competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM038May17

In the matter between

MIH ECOMMERCE HOLDINGS (PTY) LTD	Acquiring Firm
And	
TAKEALOT ONLINE (RF) (PTY) LTD	Target Firms

Panel	: Mr N Manoim (Presiding Member)
	: Ms M Mazwai (Tribunal Member)
	: Mr AW Wessels (Tribunal Member)
Heard on	: 02 August 2017
Order Issued on	: 02 August 2017
Reasons Issued on	: 25 August 2017

REASONS FOR DECISION

Approval

[1] On 02 August 2017, the Competition Tribunal unconditionally approved the large merger between MIH eCommerce Holdings (Pty) Ltd ("MIHE") and Takealot Online (RF) (Pty) Ltd ("Takealot").

[2] The reasons for the approval follow.

Parties to the transaction and their activities

Primary Acquiring Firm

[3] The primary acquiring firm is MIHE, a subsidiary of Naspers Limited ("Naspers").

[4] Naspers is a holding company which operates through a number of subsidiaries. Two of these subsidiaries, namely MIH Holdings (Pty) Ltd ("MIH Holdings") and Media24 Holdings ("Media24 Holdings"), are relevant to the transaction at hand.

[5] MIH Holdings wholly controls the primary acquiring firm, MIHE.

[6] At present MIHE owns a 47.08% stake in the target firm Takealot. In terms of this transaction it will increase its stake in Takealot to 58.26 %.[1]

[7] Media24 Holdings controls Media24 (Pty) Ltd ("Media24"). Media24 has two divisions relevant to the transaction, "On the Dot" and "Spree".

[8] Spree is an online retailer of footwear, apparel and accessories to consumers through its website www.spree.co.za. Spree sells local and international footwear, apparel and accessories for men, women, and children. Spree does not sell any other consumer goods other than footwear, apparel and accessories.

[9] On the Dot is a multichannel media logistics company that offers print distribution and, relevant to the current transaction, ecommerce services. These ecommerce services include warehousing, pick and pack, courier, clearing and forwarding, customer case and returns co-ordination services. In addition, On the Dot provides certain technology bases systems to its clients,

[1] Joint Competitiveness Report submitted by the Merging Parties, page 47 of the Merger Record.

including warehouse management systems, courier management systems and last mile delivery solutions.

Primary Target Firm

[10] Takealot's primary shareholders pre-transaction are Tiger Global Six T2 Holding ("Tiger") and MIHE, each controlling 47.08% of the company respectively. The remaining 5.84% of the shares in Takealot are held by minority shareholders.

[11] Takealot is an online retailer of a wide variety of consumer goods through its website www.takealot.com. Takealot offers an extensive range of consumer products.[2]

[12] It also controls Superbalist is an online retailer of footwear, apparel and accessories, as well as homeware, décor and novelty products through its website www.superblist.com.

[13] In addition, Takealot, through its subsidiary, Mr Delivery Pty Ltd ("MrD"), is active in the provision of (i) rapid delivery and courier services (known as MrD courier) and (ii) a food delivery business which has evolved to include a mobile online market place allowing restaurants to list their offerings and customers to purchase online and have it collected and delivered (known as MrD Food).

Proposed transaction and rationale

[14] In terms of the proposed transaction, MIHE will subscribe for a number of A-class ordinary shares in Takealot. The Merging parties submit that these new A-class ordinary shares, when combined with the shares already controlled by MIHE will result in MIHE beneficially owning more than half of issued share

[2] The products are categorised as follows: liquor, computers and tables; cellphones & GPS; TV, audio and video; cameras; office & stationary; books, including e-books; gaming; movies and TV; music; home& kitchen, DIY & auto; garden, pool &patio; toys; fashion & accessories (i.e. footwear, apparel and accessories); sport camping & outdoors; baby and toddler; health & beauty; pets; and luggage & travel.

capital in Takealot (58.26%), but will not automatically afford MIHE additional voting rights. MIHE will however have the discretion to exercise control over Takealot in the form of (i) electing to convert its a-class shares to voting shares in proportion to its shareholding; and/or (ii) exercising a right to veto the business plan of Takealot.

[15] In terms of rationale, Naspers submits that it perceives that there is potential for further growth within the ecommerce market in South Africa and that Takealot, as a leader in the sector, possesses an exceptional management team capable of great success. It submits that Takealot does however have a current (and possibly future) need for additional funding to enable its business to grow and reach a level of profitability. Naspers wishes to enter into the proposed transaction to provide funding to Takealot to place it in a position where it no longer needs to concern itself with raising funds in the future.

[16] Takealot submits that it requires funding and it is efficacious to obtain funding from an existing shareholder, which obviates the need to pay the cost of finance that would be charged by third party lenders, or to introduce new shareholders to Takealot.

Relevant market and impact on competition

Horizontal assessment

[17] The proposed transaction presents two horizontal overlaps. The first is in respect of the retail of consumer goods as the Naspers group's subsidiary, Spree, operates in this market as does Takealot (including Superbalist).

[18] The Commission considered various approaches to defining the market. The narrowest market definition was that of the online national market for the retail of footwear and clothing. If the market was so defined then the merging parties would have a market share of 88.15% with an accretion of 43.15%.

[19] However this market definition is unlikely to be correct. First, as the merging parties pointed out, online retailers are still constrained by bricks and mortar retailers. If the market consists of the latter as well, then the merged entity would not account for more than 1%. Second, even the online footwear and clothing market shares are vastly overstated, as the Commission was unable to obtain sales data for other online rivals. Thus the Commission's market shares for instance did not include a well-known online retailer called Zando. It is therefore more likely that the 1% figure reflects an accurate market assessment than does the 88.15% figure.

[20] Third, it needs to be borne in mind that Naspers through MIHE already holds a substantial stake in Takealot pre-merger. The increment of approximately 7% is unlikely to alter pre-merger incentives.

[21] In respect of the second market for courier services where Naspers' On the Dot provides courier services whilst Takealot does this in-house whilst provided some to third parties, the market shares were – too low – below 1% – to merit concern.

Vertical assessment

[22] The Commission assessed two vertical relationships (i) Naspers Group supplies Takealot with books and ebooks and (ii) Naspers provides courier services to online retailers that compete with Takealot.

[23] In respect of books and ebooks, the Commission submitted that Takealot accounted for less than 3% of the total revenue generated by the Naspers Group for the sale of books and ebooks, with the remaining 90% of the revenue generated by other customers. The Commission concluded that it is unlikely that the merged entity would be incentivized to adopt any input foreclosure strategy against its other customers.

[24] In terms of the provision of courier services to online retailers that compete with Takealot, the Commission submitted that On the Dot as a relatively small

player within the courier services market does not have the market power for an input foreclosure strategy to be effective. In addition, the Commission found that online retailers' source courier services from multiple courier services at a time and do not rely on any one company. The proposed transaction thus does not raise foreclosure concerns relating to courier services.

Public interest

[25] The merging parties submitted, which was confirmed by the Commission that the proposed transaction will not have a negative effect on employment because the target firms will continue to operate as is post-merger.

[26] The proposed transaction further raised no other public interest concerns.

Conclusion

[27] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Mr Norman Manoim **25 August 2017**
Date

Ms Mondo Mazwai and Mr AW Wessels concurring

Tribunal Researcher: Alistair Dey-van Heerden

For the merging parties Nick Altini of Baker McKenzie

For the Commission: Reabetswe Molotsi and Thabelo Masithulela