

SOUTH AFRICA / JUDGMENT

**ZA Online Store Proprietary Limited
v Shock Proof Investment 202
Proprietary Limited (LM066JUL22)
[2022] ZACT 103 (29 September 2022)
[2022] ZACT 103**

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, A Ndoni, I Valodia

CASE / FILE NUMBER

LM066JUL22

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COMPETITION

TRIBUNAL OF SOUTH AFRICA

Case No: LM066JUL22

In

the matter between:

ZA
ONLINE STORE PROPRIETARY LIMITED Acquiring
Firm
and
SHOCK
PROOF INVESTMENT 202 PROPRIETARY LIMITED Target
Firm
Panel: Yasmin
Carrim (Presiding Member)
Andiswa Ndoni (Tribunal
Member)
Imraan Valodia (Tribunal
Member)
Heard
on: 21
September
2022
Order
issued on: 28
September 2022
Reasons
issued on 29 September 2022

REASONS FOR DECISION

- [1] On 21 September 2022, the Competition Tribunal (“Tribunal”) considered the large merger where ZA Online store (Pty) Ltd (“ZA online”) intends to acquire an additional 0.2% of the issued shares in Shock Proof Investment 202 (Pty) Ltd (“Shock Proof”).
- [2] The reasons for unconditional approval follow.

Parties to the Transaction and their activities

- [3] The primary acquiring firm is ZA Online, a private company. Its shares are owned by [...] and [...] jointly[1] own and control various entities that form part of the Core Group of companies in South Africa. and [...] also jointly control[2] Core Computer Group (Pty) Ltd which is a holding company for Core Computer Business (Pty) Ltd (“Core”) and Core Peripherals (Pty) Ltd (“Core Peripherals”).
- [4] ZA Online does not directly or indirectly control any firm.
- [5] The primary target firm is Shook Proof a private company which is not controlled by a single shareholder, the shareholding in Shock Proof are held by ZA Online (49.9%), [...]. and Mark Parsons (0.2%).[3]

Activities of the parties

- [6] The activities of ZA Online and the Core group generally include the distribution of information, communication and entertainment technology products and services in South Africa through a network of resellers and its own retail outlets. Core and Core Peripherals are the two entities of relevance to the assessment.
- [7] Core is an authorised distributor of Apple products and accessories to Apple Authorised Resellers, including ZA Online, Digicape, Takealot, Incredible Connection, Mobile Network Operators (“MNOs”) such as MTN, Vodacom and Telkom. The MNOs also have a direct supply relationship with Apple for the procurement of Apple products.
- [8] Core Peripherals supplies Apple products and technology solutions to medium and large B2B customers.
- [9] Core is also an Apple Authorised Training Provider, offering a variety of Apple certified and in-house training courses specialising in Apple technologies.
- [10] Through its group of companies, Core offers various business solutions, including business consulting; mobile device management; financing solutions; extended warranties; professional deployment assistance; business mobility solutions; and cellular business contracts and education solutions.
- [11] ZA Online operates in South Africa through the iStore, it supplies information, communication and education technology, specifically

cellular phones, IT hardware and related IT products and services. More specifically, in relation to cellular phones, ZA Online sells mobile handsets (Apple iPhone), accessories and cellular contracts and in relation to IT hardware, it sells computers (Apple Mac) and tablets (Apple iPad). [4]

[12] Shock Proof is the holding company for Digicape. Digicape's activities include selling:

12.1 information, communication and entertainment technology, specifically cellular phones and IT hardware and related IT products and services.

12.2 mobile handsets (iPhone), accessories and cellular contracts (with Vodacom).[5]

12.3 IT Hardware such as computers (Mac) and tablets (iPad).

[13] Digicape customers are predominantly B2B customers, particularly in the creative sector in relation to computers (Mac) and in the education sector in relation to tablet (iPad), and the majority of its business is in the Western Cape Province of South Africa.

Proposed Transaction

[14] The proposed transaction involves the acquisition by ZA Online of an additional 0.2% of the issued share capital of Shock Proof (being 20 ordinary shares) from the Seller.

[15] Following implementation of the Proposed Transaction, ZA Online will hold 50.1% of shares in Shock Proof and will exercise sole control over Shock Proof in terms of the Competition Act, 1998 ("the Act").

Competition Assessment

[16] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction presents a horizontal and vertical overlap.

[17] The horizontal overlaps arise in:

17.1 The sale of cellular phones, including mobile handsets, accessories, cellular contracts; and

17.2 IT hardware, including computers (Mac), laptops, tablets (IPad) and accessories and related IT products and services.

[18] The vertical overlap arises because Core supplies Digicape with Apple products[6], iCare, service and support, and third-party accessory products for resale.

[19] Diagram 1 below shows the relationship between the merger parties and where they are placed on the value chain, particularly with respect to Apple products.

Diagram of the value chain depicting the relationship between the merger parties

Source: The Commission Market definition and product Market

[20] The Commission looked at previous cases and found that in the matter between Cell C Service Provider Company (Pty) Ltd and Altech Autopage, a division of Altron TMT (Pty) Ltd (Cell C and Altech Autopage) the Competition Tribunal (the “Tribunal”) considered a distinct market of cellular hardware (such as mobile handsets) and accessories.[7] In the instant transaction, both ZA Online and Digicape sell cellular phone products and accessories to their customers.

[21] In the EOH Holdings Limited and Apronics Proprietary Limited matter[8], the Tribunal considered the broad IT hardware market, which can be segmented into (i) IT hardware; (ii) servers, personal computers,

storage, and network equipment; and (iii) IT services. ZA Online and Digicape both supply personal computers (i.e., laptops and computers).

[22] The Commission accordingly assessed the proposed transaction in the following product markets (i)The market for the sale of cellular phones, including mobile handsets, accessories, and (ii)The market for IT hardware, including personal computers, laptops and tablets.

[23] The Commission found that the Tribunal had previously defined the relevant geographic market as national.

Market

Analysis

[24] The Commission found that there is no publicly available source that has the data required for market share calculation and in determining the merging parties’ size within the relevant markets. Therefore, the Commission relied on the estimates by market participants.

Horizontal overlap

The national market for the sale of cellular hardware (such as mobile handsets) and accessories

[25] The Commission obtained views from customers and found that the largest retailers of cellular hardware (e.g., mobile handsets) and accessories, include Dimension Data, Digicape, MTN / Vodacom, First Technology, Incredible Connection, and iStore. Similarly, the largest suppliers of cellular hardware (such as mobile handsets) and accessories included the same retailers, as well as Mustek. The customers further submitted that there are various other alternative suppliers.

[26] Competitors of the merging parties estimated that the largest resellers of hardware (such as mobile handsets) and accessories are MNOs. These include Vodacom, MTN, Cell C and Telkom.[9]

- [27] None of the customers and competitors of the merging parties raised concerns with the proposed transaction.
- [28] In light of the above the Commission found that there are alternative resellers active in the market for the sale of cellular hardware (such as mobile handsets) and accessories who will continue to constrain the merged entity post-merger. More specifically in relation to Apple products, there are other Apple Authorised Resellers that will continue to constrain the merged entity post-merger.

The national market for the sale of IT hardware which includes personal computers (i.e., laptops and computers)

- [29] The Commission obtained views from customers and found that the largest suppliers of hardware such as personal computers (i.e., laptops and computers), included Dimension Data, Digicape, MTN/Vodacom, First Technology, incredible connection and IStore and Mustek.
- [30] Competitors of the merger parties estimated the largest suppliers in the resale of (IT hardware including laptops and computers) to include Mustek, Core, Pinnacle, Tarsus, Axiz, Drive Control, Esquire, Incredible Connection, Makro, Game, Evertech and Woodward.
- [31] In light of the above the Commission found that there are alternative resellers^[10] active within the market for resale of (IT hardware including laptops and computers) that will continue to constrain the merged entity post-merger. More specifically in relation to Apple products and there are other Apple Authorised Resellers that will continue to constrain the merged entity post-merger. Importantly, none of the customers and competitors of the merging parties raised concerns with the proposed transaction.

Vertical overlap

- [32] The vertical overlap arises because Core supplies Digicape with Apple products, iCare, services and support Apple accessories and other brands of hardware products for resale. Therefore, the Commission considered the upstream market for the wholesale/distribution of Apple products, iCare, service and support, third party accessory products and the downstream market for the resale of Apple products. Core is active in the upstream market and Digicape is active in the downstream market.
- [33] Core is an authorised distributor/wholesaler of Apple products in South Africa. It supplies all South African “Apple Authorised Resellers” with Apple products iCare, services and support.
- [34] Looking at input foreclosure the Commission assessed whether Core would have the ability and incentive to deal exclusively with Digicape such that other customers are denied access to Core as a supplier of Apple products. The Commission found that Apple Inc identifies and enters into commercial agreements with Apple Authorised Resellers. Core, as the Authorised Distributor, fulfils the supply requirements of the Apple Authorised Resellers on behalf of Apple Inc. Core does not have any input into the identification of Apple Authorised

Resellers, or the terms and conditions under which Apple Authorised Resellers on-sell Apple products. In addition, Apple Inc also supplies the MNOs with Apple products directly as they are all Apple Authorised Resellers, and they have direct supply agreements with Apple.

- [35] In relation to third-party accessory products, the Commission found that Core competes with several distributors who supply third-party accessories. These include [...] amongst others. Given the availability of alternative distributors, the Commission is of the view that the Core is unlikely to exercise market power in the distribution of third- party accessory products.
- [36] Regardless of the findings on the levels of market power upstream, the Commission also notes that Core is unlikely to have the incentive to foreclose. [...] Importantly, Core will continue to supply Digicape on an arms' length basis in the same way as it currently supplies ZA Online and all its other customers. As such, the status quo will therefore remain post implementation of the proposed transaction.
- [37] In relation to customer foreclosure, Digicape is an important customer of Core, the Commission assessed whether Digicape will stop procuring the relevant products from those competitors. [...] Therefore, the proposed transaction is unlikely to raise customer foreclosure concerns in relation to Apple products and iCare, services and support service [...].
- [38] In light of the submissions made by market participants, the Commission found that there are numerous alternative customers/ resellers of third-party accessory products therefore Digicape is unlikely to exercise market power in the downstream market for the retail of third-party accessory products.
- [39] In addition, the Commission found that in terms of third-party accessory products sourced from Digicape, approximately [...] of the total purchases of Digicape's were from other suppliers. This indicates that [...] of Digicape's business is derived from other upstream suppliers of third-party accessories. [...] was from Core.
- [40] As a retailer/reseller Digicape's operations benefit from having a diverse offering of products and brands, any customer foreclosure strategy by the merging parties is likely to be detriment to their operations and futile for Digicape's business. Given the [...] of Digicape on third-party suppliers, customer foreclosure is unlikely in this instance. Even if the merged entity were to attempt to foreclose these upstream suppliers' post-merger, there are various other alternative retailers active in the market.
- [41] The Commission concluded that the proposed transaction does not substantially prevent or lessen competition in any of the relevant markets and the Tribunal Concurs.

The Hearing

[42] The Tribunal identified some inconsistencies in the submissions made by the merging parties and the Commission regarding the procurement and supply of Apple products to MNOs. The Tribunal requested the Commission to provide submissions on whether the MNOs procure their supply of Apple products from Core or directly from Apple Inc.

[43] The MNOs confirmed that they procure their Apple products directly from Apple Inc and they also procure certain products from Core.

Public Interest Assessment

Effect on Employment

[44] The merging parties submitted that the proposed transaction will not result in any merger specific retrenchments. The employees of ZA Online and Shock Proof are represented by employee representatives and the Commission engaged with the respective representatives of the merging parties' employees, none of them raised any employment concerns.

Effect on Spread of Ownership

[45] The Commission also assessed the effects of the merger on greater spread of ownership and found that [....].

[46] On the other hand, [....] as such, the proposed transaction will not result in a reduction in shareholding by HDP.

[47] [....].

[48] In light of this, the Commission is of the view that the proposed transaction is unlikely to have a negative effect on the promotion of a greater spread of ownership in the market and the Tribunal concurs.

Conclusion

[49] The Tribunal concluded that the proposed transaction is unlikely to prevent or lessen competition in any of the relevant markets and it does not raise public interest concerns. Therefore, the Tribunal approved the proposed transaction without conditions.

Date: 29 September 2022

Ms Yasmin Carrim

Ms A Ndoni and Prof. I Valodia concurring.

Tribunal case manager: Makati Seekane.

For the merging parties: Sandhya Foster, Jean Meijer and

Natasha Rachwal of Herbert Smith Freehills South Africa.

For the Commission: Reabetswe

Molotsi and Ratshidaho Maphwanya.

- [1] 50:50% shareholding.
- [2] 50:50% shareholding.
- [3] Mark Parsons is the seller in the Proposed Transaction (“Seller”).
- [4] ZA Online also sells accessories including Apple Watch, Apple TV, AirPods and AirTag as well as other brands of accessories. A full list of accessory brands can be accessed at <https://www.istore.co.za/accessories>.
- [5] Digicape also sells accessories including Apple Watch, Apple TV, Apple accessories, Beat accessories and other brands of accessories.
- [6] The Apple products include mobile phones (iPhone), IT hardware (including Mac and iPad) and various Apple accessories.
- [7] Tribunal Case: 81/LM/Nov02, 02/LM/Jan05, 48/LM/Jun06, and LM117Aug15.
- [8] Tribunal Case: LM024May16.
- [9] Other players in the market include Incredible Connection, Computer Mania, Vodacom, Icomputing Solutions, Digital Experience, FNB, DG Store, Shop and Ship
- [10] 10These include MTN, Telkom, Vodacom, Computer Mania, Metro Home Centre, Digital Experience, FNB, Shop and Ship, DG Store, Makro and Icomputing solutions CC amongst others.

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