



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM271Mar19

In the matter between:

The Industrial Development Corporation of
South Africa SOC Ltd

Primary Acquiring Firm

And

Celrose (Pty) Ltd

Primary Target Firm

Panel : E Daniels (Presiding Member)
F Tregenna (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 10 April 2019
Last submission on : 11 April 2019
Decided on : 11 April 2019

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that -

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Presiding Member
Mr Enver Daniels

11 April 2019
Date

Concurring: Prof. Fiona Tregenna and Mrs Medi Mokuena

ANNEXURE A

THE INDUSTRIAL DEVELOPMENT CORPORATION OF SOUTH AFRICA SOC LIMITED

AND

CELROSE PROPRIETARY LIMITED

CASE NUMBER: 2019MAR0039

CONDITIONS

1. DEFINITIONS

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-

1.1.1. "**Acquiring Firm**" means The Industrial Development Corporation of South Africa SOC Limited;

1.1.2. "**Approval Date**" means the date on which the Merger is approved by the Tribunal and as set out in the Tribunal's clearance certificate (Notice CT 10);

1.1.3. "**Celrose**" means Celrose (Pty) Ltd;

1.1.4. "**Commission**" means the Competition Commission of South Africa;

1.1.5. "**Conditions**" means the conditions set out herein;

1.1.6. "**Days**" means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;

1.1.7. "**Edcon**" means Edcon Limited;

1.1.8. "**Eddels**" means Eddels Shoes (Pty) Ltd a wholly owned subsidiary of Celrose;

- 1.1.9. “**IDC**” means the Acquiring Firm;
- 1.1.10. “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.11. “**Labour Relations Act**” means the Labour Relations Act, 66 of 1995 (as amended);
- 1.1.12. “**Merchandise Supply Agreement**” means the strategic merchandise supply agreement concluded between Edcon, Celrose and Eddels on 10 April 2019.
- 1.1.13. “**Merger**” means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.1.14. “**Merging Parties**” means the IDC and Celrose;
- 1.1.15. “**NULAW**” means the National Union of Leather and Allied Workers;
- 1.1.16. “**SACTWU**” means South African Clothing and Textile Workers’ Union;
- 1.1.17. “**Target Firm**” means Celrose and Eddels; and
- 1.1.18. “**Tribunal**” means the Competition Tribunal of South Africa.

2. RECORDAL

- 2.1. On 27 June 2018, the Merging Parties notified a large Merger to the Commission wherein the IDC intends to acquire control over Celrose. Following its investigation of the Merger, the Commission is of the view that the Merger is unlikely to substantially prevent or lessen competition in any market because it does not result in any overlaps.
- 2.2. The Merging Parties submitted that the Merger would not result in any job losses or other negative impact on employment. However, the Commission received employment concerns from NULAW and SACTWU relating to Edcon’s exit as a controlling shareholder of the Target Firm. In particular, SACTWU and NULAW are concerned that in the absence of commitments that post-merger, Edcon will continue to procure the same or similar volumes of footwear and clothing from Celrose and Eddels, it is likely that employment at Celrose and Eddels will be negatively impacted.

- 2.3. The Commission found that the concern from SACTWU and NULAW and the likely effect on employment raised by the trade unions is merger-specific because but for the proposed transaction, Edcon would remain the controlling shareholder of the Target Firm and continue to procure from the Target Firm. The Commission further found that sales to Edcon constituted a substantial portion of the Target Firm's revenue pre-merger.
- 2.4. In response to the trade unions' concerns, the Merging Parties submitted that the merger agreement has a condition precedent clause which requires Edcon, Celrose and Eddels to conclude an amended and reinstated merchandise supply agreement on terms reasonably satisfactory to each of them, and have in fact concluded the Merchandise Supply Agreement, and as such, Edcon will continue to procure products from Celrose and Eddels post-merger. In addition, the Merging Parties provided an unequivocal undertaking that the Merger will not result in any retrenchments. Despite the merging parties' submissions, SACTWU and NULAW indicated that they remain concerned about the Merger's possible effect on employment.
- 2.5. In order to address the employment concerns raised by SACTWU and NULAW, the Merger is approved subject to these Conditions.

3. CONDITIONS

- 3.1. The Target Firm shall not retrench any employees as a result of the Merger for a period of five (5) years from the Implementation Date.
- 3.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.
- 3.3. The Target Firm must, during the first five year period of the Merchandise Supply Agreement, provide reports to the Commission on the Merchandise Supply Agreement in accordance with paragraph 4.5 below.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. The Target Firm shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. The Target Firm shall circulate a copy of the Conditions within 5 (five) Days of the Approval Date to all employees of Celrose and Eddels and their trade unions or employee representatives.
- 4.3. As proof of compliance thereof, the respective Chief Executive Office or Managing Director of the Target Firm shall within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees and respective trade unions.
- 4.4. The Target Firm shall submit an affidavit on each anniversary of the Implementation Date, confirming compliance with clause 3 of the Conditions for the duration of the Conditions. This affidavit must be deposited to by the Chief Executive Officer or Managing Director of the Target Firm.
- 4.5. The Target Firm shall submit an affidavit on each anniversary of the Implementation Date, confirming that Edcon has complied with its obligations in terms of the Merchandise Supply Agreement. This affidavit must be deposited to by the Chief Executive Officer or Managing Director of the Target Firm.

5. GENERAL

- 5.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.
- 5.2. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
- 5.3. The Merging Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.