

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 374

27 MARCH 2020

COMPETITION COMMISSION

NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

REBEL PACKAGING (PTY) LTD

AND

RIGHT CORRUGATED CONTAINERS (PTY) LTD

CASE NUMBER: 2019JUN0040

1. On 25 June 2019, the Competition Commission (Commission) was notified of the prior implemented merger whereby Rebel Packaging (Pty) Ltd (Rebel) acquired control over Right Corrugated Containers (Pty) Ltd (RCC) in 2006, without notifying the Competition Authorities as required by section 13A of the Competition Act of 1998, as amended (the Act).
2. The primary acquiring firm is Rebel, a firm incorporated in accordance with the company laws of the Republic of South Africa (South Africa). Rebel is a wholly owned subsidiary of Mpact Limited (Mpact). Rebel and Mpact are used interchangeably in this report and essentially refer to the acquiring firm.
3. The primary target firm is RCC, a firm incorporated in accordance with the company laws of South Africa. In 2006 before the implementation of this merger, RCC was controlled by its shareholders.

Activities of the parties

4. Mpact is a paper and plastics packaging manufacturer with operations in South Africa, Mozambique, Namibia and Botswana. Its business involves the production of paper and plastic packaging products; and recycling (of both paper and plastic). Mpact's paper business

comprises three parts, each of which operates at a different level of the paper and paper packaging value chain.

5. Of relevance to the proposed transaction is Mpact's corrugated and converted paper products operations, wherein Mpact is active in the production of printed and unprinted converted corrugated and other paper products, including corrugated packaging, corrugated boxes, die-cut cases, folded glued cases, trays, point-of-sale displays, converted paper products for the quick service restaurant (QSR) sector, as well as paper bags.
6. RCC operates as a sheet plant and is based in Boksburg, Gauteng. Sheet plants purchase corrugated sheet board from corrugating facilities and convert this boards into corrugated boxes and other finished packaging products.

Overlap

7. The prior implemented merger raised both horizontal and vertical overlaps between the activities of the merging parties. The horizontal overlap was in relation to the manufacturing and supply of finished corrugated boxes and packaging products. The vertical overlap arose as Mpact supplies RCC with corrugated board which is an input in the manufacturing of finished corrugated boxes and other finished packaging products. As a result, the Commission considered the following markets:

7.1. The upstream market for the manufacture and supply of corrugated boards in Gauteng, and

7.2. The downstream market for the manufacture and supply of corrugated boxes and packaging in Gauteng.

Competition Assessment

8. In the upstream market for manufacturing and supply of corrugated boards, the Commission found that Mpact has an estimated market share of approximately between 20 – 30%. The remainder of the market shares are held by Neopak, Corruseal and New Era. This indicates that Mpact is unlikely to have acquired market power in the upstream market as they were/are

constrained by other market participants who account for the remaining 70 - 80% of the market share.

9. In the downstream market for the manufacture and supply of corrugated boxes and other finished packaging products in Gauteng, the Commission found that Mpact had an estimated market share of between 10 - 20% in 2017 while RCC had an estimated market share of below 5%. Rebel/Mpact's acquisition of RCC, along with interest it held in other sheetplants, implied that it had a combined post-merger market share of approximately between 20 – 30%. The merged entity continues to be constrained by firms such as New Era, Corruseal, Neopak and others who operate in Gauteng.
10. Therefore, the Commission is of the view that the prior implemented mergers did not provide Mpact/Rebel with the ability to unilaterally increase prices in Gauteng Province mainly due low market share accretion and the presence of alternatives.

Vertical assessment

11. As discussed above, the merger resulted in a vertical overlap as Mpact supplied RCC with corrugated board (sheet) and to a limited extent corrugated packaging. The Commission considered the merged entities' ability to exercise market power in the market for the manufacture of corrugated board, thereby foreclosing its rivals in the downstream market for the supply of corrugated packaging.
12. The Commission found that Mpact does not have the ability to foreclose the downstream competitors as there are alternatives in the upstream market who control close to 80% of the supply. The Commission does not carry out a detailed vertical effects analysis as the current data indicates that competitors of RCC and Mpact have continued to operate within the market with new entrants entering the market during the period when the mergers were prior implemented. Furthermore, Mpact does not appear to have gained any considerable market share in the supply of corrugated packaging as a result of the prior implemented mergers.
13. In addition, the Commission notes that prior to the merger, RCC did not purchase any significant amounts of corrugated board from any third parties save for Mpact. Therefore, it is

unlikely that the prior implemented mergers resulted in any input or customer foreclosure mainly due to relatively low market shares of the merged entity in both upstream and downstream markets.

Coordinated effects

14. The Commission considered whether the prior implemented transactions resulted in coordination in the market, as there are several cartel investigations in the corrugated packaging markets. Of note is that Mpact and RCC are directly implicated in these cartel investigations.
15. The Commission investigation of this merger found that it facilitated collusion between Mpact and RCC. The Commission notes that Mpact did not acquire sole control over RCC and as such Mpact and RCC did not constitute a single economic entity. The Commission further found evidence of collaboration between Mpact and RCC where prices, customers and volumes of corrugated packaging products were discussed. It should be noted that this is in a context where Rebel/Mpact did not exercise sole control of RCC and therefore could not have been part of a single economic entity. This therefore implies that Mpact and RCC were competitors that exchanged commercially sensitive information.
16. The Commission notes that in the merger between Rebel and Seyfert, which was recently prohibited, the same evidence was found. It should also be noted that even in that transaction, Rebel/Mpact implemented that transaction without notifying the Competition Authorities. In this transaction, like the Rebel/Seyfert merger, the Commission found that these transactions facilitated the collusion between Mpact and RCC in contravention of section 4(1)(b) of the Act.
17. Lastly, the Commission notes that although this assessment relates to RCC, Mpact has implemented various other similar transactions in Gauteng and the Western Cape. As such, considering the impact of all these transactions in totality, the Commission is of the view that there may have been a substantial effect in the market. Therefore, the Commission concludes that the collusive conduct by Mpact as a result of these mergers raised substantial competition concerns.

Remedies

18. Given the nature of the anti-competitive concerns this merger raises, namely collusion which is a per se prohibition in terms of section 4(1)(b) of the Act, there is no remedy that could alleviate it. Mpact and RCC have been colluding for approximately 13 years since the merger was implemented and have successfully sustained the collusion without detection.
19. In order to address this concern, the Commission is of the view that a prohibition of the merger is the only appropriate remedy. Further, the Commission is of the view that since the merger was implemented already, divestiture of Mpact's 49% shares of RCC is also an appropriate remedy.
20. The merger does not raise any public interest concerns.
21. The Commission therefore prohibits the prior-implemented merger between Mpact and RCC.

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