competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: IM161Dec14

In the matter between:

Southern African Clothing and Textile Workers' Union — **Applicant**

and

The Competition Commission — **First Respondent**

NEWCO ONE, BAGSHAW FOOTWEAR (PTY) LTD, BOLTON FOOTWEAR (PTY) LTD, KAP MANUFACTURING (PTY) LTD, THE DIVISIONS, UNITED FRAM, WAYNE PLASTICS, MOSSOP WESTERN LEATHERS, JORDAN SHOES

(together "THE MERGING PARTIES") — **Second Respondent**

Panel	: Medi Mokuena (Presiding Member) : Andiswa Ndoni (Tribunal Member) : Fiona Tregenna (Tribunal Member)
Heard on	: 06 May 2015
Order Issued on	: 06 May 2015
Reasons Issued on	: 28 May 2015

Reasons for Decision

Conditional approval

[1] On 11 December 2014, the Southern African Clothing and Textile Workers' Union ("SACTWU") filed an application in terms of section 16(1)(b) of the Competition Act No. 89 of 1998("the Act") requesting the Competition Tribunal ("Tribunal") to reconsider an intermediate merger that was conditionally approved by the Competition Commission ("Commission") on 30 September

2014. The merger entailed NewCo One ("NewCo"), Bagshaw Footwear (Pty) Ltd ("Bagshaw") and Bolton Footwear (Pty) Ltd ("Bolton") acquiring the four divisions of Kap Manufacturing (Pty) Ltd ("Kap") namely: United Fram, Wayne Plastics, Mossop Western Leathers ("Mossop") and Jordan Shoes. For purposes of this application these firms will be referred to as the Merging Parties.

[2] The Commission conditionally approved the transaction by imposing an obligation on the Merging Parties not to retrench employees at United Fram for a period of one (1) year from the Implementation Date of the proposed transaction. The main reason the Applicant filed this application before us was because prior to the notification of the transaction, SACTWU and the Merging Parties had entered into an agreement ("Prior Agreement"), which entailed an undertaking not to retrench workers at several firms for a period of three years.

[3] It is worth noting that the Application before us was unopposed by both the Commission and the Merging Parties. In light of this we will not reconsider the transaction as a whole but only consider the public interest issues that form the basis of this application.

Background

The Applicant

[4] SACTWU is one of the registered trade unions present at the merging parties operations in South Africa. It filed a Notice of Intention to Participate in relation to the current intermediate merger.[1]

The Merging Parties

[5] NewCo, at the time of the merger was yet to be formed for purposes of the transaction.

[1] SACTWU filed its Notice of Intention to participate in the proceedings on 16 July 2014.

5.1 Bolton comprises of three divisions, namely Bagshaw Footwear, Watson Shoes and Barker Footwear, which all manufacture different types of footwear. Bagshaw is a manufacturer of multiple brands of leather safety footwear.

5.2 Barker Footwear manufactures men's formal footwear on leather sole. Its target market is young business executives looking for fashionable, yet reasonably priced formal footwear. It is worthy to note that Bolton also has another division called Watson Shoes which has manufacturing facilities in Southern Cape, and houses a number of brands for men, women and children's footwear.

5.3 Kap is an investment company with a portfolio of diverse manufacturing businesses including leather products, footwear, automotive components and food. All Kap's businesses are conducted through United Fram, Wayne Plastics, Jordan Shoes and Mossop. United Fram is a manufacturer and importer of leather safety footwear. Wayne Plastics is a manufacturer of gumboots. Jordan Shoes is a manufacturer and importer of civilian footwear, but also specialises in casual and fashion footwear. Mossop is a manufacturer of bovine tanned leather used in the manufacturing of leather footwear. It produces a range of leathers such as full grain sides, corrected grain slides, Tektan splits, suede splits *inter alia.*

Proposed transaction

[6] The transaction entails various steps wherein the following would take place:

6.1 The leather safety footwear transaction: Beier and Bagshaw will form NewCo. United Fram will then be acquired by NewCo. This would then result in a horizontal overlap between Beier, Bagshaw, United Fram and Wayne Plastics, as they all manufacture and supply safety footwear.

6.2 The civilian footwear transaction: This involves the merger between Watson Footwear, Barker Footwear and Jordan Shoes. This would result in a horizontal overlap in relation to civilian footwear.

6.3 The Acquisition of Mossop: Mossop will be jointly acquired by Bolton, NewCo and SKN (Rahman Industries). Mossop is a leather tanner and thus a vertical relationship exists between Mossop and Jordan Shoes, Barker Footwear and Watson Shoes.

The Current Application

[7] As already mentioned above, neither of the respondents opposed the current application. The Merging Parties informed us that they had re-assured SACTWU that despite the Commission's one year conditional approval, they would honour their agreement with the union that was concluded prior to the transaction notification.

[8] SACTWU submitted that the reason for bringing the application related to the enforceability of an undertaking versus that of a Tribunal condition. The former obviously carried less weight than the latter. If one fails to abide by a condition imposed by the Tribunal one would be liable in terms of the Act and the Tribunal can impose an administrative penalty in terms of sections 59 of the Act.[2]

[9] Although the Commission indicated that it would regard such agreements between parties on a case by case basis, the Commission would be well advised when considering public interest issues to take cognisance of those conditions agreed to between unions and merging parties, so that it does not undermine any constructive engagement concerning employment which, in the current economic climate in South Africa, is of utmost importance.

[10] Therefore, having heard the Applicant's submissions, the Competition Tribunal orders that clause 3.4 in the conditions attached to the Merger (and attached hereto as "Annexure A"), be amended as follows:

---

[2] See page 3 of the transcript of the hearing.

"a. Apart from the Affected Employees, there shall be no retrenchment of any other employees as a result of the Merger in the Acquiring Firms as well as the Target Firms for a period of three (3) years after the Implementation Date."

Conclusion

[11] In light of the above, the application in SACTWU's notice of motion is hereby granted.

Ms Medi Mokuena

28 May 2015
DATE

Ms Andiswa Ndoni and Prof. Fiona Tregenna concurring.

Tribunal Researcher:	Caroline Sserufusa
For the Applicant:	Michelle le Roux instructed by Cheadle Thompson & Hayson
For the merging parties:	Andile Nikani of Fluxmans Attorneys
For the Commission:	Ziyaad Minty