

# Competition Tribunal approves Ellerine transactions



By [Leana Engelbrecht](#)

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On 12 November 2014 and 12 December 2014, the Competition Tribunal approved two transactions relating to the attempts to raise capital for the struggling Ellerine group as part of the current business rescue process it is engaged in.



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The Tribunal first conditionally approved the acquisition by Lewis Stores of 63 Beares Stores from Ellerine Furnishers Proprietary Limited and then conditionally approved the assignment of certain leases and employment of the employees of selected Ellerine Furnitures stores by Shoprite Checkers.

These transactions are a result of the ongoing business rescue process and the sale of certain assets, brands and divisions were undertaken as an alternative to liquidation of the group. As part of this process, Coricraft Group acquired Ellerine's Dial-a-bed division (this transaction has also been conditionally approved by the Competition Commission).

## Activities overlap

In the Lewis transaction, the Commission found that the activities of the merging parties overlap in the market for the sale of furniture products and that, post-merger, Lewis is likely to become a monopolist in certain geographical markets. Nevertheless, the Commission took into account the counter-factual of Beares exiting the market completely as a result of liquidation of the Ellerine group and, accordingly, absent the merger the market would not be left in a more competitive position.

Furthermore, the substantial public interest benefits arising from the merger would justify any possible lessening of competition in these geographical markets. Absent the merger, over 1,150 employees would have lost their jobs, but post-merger at least 393 of these employees would retain employment and no further merger related retrenchments are permitted.

Lewis is, further, obliged to create additional driver and driver assistant positions at each of the stores it is acquiring and to

offer these positions (and any further positions created at the transferred Beares Stores in the next year) to those former Beares employees that were retrenched.

In the Shoprite Checkers transaction, Shoprite Checkers obtained the leases to certain Ellerine premises to house Shoprite Checkers stores. This transaction did not pose any competition concerns, neither did it pose public interest concerns (as the retrenchment of Ellerine employees was not as a result of the transaction but as a result of Ellerine's financial difficulties).

## Employment conditions

The Commission did, however, impose employment conditions in order to protect the jobs of the former Ellerine employees that did not accept voluntary severance packages. Shoprite Checkers, accordingly, agreed not to retrench these 300 employees subject to an agreement with the relevant union.

It is well known that the Commission takes a stern stance in respect of matters relating to employment. However, in this instance the job losses were not merger related and it may be argued that the imposition of employment related merger conditions (where there is no immediate nexus between the proposed transaction and the retrenchments) may not be necessary or appropriate.

Ultimately, it can be accepted that none of the bidding parties taking over parts of the Ellerine business would be opposed to assisting these employees based on the sensitivities surrounding the financial woes of Ellerine and the anticipated retrenchments of its employees.

## ABOUT LEANA ENGELBRECHT

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