

SOUTH AFRICA / JUDGMENT

Shoprite Checkers (Pty) Ltd v Transfarm (Pty) Ltd and Others (68/LM/Oct09) [2010] ZACT 8; [2009] 2 CPLR 483 (CT) (2 February 2010) [2010] ZACT 8

COURT
Competition Tribunal

BEFORE
N Manoim, Y Carrim, A Wessels

CASE / FILE NUMBER
68/LM/Oct09

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 68/LM/Oct09

In the matter between:

Shoprite Checkers (Pty) Ltd Acquiring Firm

And

Transfarm (Pty) Ltd and 6 Others Target Firms

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member)

and A Wessels (Tribunal Member)

Heard on : 25 November 2009

Order Issued : 25 November 2009

Reasons Issued: 2 February 2010

Reasons

for Decision

Approval

On 25 November 2009, the Competition Tribunal (“Tribunal”) unconditionally approved the acquisition by Shoprite Checkers (Pty) Ltd of Transfarm (Pty) Ltd and 6 Others. The reasons for approving the transaction follow.

Parties

The primary acquiring firm is Shoprite Checkers (Pty) Ltd (“Shoprite”), a supermarket group with approximately 984 stores in 17 countries. Shoprite is a subsidiary of Shoprite Holdings Limited, a public company listed on the JSE Securities Exchange.

The primary target firms are Transfarm (Pty) Ltd (“Transfarm”), Exfarma (Pty) Ltd, Group 2 Transport (Pty) Ltd, Medsnel Transport (Pty) Ltd, Pretoria IT Services (Pty) Ltd, Schulenburg Verbeek (Pty) Ltd and Welmed Marketing (Pty) Ltd (collectively referred to as “the Transfarm Group”). The Transfarm Group is controlled by the Dirk Verbeek Family Trust and the Schulenberg-BWS Trust (the “Trusts”).

Transfarm is the main constituent company in the Transfarm Group and is a wholesale distributor of pharmaceutical, galenical and surgical products. The other afore-mentioned target firms provide support services to Transfarm.

Proposed transaction

Due to the interrelated nature of the business of the Transfarm Group, and in order to provide job security and a smooth succession planning process, the Transfarm Group decided to sell all of the said target firms as part of one indivisible transaction. Shoprite intends to acquire the entire issued share capital in the Transfarm Group.

Rationale for the transaction

Shoprite wishes to expand its pharmaceutical business operations by obtaining specialist wholesale logistics and procurement expertise through the acquisition of a national pharmaceutical wholesaler. Shoprite believes that such expansion shall enable it to secure improved efficiencies and effectively manage and control the costs of their supply chains. Shoprite submitted that the acquisition shall also place it on equal footing with its vertically integrated competitors, such as Dis-Chem and Clicks.

From the sellers’ perspective, certain trustees of the Trusts are approaching retirement and wish to exit the pharmaceutical wholesale market.

Activities of the merging parties

The Shoprite group of companies primarily operate retail grocery supermarkets and stores. Their activities predominantly relate to the retail of a wide range of fast moving consumer goods as well as the distribution of these goods, including groceries, food, household, health, beauty and lifestyle consumer products, clothing retail, home ware, textiles, cellular telephone products and the distribution of these products to its various supermarkets and stores.

Of specific relevance in the context of this transaction is MediRite, one of the value added retail divisions of the Shoprite Group.¹ MediRite operates as a retail pharmaceutical business, i.e. 83 MediRite pharmacies, which are almost exclusively located in Shoprite Checkers supermarkets and stores. MediRite retails scheduled and unscheduled pharmaceutical products and general consumer products such as health, lifestyle and beauty products (so-called “front shop” products).

Transfarm is a national wholesaler and distributor of pharmaceutical products, being scheduled and unscheduled products, which include surgical and galenical products and vitamins and minerals. These products are sold to registered vendors and dispensaries such as retail pharmacies, hospitals, doctors’ practices and veterinary practitioners.

As such, there is no horizontal overlap between the activities of the merging parties since Transfarm is a pharmaceutical wholesaler who distributes to retailers whilst Shoprite (MediRite) sells pharmaceutical products to end consumers. The proposed merger thus results in the vertical integration of the merged entity in the pharmaceutical products supply chain, i.e. the merged entity would be active at both wholesale and retail level (see vertical analysis below).

Relevant product market

The Commission and the merging parties submitted, in line with the Tribunal’s previous decisions,² that the pharmaceutical supply chain can be delineated into upstream (wholesale) and downstream (retail) segments. They submit that the upstream market can be further delineated into separate markets for the wholesale distribution of (i) scheduled pharmaceuticals and (ii) unscheduled pharmaceuticals. The Commission further analysed the downstream markets for the retail sale of (i) scheduled

pharmaceuticals and (ii) unscheduled pharmaceuticals and front shop products (which include health, beauty and lifestyle products).

Relevant geographic market

The Commission and the merging parties submitted that the relevant geographic market for the above-mentioned upstream (wholesale) markets is national. The merging parties argued for a local market for the retail sale of pharmaceuticals, but the Commission left this open. It is also not necessary for us to make a definitive finding on the exact scope of the relevant geographic market(s) for the retail distribution of pharmaceuticals since our decision in this case does not alter with any alternative geographic market definition, i.e. whether the retail market is considered to be national, regional or local.

Vertical analysis

To assess potential foreclosure effects as a result of this transaction, we shall analyse the market positions of the merging

parties both in the upstream (wholesale) and downstream (retail) markets.

Table 1 National market shares of Transfarm and competitors in 2009 in the wholesale distribution of (i) scheduled and (ii) unscheduled pharmaceuticals³

Source: Above ranges estimated by Transfarm based on information obtained from IMS Health (Pty) Ltd, a company that provides market information in the pharmaceutical and healthcare industries.

As is clear from Table 1 above, Transfarm has a national market share of less than 10% in the wholesale distribution of both scheduled and unscheduled pharmaceuticals. A number of market players compete with Transfarm in these markets, among others, large players such as New United

Pharmaceutical Distributors (with market shares of above 20% for the wholesale of scheduled and unscheduled pharmaceuticals respectively)

and International Healthcare Distributors (with market shares of above 10% for the wholesale of scheduled and unscheduled pharmaceuticals respectively).

Table 2 National market shares of MediRite and competitors in 2009 in the retail distribution of (i) scheduled and (ii) unscheduled

pharmaceuticals

Source: Shoprite's estimates based on information obtained from IMS (for scheduled pharmaceuticals) and AC Nielsen (for unscheduled

pharmaceuticals).

The national market shares as shown in Table 2 above provide an indication of the relative size of MediRite in relation to numerous competitors in the downstream (retail) markets. These competitors include players such as Clicks, Pick 'n Pay, Dis-Chem and numerous smaller independent pharmacy groups.

As stated in paragraph 15 above, Transfarm's market shares in both upstream (wholesale) product markets are below 10%. Given this relatively small market share in the upstream markets, combined with the fact that a number of competitors will compete with the merged entity in the downstream markets (of which the larger ones have a national presence), foreclosure effects seem unlikely regardless of the geographic scope of the retail market(s). Based on the above, the proposed merger is unlikely to result in either customer or input foreclosure.

Public Interest

No public interest issues arise as a result of the proposed transaction.

Conclusion

Given that the proposed transaction does not result in a substantial prevention or lessening of competition in any relevant market and, furthermore, raises no public interest concerns, the merger is approved without conditions.

____ 2 February 2010

A Wessels DATE

Tribunal Member

N Manóim and Y Carrim concurring

Tribunal Researcher : R Kariga

For the merging parties : Werksmans Attorneys

For the Commission : N Ramroop (Mergers and Acquisitions Division)

1 The other value added retail divisions include Money Market counters, Computicket, Liquorshop, Freshmark and Meat Market and the operational divisions consist of the following supermarkets and stores: Shoprite, Checkers, Checkers Hyper, Shoprite USave, OK Furniture, House and Home, OK Power Express, OK Franchise Division and Hungry Lion.

2 See Clicks Pharmaceutical Wholesale (Pty) Ltd and New United Pharmaceutical Distributors (Pty) Ltd, Case No. 69/LM/Sep02.

3 Sales to retail pharmacies, dispensing doctors, private hospitals and other private outlets.

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