competition tribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM075Jul19

In the matter between:

Footgear (Pty) Ltd Primary Acquiring Firm

and

The assets and business associated with the "Edgars Active" and "High Key" brands of Edcon Ltd Primary Target Firm

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Panel	: Enver Daniels (Presiding Member)
	: Yasmin Carrim Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 18 September 2019
Order Issued on	: 18 September 2019
Reasons Issued on	: 17 October 2019

Reasons for Decision

Approval

[1] On 18 September 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Footgear (Pty) Ltd and the assets and business associated with the "Edgars Active" and "High Key" brands of Edcon Ltd.

[2] The reasons for the unconditional approval follow.

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Footgear (Pty) Ltd ("Footgear"), a company incorporated in accordance with the company laws of South Africa. Footgear is wholly owned and controlled by Footgear Holdings (Pty) Ltd, which is, in turn, controlled by OMPE GP IV (Pty) Ltd ("OMPE"). OMPE is ultimately controlled by Old Mutual Ltd ("OM"). OM is listed on the Johannesburg Stock Exchange and is therefore not controlled by any firm.

[4] Footgear does not control any firm/s.

[5] Footgear Holdings is a newly incorporated company. Its sole purpose is to hold 100% of the shares in Footgear.

[6] In South Africa, OM ultimately controls in excess of 100 firms. Relevant for purposes of the proposed transaction, that is, in addition to its controlling interest in Footgear, is its ultimate controlling interest in MoreCorp (Pty) Ltd ("MoreCorp"). The relevance of which is made clear below.

[7] Footgear, Footgear Holdings and their ultimate controllers are, hereafter, collectively referred to as the Acquiring Group.

[8] The Acquiring Group has interests in a number of companies active in several industries, including, *inter alia*, financial services, life and savings, property and asset management. Apposite to the present transaction are the activities of Footgear and MoreCorp.

[9] Footgear primarily operates as a retailer of footwear and, on a limited scale, as a retailer of accessories and apparel.[1] Footgear stocks brands, such as Levi's, CAT, Hi-Tec, New Balance, Reebok, Asics, Nike, Adidas and Puma. Footgear's footwear offering caters across categories, gender and age groups, servicing men, women and children. This offering includes an array of

[1] Footgear operates via 63 "brick and mortar" stores and also sells online.

casual and leisure footwear, which includes fashion footwear, outdoor footwear, sports performance and sports inspired footwear.

[10] MoreCorp, on the other hand, is primarily involved in the retail of golf and cycling equipment as well as related products and accessories.[2] MoreCorp also provides golf and cycling training facilities and online platforms which allow for the booking of golf games, sports related travel or holidays and online advertising.

Primary target firm

[11] The primary target firm is the assets and business associated with the "Edgars Active" and "High Key" brands of Edcon Ltd ("the Target Business").

[12] The target business is within the Jet Division of Edcon Ltd. Edcon Ltd is a listed company and is therefore not controlled by any firm.

[13] The Target Business is active in the retailing of men's, women's and children's active footwear, apparel and accessories. Brands sold by the Target Business include, amongst others, Edcon's in-house Pro Action and Jabari brands, as well as Adidas, New Balance, Nike, Puma and Reebok.[3]

Proposed transaction and rationale

[14] Footgear intends to acquire the Target Business as a going concern from Edcon Ltd. Post-merger, the Target Business will be owned and controlled by Footgear.

[15] The proposed transaction will afford Footgear an opportunity to fast track the growth and geographic coverage of its retail footprint, in that the vast majority of the Target Business' outlets are situated in locations where Footgear does not have significant presence.

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[2] Golfing equipment includes golf clubs, golf balls, bags and carts. Cycling equipment includes branded bicycles, components and accessories.

[3] The Target Business comprises approximately 116 retail stores across the continent (with 109 of these stores located in South Africa). These stores are typically located in shopping streets in central business districts, as well as shopping centres.

[16] From the perspective of Edcon Ltd., the sale of the Target Business to Footgear will provide it with the best prospect of continued existence in light of the financial difficulty that it has been experiencing of late.

Impact on competition

[17] The Commission considered the activities of the merging parties and found that there is a horizontal overlap in the retailing of athleisure footwear, apparel and accessories. As such, the Competition Commission ("the Commission") assessed the competition effects in the following markets:

Branded products

17.1 *The national market for the retail of athleisure branded footwear;*

17.1.1 Within this market, the Commission found that the merged entity will account for 11% of the market, with a market share accretion of 5%.[4] It further found that the merged entity will continue to face competition from various other players, including Total Sport, Sport Scene, Studio 88, Cross Trainer and Tekkie Town.

17.2 *The national market for the retail of athleisure branded apparel;*

17.2.1 The Commission found that Footgear is barely active in this segment of the market, with an estimated market share of 0.008%, whereas the Target Business has an estimated market share of 8.5%.

17.3 *The national market for the retail of athleisure branded accessories;*

17.3.1 The Commission found that Footgear is barely active in this segment of the market as it has an estimated market share of 1.1%, while the Target Business has an estimated market of 10.3%.

[4] The Commission used data, obtained from market participants to estimate the market shares of the merging parties and their competitors in the relevant markets, of 2018.

17.4 *The national market for the retail of athleisure branded footwear, apparel and accessories;*

17.4.1 Within this market, the Commission found that the merged entity will account for approximately 10.6% of the market, with an accretion of 6%. It further found that there are alternative players in the market that will continue to constrain the merged entity, such as Cross Trainer, Tekkie Town, Street Fever, Nike, Adidas and Total Sport.

Non-branded products

17.5 *The national market for the retail of athleisure non-branded footwear;*

17.5.1 Within this market, the Commission found that the merged entity will account for 31% of the market, with an accretion of 10%. The merging parties will continue to face competition from a number of competitors, such as Mr. Price, Mr. Price Sports, Edgars, Ackerman's, Jet and Woolworths.

17.6 *The national market for the retail of athleisure non-branded apparel;*

17.6.1 The Commission found that while the Target Business has an estimated market share of 6.5%, Footgear is not active in this market.

17.7 *The national market for the retail of athleisure non-branded accessories;*

17.7.1 The Commission found that the merged entity will have an estimated market share of 5.9%, with an accretion of 5.7%. Footgear was found to be barely active in this market.

17.8 *The national market for the retail of athleisure non-branded footwear, apparel and accessories.*

17.8.1 The Commission found that the merged entity will have an estimated market share of 9.3%, with an accretion of 7%.

[18] In addition to the aforementioned, the Commission noted that while both the merging parties offer credit facilities, this was unlikely to give them a significant competitive advantage as it was found that the provision of credit is not a significant consideration by customers. Furthermore, the competitors of the merging parties, such as Tekkie Town, were found to offer similar credit facilities.

[19] Given the relatively low market shares and the presence of alternative players in each of the aforementioned markets, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition.

Public interest

[20] The merging parties gave an undertaking not to effect retrenchments as a result of the proposed transaction.

[21] In view of the merging parties' undertaking, the Commission concluded that the proposed transaction is unlikely to give rise to merger specific retrenchments.

Conclusion

[22] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, the proposed transaction raises no public interest concerns. Accordingly, we approved the proposed transaction unconditionally.

Presiding Member: Mr. Enver Daniels

17 October 2019
DATE

Ms Yasmin Carrim and Ms Andiswa Ndoni concurring

Case Manager: Helena Graham
For the merging parties: Mark Garden of ENSafrica
For the Commission: Billy Mabatamela and Themba Mahlangu