



MERGER DECISION NO 21: 2020

Notice in Terms of Section 53(4) (a) (ii) of the Competition Act 2018

AMENDMENT OF THE MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF PARTS OF THE JET BUSINESS CONDUCTED BY EDCON, THROUGH JET SUPERMARKETS BOTSWANA (PTY) LTD IN BOTSWANA BY THE FOSCHINI GROUP LIMITED, ACTING THROUGH FOSCHINI (BOTSWANA) [PTY] LTD

Introduction of the Merging Parties

- i. Pursuant to section 53(4)(a)(ii) of the Competition Act of 2018 ("the Act"), notice is hereby given on the decision made by the Competition and Consumer Authority ("the Authority") in respect of the proposed acquisition of parts of the Jet business (consisting of certain assets and identified liabilities) conducted by Edcon Limited ("Edcon"), through Jet Supermarkets Botswana (Pty) Ltd ("Edcon Botswana"), in Botswana ("Jet Business" or "the target enterprise"), as a going concern, by the Foschini Group Limited ("TFG"), acting through Foschini (Botswana) [Pty] Ltd ("Foschini Botswana" or "the acquiring enterprise"). The transaction was notified to the Authority on 2nd October 2020 and the merger assessment was completed on 10th November 2020.
- ii. The acquiring enterprise, Foschini Botswana, is a company incorporated in accordance with the Laws of Botswana and it is wholly controlled by the Foschini Retail Group (Pty) Ltd ("Foschini") based in South Africa. Foschini is in turn wholly owned by the Foschini Group Limited ("TFG") which is a public company listed on the Johannesburg Stock Exchange (JSE) Limited and is also based in South Africa. TFG is a chain store group in Southern Africa and has diverse fashion retail brands in Botswana, offering clothing, jewellery, cell phones, accessories, cosmetics, sporting apparel and equipment, homeware and furniture, from value to upper market segments in larger urban centres across Botswana.
- iii. The Jet Business, as the primary target enterprise, is solely controlled by Edcon Botswana, which is a company incorporated in accordance with the Laws of Botswana. Edcon Botswana is in turn controlled by Edcon Limited ("Edcon"), a company wholly owned by Edcon Consolidated Stores Limited ("ECSL") - a limited liability company incorporated under the Laws of South Africa. Edcon's trading names are: Edgars; Jet; Thank U; and Credit and Financial Services. The Jet Business is Edcon's discount department store division, selling clothing, footwear, homeware and some cosmetics as well as cellular products and targets lower-to-middle income consumers throughout Botswana.

Relevant Markets

- iv. In terms of the relevant market, the assessment of the proposed transaction revealed that from a general perspective, the merging parties may be regarded as competitors as they are both seen to be active in similar segments of market. However, a more refined analysis has shown that the markets of the merging parties in Botswana are differentiated to accommodate the diverse tastes, preferences, and income levels of millions of Batswana. For this reason and when a narrower perspective is considered, TFG is not regarded as the closest competitor to the Jet Division. Therefore, for purposes of analysing the proposed transaction, and in view of the nature of the products and services offered by the merging parties, particularly the target entity, the Authority determined the relevant product market to be the market for the *Sale of Apparel, Cosmetics, Homeware and Cellular products*. The geographical market is national hence *the entire country of Botswana*.

Competitive Analysis and Public Interest

- v. In the assessment of Substantial Lessening of Competition, the Authority discovered that TFG is classified as a standard retailer which targets middle-to-upper income consumers and it competes with stores such as: Truworths and Woolworths. On the other hand, the target, Jet Division is regarded as a discount/value retailer targeting lower income consumers or a mass market, as is the case with, Ackermans, Pepkor, Cash Bazaar, and to a lesser extent, Mr Price. Therefore, a narrower view of the market is that TFG through its stores trading in Botswana is not a close competitor to the Jet Division. Additionally, there exist other major rivals who will continue to exercise competitive constraints on the merged enterprise post-merger.
- vi. In terms of the Acquisition of a Dominant Position, the analysis shows that the acquisition of the target business by Foschini Botswana will result in an insignificant combined market share in the relevant market. Therefore, the Authority does not foresee an acquisition of a dominant position in the market under consideration or any other market on the account of the proposed transaction.
- vii. With regards to Public Interest Considerations, the findings of the assessment revealed that the transaction is as a result of the need for a Business Rescue by the target enterprise; and that, in the event that the proposed transaction fails, it will translate into the loss of the employment positions at the target business. On that note the Authority found it necessary to ensure that the proposed merger does not result in any retrenchments or redundancies. In light of this, the assessment revealed the critical need to protect the employees of the merged entity from possible merger specific retrenchments/ redundancies.

The Determination

- viii. The Authority determined through the analysis of the facts of the merger, that the proposed transaction is not likely to result in the prevention or substantial lessening of competition, or endanger the continuity of the services offered in the relevant market. However, it is noted that the proposed transaction gives rise to public interest concerns under section 52(2)(e) of the Act, whereby possible retrenchments/ redundancies may arise as a result of implementation of the proposed merger.
- ix. Taking the public interest concerns and pursuant to the provision of section 53 of the Act, the Authority has approved the proposed acquisition of parts of the Jet Business (consisting of certain assets and identified liabilities) conducted by Edcon Limited, through Jet Supermarkets Botswana (Pty) Ltd in Botswana as a going concern, by the Foschini Group Limited acting through Foschini (Botswana) [Pty] Ltd, subject to the following conditions:
1. There shall be no merger specific retrenchments or redundancies that may affect the employees of the merged enterprises. For clarity, merger specific retrenchments or redundancies do not include (the list is not exhaustive):
 - i. voluntary retrenchment and/or voluntary separation arrangements;
 - ii. voluntary early retirement packages;
 - iii. unreasonable refusals to be redeployed;
 - iv. resignations or retirements in the ordinary course of business;
 - v. retrenchments lawfully effected for operational requirements unrelated to the Merger; and
 - vi. terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance;
 2. The merged enterprise shall inform the Authority of the date of implementation within thirty (30) days of the Approval date;
 3. The merged enterprise shall provide details (Full Name; Identification Number; Gender; Position and Store of employment; contact number) of the 126 employees of the target within thirty (30) days of the Approval date;
 4. The merged enterprise shall share a copy of the conditions of approval to all employees of the target and/or their respective representatives within ten (10) days of the Approval date;
 5. Should vacancies arise in the target, the merged enterprise shall consider previous employment at one of the non-transferring Jet stores to be a positive

factor to be taken into account in the consideration of offering potential employment;

6. The merged enterprise shall for a period of (three) 3 years from the implementation date, submit a report on each anniversary of the implementation date, detailing its compliance with the conditions of approval;
7. Any person who believes that the merged enterprise has failed to comply with any of the conditions of approval may approach the Authority with his/her complaint;
8. In cases of any job losses, for the Authority to assess whether the retrenchments or redundancies are merger specific, at least three months before (to the extent that this deadline can be practically achieved and in terms of the prevailing and legally required employment practices) any retrenchments or redundancies are to take place, inform the Authority of:
 - i. The intended retrenchments;
 - ii. The reasons for the retrenchments;
 - iii. The number and categories of employees affected;
 - iv. The expected date of the retrenchments; and
9. The conditions shall last for a period of three (3) years from the date of implementation.

However, as stated under section 61 of the Act, this approval does not override or negate any other mandatory statutory approvals or processes that any of the parties to this merger must comply with under the Laws of Botswana.

Dated at Gaborone on this 18th day of November 2020.

Tebelelo Pule, Chief Executive Officer, Competition and Consumer Authority,
P/Bag 00101, Gaborone, Plot 28, Matsitama Road, Tel: 3934278 Fax: 3121013