

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 2527****23 September 2022****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****DIS-CHEM PHARMACIES LIMITED****AND****SUPERSTRIKE INVESTMENTS 56 PROPRIETARY LIMITED T/A “BABY BOOM”****CASE NUMBER: 2021SEP0006**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the ‘Rules for the Conduct of Proceedings in the Competition Commission’, that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

1. On 03 September 2021 the Competition Commission (“Commission”) received notice of an intermediate merger wherein Dis-Chem Pharmacies Limited (“Dis-Chem”) intends to acquire 100% of the issued share capital of Superstrike Investments 56 Proprietary Limited t/a “Baby Boom”. Following the implementation of the proposed transaction, Baby Boom will be wholly-owned and controlled by Dis-Chem.
 2. The primary acquiring firm is Dis-Chem. Dis-Chem stores focus on the retailing of scheduled and unscheduled pharmaceutical products, as well as front shop goods. The majority of Dis-Chem’s sales are dispensary, personal care and beauty, as well as healthcare and nutrition products. A minimal portion of Dis-Chem’s sales relates to baby products and baby toy products.
 3. In November 2020 Dis-Chem acquired Baby City which, like Baby Boom (the target firm in the current transaction), focuses exclusively on the sale of baby products. Baby City’s product offering includes a full range of baby bathroom products, car seats, clothing, feeding
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accessories, home and safety products, healthcare, maternity wear, nappies, nappy bags, nursery bedding and linen and many other products for infants and toddlers.

4. The primary target firm is Baby Boom. Baby Boom specialises in a comprehensive range of baby products, aimed at parents-to-be and parents of children up to the age of 3 (three) years. Similar to Baby City, the range of Baby Boom's products include the following: (i) Products used to transport babies - prams, strollers, car seats, baby carriers and travel systems; (ii) Baby feeding accessories - bottles, teats, cups, baby foods and nutritional formula; (iii) Baby bathing accessories - baby baths, baby shampoos, powders, creams, and lotions; (iv) Accessories for moms and moms to be - breast pumps, maternity underwear, pregnancy rolls and breast-feeding pillows; (v) Baby Toys, (vi) fast-moving consumer goods including baby nappies and wipes; (vii) Baby safety products - safety gates and bed guards; (viii) Baby Nursery accessories - mattresses, linen, duvet sets, camp cots and nursery furniture; and (ix) Baby clothing - mainly focused on christening clothes, caps and mittens.

Competition assessment

5. The Commission considered the activities of the merging parties and found that the proposed transaction raises an overlap in the retailing of baby and mother care products. The Commission has taken the view that baby and mother care retailers can be delineated into two types, namely, (i) specialist (i.e., Baby City and Baby Boom) and (ii) non-specialist (i.e., grocers, pharmacies and online platforms). As such, the market can be defined into the following segments: (i) the national market for the retail sale of non-specialised baby and mother care products, and (ii) the national market for the retail sale of specialised baby and mother care products.
6. In terms of the relevant geographic market, the Commission will consider the effects of this transaction based on the broad market for the national retail supply of baby and mother care products (specialist and non-specialist retailers). The Commission defined a national market because the merging parties and most of their rivals service customers across South Africa through their brick-and-mortar stores as well as their online platforms. Further, the merging parties and their competitors also seem to determine pricing at a national level.

7. Notwithstanding the national geographic market, the Commission considered the possible effects of the proposed merger at a local level focusing on the narrow markets where Baby City and Baby Boom stores are located. In this regard, the Commission found that where Baby Boom and Baby City have stores in the same provinces, their stores are not located close to each other. Baby Boom has three stores located in the Eastern Cape, while Baby City has one, and each has one store located in Port Elizabeth. Baby Boom's store in Port Elizabeth is located at Bay West Mall, while Baby City's store is located at "Moffett on Main" Lifestyle Centre. These stores are approximately 14.2km apart. The Commission also notes that the Baby Boom store in Port Elizabeth is one of the stores earmarked for closure post-merger. Further, in all areas where Baby Boom is based it faces competition from various retailers including Clicks, Checkers, Game and Pick 'n Pay. Baby Boom and Dis-Chem are currently located in the same shopping centre in one area, Springs Mall, where there are various other retailers including Checkers, Clicks, Dis-Chem, Game, Pick 'n Pay.
8. The Baby Boom and Baby City stores in Bloemfontein are relatively close to each other at just over 6 kilometres apart. However, there are other retailers including Clicks, Checkers and Pick 'n Pay who will compete with the merged entity post-merger. Babies R Us is also 7.7km from the Baby Boom store in Bloemfontein. The Commission is of the view that there are sufficient alternatives that will continue to constrain the merged entity in the local area after the merger.

Market share and concentration levels

9. In the national market for the retail of baby and mother care products, the Commission found that the merged entity will have a minimal combined market share with an insignificant accretion. The estimated market shares are based on sales revenue. There are several national retailers with larger market shares who will continue to compete with the merging parties post-merger.
10. Based on the market shares and accretion, the Commission was of the view that the transaction will not result in any significant changes in the prevailing market structure and competition dynamics in the national market.
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11. In addition to assessing market shares and market structure, the Commission conducted a closeness of competition analysis focusing on the similarities and differences between different categories of specialist stores as well as all specialists stores vis-à-vis mass retailers who also offer baby mother care products. In this regard, the Commission assessed several metrics (including the products and services offered by the merging parties as well as their customers) to determine whether the merging parties are close competitors.

Range of inventory and store size

12. The Commission found that the quantity and scope of inventory that can be stocked by a retailer is linked to the store size and the availability of shelf space. The availability and range of products offered by a retailer will, in turn, affect consumer footfall. Variety, and stock selection are thus some of the factors that drive footfall and/ revenue into baby stores.
13. The distribution of floor space in retail stores is another metric that can determine whether the merging parties focus on the same market segment. The Commission found that specialist and non-specialist stores carry varying products and product ranges. For instance, specialist baby and mother care stores stock an extensive range of baby products or product categories such as baby accessories, baby foods and baby personal care. The Commission found that there was a noticeable difference in the store sizes of Dis-Chem and Baby City retail stores average.
14. The Commission found that while retailers such as Baby Boom and Baby City are geared towards retailing of specialised baby and mother care products, the same cannot be said for pharmacies such as Dis-Chem and grocers where a greater portion of their floor and shelf space is dedicated to non-specialised products. Although the Commission did not definitively conclude on this aspect of competition, it appears that non-specialist retailers (pharmacies and grocers) may not be close competitors to specialist retailers such Baby Boom and Baby City at this stage of market development.
15. The Commission also compared the range of products offered by the merging parties. Baby City is a baby destination retail store, offering a wide range of premium product categories, together with sales staff trained on specific brands. Baby Boom does not carry a wide range of premium products and stocks products at a lower price point. Nonetheless, the Commission

notes from the merging parties' Joint Competitiveness Report as well as from desktop research that Baby City offers some overlapping product ranges to Baby Boom.

16. The Commission found that Baby Boom and Baby City sell comparable product ranges and thus, may be regarded as close competitors at a national level. At a local level, closeness of competition may be dependent on factors including, *inter alia*, types of products sought by the consumer, willingness of consumers to travel (i.e., convenience), availability of stock and the types of quality brands stocked (premium versus non-premium).

Revenue drivers

17. The Commission evaluated the revenue drivers in Baby Boom and Baby City retail stores for the 2020 financial year and concluded that the merging parties can be regarded as close competitors given that they appear to focus on the same specialised product offering and market segments.
18. However, the Commission's assessment indicated that there is some differentiation between the brands offered by Baby City and Baby Boom. Baby City's customers comprise of middle- to high-income consumers, whilst Baby Boom focuses largely on the low-income customers, with a smaller target market consisting of middle-income customers. This is confirmed by some global suppliers of baby care products who submit that Baby City sources a comprehensive basket of specialised premium baby products compared to Baby Boom. Further, Baby Boom stores are strategically located in outlying areas targeting predominantly the lower LSM consumers.
19. In light of the above, the Commission took the view that the merging parties, particularly Baby City and Baby Boom can be regarded as close competitors in relation to the specialist retail of baby and mother care products at a national level. This is because they render similar products and service offerings, as well as focus on the same broad market (i.e., mainly retailing of specialised baby and mother care products). However, Baby City does appear to stock more premium brands while Baby Boom focused on mass-market or less expensive brands.
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20. The Commission also noted that barriers to entry into the specialist baby retail market appear to be surmountable as there have been several new entrants with brick-and-mortar stores as well as online stores in the last three years. This includes entry by specialist retailers such as Chelino Baby (2019); Clicks Baby (2021); Little Me by Checkers (2021), and Everyshop (2021).
21. Overall, the Commission found that the proposed transaction is unlikely to substantially lessen or prevent competition in any relevant market.

Third-party concerns

22. During the investigation, the Commission received concerns from some of the merging parties' competitors. One competitor submitted that it is concerned about Dis-Chem attaining significant market share as a result of the transaction thereby increasing its purchasing power with both local and international suppliers. Another competitor indicated that while it does not believe that this merger will have a significant impact on its business, it points out to the Commission that Dis-Chem's acquisition of Baby Boom (Dis-Chem having already acquired Baby City) significantly increases its buying power within this market including in portfolios such as nappies.

Merging parties' views on the concerns

23. In response to the concerns, the merging parties reiterated that Baby Boom's market share does not constitute a considerable portion of the market and that there will be no significant accretion of market shares as a result of the proposed transaction.
24. The merging parties submitted that the merged entity would continue to face competition from a number of competitors. In this regard, the merging parties submit that the primary competitive constraints facing the merging parties are exerted by other baby specialist stores, such as Babies-R-Us, Kids Emporium, Baby Fantasy, Chelino, A-Zee Baby's World and traders who trade from baby shows, and more recently, Clicks, Shoprite and Mr. Price. It is submitted that these retailers cater specifically for expectant mothers, newborn babies and toddlers.
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25. Accordingly, the merging parties submitted that the third-party concerns set out above are misplaced, as there will be no material change in the market structure as a result of the proposed transaction.

Commission views on the concerns

26. Given that the concerns raised by third parties mainly relate to increased bargaining power, the Commission engaged with suppliers of the merging parties including those of FMCG products such as nappies and formula to establish their views on the transaction. While some of the suppliers derive a substantial portion of their business from Dis-Chem, they made it clear that they will not accept any unfavourable terms from Dis-Chem and that negotiations with Dis-Chem are always balanced.
27. Based on the information before it, the Commission was of the view that it is unlikely that the merged entity will, post-merger, have significant bargaining power against its suppliers.

Public interest

28. The proposed transaction raised public interest concerns in that the merging parties identified roles which may potentially be duplicated and become redundant, thereby resulting in retrenchments as a result of the proposed transaction. The merging parties submit that this is not substantial when viewed in the context of the entire staff complement of the merging parties. Further and for the sake of completeness, Baby Boom indicated that it had undertaken retrenchments based on operational requirements that were unrelated to the proposed transaction.

Are the retrenchments merger specific?

29. The merging parties accept that the possible future retrenchments identified above are merger specific. The merging parties have indicated that these potential retrenchments are not substantial when viewed in the context of the entire staff complement of the merging parties.
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30. The Commission will first consider whether the pre-merger retrenchments and the retrenchments likely to result from the closures are merger specific and then consider whether the retrenchments in total, are substantial.

31. The Commission considered the merging parties' submissions and could not find any evidence to suggest that the employees retrenched before the merger and the envisaged store closures and resulting retrenchments are merger specific. The Commission was of the view that retrenchments that would result from the store closures were also unlikely to be merger specific.

Is the merger-specific retrenchment of employees substantial?

32. Following consideration of a number of factors, the Commission was also of the view that the total number of employees who may be retrenched because of duplications, all things considered, was not substantial.

DTIC Participation

33. The Department of Trade Industry and Competition ("DTIC") filed a notice of intention to participate in this matter. The DTIC urged the acquiring firm to consider accepting the following conditions:

33.1. Suspend the decision to close any Baby Boom stores for a period of 24 months.

33.2. Workers who have been retrenched or who are in the process of being retrenched as well as workers who may lose their jobs in future should be offered employment opportunities when suitable positions become available within the Dis-Chem Group.

33.3. Baby Boom to retain and where possible improve on its level of local procurement including procurement from SMMEs and HDI-owned businesses.

34. The Commission shared the DTIC's submission with the merging parties. The merging parties' response to the proposals advanced by the DTIC is outlined below.

35. Regarding the suspension of the decision to close Baby Boom stores, the merging parties, *inter-alia*, submitted that the proposed transaction will not be commercially viable should the proposed transaction be approved subject to such a condition.
36. The merging parties agreed to the proposed transaction being approved subject to a condition obligating the merged entity to give preference to the retrenched employees for a period of 2 (two) years after the implementation of the merger, in order to address concerns relating to employment.
37. In relation to the local procurement commitment, the merging parties submitted that Baby Boom endeavours to procure some of its products locally.

Conclusion

38. For the above reasons, the Commission approved the proposed transaction subject to the condition obligating the merged entity to give preference to the retrenched employees for a period of 2 years after the implementation of the merger set out in **Annexure A** hereto

ANNEXURE A
DIS-CHEM PHARMACIES LIMITED
AND
SUPERSTRIKE INVESTMENTS 56 PROPRIETARY LIMITED T/A “BABY BOOM”

CASE NO: 2021SEP0006

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 Dis-Chem;
 - 1.2. **“Affected Employees”** means the employees occupying positions which may potentially be redundant as a result of the Merger, and which may form part of a potential retrenchment process.
 - 1.3. **“Affected Stores”** means all of the identified loss-making stores of the Target Firm that have closed or are still to close soon after Implementation Date;
 - 1.4. **“Approval Date”** means the date referred to in the Competition Commission's clearance certificate (Form CC 15);
 - 1.5. **“Baby Boom”** means Superstrike Investments 56 Proprietary Limited t/a “Baby Boom”, being the Target Firm;
 - 1.6. **“Commission”** means the Competition Commission of South Africa;
 - 1.7. **“Competition Act”** means the Competition Act 89 of 1998, as amended;
 - 1.8. **“Conditions”** means these conditions;
 - 1.9. **“Day”** means any calendar day which is not a Saturday, a Sunday or an official public
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holiday in South Africa;

- 1.10. **"Dis-Chem"** means Dis-Chem Pharmacies Limited, being the Acquiring Firm;
- 1.11. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12. **"Loss-Making Store Employees"** means all employees who have been subject to a retrenchment process or may be subject to a potential retrenchment process in the event that any of the Affected Stores are closed;
- 1.13. **"LRA"** means the Labour Relations Act 66 of 1995, as amended;
- 1.14. **"Merged Entity"** means the Acquiring Firm and Target Firm;
- 1.15. **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 1.16. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.17. **"Target Firm"** means Baby Boom;

PUBLIC INTEREST CONDITIONS

2. EMPLOYMENT

- 2.1. The Merged Entity commits for a period of 2 (two) years after the Implementation Date, to give preference to the Affected Employees and the Loss-Making Store Employees provided they have the requisite qualifications, skills, know-how and experience should there be available vacancies at the Merged Entity.
 - 2.2. The Merged Entity shall use its reasonable endeavours to communicate available vacancies at the Merged Entity to the Affected Employees and the Loss-Making Store Employees for a period of 2 (two) years after the Implementation Date.
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3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merging Parties shall circulate a copy of the Conditions to the Affected Employees and Loss-Making Store Employees and/or their respective representatives within 10 (ten) Days of the Approval Date.
- 3.2. As proof of compliance with clause 3.1 above, the Merging Parties shall within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit from a director employed by the Merged Entity attesting to the circulation of the Conditions and attach copies of said notices.
- 3.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 3.4. The Merged Entity shall submit a comprehensive annual compliance report to the Commission, setting out the extent of its compliance with clauses 2.1 and 2.2 of the Conditions for the duration of the Conditions.
- 3.5. The compliance report shall be accompanied by an affidavit (deposed to by a senior official of the Merged Entity) confirming the accuracy of the information contained in the compliance report.
- 3.6. Any Affected Employee or Loss-Making Store Employee who believes that his/her employment with the Merging Parties has been terminated in contravention of the Conditions may approach the Commission with his/her complaint.

4. APPARENT BREACH

- 4.1. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
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5. VARIATION

- 5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise concerning the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

6. GENERAL

- 6.1. All correspondence in relation to these Conditions shall be sent to mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298