



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 83/LM/Dec09

In the matter between:

Business Venture Investments No 1347
And

Acquiring Firm

Astor Group (Pty) Ltd and 3 Others

Target Firm

Panel	:	N. Manoim(Presiding Member), Y Carrim (Tribunal Member) and M Mokuena (Tribunal Member)
Heard on	:	18/12/2009
Order issued on	:	18/12/2009
Reasons issued on	:	18/01/2010

Reasons for Decision

Approval

[1] On 18 December 2009 the Tribunal unconditionally approved the merger between the acquiring firm, Business Venture Investments (herein referred to as “Newco”), and the target firms; Astor Group, Astor Cash and Carry Express No. 1, Astor Cash and Carry Express No. 2 and Astor Cash and

Carry Express No.3 (collectively referred to as “Astor”). The reasons for the decision follow below.

The Transaction

[2] The primary acquiring firm, Newco is a wholly owned subsidiary of Massmart Holdings Limited, which is in turn also a wholly owned subsidiary of Masscash Holdings. The primary target firm is Astor, currently housed in the four abovementioned stores located in Johannesburg and Pretoria CBDs, which are family owned.¹

[3] In terms of the structure of the proposed transaction, firstly the business of the Astor Group of Companies will be transferred as a going concern to Newco. Then, Masscash will acquire 75% of the issued share capital of Newco, and the remaining share capital will be shared between the Trusts which represent the interests of the families that currently control Astor; i.e. the CATG Share 2 Trust (12.5%), the Syngy Share 2 Trust (4.5%) and the Anne Lambropoulos Family Trust (8%). It has been agreed among the parties that the Trusts together will have material influence. Hence Masscash and the Trusts will have joint control over Newco post merger.

The Rationale

[4] Masscash regards Astor as a successful independent retailer in the Johannesburg CBD which will enable Masscash to gain exposure, skill and growth potential in the growing retail mass market where Massmart is under-represented.² In addition Masscash believes that it will benefit from Astor’s management experience in this sector, since they will remain closely involved in the business post merger.

¹ Herein also referred as Astor Newtown, Astor Express Noord Street, Astor Express Jeppe Street and Astor Express Pretoria. These are owned by the Trohopulos family, Ontong and Lambropoulos families.

² Massmart, through Masscash, is seeking to extend its participation across the supply chain into the retail grocery segment, particularly in the growing mass-market in urban and peri-urban areas where large incumbents such as Shoprite, Pick n Pay and Spar are consolidating their respective market shares.

[5] At the hearing Sydney Ontong, the managing director of Astor explained that Astor was forced to sell due to a severe fraud that took place in the business. Ontong explained further that various options were considered including selling to some of the other retail chains, as well as Masscash, which made the most attractive offer.

The parties and their activities

[6] Newco is a newly formed company which has not traded. Massmart is active throughout South Africa in both the wholesale and retail of grocery products, and has four divisions namely; (i) Masscash which is active in wholesaling and retailing of cosmetics, toiletries, hair products, basic grocery products and some of general merchandise; (ii) Masswarehouse which comprises the Makro chain of large wholesale club outlets which market a broad range of food, liquor and general merchandise; (iii) Massdiscounters which comprises retail discount stores offering a wide range of general merchandise and non-perishable groceries to end consumers³; and (iv) Massbuild which sells hardware and home improvement products, and building material⁴.

[7] Astor through Astor Newtown is active, however to a small extent, in wholesale grocery sales, and through Astor Noord, Astor Jeppe and Astor Pretoria, focuses in the retail of grocery products to lower end consumers.

[8] At the hearing Jay Currie, the retail director of Masscash and member of the Massmart executive committee, explained that within Massmart and Masscash there isn't a great skill in the type of retail sector which Astor specialises in.⁵ Massmart's food and grocery offering to the lower-end consumer is predominantly at the wholesale level, which involves the bulk sale of groceries to smaller retailers, who on-sell to consumers.⁶ Astor Newtown is also engaged in wholesale grocery sales, however to a small extent.

³ These stores trade under the names "Game" and Dion Wired.

⁴ Massbuild operates through Builders Express, Builders Warehouse and Builders Trade Depot chains.

⁵ Refer to pg. 21 of the transcript.

⁶ Refer to pg.5 of the merging parties' competitiveness report.

Competition Analysis

[9] The Commission assessed the impact of the proposed merger in the retailing of grocery products to customers in the LSM 2-6 categories within a 5km radius of the Astor stores in Johannesburg, and the wholesale grocery market within 40-50km radius⁷ of Astor Newtown, where there is a horizontal overlap. Nonetheless Massmart does not have a comparable retail offering as Astor⁸.

[10] To the extent that Astor Newtown is also engaged in some wholesale grocery sales, its activities overlap with Massmart's existing grocery wholesale activities in the Gauteng area.⁹ However, this market is highly competitive and Astor's market share is negligible. At the hearing Currie unequivocally stated that Massmart does not regard Astor as a threat, nor a competitor, from a wholesale perspective, furthermore that the proposed merger is not material for Massmart from a wholesale point of view.

Horizontal Analysis

[11] In the retail market, Astor has a combined market share of 5.3%¹⁰, and Massmart through Jumbo has 2.3%. Post merger the merging parties will have a combined market share of 7.6% and continue to face competition from other retailers such as Pick n Pay, Shoprite, Boxer, Fontana Spar, Park City Supermarket, and others.¹¹

[12] In the wholesale grocery market within the specified radius of 40km to 50km of Astor Newtown, Massmart has approximately 30% market share, and Astor Newtown has about 2% market share. The structural change post merger will

⁷ During its investigation, the Commission asked the merging parties to indicate if there were any stores which fall outside of the 50km radius but within 60km radius, and at the hearing the merging parties indicated that there were 3 stores; CBW Store in Pretoria West, CBW Store in Vereeniging and Makro is Silverlakes.

⁸ Massmart's Jumbo Crown Mines, although a core wholesaler, makes limited and incidental sales to end-consumers in the LSM 2 to 6 categories and is situated within 5km of Astor's Express stores in Johannesburg. However Astor does not consider Jumbo among its retail competitors.

⁹ Astor Newtown is largely active in retail and its participation in wholesale is very limited.

¹⁰ Astor Newtown has a market share of 2.6%; Jeppe has 1.5%; and Noord has 1.2%.

¹¹ The complete list of competitors that compete with the merging parties in this market is contained in annexure C5 of the merger record.

therefore be insignificant as there is very little market share accretion post merger.

Vertical Analysis

[13]The merging parties' activities overlap vertically in that Astor Newtown currently sources some of its products from Massmart's Jumbo. However it is unlikely that this vertical relationship can raise significant customer foreclosure and input foreclosure as this does not exist pre-merger, and unlikely to arise post merger due to the small market share accretion post merger.

[14]In light of the above, we find that the transaction would not substantially prevent or lessen competition in any of the relevant markets.

CONCLUSION

[15] There are no significant public interest issues.

N Manoin
Y Carrim and M Mokuena concurring

18/01/2010
DATE

Tribunal Researcher: Londiwe Senona
For the merging parties: Cliffe Dekker Hofmeyr
For the Commission: Thabelo Ravhugoni