



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM129Aug17

In the matter between:

The SPAR Group Ltd

Primary Acquiring Firm

and

Fifth Season Investments 126 (Pty) Ltd

Primary Target Firm

Panel : Yasmin Carrim (Presiding Member)
: Enver Daniels (Tribunal Member)
: Fiona Tregenna (Tribunal Member)
Heard on : 20 September 2017
Order Issued on : 20 September 2017
Reasons Issued on : 18 October 2017

Reasons for Decision

Approval

[1] On 20 September 2017, the Competition Tribunal ("Tribunal") unconditionally approved the large merger between The SPAR Group Ltd ("SPAR Group") and Fifth Season Investment 126 (Pty) Ltd¹ ("Fifth Season").

[2] The reasons for approving the proposed transaction follow.

¹ Fifth Season is referred to as Fifth Season Investments 126 (Pty) Ltd throughout the record, except in the Subscription Agreement where it is referred to as Fifth Season 126 (Pty) Ltd. We queried this with the merging parties' legal representative who confirmed that the correct name is Fifth Season Investments 126 (Pty) Ltd.

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm is the SPAR Group, a public company incorporated under laws of the Republic of South Africa ("RSA") and listed on the Johannesburg Securities Exchange. The SPAR Group conducts a wholesaling operation throughout South Africa. It acquires goods at best possible prices as far as possible directly from manufacturers and sells these goods to the SPAR Guild members. The SPAR Group also operates the SPAR Distribution centres. These distribution centres warehouse and distribute dry goods, perishable goods, liquor, general merchandise, personal care goods, etc. to the SPAR Guild stores. The SPAR Group also operates nine retail stores. Of relevance to this transaction is the SPAR Group's activities in the pharmaceutical sector through its PHARMACY at SPAR entities ("PAS"). The SPAR Group has 75 PAS retail outlets in South Africa, which purchase unscheduled medicines and frontshop products from pharmaceutical wholesalers and sell them in the SPAR Groups' retail outlets. The SPAR Group does not own a pharmaceutical license and is therefore unable to wholesale pharmaceutical products.

Primary target firm

[4] Fifth Season is firm duly incorporated in accordance with the company laws of South Africa. Fifth Season is a wholly-owned subsidiary of Avoriaz (Pty) Ltd ("Avoriaz"). Avoriaz does not directly or indirectly own any other entity. Fifth Season controls the entire issued share capital of S Buys (Pty) Ltd ("S Buys"), which in turn controls the following entities; S Buys (Pty) Ltd (ScriptWise Courier Pharmacy and Park Retail Pharmacy), Malan & Buys (Pty) Ltd ("S Buys Wholesaler") and Forefront Info (Pty) Ltd ("Forefront"). S Buys and its subsidiaries will be referred to as the "S Buys Group". The S Buys Group activities are divide into four separate divisions namely;

- S Buys Wholesaler which is a pharmaceutical, dispensary and wholesaler of surgical products to pharmacies, hospital doctors, the State and NGO's;

- ScriptWise Specialised Pharmacy which is a courier pharmacy that dispenses and delivers chronic medication to patients throughout the country;
- S Buys Park Pharmacy which is a retailer of prescription medicines, over the counter and frontshop products to customers; and
- S Buys Academy which provides training programmes to individuals.

Proposed transaction and rationale

[5] The SPAR Group will purchase 3000 shares in Fifth Season, through a Subscription Agreement, giving it 60% shareholding and majority control over the S Buys Group. Essentially what will happen is that currently S Buys has 2000 shares. S Buys will issue an additional 3000 shares. Thereafter the SPAR Group will subscribe for those 3000 shares. So Fifth Seasons will move from 2000 shares to 5000 shares which will entitle the SPAR Group to 60% ownership of the company. The 40% will remain with Avoriaz. Post-merger the SPAR Group will have majority control of Fifth Season.

[6] The proposed transaction will provide SPAR Group with the required license to carry on business as a wholesaler of medicines.

Impact on competition

[7] Based on the activities of the merging parties, the Commission assessed the following markets to ascertain whether any competition concerns arise;

- Warehousing and distributing of pharmaceutical products - no overlaps as the SPAR Group is not active in this market;
- Courier of medicines - no overlap as SPAR Group is not active in this market;
- Training of pharmacy staff - no overlap as SPAR Group is not active; and
- Pharmacy retail - no overlap as SPAR Group is not active because PAS retail outlets operate independently of the SPAR Group.

[8] The Commission found that the only horizontal overlap is in the national market for the wholesaling of frontshop products and unscheduled medication.

However, the Commission found that the post-merger market share is less than 1%.

[9] The Commission also identified a vertical overlap arising from the current transaction, in the national market for the wholesaling of frontshop products and unscheduled medication. This is because post-merger the SPAR Group's PAS retailers may procure pharmaceuticals from the SPAR Group's in-house wholesaler. The Commission, however, submits that no input foreclosure or customer foreclosure is likely to take place as the target firm only accounts for less than 1% of the wholesale market for frontshop products and unscheduled medication. In addition to this, the merged entity will only have less than 6% of the national retail market for pharmaceuticals.

Public interest

[10] The merging parties submitted that the proposed transaction will not result in any adverse impact on employment.²

[11] The proposed transaction further raises no other public interest concerns.

Conclusion

[12] 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 Enver Daniels

18 October 2017

DATE

Prof. Fiona Tregenna and Ms Yasmin Carrim concurring

² Merger Record, *inter alia* page 45.

Tribunal Case Manager : Caroline Sserufusa
For the merging parties : Howard Stephenson of Garlicke & Bousfield Inc.
For the Commission : Rakgole Makolo