



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 016311

In the matter between:

CA Sales Holding (Pty) Ltd

Acquiring Firm

And

Pack 'n Stack Investment Holdings (Pty) Ltd

Target Firm

Panel	:	Norman Manoim (Presiding Member), Takalani Madima (Tribunal Member) and Andiswa Ndoni (Tribunal Member)
Heard on	:	12 June 2013
Order issued on	:	12 June 2013
Reasons issued on	:	21 June 2013

Reasons for Decision

Approval

[1] On 12 June 2013, the Competition Tribunal ("Tribunal") conditionally approved the merger between CA Sales Holding (Pty) Ltd ("CA Sales") and Pack 'n Stack Investment Holdings (Pty) Ltd ("Pack & Stack"), in terms of which CA Sales will acquire 40% of the total issued share capital of Pack & Stack with an irrevocable right and option to acquire a further 27.1% of the issued share capital of Pack & Stack. Our reasons follow below.

The Parties and their activities

[2] The primary acquiring firm is CA Sales which is the parent company of a group of businesses that operate in Southern Africa and act as agents for

manufacturers of fast-moving consumer goods (“FMCG”). CA Sales is controlled by PSG Group Limited (“PSG”) a public company listed on the Johannesburg Stock Exchange (“JSE”). CA Sales broadly offers sales, merchandising, warehousing, distribution and debtors’ administration services. However in the Republic of South Africa, CA Sales only offers sales and merchandising services to the Spar house brands.¹

- [3] The target firm is Pack & Stack which is a sales and merchandising business, operating in retail and wholesale stores representing manufacturers of FMCG. Such retailers include Pick ‘n Pay, Shoprite, Checkers, Spar, Clicks, Metcash amongst others.

The relevant market and the impact on competition

- [4] It is common cause between the Commission and the merging parties that there is a horizontal overlap in the activities of the merging parties as they are both active in the market for the provision of sales and merchandising services for manufacturers of FMCG. Essentially these firms are responsible for packing of manufacturers goods on retailers’ shelves. The Commission however found no reason for concern about this overlap in activities as the merged entity has a small market share and the increment is insignificant; from 6% to 6.5%. Market players such as Smollan, 3D Marketing, VMS Group, GP Harding, amongst others, would continue to discipline the merged entity post merger.

- [5] The Commission also considered the potential for foreclosure post merger, given that Pioneer Foods Group Limited (“Pioneer Foods”) (in which PSG also has a shareholding) is a major manufacturer of FCMGs. The Commission concluded after a detailed investigation that neither customer nor input foreclosure were likely post merger.

The Call Option

- [6] As noted above, the transaction involves an initial purchase by CA Sales of 40 % of the target firm’s equity, with the right to exercise a call option to acquire a further 27.1 %.² Since it was not clear if the call option might be exercised within the 90 day period provided for in the Call option agreement, the Commission was willing to concede that the transaction would not be required to be re-notified, provided the option was exercised during this period. However if the option was exercised at some date thereafter, the Commission argued that the transaction should be re-notified, as market conditions might have changed. The merging parties

¹ See page 5 of Transcript of hearing.

² Clause 4.2.1 of the Call Option Agreement, see page 114 of merger record.

accepted this proposal and agreed that it should be made as a condition for the approval of the merger.

[7] We consider this approach reasonable. Technically, the later exercise of the option would make what is presently an acquisition of joint control, an acquisition of sole control. Ordinarily that would entail a further merger notification, but the condition obviates the need for doing so.³

[8] There are two reasons why the condition is appropriate on the present facts. Firstly, the period allowed for the exercise of the option is limited and market conditions prevailing at present are unlikely to change significantly in this period. Secondly, the Commission has analysed the merger as if it was one entailing the acquisition of sole control, not just one of joint control. Thus the change in control contemplated by the exercise of the call option has been foreshadowed in its present analysis, provided it is exercised timeously. The condition is thus a reasonable compromise between the public interest in having effective control of mergers and the private interests of the merging parties in not being burdened by excessive compliance requirements.⁴

Our Analysis

[9] We asked the Commission during the hearing if it had contacted Spar for its views on the transaction given that it was the sole customer of the acquiring firm. It transpired that it had not been consulted. The Commission has since rectified this at our instance and has, after our hearing, obtained written confirmation from Spar that it has no concerns about the transaction.⁵

[10] There were no public interest concerns, and the proposed transaction had no effect on employment.

CONCLUSION

[11] The proposed transaction is unlikely to substantially lessen or prevent competition and we therefore approved it subject to the following condition related to the exercise of the call option:

³ See our decision in *Ethos Private Equity Fund IV & The Tsebo Outsourcing Group (Pty) Ltd*: 30/LM/Jun03 at para37-40, page 9.

⁴ Ibid

⁵ See page 10 of Transcript of hearing.

[12] *“Should CA Sales not exercise the call option within the 90 days period as envisaged by clause 4.2.1 of the Call Option Agreement filed with the merger notification and decide to acquire additional shareholding that results in CA Sales owning more than half of the issued share capital of Pack & Stack at a later date, outside the aforesaid 90 (ninety) day period, then the merging parties will again seek competition approval before implementing the acquisition.”*

Norman Manoim

21 June 2013
DATE

T Madima and A Ndoni concurring.

Tribunal Researcher:

Caroline Sserufusa

For the merging parties:

Susan Meyer for Cliffe Dekker

For the Commission:

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