competitiontribunal
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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: SM154Oct15

In respect of the request for consideration of the conditionally approved merger under the Competition Commission's case number 2015Sep0503 between:

Accenture (South Africa) Proprietary Limited	**First Applicant**
Accenture Holdings B.V.	**Second Applicant**
Edcon Limited	**Third Applicant**

("The Acquiring Firms")

The Consumer Credit and Collection Services Joint Ventures	**Fourth Applicant**

("The Target Firm")

and

The Competition Commission	**Respondent**

Panel	:	N Manoim (Presiding Member)
		A Roskam (Tribunal Member)
		A Ndoni (Tribunal Member)
Heard on	:	15 December 2015
Decided on	:	15 December 2015
Reasons issued on	:	27 January 2016

Reasons for Decision

Approved subject to conditions

[1] On 20 October 2015, the merging parties, namely, Accenture (South Africa) Proprietary Limited ("Accenture SA") , Accenture Holdings B.V. (collectively referred to as the Accenture Group) and Edcon Limited ("Edcon") and the acquiring firm The Consumer Credit and Collection Services Joint Ventures ("Joint Venture") filed an application in terms of section 16(1)(a) of the

Competition Act No. 89 of 1998 requesting the Competition Tribunal ("Tribunal") to reconsider their small merger that was approved subject to conditions by the Competition Commission ("Commission") on 6 October 2015.

[2] On 15 December 2015, the Competition Tribunal ("Tribunal") conditionally approved the merger between the merging parties for the reasons to follow.

Parties to transaction

Primary acquiring firm

[illegible] consulting, technology and outsourcing activities. In South Africa, Accenture SA provides advisory services to companies in order to maximise their operating performance by developing and implementing technology to improve productivity and efficiency.

[4] Edcon is a large clothing retailer trading through a range of retail formats in and around South Africa.

Primary target firm

[5] The target firm is a newly established joint venture which was established to provide consumer credit and collection services to third-party customers locally and abroad. The Joint Venture would provide these services to customers such as banks, fast moving consumer goods such as clothing retailers and other consumer focused companies.

Background

[6] During the Commission's investigation of the proposed transaction it found that there was no horizontal overlap and that the proposed transaction would unlikely lead to any vertical foreclosure concerns post-merger. Instead, the

Commission's concern intended to address the potential harm of the acquiring firm being used as a conduit for information exchange between Edcon and its competitors in the retail sector as the acquiring firm could provide consumer credit and collection services to competing clothing retailers.

[7] In addressing this harm the Commission proposed that the merger be approved subject to, amongst others, the following conditions:

> *"The directors appointed to the board of the Target Firms shall not be appointed, invited and/or attend meeting of the board and/or management committees(s) of Edcon"'* and
> *'The employees, management and executive and non-executive directors of the Target Firms shall not be involved in Edcon's retail and other operations nor attend any meetings"*

[8] The above-mentioned conditions were communicated to the merging parties during October 2016 and were subsequently approved and a merger certificate was duly issued. The merging parties submitted that the merger was approved prematurely and that the above-mentioned merger conditions would be burdensome for Edcon as it does not have sufficient executive and management staff available for it to have mutually exclusive boards with the Joint Venture. The merging parties sought to apply to the Tribunal for request for consideration.

[9] Subsequent to the merging party's filing their request for consideration with the Tribunal they suggested alternative conditions to remedy the possibility of information exchange. The conditions include provisions where the merging parties undertake to partition and separate Edcon's retail operations from the Joint Venture, the implementation of Chinese walls to ensure that information is not exchanged and an undertaking that employees and management of the Joint Venture would not be involved in Edcon's retail operations.

[10] These alternative conditions were acceptable to the Commission who confirmed this in a letter confirming to the Tribunal. [1]

[10] As the merging parties and the Commission are in agreement on the proposed conditions and as no contrary facts were presented to us, the Tribunal grants the consideration subject to the proposed conditions.

Mr Norman Manoim

27 January 2016
DATE

Mr Anton Roskam and Ms Andiswa Ndoni concurring

Tribunal Researcher: Aneesa Ravat

For the merging parties: Chris Charter of Cliffe Dekker Hofmeyr for the first and second applicants and Graeme Wickins of Werksmans attorneys for the third applicant

For the Commission: Gilberto Biacuana

[1] *Inter alia* merger record page 38-39