COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 63/LM/Jul05

In the large merger between:

Medicine Management Services (Pty) Ltd

and

Gerard Augustine *t/a* Direct Medicines Pharmacy

Reasons for Decision

APPROVAL

1. On 24 August 2005 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Medicine Management Services (Pty) Ltd and Direct Medicines Pharmacy. The reasons for the approval of the merger appear below.

The Parties

2. **The acquiring firm is Medicine Management Services (Pty) Ltd ("MMS"), a subsidiary of Afrox Healthcare Services (Pty) Ltd.**[1]

3. The target firm is the dispensary business of Gerald Augustine trading as

[1] The following three (3) entities control MMS, viz., Afrox Healthcare Services (Pty) Ltd (which holds 100% of the issued share capital of MMS); Afrox Healthcare Ltd (which recently changed its name to Life Healthcare (Pty) Ltd; and Business Venture Investments 790 (Pty) Ltd (which recently acquired the 100% of the issued share capital of Life).

Direct Medicines Pharmacy ("the Pharmacy Business"), which is controlled by MMS (as its administrator and manager) and Gerard Augustine (as its sole shareholder).[2]

The merger transaction

4. Both Gerard Augustine t/a Direct Medicines Pharmacy and MMS entered into a Sale of Business Agreement in terms of which MMS acquired the pharmacy business as a going concern. Subsequent to the implementation of the merger, sole control (on a direct basis) over the pharmacy business will vest in MMS.[3]

5.

Rationale for the Transaction

5. Owing to the recent amendments to the Regulations relating to the Ownership and Licensing of Pharmacies it was no longer obligatory for Gerard Augustine, who is a registered pharmacist, to run the pharmacy business. Having regard to his desire to exit the pharmacy business it was decided to consolidate the pharmacy business' administration, management and dispensing operations into MMS.[4]

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2 MMS exercises administrative and managerial control over the Pharmacy Business, and do not directly or indirectly control any other firm. Mr Augustine does not control (directly or indirectly) any firm save for holding all of the issued share capital of Direct Medicines (Pty) Ltd, a dormant company. (See page 14 (item 2.2) of the record).

3 Page 25 (item 11.3) of the record.

4 See page 3 of the transcript dated 24 August 2005 as well as page 45 of the record.

The relevant product market

6. MMS undertakes administration and managerial services for Direct Medicines. Direct Medicines in turn conducts the business of dispensing prescription medicines to private sector patients. The parties contended that the relevant product market for analyzing the proposed merger is the market for the dispensing of prescription medicines to private sector patients.

7. We found that no overlap exists with respect to activities of the merging parties.

Retail Pharmaceutical (Dispensary) products

The relevant geographic market

8. Since the pharmacy business conducts the business of dispensing prescription medicines to private sector patients throughout South Africa, the market is defined as national.

Impact on competition

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9. ccording to the merging parties the total number of repeat prescriptions in South Africa on a monthly basis amounts to approximately 1.4 million repeat prescriptions of which the pharmacy business' market share

accounted for 0.05%. The proposed merger would not give rise to an aggregation of market shares because MMS is not involved in this market.

10. We are persuaded that the merger is unlikely to result in the substantial lessening or prevention of competition given the significant number of players in the market as well as the merging parties' low market shares post-merger. were compounded by the prospect that might not enter this sector at all

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> *"It is clear that the existence of Proctor at the edge of the industry exerted considerable influence on the market. First, the market behaviour of the liquid bleach industry was influenced by each firm's predictions of the market behaviour of its competitors, actual and potential. Second, the barriers to entry by a firm of Proctor's size and with its advantages were not significant…"*

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Public Interest

11. The merging parties were confident that there would be no negative effects on employment arising from the proposed merger as no job losses were anticipated.

Conclusion

12. The proposed merger is therefore approved unconditionally.

____________ 14 September 2005

N. Manoim Date

Concurring: M. Moerane, M. Mokuena

For the merging parties:	Mark Garden, *Edward Nathan Corporate Law Advisers*
For the Commission:	Odie Strydom assisted by Leonard Lamola, *Mergers & Acquisitions*