

SOUTH AFRICA / JUDGMENT

Dis-Chem Pharmarcies Ltd v Quenets Pharmaceutical Wholesalers (Pty) Ltd, Brandwacht Marketing (Pty) Ltd (LM115Jul18) [2018] ZACT 51 (15 November 2018)

[2018] ZACT 51

COURT

Competition Tribunal

BEFORE

Enver Daniels, Imraan Valodia

CASE / FILE NUMBER

LM115Jul18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM115Jul18

In the matter between

Dis-Chem Pharmacies Ltd

Primary Acquiring Firm

And

Quenets Pharmaceutical Wholesalers (Pty) Ltd,

Primary Target Firms

Brandwacht Marketing (Pty) Ltd

Panel

: Enver Daniels (Presiding Member)

: Imraan Valodia (Tribunal Member)

Heard on : 31 October 2018

Order Issued on : 31 October 2018

Reasons

Issued on : 15 November 2018

REASONS

FOR DECISION

Approval

- [1] On 31 October 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Dis-Chem Pharmacies Ltd ("Dis-Chem") and Quenets Pharmaceutical Wholesalers (Pty) Ltd ("Quenets"), Brandwacht Marketing (Pty) Ltd ("Brandwacht"), hereinafter collectively referred to as the merging parties.
- [2] Prior to the commencement of the hearing, Ms Andiswa Ndoni (Ms Ndoni) was scheduled to sit on the panel alongside myself and Prof. Imraan Valodia. Unfortunately, Ms Ndoni received news that a family member passed away and thus was not in a position to adjudicate over the proposed transaction. In terms of section 31(3)(a) of the Competition Act 89 of 1998 (the "Act") I, Enver Daniels as the Deputy Chairperson of this Tribunal, in the absence of the Chairperson as he was traveling abroad, assumed the position of Chairperson and excused Ms Ndoni. I decided to proceed with the hearing with only two Tribunal Members sitting on the panel. No objections were raised by the Commission or the merging parties.
- [3] The reasons for approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [4] Dis-Chem is ultimately controlled by the Saltzman Family Trust. Dis-Chem controls a total of 40 firms. Dis-Chem and its subsidiaries are hereinafter collectively referred to as the 'Dis-Chem Group'.
- [5] The Dis-Chem Group is a corporate pharmacy group operating through two divisions, retail and wholesale. In terms of the retail activities,

the Dis-Chem Group operates 129 retail pharmacies which offer a range of scheduled and unscheduled pharmaceutical products; as well as 'front-shop' items.[1]

- [6] The Dis-Chem Group's wholesale activities include logistics, warehousing, fine distribution, supply chain management and in store category management. The Dis-Chem Group supply their own retail pharmacies and independent pharmacies. Their warehousing facilities

are located in Midrand and Cape Town.

Primary Target Firms

- [7] The primary target firms are Quenets and Brandwacht.

[8] Quenets is a pharmaceutical wholesaler located in the Western Cape. Quenets wholesale activities include logistics, warehousing, fine distribution, supply chain management, in store category management, marketing activities and bulk distribution. Quenets distributes pharmaceutical products and front-shop items.

[9] Brandwacht is a market company and conducts all of marketing activities related to the wholesale of the products by Quenets.

Proposed transaction

[10] In terms of the Share Purchase Agreement, Dis-Chem will acquire Quenets and Brandwacht. Post-merger, Dis-Chem will own and control the target firms.

Impact on competition

[11] The Competition Commission ("Commission") considered the activities of the merging parties and identified a horizontal overlap in the following markets:

(i) the national market for the wholesale distribution of pharmaceutical products and (ii) the Western Cape market for the wholesale distribution of pharmaceutical products.

[12] In the national market for the wholesale distribution of pharmaceutical products, the Commission found that the merging parties will have a combined post-merger market share of less than 20%, with a de minimis share accretion.

[13] In the Western Cape market for the wholesale distribution of pharmaceutical products, the Commission found that the merging parties will have a combined post-merger market share of less than 15%, with an accretion of less than 5%.

[14] The Commission was of the view that the post-merger market shares are relatively low and that the merged entity will continue to face competition from market participants such as Alpha Pharm, Pharmaceutical Distributors and manufacturers who supply directly to the retailers.

[15] The Commission also identified a vertical relationship between the merging parties as Quenets supplied pharmaceutical products to 17 Dis-Chem retail pharmacies on an ad hoc basis in 2018. This prompted an investigation into the effect of the proposed transaction on the downstream market for the retail of scheduled and unscheduled pharmaceutical products in the Western Cape. The Commission found that Dis-Chem has a market share of less than 15%.

[16] Given that Dis-Chem has a low market share, the proposed transaction does not change the structure of the retail market, and the relationship between the merging parties was very brief; the Commission was of the view that the proposed transaction is unlikely to raise foreclosure concerns.

[17] In light of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We accordingly agree with the Commission's findings.

Public interest

[18] A competitor in the market for the wholesale distribution of pharmaceutical products raised concerns about the proposed transaction. The competitor was of the view that the proposed transaction would strengthen Dis-Chem's position as a monopoly and eliminate the independent pharmacy sector.

[19] The Commission investigated the matter and found that the concerns were unsubstantiated. First, Dis-Chem's market shares in both the upstream and downstream markets are relatively low. Secondly, there is nothing to suggest that the proposed transaction will result in Dis-Chem acquiring market power. Moreover, the retailers and wholesalers will have alternatives post-merger.

[20] The merging parties confirmed that the proposed transaction will not result in any retrenchments or job losses. The proposed transaction does not raise any other public interest concerns.

Conclusion

[21] 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 concerns arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Mr Enver Daniels

Prof. Imraan Valodia concurring.

15 November 2018

Date

Tribunal Researcher : Hlumelo Vazi

For the merging parties : Adv Michelle Le Roux instructed by Saltzman Attorneys

For the Commission N Msiza and G Mutizwa

[1] Front shop items include personal care and beauty products; healthcare and nutrition products; baby care items; food products;

shoes and electronics.

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