THE FAIR TRADING COMMISSION

BEFORE THE BOARD OF COMMISSIONERS

(Fair Competition Act, 2009)

IN THE MATTER OF:

Merger Application

FLAWLESS (SEYCHELLES) LIMITED

AND

KREOLOR LIMITED

FCA 132

1. This is an application for permission to effect a merger between FLAWLESS (SEYCHELLES) Limited and KREOLOR Limited. The application has been initiated ex-post[1] by the Commission (hereinafter the Commission).

2. The Commission through its investigation produced a report which was placed before the Board of Commissioners (hereinafter the Board) for approval of their recommendations.

3. On the 05th November 2020, the Board met with the officers of the Commission who handled the investigation and who compiled the report so that the officers could present their findings and also answer queries that the Commissioners may have.

4. The report is very concise on the assessment of the merger with detailed in-depth analysis of the relevant market share of the enterprises in the jewellery sector. Thus, the Board of Commissioners will not recite the facts of the merger but will focus on the law and the recommendations of the Commission.

5. The relevant parts of the law are sections 21, 23, and 24 of the Fair Competition Act which provides –

[1] Refer page 6 paragraph 7 of the report.

Section 21: All mergers involving an enterprise that —

(a) by itself controls; or

(b) together with any other enterprise with which it intends to effect the merger is likely to control 40% of a market or such other amounts as the Minister may prescribe, are prohibited unless permitted by the Commission in accordance with this Sub-Part.

Section 23: An enterprise seeking permission to effect a merger under Section 22 (1) shall —

(a) demonstrate that if the merger was not completed it is not likely that the relevant efficiency gains would be realized by means that would limit competition to a lesser degree than the merger; or

(b) demonstrate that reasonable steps have been taken within the recent past to identify alternative purchasers for the assets of the failing business, and describe in detail the results of the search for alternatives purchasers.

(2) A merger may be permitted if the parties establish that-

(a) the merger is likely to bring about gains in real as distinct from pecuniary efficiencies that are greater than or more than offset the effects of any limitation on competition that result or are likely to result from the merger; or

(b) one of the parties to the merger is faced with actual or imminent financial failure, and the merger represents the least anti-competitive among the known alternative uses for the assets of the failing business.

Section 24 provides that:

"In determining, in any particular case whether to grant permission, the Commission shall take into account the following-

(a) the structure of the market likely to be affected by the proposed merger;

(b) the degree of control exercised by the enterprises concerned in the proposed merger in the market, and particularly the economic and financial power of the enterprises;

(c) the availability of alternatives to the services or goods supplied by the enterprises concerned in the merger;

(d) the likely effect of the proposed merger on consumers and the economy; and

(e) the actual or potential competition from other enterprises and the likelihood of detriment to competition.

6. The Board agrees with the analysis of law and facts of the Commission.[2]

7. The Board hereby endorse the findings of the report and grant permission for the merger subject to the recommendations stated therein subject to the following changes—

Recommendations:

I. FLAWLESS (SEYCHELLES) Limited and KREOLOR Limited shall produce and make available to the Commission latest version of their annual report in a timely manner.

II. FLAWLESS (SEYCHELLES) Limited and KREOLOR Limited shall not engage in any anti-competitive conduct set out in the Fair Competition Act 2009.

III. FLAWLESS (SEYCHELLES) Limited and KREOLOR Limited shall notify the Commission in event of a merger, sales of share, or acquisition in any other sector.

IV. The Commission should keep under review both entities for 3 years from the date of approval to ensure compliance with the recommendations outlined in this report.

V. As per the prescribed form, the merging parties shall be subjected to a fee of **SCR 230,051.60** not later than 60 days from receiving the ruling.

We order accordingly.

Pronounced by us on this **28th day of January, 2021**.

Mr Victor Pool
(Presiding)

Mr. Michael Nalletamby
(Commissioner)

Mr. Philippe Chong-Séng
(Commissioner)

[2] Refer page 10 paragraph 7 to 13 of report.