



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM131Nov23

In the matter between:

Devland Cash and Carry (Pty) Ltd

Primary Acquiring Firm

And

**Various Grocery retail and wholesale stores
operated under the brand names “Cambridge
Foods” and “Rhino” and ultimately owned by
Massmart Holdings (Pty) Ltd**

Primary Target Firm

Panel : L Mncube (Presiding Member)

: I Valodia (Panel Member)

: A Kessery (Panel Member)

Heard on : 05 March 2024

Order issued on : 05 March 2024

Reasons issued on: : 28 March 2024

REASONS FOR DECISION

Introduction

[1] On 05 March 2024, the Competition Tribunal (“Tribunal”) conditionally approved the large merger whereby Devland Cash & Carry (Pty) Ltd (“Devland”) intends to acquire several grocery retail and wholesale stores operated under the brand names “Cambridge Foods” and ultimately owned by Massmart Holdings (“Target Businesses”). Post-merger, the Target Businesses will be solely owned by Devland.

The Parties

Primary acquiring firm

- [2] Devland is a company duly incorporated in accordance with the laws of the Republic of South Africa. Devland is jointly (50/50) controlled by 2 (two) individuals in their personal capacities, namely, Mr Mahomed Gathoo and Mr Shiraz Gathoo ("The Gathoos").
- [3] Devland is a fast-moving consumer goods ("FMCG") wholesaler/grocery retail enterprise which provides general merchandise and food products in bulk to a range of independent traders and commercial users throughout Southern Africa. Devland operates through 43 stores situated across various locations in South Africa.

Primary target firm

- [4] The Target Businesses comprise of several grocery retail and wholesale stores which are directly and indirectly owned and controlled by Walmart Inc ("Walmart"). The Target Businesses comprise of 8 Cambridge grocery retail stores and 2 Rhino cash and carry wholesale stores, located in various parts of the country.

Transaction and rationale

Transaction

- [5] In terms of the Sale of Business Agreement entered into between Devland and Massmart Retail and Clidet, Devland intends to acquire the Target Businesses from Massmart Retail and Clidet as a going concern. Post-merger, the Target Businesses will be wholly owned by Devland.

Rationale

- [6] Devland sees the proposed transaction as an opportunity to expand its national footprint in the grocery retail market. Additionally, the proposed transaction arises from conditions imposed by the Tribunal in its approval of the **Shoprite/Cambridge Merger**¹.

Relationship between the parties

¹ Shoprite Supermarkets (Pty) Ltd And Massmart Holdings Ltd [LM071Sep21] CTZA

[7] The proposed transaction raises a horizontal overlap with respect to grocery retail. The Competition Commission “the Commission” noted that none of the Target Businesses operates as a complete wholesale store as all of the 10 wholesale stores branded as Cambridge/Rhino were acquired in the **Shoprite/Cambridge Merger**.

Relevant markets

Product market

[8] We have previously considered that grocery retail and wholesale grocery are two separate markets². Given that the Target Businesses are mostly grocery retail stores, and without necessarily concluding on the precise boundaries of the market, we assess the merger in the market for the retail trade of grocery products.

Geographic market

[9] With regard to the geographic market, the merging parties considered the geographic market definition of the grocery retail market in radii between 1.5km and 5km. More recently, we considered a radius of 2-3km sufficient on which to assess the market for the retail of grocery³. For the purposes of assessing this merger and without necessarily concluding on the definitive relevant geographic market, we assess the local market for the retail of groceries in a radius of not more than 3km.

Competition assessment

[10] We note that none of the stores belonging to the Acquiring Group are located within a 3km radius of any of the Target Businesses. Accordingly, we consider it unlikely that the proposed transaction will substantially prevent or lessen competition in any relevant market.

Public interest assessment

Effect on employment

[11] The merging parties submitted that the proposed transaction will not give rise to any merger-specific retrenchments and that all employees of the Target Businesses will be transferred to Devland in terms of section 197 of the Labour Relations Act (“LRA”) No. 66 of 1995. The merging parties, however, guaranteed that there will be no merger-specific retrenchments for a period of 12 months.

² Devland cash and carry (Pty) Ltd and certain stores owned by Masscash (Pty) Ltd [LM163Dec20] CTZA

³ Shoprite Supermarkets (Pty) Ltd And Massmart Holdings Ltd [LM071Sep21] CTZA

- [12] In assessing the likely impact of the proposed transaction on employment, the Commission engaged the employee representatives to obtain their views. The employees of the merging parties are represented by the South African Commercial Catering and Allied Workers Union (“SACCAWU”). SACCAWU confirmed that they have been notified of the merger and that all of the employees of the Target Businesses will be transferred to the Acquiring Group in terms of section 197 of the LRA.
- [13] The Minister of Trade, Industry and Competition (“DTIC”) submitted that it is not sufficient to give employment commitments without confirming applicable timeframes on whether these can be extended to include maintaining or decreasing the aggregate headcount of all employees. The Commission was likewise of the view that the employees of the Target Businesses should be protected against retrenchments beyond 12 months after the Implementation Date of the merger because 12 months is a short period. The Commission requested the merging parties to extend the period by which it will not effect merger related retrenchments to 36 months and this be made a Condition. The merging parties agreed to 24 months and the Commission accepted the proposal.
- [14] Considering the proposed Condition, we are of the view that the proposed transaction is unlikely to raise employment concerns.

Effect on the spread of ownership

- [15] The merging parties submitted that the Target Businesses are currently owned and controlled by Massmart, which is 100% owned by Walmart, a foreign entity. On the other hand, Devland is jointly owned and controlled by 2 (two) individuals, Mr Mahomed Gathoo (50%) and Mr Shiraz Gathoo (50%) who are both HDPs. Post-merger, the Target Businesses will 100% owned and controlled by HDPs.
- [16] The proposed transaction is in fulfilment of a divestiture condition imposed by the Tribunal in the Shoprite/Cambridge Merger, which required that the Target Businesses be sold to a preferred HDP purchaser.

Conclusion on the public interest assessment

- [17] The proposed transaction raised no other public interest issues.
- [18] Therefore, we do not consider it likely that this merger will raise negative public interest issues.

Third party views

[19] No third parties, whether customers or competitors, expressed concerns about the proposed merger to the Tribunal.

Conclusion

[20] We conclude that the proposed transaction is unlikely to significantly prevent or lessen competition. Furthermore, the public interest issues that have been raised have been addressed by the Conditions, marked **Annexure A**.

28 March 2024

Professor Liberty Mncube

Date

Concurring: Professor Imraan Valodia and Adv. Anisa Kessery

Tribunal Economist : Baneng Naape

For the merging parties : Aziza Mdee and Justin Balkin of ENS Attorneys

For the Commission : Rakgole Mokolo and Grashum Mutizwa

ANNEXURE A: CONDITIONS

IN THE LARGE MERGER INVOLVING:

DEVLAND CASH AND CARRY (PROPRIETARY) LIMITED

AND

VARIOUS GROCERY AND WHOLESALE STORES OPERATED UNDER THE BRAND NAMES “CAMBRIDGE FOODS” AND “RHINO” OWNED BY MASSMART HOLDINGS (PROPRIETARY) LIMITED

CASE NUMBER: LM131Nov23

1. DEFINITIONS

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.2 **“Commission”** means the Competition Commission of South Africa;
- 1.3 **“Conditions”** means these merger conditions, included in this Annexure A;
- 1.4 **“Devland”** means Devland Cash and Carry (Proprietary) Limited;
- 1.5 **“Days”** means any day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.6 **“Implementation Date”** means the date on which the Merger is implemented by Devland and Massmart;
- 1.7 **“LRA”** means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.8 **“Massmart”** means Massmart Holdings Proprietary Limited, the seller of the Target Businesses;
- 1.9 **“Merger”** means the proposed acquisition by Devland of the Target Businesses, as notified to the Commission under Case No. 2023Nov0028;

- 1.10 **“Merged Firm”** means the combination of Devland and the Target Businesses pursuant to the Merger;
- 1.11 **“Merging Parties”** means Devland and the Target Businesses;
- 1.12 **“South Africa”** means the Republic of South Africa;
- 1.13 **“Target Businesses”** means the grocery and wholesale stores being acquired by Devland from Massmart, namely: Cambridge Botshabelo; Cambridge Thaba Nchu; Cambridge Nkandla; Cambridge Ladybrand; Cambridge Mitchells Plain; Rhino Qumbu; Cambridge Nongoma; Cambridge / Savemoor Tembisa; Rhino Ulundi; and Cambridge Evaton;
- 1.14 **“Tribunal”** means the Competition Tribunal of South Africa;
- 1.15 **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal;

2. **EMPLOYMENT**

- 2.1 Pursuant to the implementation of the Merger, all employees of the Target Businesses shall be transferred to Devland in accordance with section 197 of the LRA, on no less favourable terms of employment (including without limitation with respect to wages, working conditions and/or benefits) compared to those which currently apply to such employees as employees of Massmart.
- 2.2 The Merged Firm shall for a period of 2 (two) years after the Implementation Date, not retrench any employees as a result of the Merger.

For the sake of clarity, retrenchments for purposes of these Conditions, will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

3. **MONITORING**

- 3.1 Devland will notify the Commission in writing of the Implementation Date within 10 (ten) Days of the Implementation Date.
- 3.2 Within 10 (ten) Days of the approval of the Merger by the Tribunal, Devland shall circulate a non-confidential version of the Conditions to its employees, their employee

representatives and representative trade unions. As proof of compliance herewith, Devland shall within 10 (ten) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.

- 3.3 Within 10 (ten) Days of the approval of the Merger by the Tribunal, Massmart shall circulate a non-confidential version of the Conditions to the Target Businesses' employees, their employee representatives and representative trade unions. As proof of compliance herewith, Massmart shall within 10 (ten) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 3.4 As proof of compliance with clauses 2.1 and 2.2, Devland shall, within 2 weeks of each of the first and second anniversary of the Implementation Date, provide an affidavit attested to by a senior official of Devland confirming compliance with these Conditions.

4. APPARENT BREACH

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by Devland of these Conditions, the alleged breach shall be dealt with in terms of Rule 37 of the Tribunal Rules.

5. VARIATION

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

6. GENERAL

- 6.1 All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedic.gov.za.