COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no.: 69/LM/Dec03

In the large merger between:

Castellina Investments (Pty) Ltd

and

Pepkor Ltd

Reasons

Introduction

On 21 January 2004 the Competition Tribunal approved the merger between Castellina Investments (Pty) Ltd and Pepkor Ltd.

The transaction

Castellina Investments (Pty) Ltd ("Castellina") will, in terms of a scheme of arrangement between Castellina, Pepkor and its shareholders, acquire the entire issued share capital of Pepkor. The listing of Pepkor ordinary shares on the JSE will be terminated and shareholders in Pepkor will be paid out or receive shares in Castellina. The transaction will cause Castellina to acquire all the ordinary shares as well as all the issued Pepkor preferent shares from all the shareholders at R12.00 per share.[1]

According to the merging parties the following major ordinary and preferent shareholders in Pepkor have indicated that they will be opting to reinvest into Castellina:

- Fincom
- OMLACSA
- Titan Nominees (Pty) Ltd [2]

1Shareholders can either elect to receive cash or to reinvest their Pepkor ordinary shares in Castellina ordinary shares.
2 Controlled by Dr. C.W. Wiese

The underwriters have, furthermore, committed themselves to allocate between 7,5% and 10% of the total issued ordinary share capital of Castellina to a black economic empowerment firm in the event that they obtain more than 40% shareholding in Castellina.[3]

The parties

Castellina Investments (Pty) Ltd is a newly formed company, established specifically for this transaction.

The parties could not, at the hearing, confirm who the controlling shareholder in Castellina would be but anticipated that the largest shareholder would be Dr Wiese himself, who is currently also the largest shareholder in the target firm, Pepkor. It is expected that Dr Wiese would hold 39.2%. The underwriters, Old Mutual Plc and Brait SA[4], would take up at least 15% equity each, totalling 30%. It is also envisaged that 10% of Castellina's equity would be issued to the management group. This totals 79.2%.

Reinvesting shareholders would then be able to take up the remaining 20.8%. If none of the shareholders reinvest it is anticipated that the shareholding would be as follows:

- Dr Wiese 32.9%
- Brait 25.4%
- Management 10%
- Old Mutual Private Equity 25.4%

According to the shareholders agreement a quorum of 85% is required for any directors' meeting while the quorum required for a shareholders' meeting would be 75%. The shareholders agreement, therefore, ensures that no one person effectively controls the business.

The target firm is Pepkor Ltd ("Pepkor"), a public company listed on the JSE. The Wiese Group controls Titan Nominees (Pty) Ltd and Fincom (Pty) Ltd which are currently *de facto* able to vote 44.3% of the votes exercisable at a shareholders meeting of Pepkor. Other shareholders are OMLACSA, Public Investment Commissioner, Management and Public shareholders.

The rationale for the merger

3 The South African Private Equity Fund III LP ("SAPEF"); the South African Private Equity Trust III ("SAPET") and Old Mutual Life Assurance Company (SA) (Pty) Ltd ("OMLACSA") collectively are the underwriters of the scheme.
4 Brait SA manages two private equity funds, SAPET and SAPEF, that act as joint underwriters of the proposed scheme.

According to Pepkor it has produced real growth in operational earnings and cash flow but this has not been matched by corresponding improvement in Pepkor's headline earnings per share. Pepkor's Ordinary Share price performance on the JSE has been characterised by a relatively low rating and low levels of liquidity, whilst Pepkor Ordinary Shares trade at a discount to those of its peers listed on the JSE. The scheme will allow Pepkor to:

1. restructure its capital base so that it is more efficient and enhances shareholder value;
2. allow Pepkor to eliminate the current control structure; and
3. afford Pepkor Ordinary shareholders an opportunity to receive the Cash Consideration or to remain invested in Pepkor.

Impact on competition

The only potential market in which overlap occurs is in the retail footwear market. Both Pepkor and Brait own shares in companies that sell shoes.

Brait through its private equity fund SAGEF, one of the shareholders, is invested in Shoe City in which it holds 58.3% of the total issued share capital. Shoe City has a market share of approximately 1% in the total footwear market.

Pepkor operates four brands of retail outlets in South Africa namely Pep, Ackermans, Dunns and Millers. These stores primarily sell clothing and footwear merchandise. Pepkor's combined total market share in the footwear sector is approximately 15.7%.

Pepkor and Shoe City compete with well-known retail groups such as Edgars, Foschini, Woolworths and various other independents.

Based on the information supplied to the Tribunal on the anticipated shareholding in Castellina and in light of the above analysis we find that the transaction would not prevent or lessen competition in the footwear market.

Public interest

According to the merging parties the transaction will have no effect on employment, as the Pepkor business will continue as prior to the transaction.

11 February 2004

N. Manoim **Date**

Concurring: D. Lewis, P Maponya