

SOUTH AFRICA / JUDGMENT

Dis-Chem Distribution (Pty) Ltd v CT Distribution Centre (Pty) Ltd and Another (LM177Feb22) [2022] ZACT 94 (30 March 2022) [2022] ZACT 94

COURT
Competition Tribunal

BEFORE
L Mncube, M Mazwai, I Valodia

CASE / FILE NUMBER
LM177Feb22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM177Feb22

In the matter between:

Dis-Chem Distribution (Pty) Ltd

Primary Acquiring Firm

And

CT Distribution Centre (Pty) Ltd

and KZN Warehouse (Pty) Ltd

Primary Target Firms

Panel: L Mncube (Presiding Member)

M Mazwai (Tribunal Member)

I Valodia (Tribunal Member)

Heard on: 30

March 2022

Order Issued on: 30 March 2022

Reasons

Issued on: 30 March 2022

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)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Presiding Member Professor Liberty Mncube

Concurring: Ms Mondo Mazwai and Professor Imraan Valodia

Date: 30 March 2022

Merger Clearance Certificate

Date : 30 March 2022

To : Bowmans Attorneys

You applied to the Competition Commission on 04 February 2022 for merger approval in accordance with Chapter 3 of the Competition Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal

approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to: X no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

This form is prescribed by the Minister of Trade and Industry in terms of section 27 (2) of the Competition Act 1998 (Act No. 89 of 1998).

Case no: LM177Feb22

Dis-Chem Distribution (Pty) Ltd (Primary Acquiring Firm)

and

KZN Warehouse (Pty) Ltd

(Primary Target Firms)

REASONS

FOR DECISION

- [1] On 30 March 2022, the Tribunal unconditionally approved a large merger between Dis-Chem Distribution Proprietary Limited (“Dis-Chem Distribution”) and CT Distribution Centre (Pty) Ltd (“CTDC”) and KZN Warehouse (Pty) Ltd (“KZN Warehouse”).

Transaction

- [2] The proposed transaction involves Dis-Chem Distribution acquiring the entire issued share capital of KZN Warehouse and CTDC in terms of the two sale and purchase of shares agreements. Upon implementation of the proposed transaction, Dis-Chem Distribution will exercise sole control over KZN Warehouse and CTDC.

Parties to the transaction and their activities

Primary acquiring firm

- [3] The primary acquiring firm is Dis-Chem Distribution Proprietary Limited (“Dis-Chem Distribution”). Dis-Chem Distribution controls Finamics (Pty) Ltd, and Quenets Pharmaceutical Wholesalers (Pty) Ltd.
- [4] Dis-Chem Distribution is wholly owned by Dis-Chem Pharmacies Limited (“Dis-Chem”).[1]
- [5] Dis-Chem is active along the pharmaceutical supply chain ranging from wholesale distribution (including logistics) to the operation of retail pharmacies. Dis-Chem pharmacy stores are licensed to provide scheduled pharmaceutical products and unscheduled (specifically, schedule 0) pharmaceutical products, and front shop goods, as well as primary healthcare services through its clinics, which are located in most of its pharmacy stores.
- [6] Dis-Chem also operates an online store as well as a courier pharmacy business, which dispenses and delivers over-the-counter drugs, prescription medicine and front shop items after a customer place an order on its website.
- [7] Wholesale distribution encompasses the delivery of pharmaceutical products from wholesaler to end-dispenser (typically the retail pharmacy). The Acquiring Group is involved in final distribution of pharmaceuticals and will take ownership of the stock and on-supply to retail pharmacies. These products are warehoused and delivered to customers such as Dis-Chem retail pharmacies.\

- [8] Dis-Chem's wholesaling services are provided in-house both to its own retail pharmacies as well as to 135 The Local Choice pharmacies and approximately 800 independent pharmacies and pharmacy groups on a national basis.

Primary target firms

- [9] CTDC and KZN Warehouse are controlled by [...] an investment holding company, which is in turn controlled by [...] [2].
- [10] For the purposes of the proposed transaction, the warehouse complex property owned by CTDC [3] and the warehouse complex property owned by KZN Warehouse [4] is relevant. These two properties are referred to in these reasons as the "Target Properties" and both comprise of rentable light industrial space.
- [11] The Target Properties do not control any single firm and their distribution centres are leased to the acquiring firm, Dis-Chem Distribution.

Relationship between the parties

- [12] There is no horizontal overlap in the activities of the merging parties as the Dis-Chem Group is not active in the market for rentable light industrial properties in Pine Town area and Cape Town.
- [13] The proposed transaction presents vertical overlap between the activities of the merging parties as the Target Properties are currently leased to Dis-Chem Distribution. The Target Properties are rentable light industrial properties in Pine Town area and Cape Town area and Dis-Chem Distribution uses the Target Properties as warehouse and distribution centres for its products.

Relevant markets

- [14] Given the vertical overlap set out above, we focused our assessment on the market for the provision of rentable light industrial property.
- [15] For the purpose of our analysis, and on a cautious basis, we considered the relevant geographic market to be rentable light industrial property located within a 15km radius of the KZN warehouse and CTDC.

Competitive assessment

Vertical effects

- [16] Vertical effects may arise when a merger involves firms at different levels of the supply chain. In certain circumstances vertical mergers can result in a likely substantial lessening of competition, for example when they result in foreclosure of the merged firm's competitors.

- [17] We did not consider foreclosure in the supply of rentable light industrial property located within a 15km radius of the KZN warehouse and CTDC markets to be likely, based on the evidence before the Tribunal that the Target Properties have relatively small market shares of approximately 2% for each of the Target Properties in both markets.
- [18] Pre-transaction, the Target Properties were entirely leased to the Acquiring Group. The Acquiring Group is currently not a customer of any competitor of the Target Properties in Cape Town (Western Cape) and Pine Town (Kwa-Zulu Natal).
- [19] On the above evidence, we conclude that the merged firm will not have the ability to foreclose rivals in the market for rentable light industrial property post-merger due to the presence of alternative suppliers. Given this conclusion, we have not found it necessary to examine the incentive to foreclose or effect of foreclosure.
- [20] The proposed transaction does not give rise to a likely substantial lessening of competition as a result of vertical effects in the supply of rentable light industrial property located within a 15km radius of the KZN warehouse and CTDC.

Public interest assessment

Employment

- [21] The merging parties submit that the proposed transaction will not adversely affect employment because the target firms do not have any employees. The merging parties also submit that Dis-Chem does not intend to cancel any contracts related to the outsourced services as a result of the proposed transaction.[5]
- [22] The Commission found that the management services of the warehouse are managed by [...].
- [23] The proposed transaction is unlikely to result in employment concerns.

Effect on the promotion of a greater spread of ownership

- [24] The Target Properties are not controlled by any members of historically disadvantaged persons ("HDPs"). The

Acquiring Group [...] shareholding by HDPs.

- [25] The proposed transaction is unlikely to result in a negative effect on the promotion of a greater spread of ownership.

Conclusion

- [26] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Further, we conclude that the proposed transaction raises no substantial public interest concerns.

Professor Liberty Mncube

Ms Mondo Mazwai and Professor Imraan Valodia concurring

Tribunal Case Manager: Juliana Munyembate and Leila Raffee

For the Merging Parties: Amanda Mfuphi and Lebohang Mabidikane of

Bowmans Law

For the Commission: Innocent Mhlongo and Themba Mahlangu

[1] Other than Dis-Chem Distribution, Dis-Chem controls the following firms: Pharma Logistical Solution (Pty) Ltd; Dis-chem Glenfair (Pty) Ltd; Dis-chem Park Station; Dis-chem Mams Mall (Pty) Ltd; and Dis-chem Festival Mall (Pty) Ltd. Dis-Chem Distribution, Dis-Chem and the firms that are directly and indirectly controlled by Dis-Chem are collectively referred to as the “Acquiring

Group”.

[2] [....].

[3] CTDC's warehouse complex is located in Stikland, Cape Town with a total leasable area of 17 904m²

[4] KZN Warehouse property complex is located in New Germany, KwaZulu-Natal with a total leasable area of 15 670 m².

[5] See letter from the merging parties dated 02 March 2022, page 442 at paragraph 2.5.2 of the Merger Record.

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Prepared on 12 October 2026 · Esheria