competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM025May21

In the matter between:

Dis-Chem Pharmacies Limited	**Primary Acquiring Firm**
And	
Kaelo Holdings Proprietary Limited	**Primary Target Firm**

Panel:	AW Wessels (Presiding Member)
	E Daniels (Tribunal Member)
	T Vilakazi (Tribunal Member)
Heard on:	08 October 2021
Order Issued on:	08 October 2021
Reasons Issued on:	19 October 2021

REASONS FOR DECISION

[1] On 08 October 2021, the Competition Tribunal ("Tribunal") conditionally approved the transaction involving Dis-Chem Pharmacies Limited ("Dis-Chem") and Kaelo Holdings Proprietary Limited ("Kaelo").

[2] Dis-Chem is a company listed on the Johannesburg Stock Exchange and is ultimately controlled by the trustees for the time being of the Saltzman Family Trust. Dis-Chem has a national chain of 181 pharmacy stores located in the major metropolitan areas and suburbs in South Africa. Through its various subsidiaries, Dis-Chem is active along the pharmaceutical supply chain and provides *inter alia* scheduled and unscheduled pharmaceutical products and healthcare services.

[3] Kaelo is controlled by Spionkop Proprietary Limited ("Spionkop").[1] Its key product offering includes gap cover insurance (for medical scheme members); primary healthcare insurance (for uninsured South Africans); occupational health clinics and on-site primary care clinics (for large organisations); and psychological wellbeing services (for all South Africans).

Transaction and condition

[4] The proposed transaction involves Dis-Chem acquiring 25% of the issued share capital of Kaelo. Through its 25% shareholding, Dis-Chem will acquire minority rights to approve or veto matters of strategic importance in Kaelo. Therefore, upon the

[1] Spionkop holds 54.34% of the shares in Kaelo as at 31 January 2021.

implementation of the proposed transaction, Dis-Chem will exercise control over Kaelo as envisaged by section 12(2)(g) of the Competition Act 89 of 1998, as amended ("the Act").

[5] The proposed transaction is approved subject to the condition that should Dis-Chem acquire sole unfettered control in Kaelo after the approval date, it shall notify the acquisition of the sole unfettered control in Kaelo as a merger in terms of section 13A of the Act.

Competition assessment

[6] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal overlaps.

[7] The Commission identified a vertical overlap in the activities of the merging parties in that Kaelo provides healthcare, occupational health and wellness services to Dis-Chem for the benefit of Dis-Chem's employees. We note that Dis-Chem procures these services from Kaelo only and not from any of Kaelo's competitors.

[8] The Commission assessed the proposed transaction from a vertical perspective in the following markets:

6.1. the national (upstream) market for the provision of managed healthcare services;
6.2. the national (upstream) market for the provision of occupational health and wellness services; and
6.3. the national (downstream) market for procuring managed healthcare services and occupational health and wellness services.

[9] The Commission found that the merger is unlikely to result in any input or customer foreclosure concerns given (i) the relatively low market shares of Kaelo in the vertically affected markets; and (ii) Dis-Chem does not procure any managed healthcare services, and occupational healthcare and wellness services from any other service provider in the market and as such the proposed transaction is unlikely to raise any customer foreclosure concerns.

[10] Customers and competitors raised no concerns regarding the effects of the proposed transaction on competition.

[11] We have no reason to disagree with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[12] Regarding potential employment effects, the merger parties submitted that there shall be no retrenchments as a result of the proposed transaction.

[13] The proposed transaction raises no other public interest concerns.

Conclusion

[14] We approve the proposed transaction subject to conditions relating to the notification by Dis-Chem of potential future sole unfettered control in Kaelo. The conditions are attached hereto.

Andreas Wessel Wessels

19 October 2021

Mr. A. W. Wessels **Date**

Mr. E Daniels and Dr. T Vilakazi concurring

Tribunal Case Manager:	D Mogapi
For the Merging Parties:	M Sambo and L Mabidikane
For the Commission:	R Maphwanya