



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM210Jan16

In the matter between:

WANDS INVESTMENTS (PTY) LTD

Primary Acquiring Firm

and

JD CONSUMER FINANCE (PTY) LTD

Primary Target Firms

JDG INVESTMENT HOLDING COMPANY (PTY) LTD

Panel	: Andreas Wessels (Presiding Member)
	: Prof. Fiona Tregenna (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 09 March 2016
Last submission received on	: 18 March 2016
Order Issued on	: 22 March 2016
Reasons Issued on	: 21 April 2016

Reasons for Decision

Conditional approval

- [1] On 22 March 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction involving Wands Investments (Pty) Ltd, JD Consumer Finance (Pty) Ltd and JDG Investment Holding Company (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is Wands Investments (Pty) Ltd ("Wands Investments"), a private company incorporated in accordance with the laws of the Republic of South Africa.
- [4] Wands Investments is a wholly owned subsidiary of Fulcrum Financial Services SA ("Fulcrum Financial Services"), a company registered in accordance with the laws of Switzerland. Fulcrum Financial Services is wholly owned by Fulcrum Investment Partners SA ("Fulcrum Investment Partners"), which in turn is wholly owned by Campion Capital SA ("Campion"). The above-mentioned firms are collectively referred to as the "Acquiring Group".
- [5] Wands Investments is a shelf company. The Acquiring Group's only activities in South Africa comprise of an unsecured lending business which is operated under the trade name "Capfin", i.e. quick and simple personal loans are provided to South African consumers under the Capfin brand name via Pepkor's Pep and Ackermans retail stores.

Primary target firm

- [6] The primary target firms are (i) JD Consumer Finance (Pty) Ltd ("JDCF"); and (ii) JDG Investment Holding Company (Pty) Ltd ("JDGI"), both incorporated in accordance with the laws of the Republic of South Africa. JDCF and JDGI are collectively referred to as the "JD Consumer Finance and Insurance Business".
- [7] JDCF and JDGI are wholly owned by JDG Trading (Pty) Ltd ("JDGT"), which is wholly owned by JD Group Limited ("JD Group"), a company incorporated in accordance with the laws of the Republic of South Africa. JD Group is a wholly owned subsidiary of Steinhoff Africa Holdings (Pty) Ltd ("Steinhoff Africa"), which is wholly owned by Steinhoff International Holdings Limited ("Steinhoff International").
- [8] The JD Group operates a diversified retail and consumer finance business.
- [9] JDCF operates the consumer finance business of the JD Group. It offers customers the following financial services: the provision of secured and unsecured credit to the

customers of the JD Group's retail chain stores for items purchased in these stores; the limited provision of credit to the customers of the other retail stores within the broader Steinhoff Group; and the limited provision of credit to the customers of third party retailers.

- [10] JDGI offers micro-insurance products to the customers of the JD Group's retail stores. JDGI was set up in 2007 with the sole purpose of underwriting the credit life, credit goods and funeral insurance policies sold to retail consumers of the JD Group. These insurance policies are sold to consumers who apply and are approved for credit granted by the JD Group.

Proposed transaction and rationale

- [11] Wands Investments intends to acquire the entire issued share capital of JDCF and JDGI from JDGT and as a result will have control over JDCF and JDGI upon implementation of the proposed transaction.
- [12] The Acquiring Group submitted that it wishes to [...] ¹ in South Africa, as well as [...] in South Africa.
- [13] The JD Group submitted that it wishes to [...], thus the proposed transaction is an [...] to dispose of JDCF and JDGI.

Impact on competition

- [14] The Competition Commission ("Commission") identified a horizontal overlap between the activities of the merging parties in the national market for the provision of unsecured credit. We note that there is no horizontal overlap between the activities of the merging parties in respect of the provision of insurance since the Acquiring Group is not active in this area.
- [15] The Commission found that the merged entity will have a market share of below 10% in the national market for the provision of unsecured credit. The Commission further found that there are a number of other players in this market, including Nedbank, FirstRand Bank, Capitec Bank, ABSA Bank, Standard Bank of South Africa and African

¹ Certain information has been deleted in the non-confidential version of these Reasons since it has been claimed as confidential by the merging parties.

Bank. The Commission therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

- [16] We concur with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [17] Based on the submissions made by the merging parties, the Commission concluded that the proposed transaction raises no significant public interest concerns, including no significant employment concerns.

- [18] We concur with the Commission insofar as the proposed merger does not raise public interest concerns other than employment concerns. We deal with the employment concerns below.

Employment

Background

- [19] The merging parties submitted that the proposed transaction will not have any negative effect on employment since the Acquiring Group intends to continue with the JDCF and JDGI businesses as usual.²
- [20] The merging parties however provided details of restructuring within the broader JD Group of companies that include reducing the staff model. They submitted that reducing the staffing model, which had largely been developed to serve peak trading conditions which occur only once a year,³ includes the following initiatives: (i) freezing vacancies; (ii) redeployment of certain staff; and (iii) reducing staff in accordance with operational requirements.⁴
- [21] The above-mentioned restructuring resulted in the loss of approximately 3 409 jobs, predominantly in the furniture retail operations of the JD Group. Of the total amount of jobs lost, approximately 2 800 employees accepted voluntary severance packages.⁵

² Merger Record, page 14.

³ I.e. the December period.

⁴ Merger Record, pages 14 and 15.

⁵ Merger Record, pages 15 and 16.

- [22] The employees of the JD Group, including JDCF, are represented by the South African Commercial, Catering and Allied Workers Union ("SACCAWU").
- [23] Since SACCAWU raised employment concerns during the Commission's investigation, we informed it of the Tribunal's hearing date.

SACCAWU's submissions to the Commission and merging parties' response

- [24] According to the Commission, SACCAWU during its investigation of the matter raised similar concerns to those that it raised during the *RCS/Consumer Finance Business of JD merger*⁶. SACCAWU furthermore alleged that the proposed transaction has led to the retrenchment of employees of the JD Group as recently as October 2015.
- [25] By way of background, in the *RCS/Consumer Finance Business of JD merger*, SACCAWU had submitted that the transaction would result in job duplications and retrenchments and the Tribunal ultimately approved the transaction subject to certain employment conditions.
- [26] SACCAWU submitted that this proposed transaction should be approved subject to stringent employment conditions and that the JD Group must reinstate all the employees that were retrenched in October 2015.
- [27] The merging parties, in reaction to the concerns raised by SACCAWU, submitted that the historic restructuring process taking place within the broader JD Group is still continuing. They stated that it is common knowledge (through the *RCS/Consumer Finance Business of JD merger*) that the restructuring of the JD Group over the past few years has led to a number of job losses which are unrelated to the proposed transaction. The merging parties also submitted that, as advised previously, the need to restructure the JD Group's business was identified in 2014. The resulting job losses were already contemplated and consultations ensued in respect thereof in early 2015, whereas the proposed transaction was only envisaged towards the end of 2015. Therefore any retrenchments given effect to in the JD Group during October 2015 cannot have been as a result of this proposed transaction.

⁶ Merger involving *RCS Cards Proprietary Limited* and *The Consumer Finance Business of the JD Group*, Tribunal Case No. LM193Feb15/020644. This merger was conditionally approved by the Tribunal on 20 May 2015.

- [28] The merging parties further submitted that the JD Group is still continuing the retrenchment process and intends to close down approximately 250 stores as a result of the ongoing restructuring process in the JD Group. This is likely to affect approximately 1500 employees (i.e. six employees per store).
- [29] The Commission found that the ongoing restructuring within the broader JD Group is not merger-specific. The need to restructure the JD Group's business was identified in 2014 and the resulting job losses and consultations had already ensued by early 2015. The proposed transaction was only envisaged at the end of 2015. Accordingly the Commission concluded that the restructuring/retrenchments in October 2015 are not related to this proposed transaction. The Commission pointed out that this finding is consistent with Tribunal's approach in the *RCS/Consumer Finance Business of JD* merger, where it was found that the retrenchments occurring within the broader JD Group were likely to be operational in nature and therefore less likely to be merger-specific. In light of this the Tribunal imposed a condition that placed the onus of proof on SACCAWU or an employee who has been retrenched to prove that such dismissal was as a result of that merger. The latter merger was however never implemented.

Tribunal hearing

- [30] SACCAWU was represented at the hearing before the Tribunal and was afforded the opportunity to make oral submissions.
- [31] Ms. Nyman of SACCAWU pointed out that the *RCS/Consumer Finance Business of JD* transaction involved the same functions as the present proposed transaction, that SACCAWU raised employment concerns in that transaction and that the transaction was ultimately conditionally approved by the Tribunal. SACCAWU further noted that the *RCS/Consumer Finance Business of JD* transaction was never implemented by the relevant parties and alleged that the reason for that was the employment conditions that the Tribunal imposed at the time.⁷
- [32] SACCAWU reiterated that, despite the merging parties' submissions, it was not convinced that the proposed merger would not lead to retrenchments. It further noted

⁷ Transcript page 9.

that the JD Group has been in the process of restructuring and retrenching employees since 2014.⁸

- [33] It further alleged that, despite the assurances given by the merging parties, the retrenchment process had already begun to take place. It highlighted that the SACCAWU members are currently very insecure given the past merger (that was never implemented) and current proposed merger, as well as the ongoing process of restructuring and retrenchments.⁹
- [34] SACCAWU submitted that this proposed merger should be approved on the same basis as the *RCS/Consumer Finance Business of JD* transaction, but that the period of the moratorium on merger-specific job losses should be longer, i.e. that there should be no retrenchments as a result of the proposed transaction for a period of 5 years.¹⁰
- [35] The merging parties, in response to the concerns raised by SACCAWU, submitted that a significant difference in this transaction is that Fulcrum at present does not have the capacity to deal with any of the functions that are dealt with by the target firms. The merging parties however confirmed that Fulcrum is in the unsecured credit business and that both merging parties therefore have financial service skills.¹¹ The merging parties further stated that the *RCS/Consumer Finance Business of JD* transaction was never implemented because the economics of it had changed significantly close to the implementation date.¹²
- [36] The merging parties further stated that the job losses that occurred in 2015 and the further restructuring/job losses that were announced in February 2016 are all related to keeping the JD Group viable, i.e. they are operational in nature and not merger-specific.¹³

⁸ Transcript pages 9 and 10.

⁹ Transcript page 10.

¹⁰ Transcript pages 11, 12 and 26.

¹¹ Transcript pages 17 and 18.

¹² Transcript page 21.

¹³ Transcript page 19.

Conclusion

- [37] As stated above, the merging parties submitted that they do not anticipate any job losses resulting from the proposed transaction, despite the fact that both parties have financial service skills.
- [38] We have found no evidence that the retrenchments to date within the broader JD Group are related to this proposed merger.
- [39] However, given the apprehensions and concerns raised by SACCAWU and the presently ongoing and planned retrenchments within the broader JD Group and in the interest of transparency and in order to provide certainty to the employees affected by the proposed transaction, we have approved the proposed transaction subject to certain employment-related conditions.
- [40] The condition that we have imposed is that the merging parties will not retrench any employees as a result of the proposed merger for a period of two years from the implementation date of the proposed transaction.¹⁴ Although SACCAWU requested that the moratorium on merger-specific job losses should be five years and the merging parties submitted that the moratorium period should be no longer than one year, we have found no justification for either of these positions.
- [41] We note however that in acknowledgement of the ongoing restructurings at the Seller¹⁵, and in order to relieve the merging parties of unnecessary burdens that may flow from having to prove their compliance with the imposed conditions, during the Merger Condition Period¹⁶ any retrenchments at the businesses of the merging parties will be presumed to be not merger-specific.
- [42] Given the above presumption, the following applies:
- a. In instances where retrenched employees, or their representatives, hold the view that such retrenchments are as a result of the proposed merger, it will be for the retrenched employees, or their representatives, to rebut the presumption (see

¹⁴ For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages.

¹⁵ "Seller" means JDGT.

¹⁶ "Merger Condition Period" means the two year period commencing on the implementation date of the proposed transaction and terminating on the two year anniversary of the implementation date.

paragraph 41 above) and proof that such retrenchment is merger specific/had been caused by the proposed merger.

- b. In the event that the Commission concludes that the retrenched employees, or their representatives, are/were unable to successfully rebut the presumption set out in paragraph 41 above, the Commission must inform the merging parties of its conclusion in writing including setting out its findings from its investigation.
- c. In the event that the Commission concludes that the retrenched employees, or their representatives are/were able to successfully rebut the presumption set out in paragraph 41 above and the Commission determines that there has been an apparent breach by the merging parties of the imposed merger conditions, the breach shall be dealt with in terms of Rule 39 of the Competition Commission Rules.

[43] The merging parties shall circulate a copy of the imposed merger conditions to its employees and their respective representatives within seven business days of the Tribunal's date of approval.

Conclusion

[44] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. For the reasons stated above, we have approved the proposed transaction subject to a set of employment conditions. For the sake of convenience we attach hereto the full set of conditions that we have imposed, marked as "Annexure A".


Mr Andreas Wessels

21 April 2016
DATE

Prof. Fiona Tregenna and Ms Andiswa Ndoni concurring

Tribunal Researcher: Kameel Pancham
For the merging parties: Lizel Blignaut of ENSafrica
For the Commission: Amanda Mfuphi