

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: LM180Jan21**

In the matter between:

Mr Price Group Ltd

**Primary Acquiring Firms**

And

Otto Brothers Distributors (Pty) Ltd

**Primary Target Firms**

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|--------------------|------------------------------------|
| Panel:             | E Daniels (Presiding Member)       |
|                    | AW Wessels (Tribunal Panel Member) |
|                    | Y Carrim (Tribunal Panel Member)   |
| Heard on:          | 17 March 2021                      |
| Order Issued on:   | 17 March 2021                      |
| Reasons Issued on: | 17 March 2021                      |

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### ORDER

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Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto as Annexure A; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

**17 March 2021**

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**Presiding Member**

**Mr Enver Daniels**

**Concurring: Mr Andreas Wessels and Ms Yasmin Carrim**

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**Date**

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ANNEXURE A  
IN THE LARGE MERGER BETWEEN  
MR PRICE GROUP LIMITED  
AND  
OTTO BROTHERS DISTRIBUTORS (PTY) LTD  
CT CASE NUMBER: LM180Jan21

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CONDITIONS

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1. DEFINITIONS AND INTERPRETATION

1.1. In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —

1.1.1. **“Approval Date”** means the date the Tribunal issues a Clearance Certificate (Notice CT10) in terms of the Competition Act;

1.1.2. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.1.3. **“Competition Act”** means the Competition Act, 89 of 1998, as amended;

1.1.4. **“Conditions”** means the conditions set out herein;

1.1.5. **“Implementation Date”** means the date on which the Proposed Transaction is implemented;

1.1.6. **“Industry”** means the South African Clothing, Textiles, Footwear and Leather sector;

1.1.7. **“Merged Entity”** means the Mr Price Group, including Power Fashion;

1.1.8. **“Merger”** means the acquisition of control over Power Fashion by Mr Price Group;

1.1.9. **“Merging Parties”** means Mr Price Group and Power Fashion;

1.1.10. **“Mr Price Group”** means Mr Price Group Limited;

1.1.11. **“Power Fashion”** means the retail apparel business operated by Otto Brothers (Pty) Ltd and its subsidiaries, trading as Power Fashion and Power Fashion Factory;

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- 1.1.12. **"R-CTFL Masterplan Initiative"** means the South African Clothing, Textiles, Footwear and Leather masterplan vision for 2030. One of the objectives of the R-CTFL Masterplan Initiative is to increase the share of local retail sales of locally manufactured clothing and footwear to 65% by 2030;
- 1.1.13. **"South Africa"** means the Republic of South Africa;
- 1.1.14. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.15. **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

### 2. CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1. It is recorded that Power Fashion currently procures approximately 41% of its product units from local sources in South Africa. In order to support the R-CTFL Masterplan Initiative, the Merged Entity shall, for a period of 5 (five) years from the Implementation Date, ensure that Power Fashion maintain or improve on the current level of procurement of goods and services from South African sources.
- 2.2. In furtherance of the Merged Entity's commitments in paragraph 2.1 above, the Merging Parties shall ensure that Power Fashion participate in the R-CTFL Masterplan Initiative along with the rest of the Mr Price Group.

### 3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. Mr Price Group shall submit a report to the Commission on compliance with on each anniversary of the Approval Date, setting out its compliance with clauses 2.1 and 2.2 of the Conditions, for the duration of the Conditions. This report shall be accompanied by an affidavit, attested to by a director of the Mr Price Group confirming the accuracy of the report.
- 3.2. The Commission may request such additional information from the Merging Parties which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

### 4. BREACH

- 4.1. In the event the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the

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Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

### **5. VARIATION OF THE CONDITION**

5.1. The Commission or the Merging Parties may at any time, on good case shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

### **6. GENERAL**

All correspondence in relation to these conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM180Jan21

**Mr Price Group Ltd** (Primary Acquiring Firm) and  
**Otto Brothers Distributors (Pty) Ltd** (Primary Target Firm)

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### REASONS FOR DECISION

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- [1] On 17 March 2021, the Competition Tribunal conditionally approved the large merger between Mr Price Group Ltd ("Mr Price") and Otto Brothers Distributors (Pty) Ltd ("Otto Brothers").
- [2] The transaction involves Mr Price acquiring control of the retail apparel business operated by Otto Brothers, trading as Power Fashion.
- [3] Mr Price<sup>1</sup> is a national clothing retailer active in the provision of fashion and sport apparel, footwear, accessories, and other goods, such as homeware and mobile products, under various brands. Mr Price operates through the following divisions: (i) Mr Price Apparel, (ii) Miladys, (iii) Mr Price Sport, (iv) Mr Price Home and (v) Sheet Street.
- [4] Power Fashion is a national clothing retailer offering affordable clothing, footwear, cosmetics, mobile handsets and airtime, basic household items, electricity, and other products. Power Fashion is a privately owned company, and a family-run business.
- [5] The Competition Commission identified a horizontal overlap in the activities of the merging parties. As such, the impact of the transaction was assessed on the broad market for the retail of apparel and the narrow markets for the retail of clothing, footwear, accessories, homeware, and mobile handset and airtime products in South Africa. In the broad market for the retail of apparel, the post-merger market share is <18% with an accretion of <2%. Similarly, in the narrow markets for the retail of clothing, footwear, accessories, homeware, and mobile handset and airtime products, the market share accretions as a result of the proposed transaction are low and do not raise any competition concerns.

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<sup>1</sup> Mr Price is a public company listed on the Johannesburg Stock Exchange and it is not controlled by any single shareholder.

[6] The merger parties will continue to face competition from other players.<sup>1</sup>

[7] No third parties raised concerns regarding the effects of the proposed transaction on competition.

[8] We conclude that the proposed transaction does not substantially prevent or lessen competition in any relevant market.

[9] The Minister of Trade Industry and Competition (DTIC) however did raise public interest concerns relating to the effect that the proposed transaction may have on the particular industrial sector or region; and the ability of small businesses, or firms controlled or owned by historically disadvantaged persons, to become competitive. To address these concerns, the merger parties undertook that Power Fashion shall maintain or improve on the current level of procurement of goods and services from South African sources and that Power Fashion shall participate in the R-CTFL Masterplan Initiative along with Mr Price.

[10] The merger parties also made an unequivocal undertaking that there shall be no retrenchments as a result of the proposed transaction.

[11] The Tribunal approved the merger subject to conditions. The conditions are attached hereto as Annexure A.

17 March 2021

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**Mr Enver Daniels**

**Ms Yasmin Carrim and Mr Andreas Wessels concurring**

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**Date**

Tribunal Case Manager: D Mogapi  
For the Merging Parties: H Irvine and K Lloyd of Bowmans Attorneys  
For the Commission: G Mutizwa and Z Hadebe

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<sup>1</sup> The Foschini Group, Legit, Truworths, Cotton On, Exact, The Fix, Pick n Pay Clothing, Edgars, Pep, Jet, Ackermans, Dunns, and independent retail stores such as Express, Jumbo Clothing, Jam, Fashion World, Fashion Fusion, Choice Clothing and Clothing Junction.

