

SOUTH AFRICA / JUDGMENT

Rebel Packaging (Pty) Ltd v West Coast Paper Traders (Pty) Ltd (LM072May18) [2019] ZACT 1 (23 January 2019)

[2019] ZACT 1

COURT

Competition Tribunal

BEFORE

A Roskam, A Ndoni, M Mokuena

CASE / FILE NUMBER

LM072May18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM072May18

In the matter between

Rebel Packaging (Pty) Ltd

Primary Acquiring Firm

And

West Coast Paper Traders (Pty) Ltd

Primary Target Firm

Panel

: Mr A Roskam (Presiding Member)

: Ms A Ndoni (Tribunal Member)

: Mrs M Mokuena (Tribunal Member)

Heard on

: 19 December 2018

Order Issued on : 19 December 2018

Reasons Issued on : 23 January 2019

REASONS

FOR DECISION

Approval

[1] On 19 December 2018, the Tribunal unconditionally approved the proposed transaction in terms of which Rebel Packaging (Pty) Ltd ("Rebel") is acquiring control over West Coast Paper Traders (Pty) Ltd ("West

Coast"). Rebel and West Coast will hereafter be collectively referred to as the "merging parties".

[2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

[3] The acquiring firm is Rebel, which is a wholly-owned subsidiary of Mpact Ltd ("Mpact"). Mpact is a firm listed on the Johannesburg Stock Exchange and is not controlled by any single shareholder.

[4] Mpact is a paper and plastic packaging manufacturer with operations in South Africa (SA), Zimbabwe, Namibia and Botswana.[1] Mpact's paper business comprises three parts, each of which operates at a different level of the paper and paper packaging value chain. Of relevance to the proposed transaction is Mpact's activities in the manufacture and supply of intermediate paper products, containerboard and carton board in particular.

[5] Pre-merger, Rebel has a 49% negative control over West Coast.

[6] The target firm is West Coast, which is controlled by Rebel. The remainder of the shares in West Coast are held by the Trustees of the AM Mills Family Trust, the Trustees of the Mills Family Trust, and the Trustees of the GW Godwin Family Trust.

[7] West Coast is a trader or converting merchant in relation to various paper products such as cartonboard and containerboard. West Coast focuses on the supply of paper materials to smaller and medium sized businesses which, inter alia, operate as corrugated carton manufacturers.

Proposed transaction and rationale

[8] The proposed transaction consists of a post-implementation notification of an intermediate merger whereby Rebel acquired a 49% negative control over West Coast. In addition, the notification involves the current transaction whereby Rebel intends to increase its shareholding in West Coast from 49% to 60%. Post-merger, West Coast will become a subsidiary of Rebel and will ultimately be controlled by Mpact.

Relevant market and impact on competition

- [9] The Competition Commission ("Commission") found a vertical overlap between the activities of the merging parties as Mpact manufactures industrial paper such as containerboard and cartonboard and West Coast purchases paper to break bulk and on-sell to smaller customers that are not serviced by Mpact. The Commission assessed the following markets: (i) the national upstream market for the manufacture and supply of containerboard; (ii) the national upstream market for the manufacture and supply of cartonboard with imports; and (iii) the national downstream market for paper merchants.
- [10] In the national upstream market for the manufacture and supply of containerboard, the Commission found that Mpact has a market share of[...], with the remaining share held by Sappi (36.26%), Corruseal (10.80%) among other market participants. In the national upstream market for the manufacture and supply of cartonboard, the Commission found that Mpact is the only player in the market with a market share of[...], while imports constitute [...] of the market. Further, the Commission submitted that due to high barriers to entry and low demand in this market, Mpact has remained the only player in the market. [2]
- [11] In the downstream market for paper merchants, the Commission found that West Coast has a market share of approximately [...] in the market for the trading of paper. The Commission further found that this is a highly fragmented market with a number of players (nationally and regionally) such as Papercor, Peters Papers and Quicklit among several others that will constrain West Coast.

Vertical Assessment

Input & Customer foreclosure (Containerboard)

- [12] In the upstream market for the supply of containerboard, the Commission found that Mpact holds a market share of [...], thus implying that approximately [...] is held by its competitors, inter alia, Sappi and Neopak. Based on the estimated market shares, the Commission concluded that it is unlikely that Mpact will engage in any input foreclosure strategy.
- [13] The Commission further found that West Coast sources its containerboard requirements entirely from Mpact, and thus makes it unlikely that upstream firms will be significantly foreclosed. Further, the Commission contacted the Competitors of Mpact such as Sappi and Neopak who both indicated that West Coast is not a significant customer of theirs, and thus had no concerns with the proposed transaction.

Input & Customer foreclosure (Cartonboard)

- [14] In the upstream market for the supply of cartonboard (including imports), the Commission found that Mpact has the ability to engage in foreclosure strategies. This is because Mpact is the only manufacturer of cartonboard in SA. However, the Commission concluded that this is unlikely as the supply of cartonboard to West Coast and its competitors is minimal. Furthermore, the Commission is of the view that foreclosure as a result of the proposed

transaction is unlikely because imports which account for approximately [...] of the sale of cartonboard will constrain Mpact.

[15] With Mpact being the only supplier of cartonboard in the country, the Commission was of the view that it is unlikely that there will be any significant customer foreclosures even in the worst-case scenario. Furthermore, the Commission is of the view that no SA firm can be foreclosed as a result of the proposed transaction because Mpact accounts for over [...] of West Coast's procurement of cartonboard, and the remainder is accounted for by imports.

[16] In view of the above, the Commission concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market. We have no reason to disagree with the Commission's findings.

Coordinated effects

[17] The Commission has implicated Mpact in [...] complaints of collusion in the paper industry [...]. The complaints relate to market division/allocation and price fixing in, inter alia, the market for the manufacture and supply of corrugated sheet. The Commission sought to establish what role West Coast could be involved in the cartels and the merged entity's ability to coordinate post-merger.

[18] The Commission found that West Coast is not active in all the [...]. Further, the Commission is of the view that the proposed merger is unlikely to create or strengthen coordination in the markets. This is because the proposed transaction will not provide Mpact with sensitive information it previously did not have access to through its negative control, and because none of West Coast's downstream rivals compete against Mpact anywhere else in the adjacent markets.

Public interest

[19] The proposed transaction does not raise any public interest concerns.

Conclusion

[20] In light of the above, we concluded 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 approved the proposed transaction unconditionally.

Mr Anton Roskam

Mrs Medi Mokuena and Ms Andiswa Ndoni concurring.

23 January 2019

Date

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : A Roets of Nortons Inc

For the Commission

: S Molefe

- [1] The business involves the production of paper and plastic packaging products, and recycling (of both paper and plastic).
- [2] From submissions by customers and competitors, the Commission understands that the market is small and has not grown over the years. and thus failed to attract any new entrants.

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