



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM060Jul20

In the matter between:

Unilever PLC

Primary Acquiring Firm

and

Unilever N.V.

Primary Target Firm

Panel	:	Yasmin Carrim (Presiding Member)
	:	Andreas Wessels (Tribunal Member)
	:	Andiswa Ndoni (Tribunal Member)
Heard on	:	06 August 2020
Order Issued on	:	06 August 2020
Reasons Issued on	:	28 August 2020

Reasons for Decision

[1] On 06 August 2020, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving Unilever PLC and Unilever N.V.

[2] The reasons for approving the proposed transaction follows.

Parties to the proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is Unilever PLC, an entity incorporated under the laws of the United Kingdom. Unilever PLC is listed on the London Stock

Exchange as well as the New York Exchange and is not controlled by any single firm. Unilever PLC directly controls numerous firms which in turn control other entities.

Primary target firm

- [4] Globally, the primary target firm is Unilever N.V. Unilever N.V. is listed on the Euronext Amsterdam Exchange as well as the New York Stock Exchange and is not controlled by any single firm. Unilever N.V directly controls numerous firms which in turn control other entities.
- [5] In relation to South Africa, the target firm is Unilever SA Holdings ("Unilever SA Holdings") which is controlled by Unilever PLC and Unilever N.V. Unilever SA Holdings is the holding company of the Unilever Group's South African businesses and controls Unilever South Africa (Pty) Ltd ("Unilever SA").
- [6] For the sake of convenience, Unilever PLC, Unilever N.V and all of Unilever's global businesses and entities will collectively be referred to as the "Unilever Group".

Proposed transaction and rationale

- [7] According to the merging parties, the Unilever Group was created and is maintained by a series of agreements between Unilever N.V. and Unilever PLC, together with special provisions in their respective articles of association. These agreements are together known as the "Foundation Agreements". The Foundation Agreements enable the Unilever Group to achieve unity of management, operations, shareholders' rights, purpose, and mission. Accordingly, although Unilever N.V. and Unilever PLC are separate legal entities, they effectively operate as a single economic entity.

- [8] In terms of the proposed transaction, the two ultimate parent undertakings of the Unilever Group, namely Unilever N.V. and Unilever PLC will be unified under Unilever PLC as the new ultimate controller of the Unilever Group.
- [9] The transaction will be implemented by collapsing the dual-headed holding company structure and bringing the group under the single and ultimate control of Unilever PLC. This will be achieved by means of a cross-border merger, pursuant to which:
- [9.1] Unilever PLC would acquire all assets, liabilities and legal relationships of Unilever N.V. (including all subsidiaries of Unilever N.V.);
 - [9.2] Unilever N.V. would cease to exist;
 - [9.3] Unilever PLC would allot new Unilever PLC shares to the former Unilever N.V.
 - [9.4] shareholders on a one-to-one basis;
 - [9.5] Unilever PLC would become the sole parent company of the Unilever Group; and
 - [9.6] Unilever PLC would be listed in London, Amsterdam and New York Stock Exchanges.
- [10] Following the implementation of the proposed transaction, the current Unilever N.V. and Unilever PLC shareholders will be shareholders of Unilever PLC and Unilever PLC will be the ultimate controlling entity of the Unilever Group (including Unilever SA Holdings).

Impact on competition

- [11] The Unilever Group has a presence across much of the globe and is involved in the manufacture and supply of a range of products including food, beverages, cleaning agents and personal care products. The group's business is organised in three divisions, namely Food and Refreshment, Home Care, and Beauty and Personal Care, each of which has a clearly defined strategy and portfolio of brands.

- [12] The Commission considered the activities of the merging parties and found that the proposed transaction relates to the internal reorganisation of the Unilever Group and therefore does not alter the structure of any market.
- [13] The Commission submitted that given the nature of the proposed transaction, it is unlikely to substantially prevent or lessen competition in any market in South Africa. The Commission submitted that they also contacted the customers and competitors of Unilever SA, who confirmed that they do not have concerns or objections to the implementation of the proposed transaction.¹
- [14] In light of the above, the Commission recommended that we approve the proposed transaction unconditionally.

Public interest

- [15] The proposed transaction will not have any negative effect on employment in South Africa and raises no other public interest concerns.²

Conclusion

- [16] 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 approve the proposed transaction unconditionally.

¹ Customers of Unilever SA who made submissions to the Commission's request are: SPAR Group and Shoprite Group. Competitors of Unilever SA who made submissions to the Commission's request are: AVI; Reckitt Benckiser Pharmaceuticals (Proprietary) Limited; Bliss Brands (Pty) Ltd; Colgate-Palmolive SA; P&G South Africa Trading (Pty) Ltd

² The Commission is of the view that the proposed transaction will not raise employment concerns considering that the merging parties have provided an unequivocal statement that the proposed transaction will not result in retrenchments.

28 August 2020

Ms Yasmin Carrim

DATE

Mr Andreas Wessels and Ms Andiswa Ndoni concurring

Tribunal Case Manager : Ms Busisiwe Masina
For the merging parties : Ms Lerisha Naidu of Backer & McKenzie
For the Commission : Sewela Moshoma and Thabelo Masithulela