COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM014Apr25

In the matter between:

Pharmacare Limited t/a Aspen Pharmacare **Primary Acquiring Firm**

And

Certain rights held by Ingelheim Pharmaceuticals Proprietary Limited and five employees employed by Boehringer Ingelheim Proprietary Limited **Primary Target Firm**

Panel	:	Andreas Wessels (Presiding Member)
	:	Geoff Budlender (Tribunal Member)
	:	Thando Vilakazi (Tribunal Member)
Heard on	:	14 July 2025
Order issued on	:	15 July 2025
Reasons issued on	:	23 July 2025

REASONS FOR DECISION

Introduction

[1] On 15 July 2025, the Competition Tribunal ("Tribunal") conditionally approved the large merger wherein Pharmacare Limited trading as Aspen Pharmacare ("Aspen" or the "Acquiring Firm") intends to acquire the marketing, promotion, sales and distribution rights relating to certain pharmaceutical products sold in South Africa by Ingelheim Pharmaceuticals Proprietary Limited ("Ingelheim SA"), an indirect subsidiary of Boehringer Ingelheim International GmbH ("BI International") (the "Target Products"), and five employees employed by Boehringer Ingelheim Proprietary Limited ("Boehringer SA") (collectively referred to as the "Target Business").

Parties and their activities

Primary Acquiring Firm

[2] The primary acquiring firm is Aspen; a company incorporated in South Africa. Aspen is controlled by Aspen Pharmacare Holdings Limited (as to 100%) ("Aspen Holdings"), a South African public company listed on the Johannesburg Stock Exchange and not controlled by any firm.

[3] The Acquiring Group manufactures, sells and distributes generic and branded pharmaceutical drugs in South Africa. It operates 24 manufacturing and packaging facilities across a number of countries, with its South African manufacturing and packaging operations taking place in Gqeberha, Cape Town and East London.

Primary Target Firm

[4] The primary target business is the marketing, promotion, sales and distribution rights relating to certain pharmaceutical products sold in South Africa by Ingelheim SA and five employees employed by Boehringer SA.

[5] BI International is active in the development, manufacturing and sale of pharmaceutical products. It has research and development facilities at four sites (in Germany, Austria, Japan and the US) and manufacturing facilities in 13 countries. BI International has no manufacturing facilities in South Africa. BI International exports products to South Africa which are marketed, sold and distributed through its wholly owned local subsidiary, Ingelheim SA.

Competition analysis

[6] The Commission assessed the activities of the merging parties and found that there is a horizontal overlap, as both the Acquiring Group and BI International are

involved in the development, manufacture and marketing of specific categories of pharmaceutical products in South Africa.

[7] In view of the identified overlaps in certain categories of pharmaceutical products, and in line with Tribunal and international precedent wherein product markets have been defined in relation to the Anatomical Therapeutic Chemical (ATC) classification[1] of the products, the Commission assessed the competition effects of the proposed transaction in relation to the following relevant markets:

[7.1] The national market for the provision of pharmaceutical products classified under ATC3 category L1H (Protein Kinase Inhibitor Antineoplastics);

[7.2] The national market for the provision of pharmaceutical products classified under ATC3 category N4A (Anti-Parkinson Preparations);

[7.3] The national market for the provision of pharmaceutical products classified under ATC3 category C9D (Angiotensin-II Antagonists Combinations); and

[7.4] The national market for the provision of pharmaceutical products classified under ATC3 category R3L (Anticholinergics in Combination with B2-Agonists).

[8] The products of the merging parties in ATC3 category L1H are not functionally substitutable. The merged entity would have a low combined market share of between [10-20]% with a negligible accretion in market share of less than [0-10]%. Similarly, products of the merging parties in ATC3 category C9D were not functionally substitutable, in addition, the merged entity would notionally have a relatively low combined market share of between [10-20]%, with a negligible accretion in market share of less than [0-10]%.

[9] Regarding ATC3 category R3L, there is a degree of substitutability between the products of the merging parties. As a result, the merged entity would have a combined market share of between [10-20]% with a negligible accretion in market share of less than [0-10]%. We note that in this market, BI International's products

[1] In particular, the ATC3 classification of products has been applied which refers to chemical, pharmacological or therapeutical properties of products and provides an indication of their intended use.

have been discontinued but-for the sales by Aspen of stock on hand such that the accretion in market share is temporal.

[10] Lastly, the merging parties' combined market share in the ATC3 category N4A, where there is a degree of substitutability between the products of the merging parties, would amount to between [30-40]% with a [0-10]% accretion in market share. In this market, the merging parties will continue to be constrained by significant competitors which include Sanofi, Cipla and several others, and we found no further evidence to suggest that the transaction would lead to a prevention or lessening of competition in this market.

Conclusion on the competition assessment

[11] In light of the above, we find that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in any market in South Africa.

Public interest

Effect on Employment

[12] The merging parties confirmed that the proposed transaction will not have any adverse impact on employment. In particular, there will be no retrenchments or job losses that will arise from the proposed transaction.

[13] The merging parties further submitted that 5 (five) employees who were responsible for the specialised "Lytics" portfolio within the set of Target Products will take up employment with Aspen following implementation of the proposed transaction. They further committed that a further [redacted] new employees would be appointed to be responsible for managing and promoting the Target Products. These commitments are set out in Annexure A which is attached to our Order.

[14] In light of the above, we are satisfied that the proposed transaction is unlikely to have a negative effect on employment.

The effect of the merger on the promotion of a greater spread of ownership

[15] The proposed transaction will lead to an increase in ownership by Historically Disadvantaged Persons (HDPs). Currently the target business is 100% foreign owned and has no HDP ownership, whereas the Acquiring Firm is owned by HDPs as to 27.024%.

Other public interest considerations

[16] We received no evidence or submissions that the proposed transaction raises other public interest concerns, and we are satisfied that the merger will not have any negative effect in terms of the factors set out in section 12A(3) of the Act.

Conclusion

[17] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and is justifiable on public interest grounds.

[18] Accordingly, we approve the proposed transaction subject to the conditions in **Annexure A**.

Signed by:Thando Vilakazi
Signed at:2025-07-23 15:51:25 +02:00
Reason:Witnessing Thando Vilakazi

Thando Vilakazi

Prof. Thando Vilakazi	**23 July 2025** **Date**

Concurring: Mr. A. Wessels and Adv. G. Budlender SC

Tribunal Economist:	Thabiso Poswa
For the Merger Parties:	Neil Mackenzie and Lara Granville of MGI Competition Law (Pty) Ltd; and Marianne Wagener of Norton Rose Fulbright (Pty) Ltd
For the Commission:	Biance Viljoen and Betty Mkatshwa