



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:06/LM/Jan11

In the matter between:

PROUDAFRIQ TRADING 267 (PTY) LTD

Acquiring Firm

And

S BUYS (PTY) LTD

Target Firm

Panel : Norman Manoim (Presiding Member),
Yasmin Carrim (Tribunal Member)
Merle Holden (Tribunal Member)
Heard on : 30 March 2011
Order issued on : 30 March 2011
Reasons issued on : 12 April 2011

Reasons for Decision

Approval

- 1] On 30 March 2011 the Competition Tribunal ("Tribunal") approved the large merger between Proudafrique Trading 267 (Pty) Ltd ("Proudafrique") and S Buys (Pty) Ltd ("Buys"). The Tribunal's reasons for approving the transaction are set out below.

The Parties to the transaction

- 2] The primary acquiring firm is Proudafrique an newly formed wholly owned subsidiary of RTT

Group (Pty) Ltd (“RTT”),¹ a company incorporated in terms of the laws of the Republic. RTT is ultimately controlled by First Rand Bank Limited and Actis Logistics Limited.

- 3] Buys², the target firm is controlled by Sicily Van Rensburg and the S Buys Trust. The S Buys Group provides management, product distribution and education directly to the consumer, healthcare professionals and to corporate clients.
- 4] In terms of the proposed merger, Proudafrique intends to acquire the entire issued share capital in Buys and all claims which the sellers may have against Buys.

The activities of the parties

5] The Acquiring Group:

a. The controllers of RTT:

- (i) FirstRand Group³ is one of the largest financial institutions in South Africa,
- (ii) the Actis Group⁴ is a private equity investor in emerging markets in Asia, Latin America and Africa. The Actis Group’s South African investments include Alexander Forbes, Fuel, Peters Papers and Platmin.

- ##### b. RTT, which promotes itself as the largest and most successful privately owned distribution company, provides various logistics services to a variety of industries, through its various divisions. SOSPharm is the division which trades as the Pharmaceutical Healthcare Distributors division and is relevant to this transaction. Through this division, RTT distributes pharmaceutical products on behalf of 30 manufacturers in South Africa. RTT distributes to medical practitioners, hospitals, clinics, the state, pharmacies, health shops, wholesalers and retailers in Gauteng, Western Cape, KwaZulu-Natal and Eastern Cape.

6] The Target Firm:

- a. Buys is involved in the retail supply of pharmaceutical through its 10 pharmacies in Gauteng, Mpumalanga and North West Province.
- b. The Buy Group also has subsidiaries in property, training and development and purchasing in pharmaceutical products.

- 7] The parties are in a horizontal and a vertical relationship in that they are both in distribution and wholesale of pharmaceutical products. Further Buys operates in the downstream retail market and RTT, through PHD, operates in the upstream market of the distribution of pharmaceutical products.

1 <http://www.rtt.co.za>

2 <http://www.sbuys.co.za>

3 <http://www.firstrand.co.za/live/index.php>

4 <http://www.act.is/>

The Rationale

- 8] RTT submits that the rationale behind the transaction is a strategic integration which will provide it with the backbone of the courier pharmacy business in Carltonville and surrounding areas.
- 9] The parties further submit that their proposed merger will result in pro-competitive gains in that it will enhance their joint ability to effectively compete with other significant competitors in the market.

The relevant market and the impact on competition

10] The parties define the relevant markets in which they operate as follows:

- a. The wholesale supply of pharmaceutical products, being the market where the parties compete, and
- b. The retail supply of pharmaceutical products, this being the market in which Buys' retail outlets compete.

- 11] The Commission views the pharmaceuticals sector as being characterized by a small number of manufacturers and a large number of retail outlets and this leaves the manufacturers with the task of having to distribute their products to the retailer. This then leads to wholesaler / distributor being able to act as an intermediary between the manufacturer and the retailer.
- 12] In the Commission's view, the parties are in a vertical and horizontal relationship. Both parties are active in distribution and wholesale of pharmaceutical products. While Buys is active in the downstream retail market through its pharmacies, RTT targets corporate pharmacies and also acts as a distributing agent for a number of principals who sell a variety of pharmaceutical products to wholesalers, including Buys.
- 13] In the market for the wholesale distribution of pharmaceutical products, which comprises of approximately 13 participants, the acquiring firm is ranked 4th while the target firm is ranked at about 11th in size. There are therefore a number of significant competitors in this market.
- 14] It is better to define the wholesale market as a distribution market. Wholesalers may compete in a distribution market but so may other firms which have different business models to traditional wholesaling. It is however relevant to consider the distribution market from a competition market because although the retail price of pharmaceuticals in regulated we were advised that at present the distribution price is not. For this reason we consider the implications of the merger on the distribution market.
- 15] Although there is an overlap in respect of distribution this is unlikely to raise competition concerns as the distribution models of the firms are very different. The target firm operates from Carltonville and its major customers are primarily located in the North West province

and comprise mostly of independent pharmacies in smaller towns. The acquiring firm's major customers, however, consist of the larger corporate pharmacies across the country. This then adds

credibility to RTT's contention that the services offered by Buys will complement those offered by RTT and enable the merged entity to compete more effectively with its larger competitors.

Public Interest

16] The transaction will have no negative effect on employment and no other public interest issues arise.

17] The third parties contacted raised no concerns over the merger.

CONCLUSION

18] The Tribunal has considered the above merger and analysed the impact it is likely to have on competition in the national market for the wholesale distribution of scheduled and unscheduled pharmaceutical products. The market has relatively low barriers to entry and vertical integration by various firms has previously taken place. The market is further contested by various large distributors and the parties will hold a combined market share of approximately 11%.

19] Accordingly, the merger is approved without conditions.

N Manoim

DATE 12 April 2011

Y Carrim and M Holden concurring.

Tribunal Researcher: Songezo Ralarala

For the merging parties: Shaun Read and Andrew Cadman from Read Hope Phillips Attorneys,

For the Commission: Martin Van Hoven