



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM133Oct22

In the matter between:

The SPAR Group Ltd

Primary Acquiring Firm

and

SPAR Encore Ltd

Primary Target Firm

Panel	:	L Mncube (Presiding Member)
	:	M Mazwai (Tribunal Member)
	:	I Valodia (Tribunal Member)
Heard on	:	31 January 2023
Order issued on	:	31 January 2023
Reasons issued on	:	27 February 2023

REASONS FOR DECISION

[1] On 31 January 2023, the Competition Tribunal (“Tribunal”) conditionally approved the large merger between The Spar Group Ltd (“Spar Group”) and Spar Encore Limited (“Spar Encore”) (“proposed transaction”). In terms of the proposed transaction, The Spar Group intends to acquire 50% of the issued share capital in Spar Encore from Bruce Hughes (“Mr Hughes”). Post-merger, The Spar Group will exercise 100% control over Spar Encore.¹

The Parties

[2] The Spar Group is a public company listed on the Johannesburg Securities Exchange (“JSE”), as such it is not controlled by any single shareholder.² While

¹ The Spar Group acquired its existing 50% shareholding in Spar Encore (previously called Monteagle Africa Ltd) from Monteagle Consumer Group Ltd.

² Shareholders holding more than 3% of the issued share capital in The Spar Group are Government Employees Pension Fund (19.40%), Coronation Fund Managers (7.67%) and Vanguard (3.83%).

it controls in excess of 7 firms across the Southern Region, of relevance to the proposed transaction is its shareholding in Spar Encore (i.e the target firm) (50%) and Spar Engage (Pty) Ltd (“Spar Engage”) (50%).

- [3] The Spar Group is active as a wholesaler and retailer throughout South Africa. Its wholesaling activities include the acquisition and distribution of its branded and private label goods for its Spar outlets and for Spar Guild members.³ The distribution of the said goods takes place through 7 distribution centres located in Johannesburg (Jet Park), Midrand, Durban, Pinetown, Cape Town, Port Elizabeth and Mbombela. Its retail activities are conducted through grocery stores, liquor stores, building material stores, and pharmacy stores across South Africa. Through Spar Engage, it provides merchandising and sales services to principals selling products in Spar branded stores. The merchandising and sales services include ordering, planning, stock rotation, ranging, promotional activity work, brand awareness building and shelf management.⁴
- [4] Spar Encore is an end-to-end private label supplier, jointly controlled by The Spar Group and Mr Hughes in the ratio 50% each. It is active in the sourcing, packing warehousing and supply of private label products to The Spar Group.⁵

Competition Assessment

Overlaps

- [5] The Tribunal considered the activities of the merger parties and found that there exists a vertical overlap, as a result of Spar Encore being active in sourcing, packing, warehousing and supplying of private label products to The Spar Group.

³The SPAR Guild is a voluntary trading group controlled by a board of directors to which ten directors are appointed by SPAR SA and ten directors are appointed by the Independent Retailers through the National Council of the Guild. Stores owned by Spar Guild members include SPAR, SuperSPAR, KwikSPAR, Tops at SPAR, Pharmacy at SPAR, Build It and Savemore stores.

⁴ Merger Record p 53 para [2.2].

⁵ Merger Record p 54 para [2.1].

Market definition

- [6] The merger parties submitted that the supply of private label products to the main grocery retailers⁶ is carried out internally by such grocery retailers. The only distinguishing factor in the proposed transaction is that The Spar Group has outsourced part of its private supply chain to Spar Encore, but for this there would be no separate business carried by Spar Encore. Accordingly, the merger parties submitted that there is no separate market for the end-to-end supply of private label products.⁷
- [7] In defining the relevant market, the Commission considered and relied upon Tribunal precedence in the merger between *The Spar Group and Monteagle*⁸ (“Spar Group / Monteagle”), where The Spar Group acquired its existing 50% shareholding in Spar Encore (previously known Monteagle Africa Ltd⁹) from Monteagle Consumer Group Ltd.
- [8] On the basis of the available evidence, the Tribunal found that Monteagle (i.e., the Target Firm) was active in the upstream market for the sourcing, packaging and distribution of private label products. Further, that The Spar Group was active as a wholesaler of branded and private label products for its Spar branded stores.¹⁰
- [9] On account of the evidence before it, the Tribunal assessed the impact of the proposed transaction on the upstream market for the supply of private label products and the downstream market for the wholesale of private label products.
- [10] In defining the geographic market, the Tribunal considered that the supply of private label products to The Spar Group was supplied nationally to the 7 distribution facilities in order for The Spar Group’s wholesaling business to

⁶ i.e., Pick n Pay, Woolworths, Shoprite-Checkers.

⁷ Merger Record, p65 para [6].

⁸ *Spar Group and Monteagle*, Tribunal Case No: LM139Dec19.

⁹ Monteagle has since changed its trading name to “Spar Encore”.

¹⁰ Merger Recommendation, p15 of 25, para [13].

service the various Spar retail stores. Accordingly, the Tribunal assessed the effects of the merger nationally.¹¹

Vertical Assessment

- [11] The Commission is of the view that the proposed transaction is unlikely to result in any input foreclosure concerns as Spar Encore only supplies private label products to The Spar Group.
- [12] The Tribunal considered whether Spar Encore will, post-merger, have the ability and incentive to foreclose downstream competitors in the supply of private label products. As set out above, Spar Encore has historically only supplied The Spar Group with private label products. In the circumstances, the Tribunal does not believe that Spar Encore will have the ability or incentive to foreclose downstream competitors.
- [13] In respect of customer foreclosure, the Tribunal found that there are more than [REDACTED] of private label manufacturers supplying private label products to The Spar Group. These manufacturers supply [REDACTED] of the private label products sold by The Spar Group and the balance ([REDACTED]) is procured from Spar Encore.¹²
- [14] The Commission engaged some private label suppliers of The Spar Group, and no concerns were raised in respect of the proposed transaction.¹³In the circumstances, the Commission formed the view that the proposed transaction is unlikely to result in customer foreclosure.
- [15] On the evidence before it, the Tribunal agrees with the Commission's findings.

¹¹ Merger Recommendation, p15 of 25, para [16].

¹² Merger Recommendation p 12 of 21 para [26] read with Merger Record p 16 para [14].

¹³ The Commission engaged [REDACTED] and [REDACTED].

Public Interest

Effect on employment

- [16] The merger parties submitted that the proposed transaction will not result in any retrenchments. Further, that post-merger, the terms and conditions of Spar Encore's employees will remain unchanged.¹⁴
- [17] The Commission contacted The Spar Group's employee representative, namely, the South African Commercial Catering and Allied Workers Union ("SACCAWU") and Spar Encore's employee representative, a certain Kirsty Rowley and informed them of the proposed transaction. The Commission received no concerns from the merger parties' employees.
- [18] Accordingly, the Tribunal concluded that the proposed transaction is unlikely to raise significant employment concerns.

Effect on the spread of ownership

- [19] The merger parties submitted that the seller, Mr Hughes is not an HDP. As such, the proposed transaction will result in Spar Encore being wholly owned by The Spar Group and as a result of The Spar Group having 36.54% shareholding by HDPs, the transaction will promote a greater spread of ownership and increase levels of ownership by HDPs.¹⁵
- [20] The Commission found that The Spar Group is a level 7 B-BBEE Contributor and has 36.54% shareholding by HDPs, 17.56% of which is held by black women.¹⁶ Furthermore, as Mr Hughes is not an HDP shareholder, the proposed transaction will result in Spar Encore being solely controlled by a level 7 B-BBEE Contributor which is 36.54% held by HDPs.

¹⁴ Merger Record p 291 para [7.7.1].

¹⁵ IBID para [7.7.4]

¹⁶ Merger Recommendation, p17 of 25, para [32].

Effect on the ability of small and medium business, or firms controlled or owned by HDPs, to effectively enter into, participate in or expand within the market.

[21] On 2 November 2022, the Department of Trade Industry and Competition (“DTIC”) made submissions to the Commission, noting that the exit of the seller (Mr Hughes) as a shareholder in Spar Encore will narrow the participation of independent operators in the logistics and supply chain sectors in South Africa, while also presenting an opportunity for The Spar Group to promote the entry of new independent Historically Disadvantaged Persons (“HDP”) and small and medium businesses into the supply chain of Spar Encore. The DTIC called upon the Commission to engage the merger parties and recommend that the acquiring firm avail at least 25% of its shareholding in Spar Encore to a suitable HDP owned and/or small and medium sized business.¹⁷

[22] This notwithstanding, while the merger Conditions agreed to by the Commission and Merger parties made provision for the merged entity to localise goods currently procured from foreign manufacturers and in future procure those goods from South African manufacturers, the Conditions did not expressly provide for the procurement of such localised goods from HDPs and/or small and medium sized businesses.¹⁸

[23] Accordingly, on 22 December 2022, the Tribunal wrote to the parties, noting that while the agreed Conditions make provision for the localisation of goods, the Conditions do not expressly provide for the procurement of such localised goods from HDPs and/or small and medium businesses. It requested that the parties clarify whether this was an omission, alternatively explain why the procurement of localised goods from HDPs and/or small and medium businesses was not included in the agreed Conditions.¹⁹

[24] On 9 January 2023, the merger parties responded to the Tribunal, advising, *inter alia*, that there is no need to include a specific Condition of this nature as

¹⁷ Merger Record p 286 – 287.

¹⁸ Merger Recommendation p 18 of 21.

¹⁹ Tribunal email to the Merging Parties and Commission dated 22 December 2022.

the entering, participation or expanding of HDPs and small and medium businesses will be achieved through the approval of the proposed transaction.

[25] On 13 January 2023, the Commission responded, advising that while it initially sought to impose a procurement Condition which would facilitate the entry and participation of HDPs and/or small and medium suppliers, it was advised by the merger parties, during the negotiation stage of the Conditions that as a result of their supply requirements,²⁰ it would be risky to make a firm commitment to procure localised goods from HDPs and/or small and medium businesses. This notwithstanding, the merger parties indicated that they would endeavour to procure private label products from HDPs and small and medium businesses. In light of this, the Commission accepted the merging parties' proposal for the Conditions to not expressly provide for the procurement of localised goods from HDPs and/or small and medium business.²¹

[26] The Tribunal considered that the DTIC's submissions were intended to promote the entry, participation and/or expansion of HDPs and/or small and medium businesses into the supply chain of Spar Encore. Accordingly, the Tribunal imposed a Condition that when localising the procurement of goods, the merged entity shall use its best endeavours to procure such localised goods from small and medium businesses or firms controlled or owned by Historically Disadvantaged Persons. The Tribunal further made provision, for the merger parties, as part of their monitoring and compliance obligations, to provide the Commission with details of its endeavours to procure localised goods from small and medium businesses or firms controlled or owned by Historically Disadvantaged Persons.²²

²⁰ The private label suppliers should be able to supply at a national level; required volumes; required quality.

²¹ Commission's email to the Tribunal dated Friday, 13 January 2023.

²² Paragraphs 2.3 and 3.2 to **Annexure A**.

Conclusion

[27] We conclude that the proposed transaction is unlikely to significantly lessen or prevent competition in any relevant market. Furthermore, the public interest concerns that have been raised in relation to the proposed transaction, have been addressed by the Conditions annexed hereto as **Annexure A**.

Signed by: Liberty Mncube
Signed at: 2023-02-27 19:04:24 +02:00
Reason: Witnessing Liberty Mncube

L-Mncube

27 February 2023

Presiding Member
Professor Liberty Mncube

Date

Concurring: Ms Mondo Mazwai and Professor Imraan Valodia

Tribunal Case Managers: Matshidiso Tseki And Sinethemba Mbeki
For the Merging Parties: Howard Stephenson of Garlicke & Bousfield Inc
For the Competition: Tumiso Loate And Themba Mahlangu



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SPAR Encore Limited

Primary Target Firm

Panel: M Mazwai (Presiding Member)
I Valodia (Tribunal Member)
L Mncube (Tribunal Member)

Last submission date: 13 January 2023
Heard on: 23 January 2023
Order Issued on: 31 January 2023

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that—

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Presiding Member
Ms Mondo Mazwai

31 January 2023

Date

Concurring: Professor Imraan Valodia and Professor Liberty Mncube



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SOUTH AFRICA

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date : 31 January 2023

To : Garlicke and Bousfield Attorneys

Case Number: LM133Oct22

The Spar Group Ltd And Spar Encore Ltd

You applied to the Competition Commission on **13 October 2022** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

Tebogo Mphahlele

ANNEXURE A

THE SPAR GROUP LIMITED

and

SPAR ENCORE LIMITED

Case Number: LM133Oct22

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning:

- 1.1. "**Acquiring Firm**" means The SPAR Group Ltd;
- 1.2. "**Approval Date**" means the date on which the Merger is approved in terms of the Competition Act;
- 1.3. "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4. "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.5. "**Competition Act**" means the Competition Act, No. 89 of 1998, as amended;
- 1.6. "**Conditions**" means the Merger conditions set out in this Annexure A;
- 1.7. "**Days**" mean all days except days that fall on a Saturday, Sunday or public holiday in South Africa;
- 1.8. "**Goods**" means [REDACTED] purchased by the Target Firm for sale in [REDACTED] supermarkets as [REDACTED] products, with each

item of [REDACTED] constituting a separate stock keeping unit (or SKU);

1.9. "**Historically Disadvantaged Persons**" means the plural of "historically disadvantaged person" as defined in the Competition Act;

1.10. "**Localise**", "**Localised**" and "**Localising**" means discontinuing the purchase of Goods from foreign manufacturers and the purchase of the same Goods from South African manufacturers;

1.11. "**Merged Entity**" means SPAR Encore Ltd subject to the sole control of the Acquiring Firm following implementation of the Merger;

1.12. "**Merger**" means the acquisition of sole control over the Target Firm by the Acquiring Firm;

1.13. "**Merging Parties**" means the Acquiring firm and the Target Firm;

1.14. "**Small and Medium Businesses**" means the plural of "small and medium business" as defined in the Competition Act;

1.15. "**South Africa**" means the Republic of South Africa;

1.16. "**Target Firm**" means SPAR Encore Ltd;

1.17. "**Tribunal**" means the Competition Tribunal of South Africa; and

1.18. "**Tribunal Rules**" means the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS

2.1. The Merged Entity shall Localise the procurement of at least [REDACTED] types of Goods it currently purchases from foreign manufacturers and in future procure those [REDACTED] types of Goods from South African manufacturers.

- 2.2. The Merged Entity shall Localise the procurement of the foregoing [REDACTED] types of Goods in a staggered process such that:
- 2.2.1. at least [REDACTED] types of Goods shall be Localised within [REDACTED] months of the Approval Date; and
- 2.2.2. the remaining [REDACTED] types of Goods shall be Localised within [REDACTED] months of the Approval Date.
- 2.3. When Localising the procurement of the aforementioned [REDACTED] types of Goods, the Merged Entity shall use its best endeavours to procure such Localised Goods from Small and Medium Businesses, or firms controlled or owned by Historically Disadvantaged Persons.

3. MONITORING AND COMPLIANCE WITH CONDITIONS

- 3.1. The Merging Parties shall identify a selection of Goods from which the Merged entity shall choose [REDACTED] Goods for localization as contemplated in paragraph 2.2.1 and 2.2.2 and submit to the Commission the list of the said Goods within 30 Days from the Approval Date. The list may contain more than [REDACTED] Goods from which the Merged Entity shall in its discretion choose [REDACTED] Goods for Localisation in compliance with paragraph 2.
- 3.2. As proof of compliance with the Conditions set out in this Annexure A the Merged Entity shall provide the Commission with 2 (two) reports detailing its compliance with the Conditions, including details of its endeavours to procure such Localised Goods from Small and Medium Businesses, or firms controlled or owned by Historically Disadvantaged Persons.
- 3.3. In the event that the Merged Entity is unable to comply with the Conditions as set out in paragraph 2, then the reports shall detail the reasons for the Merged Entity's inability to comply.
- 3.4. The 2 (two) reports shall be made available to the Commission as follows:

3.4.1. the first report shall be delivered by the Merged Entity to the Commission within 30 (thirty) days of the conclusion of the [REDACTED] month period referred to in paragraph 2.2.1 above; and

3.4.2. the second report shall be delivered by the Merged Entity to the Commission within 30 (thirty) days of the conclusion of the [REDACTED] month period referred to in paragraph 2.2.2.

3.5. The foregoing reports shall take the form of affidavits attested by a director of the Merged Entity.

4. BREACH OF CONDITIONS

4.1. In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been an apparent breach of the Conditions, the matter will be dealt with in terms of Rule 37 of the Tribunal Rules read with Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Commission and/or the Merging Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions or any part thereof to be waived, relaxed, modified and/or substituted.

6. GENERAL

All correspondence in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.