



MERGER DECISION NO 23: 2020

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

THE PROPOSED ACQUISITION BY RETAILABILITY PROPRIETARY LIMITED, THROUGH OCLIN PROPRIETARY LIMITED, OF PARTS OF THE EDGARS BUSINESS CONDUCTED BY EDCON IN BOTSWANA (THROUGH EDCON BOTSWANA), AS A GOING CONCERN, CONSISTING OF CERTAIN ASSETS AND IDENTIFIED LIABILITIES

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 by Retailability Proprietary Limited ("Retailability"), through Oclin Proprietary Limited ("Oclin Botswana"), of parts of the Edgars business conducted by Edcon in Botswana (through Edcon Botswana), as a going concern, consisting of certain assets and identified liabilities ("the target business"). The transaction was notified to the Authority on 13th October 2020 and the merger assessment was completed on 1st December 2020.
- ii. The acquirer, Retailability is a company incorporated in accordance with the Laws of the Republic of South Africa. Retailability is controlled by Clifford Raymond Lines (through a company which functions solely as a holding company of his interests in Retailability) and Metier Investment and Advisory Services Proprietary Limited ("Metier"). On the other hand, Metier is a private equity enterprise with investments in a range of industries spanning healthcare, hospitality, Fast Moving Consumer Goods and telecommunications.
- iii. Retailability is a retailer of clothing apparel. The acquirer owns clothing apparel retail stores trading under the names "Beaver Canoe", "Style", and "Legit". The Beaver Canoe stores sell clothing apparel for men and boys only. The Style stores offer men's and ladies' contemporary and formal fashion. The Legit stores have a fashion store format which focuses on the retailing of clothing, footwear and accessories and colour cosmetics and cellular products. There are currently 5 Beaver Canoe stores, 10 Style stores and 7 Legit stores across Botswana.
- iv. The target business forms part of the Edgars Division, which is Edcon's department store brand, selling clothing, footwear and accessories for men, women and children. In addition, these stores offer textiles, cosmetics and cellular products. The Edgars Business is controlled by Edcon Botswana, which in turn is controlled by Edcon.

The Target Business comprises 2 Edgars franchise brand and private label stores across Botswana. These stores target middle to upper income customers and are home to a range of private label brands such as Free2BU, Charter Club and Stone Harbour, and a wide range of market label brands (such as Levi's and Guess) for clothing, footwear and cosmetics.

In addition, the Target Business operates iconic Edgars Home and Edgars Beauty stores as store-in-store formats rounding out the department store offering in Botswana.

Relevant Markets

- v. 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 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 Botswana. Therefore, for purposes of analysing the proposed transaction, and in view of the nature of the products and services offered by the Merging Parties, the Authority determined the relevant product market to be the market for the *clothing apparel; cosmetic and mobile cellular products markets*. The geographical market is national hence the entire country.

Competitive Analysis and Public Interest

- vi. In the assessment of Substantial Lessening of Competition, the Authority discovered that the proposed transaction is not expected to substantially lessen competition due to the fact that there will be an insignificant change in the market as there are other large departmental stores that will act as a constraint on the merged entity, post-merger. Therefore, the merger will not give rise to any substantial lessening of competition or to restrict trade or the provision of service or to endanger the continuity of supplies or service in the relevant market of Botswana.
- vii. In terms of the Acquisition of Dominant Position, the analysis shows that the acquisition of the target business by Retailability will result in an insignificant combined market share in the relevant markets. Conversely, the merged entity will not attain a dominant position on account of the proposed transaction.
- viii. 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 necessary to avoid the relevant counterfactual which entails closure of all Edgars Stores in Botswana, resulting in substantial loss of businesses to numerous people/companies involved in the Target Business's broader supply chain (both directly and indirectly). On that note the Authority found it necessary to ensure that the proposed merger does not result in any retrenchments or redundancies.

In that regard, the assessment indicated that there exists a need to protect the employees of the merged entity from the possible merger specific retrenchments/ redundancies.

The Determination

- ix. 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.
- x. Taking the public interest concerns and pursuant to the provision of section 53 of the Act, the Authority has approved the proposed acquisition by Retailability Proprietary Limited ("Retailability"), through Oclin Proprietary Limited ("Oclin Botswana"), of parts of the Edgars business conducted by Edcon in Botswana (through Edcon Botswana), as a going concern, consisting of certain assets and identified liabilities ("the target business") 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:
 - 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; national identity numbers, Gender; Position and Store of employment; contact number) of the 73 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 Edgars Business stores to be a positive factor to be taken into account in the consideration of offering potential employment;
6. The conditions shall last for a period of three (3) years from the date of implementation;
7. 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;
8. 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; and
9. 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; and
 - iv. The expected date of the retrenchments.
10. 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 2nd day of December 2020.

Tebelelo Pule, Chief Executive Officer, Competition and Consumer Authority,
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