

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 47/LM/Jun05

In the large merger between:

Shoprite Checkers (Pty) Ltd

and

Foodworld Group Investment Holdings (Pty) Ltd and Foodworld Stores Holdings (Pty) Ltd

Reasons for Decision

APPROVAL

On 10 November 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between the aforementioned firms in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

1. The acquiring firm is Shoprite Checkers (Pty) Limited ("Shoprite"), a subsidiary of Shoprite Holdings Limited ("SHL"), a JSE-listed company. The latter is held as to 12.9% by Titan Nominees (Pty) Ltd and as to 9.5% by the Public Investment Commissioner. Shoprite subsidiaries are:
 - ❑ Country Girl Butcheries (Pty) Ltd
 - ❑ Freshmark (Pty) Ltd
 - ❑ OK Hypermarkets (Pty) Ltd and
 - ❑ Fresta Holdings Limited
2. The primary target firm is Foodworld Group Investment Holdings (Pty) Ltd ("Foodworld Group") and its wholly-owned subsidiary, Foodworld Store Holdings (Pty) Ltd ("Foodworld"). Foodworld Group's shares are held as follows:

LA Parker Family Trust	27.21%
IS Abdurahman Family Trust	19.11%
Ilyas Allie Parker Family Trust	16.62%

3. Foodworld Group also controls the following dormant companies:

- ❑ Foodworld Group Management Services (Pty) Ltd and
- ❑ Foodworld Distribution Centre (Pty) Ltd

The Merger Transaction and Rationale

4. Shoprite is buying the business of the target firms as a going concern. The target firms have traditionally been run as a family business and now, due to resource constraints, seek to sell. Shoprite maintains it wishes to enter the niche area of stand-alone halaal food shops as part of a drive to expand its retail presence in the Western Cape.
5. At the hearing the parties emphasised that Shoprite had not in the past had ideal premises or other facilities in the Western Cape to provide halaal offerings, and that the merger would allow it to achieve this goal.

The activities of the parties

6. The Shoprite group is engaged in food retailing to consumers at all income levels. It is also involved in furniture retailing, quick service/fast food restaurant market, operates distribution centres and has a food franchise division.¹ For the purpose of this transaction, only the grocery retailing activities are relevant.
7. The Shoprite group provides food and household items through its vast network of retail outlets country-wide:

Analysis of Shoprite Businesses ²

Business	Number of Outlets	LSM Category	Specificity and Positioning
Shoprite supermarkets	328 outlets	3-8 (lower to middle-income)	Primary Brand
Checkers supermarkets	92 outlets	7-10 (upper income)	Second main brand. Focus on fresh produce

¹ These other divisions are OK Furniture; House and Home; OK Franchise Division; Freshmark, Hungry Lion chain of fast food outlets.

² Commission's report and parties' CC4 (2) Forms

				and wider food range.
Checkers markets	Hyper	23 outlets	7-10 (upper income)	Large range of non-food items
Shoprite U save		82 outlets	1-5 (lower income)	No frills discounter, restricted lines of FMCG3

8. The Foodworld group comprises 13 retail outlets and 4 Saveworld wholesale outlets operating throughout the Cape peninsula and Paarl. It primarily operates as a halaal food chain that sells foodstuffs and other goods to the Muslim community in previously disadvantaged areas. It targets the lower income consumer market, LSM 4 to 8.

Relevant product market

9. Halaal foods refer to foodstuffs prepared according to Muslim precepts. They typically comprise foodstuffs that are free of pork and alcohol. Great care is taken with food items (meat, chicken, bakery) to avoid contamination with other non-halaal foods. Many dry food goods such as sauces, canned foods and snacks increasingly bear the halaal stamp. However there are a large number of dry food goods that may not necessarily be stamped as halaal but which may not contain any prohibited substances.
10. Muslim consumers may freely purchase items (which are not prohibited) from any shop even if it is not halaal-compliant and even if it stocks alcohol. Therefore, such stores compete with halaal stores as far these foodstuffs are concerned. Similarly general retailers are not forbidden to stock halaal foods, and Muslim customers may shop there, provided that the store's halaal foods are kept strictly separate from non-halaal foods and the stores have received approval from the Muslim Judicial Council. Inspectors from the Muslim Judicial council ensure that standards are complied with.
11. Therefore, all the major retailers compete with halaal stores for halaal consumers. There is accordingly a high degree of overlap between halaal and non-halaal stores in terms of competition analysis.
12. The product overlap occurs insofar as both Shoprite and Foodworld retail grocery products, including halaal foodstuffs. Both groups stock very similar product ranges. The commission found that only 20% of Foodworld's product line would not be found in a typical non-halaal grocery store and therefore 80% of the product range would be found in general retail stores.
13. The Commission submitted that from a demand perspective, Muslim

customers did not regard the market for halaal products as substitutable with non-halaal foodstuffs because the strictures of their faith prevented them from purchasing non-halaal foodstuffs. Therefore, the Commission conceded that there is a separate market for halaal products if viewed from a demand perspective.

14. However, from a supply-side perspective, the Commission found that because suppliers or retailers can comply with halaal standards, they also compete in this market. Accordingly, the Commission concluded that the retail market for halaal foods is part of a broader general grocery retail market, and not a niche market, as the merging parties contended.
15. On this basis the Commission concluded that the relevant market is that for the retail of grocery products, including halaal products, to lower- and middle-income consumers.
16. The merging parties however contended that the retail market for halaal food products is a separate product market and therefore does not compete with the products retailed by Shoprite, Pick 'n Pay, or any of the other large retail chains. They argued this on a number of grounds.
17. Firstly, they contended that supply-side substitution was not a given, as the Commission argued. To sell halaal foodstuffs, retailers have to comply with strict processes and anti-contamination procedures both at the abattoir level and during the sorting and food storage processes. Furthermore, Foodworld stores prepare and produce their own foods from scratch and do not buy pre-packed halaal foods, as do Woolworths and Pick 'n Pay. The parties argued that at Foodworld stores Muslim consumers were sure that they could purchase foodstuffs free of contamination, whereas at Shoprite stores, the customer had to go to the trouble of first checking the label.
18. From a demand perspective, the parties contended that 22% of Muslim shoppers surveyed at four Foodworld outlets indicated that they would not support a non-halaal store.⁴ The survey also showed that a further 35% would only shop at non-halaal stores for non-food or "dry goods" items.⁵
19. Secondly, the parties contended that the difference in the number of product lines offered by Shoprite and Foodworld stores was so great that they could not be considered competitors from a consumer perspective.

⁴ It is significant that the question posed to shoppers was "This store sells Halaal products. If this store did not adhere to Halaal standards, in other words, it did not sell Halaal products, would you still shop here." Therefore, the question is couched in relation to a specific store and does not indicate that they would not support a general retailer, certified to be halaal.

⁵ We find that this percentage is significant to show that there is at least some substitutability between halaal and non-halaal stores in respect of so-called "non-food" items.

Shoprite stores stocked products, which Foodworld stores simply did not stock. Further, Shoprite stores did not provide a full halaal offering. However, the parties did concede that there is a significant overlap between the product lines carried by Shoprite and Foodworld.⁶

20. The parties maintained, as support for their argument that Shoprite and Foodworld compete in different markets, that Foodworld could successfully increase its prices above those of Shoprite. This, they contended, was possible because of the specific halaal nature of the Foodworld business and because of the convenience of the location of Foodworld's stores to its Muslim customers. They stated that research they had conducted indicated that Foodworld's prices were some 6% higher than those of Shoprite.
21. Finally, the parties produced evidence to show that on average 80% of Foodworld's customers, who are typically low-income, walked to Foodworld's outlets to do their shopping whereas Shoprite shoppers typically used their own motorised transport. This, they argued, indicated that Foodworld's customers would only shop at stores in close proximity to their homes. Therefore, Foodworld's customers could only substitute within a geographic radius of a maximum of 1-3 kilometres from each outlet. Since there were no Shoprite outlets in the geographic areas where Foodworld's outlet were located, there could be no product overlap. If there was a 5-10% price increase, these "foot-bound" customers would not travel more than 3 kilometres from the nearest Foodworld store in order to shop elsewhere.
22. We agree with the Commission's product definition of the market as extending to a more general market for grocery retailing. We are not convinced that Muslim customers refrain from shopping at Shoprite stores, or any other general retailers, provided that they are halaal-certified. The ease of obtaining certification is confirmed by the Muslim Judicial Council, which states that all the major supermarket chains, including Shoprite, Pick 'n Pay and Woolworths in the Western Cape, are certified by the MJC.⁷ It is in fact clear that Muslims are free to shop at any store provided that halaal foods are completely separated, and that there is no contamination.
23. From a demand perspective it appears that Muslim consumers shop without inhibition at non-halaal stores for items other than food but acquire their halaal products, such as meat, from halaal stores. Realistically, most consumers, even in low-income areas, have access to public transport which allows them to commute when necessary to buy their groceries, either to regional shopping centres in the general vicinity of their homes or

⁶ See transcript page 17

⁷ See record page 599

into towns or city centres, where a large proportion work.⁸ Furthermore nothing would prevent *non-Muslim* customers from shopping at halaal stores, especially if prices there were more favourable or if “specials” were offered. In the circumstances, the proportion of consumers who would shop only at Foodworld stores and nowhere else, is relatively insignificant.

24. We do not regard the fact that halaal consumers would have to go to the trouble of checking labels, as a factor signifying a lack of substitutability, as the merging parties would have us believe. The Commission found that the MJC certifies stores as halaal if non-halaal and halaal products are kept separate and free of contamination. Other methods, including labels, are employed to guarantee Muslim shoppers’ peace of mind, such as having Muslim representatives on site to monitor compliance; monthly auditing by the MJC, other inspections, and the availability of supermarket staff who provide information to satisfy shoppers that halaal standards are being adhered to.
25. There is clearly an overlap between product lines that Shoprite and Foodworld carry. As stated earlier, Foodworld estimates that 20% of its total turnover is derived from the sale of halaal products.⁹ The Commission contended that the remaining 80% of its turnover emanated from products which overlapped with those of a general retailer like Pick ‘n Pay or Shoprite. At the hearing Counsel for the merging parties disputed this, contending that only 15-20% of the lines would overlap. However we are not convinced by their submissions on this issue in light of the fact that Foodworld itself went on record to state that it competed with the big retail chains.¹⁰
26. We also find it significant that, at the hearing, Shoprite’s spokesman, Mr Goosen appeared to concede that Shoprite, which is already in the business of halaal foods on a limited scale, competed in relation to them with other large retail chains:

“CHAIRPERSON: *But certainly in those stores where you’re going to maintain the Halaal format you may be able to raise prices on the basis of Mr Pretorius’ submissions?*

MR GOOSEN: *Ja if there’s ... if there’s a unique product that does not get sold by our main opposition being Spar or Woolworth’s, Pick n Pay and all the other formal chains we would probably be able to raise the price and we*

⁸ The commission confirmed that most Foodworld stores are located close to public transport hubs.

⁹ See record page 254. At record page 253 they state that products that are free of non-halaal contamination are known as “non-food” items and account for 15 % of the turnover of Foodworld.

¹⁰ See record page 253 where Foodworld explicitly state their competitors to be Shoprite and Usave stores, Pick ‘n Pay, Spar, amongst others.

will certainly do that. We will take extra margin on those products but like Mr Pretorius explained there's a few ... few products that is unique to the FoodWorld stores where we will be able to do that The bulk of those stores will have competitive pricing similar to that of Shoprite."[our emphasis added]¹¹

Geographic Market

27. Foodworld operates in the Western Cape, primarily the Cape peninsula, but has one store in Paarl. Shoprite has outlets nationwide. Therefore, the overlap occurs in respect of the Western Cape region.
28. The Commission found that Shoprite does respond to local conditions in that it has regional buying divisions each of which buys goods according to the requirements of its particular region. However, the Commission did not reach a final conclusion on the boundaries of the relevant market and instead considered the extent of competition in each of the national, regional and local markets.
29. The Commission conducted its analysis of the merger on the basis that the relevant market is the retail market for grocery products, including halaal products, to lower and middle-income consumers either nationally or within a number of local geographic markets, each being the area immediately surrounding one of the target stores.
30. The Tribunal considers that the relevant market is likely to be either regional, alternatively local. It is not national since Foodworld does not operate outside the Western Cape. In fact, as previously mentioned, Foodworld identifies its competitors as being the larger retailers in the Western Cape.
31. We have previously held in similar mergers involving retail FMCGs that the geographic market is local.¹² We also note that the record contains a series of studies conducted by Douglas Parker & Associates, commissioned by Shoprite, highlighting opportunities for new store development in various localities. A separate report and study is conducted for each of the six locations in the Western Cape. This in itself tends to suggest that Shoprite itself contemplated a series of local markets.
32. We do not consider it necessary to decide whether this market is regional or local because on either definition, no competition concerns arise.

¹¹ See transcript page 26

¹² For example, see *Pick n Pay and Boxer* case - 52/LM/Jul02.

Effect on Competition

33. The Commission analysed market shares for the retailing of grocery products at the level of national, regional and local markets in accordance with Table 1. However, as the Commission pointed out, the market shares do not differentiate between income groups:

Table 1: Commission's synopsis of market shares in respect of grocery retailing

Market	Basis	Shoprite	Foodworld	Total
National	<i>Turnover</i>	27.32% ¹³	0.57%	27.89%
Regional (Cape peninsular)	<i>Number of Stores</i>	30.82%	7.55%	38.37%
Regional (Cape peninsular) ¹⁴	<i>Turnover</i>	28.86%	3.98%	32.84%
Local (3km radius of stores)	<i>Number of stores</i>	7 catchment areas identified. Commission considered a number of competing stores in each area. Within each area, there are other competing stores from which consumers can source grocery products. ¹⁵		

34. In the local market, the Commission identified a catchment area of three kilometres around each target store. It demarcated 7 catchment areas in the Western Cape region. It also considered a wider geographic market around each Foodworld outlet, in respect of which consumers might travel up to 10 kilometres to purchase groceries.
35. The number of stores competing with the merged entity within radii of 3 and 5 kilometres from the Foodworld outlets are captured below:

Table 2: Competing Stores in each catchment area

TOWN/Catchment Area	COMPETING OUTLET IN 3KM RADIUS	COMPETING OUTLET IN 5KM RADIUS
Steenberg (Catchment Area A)	3	5
Wynberg (Catchment Area B)	5	8

¹³ See parties' documents page 379 of record.

¹⁴ Regional market shares exclude Woolworths. The Commission does not regard Woolworths as a competitor.

¹⁵ See Competition Commission's report pages 22-26.

Hanover Park and Athlone (Catchment Area C)	5	8
Bishop Lavis, Elsies River, Cravenby and Goodwood (Catchment Area D)	7	7
Kraaifontein (Catchment Area E)	2	4
Rocklands, Michell's Plain, Beacon Valley (Catchment Area F)	2	3
Paarl (Catchment Area G)	2	4

36. The Commission found that all the larger retail chains in the Cape region where the Foodworld stores are located compete with Foodworld.
37. In each catchment area, there are at least between 2 - 7 outlets of larger retail competitors in a 3 kilometre radius, and at least 3-8 competing outlets in a 5 kilometre radius of the Foodworld outlets. The Commission did not include in its analysis the number of independently-owned retail outlets competing within each catchment area. According to the merging parties, there are other independently-owned stores in each local market. We are satisfied that in each local area consumers have a choice of competing outlets from which to purchase grocery products.
38. Shoprite has indicated that post-merger it intends to maintain the halaal format in those localities where there is a demand for it. In 2006 it plans to change the branding so that the acquired stores will be presented as Shoprite stores. The former Foodworld stores will fall under Shoprite's regional pricing structure, and because the bulk of Foodworld's prices are currently approximately 6% higher than Shoprite's pricing, prices in the former Foodworld stores will in all likelihood reduce by 6%.

Conclusion

We conclude that the merger will have no effect on competition on any feasible basis of definition of the relevant market or markets.

There are no public interest concerns which would alter this conclusion.

The Tribunal therefore approves the transaction unconditionally.

Date

Concurring: L. Reyburn, T. Orleyn

For the merging parties: Adv. W. Pretorius, instructed by Roestoff Venter Kruse Attorneys
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Mallinicks Attorneys

For the Commission: S. Nunkoo, A. Kalla

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