



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM117Sep16

In the matter between:

Parentco (Pty) Ltd

Primary Acquiring Firm

and

Edcon Limited

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 23 November 2016
Order Issued on	: 23 November 2016
Reasons Issued on	: 14 December 2016

Reasons for Decision

Approval

[1] On 23 November 2016, the Competition Tribunal ("Tribunal") conditionally approved the large merger between Parentco (Pty) Ltd ("Parentco") and Edcon Limited ("Edcon"). The reasons for approving the proposed transaction follow.

Parties to the transaction

Primary acquiring firm(s)

[2] Parentco is a company incorporated in South Africa. Parentco is wholly-owned by New Holdco 1 which is also incorporated in South Africa. New Holdco 1 will be owned and controlled by New Holdco 2 which is also incorporated in South Africa. Parentco, New Holdco 1 and New Holdco 2 are all new companies that

have been established solely for the proposed transaction. Therefore none of the three companies conducts any business activities, nor do they own or control any firms. The shareholders of Hew Holdco 2 are the current creditors of the target firm. These creditors consist of financial investors in the form of private equity investments and banks. At the time of the hearing the shareholding percentages of New Holdco 2 had not yet been finalized, however the merging parties re-assured us that no single firm will control New Holdco 2, and that the current potential shareholders will still remain the same regardless of what agreement is reached post-merger.¹

Primary target firm

[3] Edcon is a company incorporated in South Africa. Edcon is controlled by Edgars Consolidated Stores limited ("ECSL"), which is controlled by Edcon Acquisition (Pty) Ltd ("Bidco"). Bidco is controlled by Edcon holdings Limited ("Edcon Holdings"), which is controlled by Edcon (BC) S.a.r.l. ("Edcon BC"). Edcon BC is ultimately controlled by Bain Capital Investors LLC ("Bain Capital"). The Edcon Group is active in the retail of apparel market. Through its various subsidiaries such as Edgars, CNA, Samsung stores, Jet and Legit, the Edcon Group sells men's, women's and children wear, fragrances, cosmetic products and cellular products. In addition to this, The Edcon Group also provides insurance products to its customers through Hollard Limited ("Hollard").

Proposed transaction and rationale

[4] This transaction is a financial restructuring of the Edcon Group due to the dire financial situation of the Edcon Group. To avoid a business rescue situation, Edcon's creditors have entered into an arrangement to partially equitize their debt claims and take the majority equity in the Edcon Group. Some of the creditors will also provide liquidity. Parentco will acquire 100% of the shares in Bidco, which holds 100% shares in ECSL, and ultimately the entire issued share capital of Edcon.

¹ See pages 8-11 of transcript of hearing.

Impact on competition

- [5] The proposed transaction does not result in any overlaps.
- [6] The Commission identified the relevant market as the market for the retail of apparel, cosmetics, homeware, and mobile cellular products. Since no overlaps arise, the Commission thus submits that the proposed transaction is unlikely to substantially lessen or prevent competition in the identified market.
- [7] However given the fact that post-merger some of the shareholders of the merged entity will be the leading banks in the country, the Commission assessed to ascertain whether there won't be any information exchange post-merger. The Commission perused the intended shareholders' agreement and noted that the terms of the Equity and Governance Term Sheet, are such that none of the leading banks will be able to appoint a board member and therefore information exchange is highly unlikely post-merger. The Commission thus submits that the proposed transaction is unlikely to substantially lessen or prevent competition in any of the identified markets. We concur with the Commission on its findings.
- [8] We agree with the Commission's competition assessment that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

Trade Union

- [9] During the Commission's investigation, the South African Commercial and Allied Workers Union ("SACCAWU") raised concerns in relation to the proposed transaction, particularly in relation to employment. These concerns were however addressed by the merging parties when it re-assured SACCAWU that the financial restructuring emanating from the proposed transaction is in fact necessary to ensure that no retrenchments will take place in the Edcon Group.

As a result thereof SACCAWU no longer had issues with the proposed transaction.

Minister of Economic Development Department

[10] The Commission also received a notice of intention to participate from the Economic Development Department (“EDD”) in relation to the proposed transaction. EDD submitted to the Commission that due to the nature of the transaction i.e. it might save the Edcon Group from liquidation, the Commission should deal with the transaction as expeditious as possible. The EDD submitted that even though the proposed transaction will result in jobs being saved, the EDD nonetheless required some assurance from the merging parties that no job losses will result from the proposed transaction. When the Commission referred the transaction to the Tribunal, the EDD had not yet submitted its proposals in relation to the proposed transaction. Subsequently prior to our hearing the EDD and the merging parties reached agreement on proposed conditions. The merging parties had no objection to them being made conditions for the approval of the merger.

[11] The EDD's conditions² address three issues namely, employment, procurement of South African brands by the merged entity and Black Economic Empowerment (“BEE”). In relation to employment the merged entity plans to employ and train a further 2000 new staff who will be deployed in its stores throughout South Africa as part of its strategy to improve customer service.

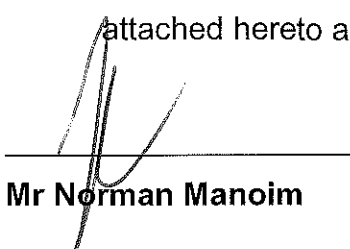
[12] In relation to the procurement of South African brands, the merged entity will expand its procurement from South African suppliers as part of its Import Replacement Programme.

² See Annexure A below.

[13] Lastly in relation to BEE, the merged entity will ensure that the current shareholding participation of the Edcon Empowerment Trust is not reduced and the rights of the beneficiaries of such trust will not be adversely affected.

Conclusion

[14] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market. We conditionally approved the proposed transaction with the conditions attached hereto as Annexure A.



Mr Norman Manoim

14 December 2016

DATE

Ms Mondo Mazwai and Ms Medi Mokuena concurring

Tribunal Researcher:	Caroline Sserufusa
For the merging parties:	Mark Garden of ENS and Heather Irvine of Falcon and Hume
For the Commission:	Grashum Mutizwa
For Minister of Economic Development:	Mohamed Vawda

ANNEXURE A

CASE NUMBER: LM117Sep16

PARENTCO PROPRIETARY LIMITED

and

EDCON LIMITED

CONDITIONS TO THE APPROVAL OF THE MERGER

1. DEFINITIONS

Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings.

- 1.1. "Approval Date" means the date referred to in the Tribunal's merger clearance certificate (Form CT 10) in respect of the Proposed Transaction;
- 1.2. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.3. "Competition Act" means the Competition Act, Number 89 of 1998, as amended;
- 1.4. "Celrose" means Celrose Proprietary Limited, registration number 2006/033124/07;
- 1.5. "DTI" means the Department of Trade and Industry of South Africa;
- 1.6. "Edcon" means Edcon Limited, registration number 2007/003525/06;
- 1.7. "EDD" means the Economic Development Department of South Africa;
- 1.8. "Eddels" means Eddels Shoes Proprietary Limited, registration number 2001/020614/07;
- 1.9. "Edcon Empowerment Trust" means that Edcon Staff Employment Trust created in July 2005 as part of the Edcon group's black economic empowerment programme, which holds 10,6% (ten comma six percent) of the issued share capital of Edcon Holdings Limited.
- 1.10. "Government" means the Government of the Republic of South Africa; in particular the EDD and DTI, duly represented by their respective Directors General;
- 1.11. "Merging Parties" means Parentco and Edcon;

- 1.12. "Parentco" means K2016470295 (South Africa) Proprietary Limited, registration number 2016/470295/07;
- 1.13. "Proposed Transaction" means the acquisition of control over Edcon by Parentco, as contemplated in the transaction notified to the Commission under Commission Case Number 2016Sep0477;
- 1.14. "Small Enterprises" has the meaning set out in the National Small Enterprises Act, Number 102 of 1996;
- 1.15. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;

2. EMPLOYMENT

- 2.1. As at the Approval Date, Edcon operates 1,377 (one thousand three hundred and seventy seven) stores across South Africa and employs 19,681 (nineteen thousand six hundred and eighty one) full time employees and 23,949 (twenty three thousand nine hundred and forty nine) other employees (including casual staff), a combined workforce of 43,630 (forty three thousand and six hundred and thirty) employees in South Africa.
- 2.2. Edcon plans to employ and train a further 2,000 (two thousand) new staff who will be deployed in its stores throughout South Africa as part of its strategic focus on improving customer service delivery across the group. Depending on extraneous circumstances (such as prevailing macro and micro economic conditions and trading conditions) and internal circumstances (such as the state of Edcon's financial position and operating performance), these additional staff-members are likely to be employed within 2 (two) years of the Approval Date.

3. SOUTH AFRICAN INPUTS

- 3.1. Edcon is committed to fostering and developing a more competitive production environment in South Africa through building and implementing an Import Replacement Programme which will entail –
- 3.1.1. expanding its procurement from South African suppliers (including small, medium and large enterprises); and
- 3.1.2. building relationships with South African suppliers of products for re-sale in its stores, *inter alia* to mitigate the risk of exchange rate fluctuation, secure faster supply chain turnaround and cater for local consumer preferences.
- 3.2. In furtherance of its Import Replacement Programme, Edcon will run –
- 3.2.1. quality assurance information sessions with South African producers to assist them in manufacturing world class products at competitive local prices; and

3.2.2. orientation sessions with small and medium enterprises in South Africa to assist them in doing business with Edcon.

3.3. Edcon will engage with South African suppliers and manufacturers relevant to its operations in South Africa with the aim of identifying opportunities for partnerships, initiatives and programs to build the capacity, technological capabilities (including equipment and intellectual property requirements) and competitiveness of those local suppliers and manufacturers, including working with Government where appropriate.

3.4. Edcon will continue to extract significant qualitative and quantitative value from managing an in-house clothing (Celrose) and footwear (Eddels) value chain, with a view to maximising and accelerating its local procurement, including exploring opportunities to expand production for the domestic market and exports at Celrose and Eddels.

3.5. To give effect to the above, for a period of 5 (five) years from the Approval Date, Edcon commits to meeting on a quarterly basis with representatives of the EDD and other public entities that may be invited by the EDD from time to time, which may include the DTI and the Industrial Development Corporation, to help identify local sourcing opportunities and measures that can improve the competitiveness of local manufacturers.

4. BEE

Edcon will ensure that, as a result of the Proposed Transaction, the shareholding participation of the Edcon Empowerment Trust in the Edcon group will not be reduced; and the rights of the beneficiaries of the Edcon Empowerment Trust will not be adversely affected.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

5.1. For a period of 5 (five) years from the Approval Date, Edcon shall, within 30 (thirty) days of each anniversary of the Approval Date, provide to the Commission and the EDD a report detailing its efforts in pursuing and achieving the public interest objectives set out in clauses 2 and 3 above.

5.2. Any person who believes that the Merging Parties have not complied with these conditions may approach the Commission. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5.3. All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

6. VARIATION

- 6.1. The Merging Parties or the Commission shall be entitled, on good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of any of these conditions at any time after the Approval Date.