

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 02/LM/Jan09

In the matter between:

Clidet No 851 (Pty) Ltd

Acquiring Firm

And

Sunshine Cash and Carry CC

Target Firm

Panel : D Lewis (Presiding Member) N Manoim, (Tribunal Member),
and Y Carrim (Tribunal Member)

Heard on : 1 April 2009

Order Issued : 2 April 2009

Reasons Issued: 18 September 2009

Reasons for Decision

Approval

- [1] On 1 April 2009, the Tribunal unconditionally approved the merger between Clidet No. 851 (Pty) Ltd and Sunshine Cash and Carry CC. The reasons for approving the transaction follow.

The parties

- [2] The primary acquiring firm is Clidet No. 851 (Pty) Ltd ("Newco"), a newly formed company for the purposes of this transaction. Initially, Newco is subject to the joint control of Kyriacos Theodosiou ("George") and Theodosiou Theodosiou ("Theo") each holding 50%. Masscash Holdings (Pty) Ltd ("Masscah"), which is in turn a wholly owned subsidiary of Massmart Holding Limited ("Massmart") will then acquire 51% of Newco as fully described below.
- [3] Massmart is a public company that is not controlled by any firm and its shares are traded on the Johannesburg Securities Exchange. Massmart controls in excess of seventy firms.¹
- [4] The primary target firm is Sunshine Cash and Carry CC ("Sunshine"). Sunshine is jointly controlled by Theo and George, each with 50% members' interest.

¹ For a complete list of Massmart's subsidiaries, see Annexure A1 and A2.

Apart from their members' interest in Sunshine, Theo and George control 2 firms each with a 50% interest. These firms are KT Theodosiou Investments CC ("KTT")² and Nelicor Property Holding CC ("Nelicor").³

Description of the transaction

- [5] Prior to the implementation of the transaction, the business of Sunshine will be transferred to Newco as a going concern. George and Theo will be the only shareholders of Newco. Masscash will then acquire 51% of the issued share capital of Newco and the remaining 49% will be collectively held by Theo and George.⁴ On completion of the transaction, Masscash will acquire sole control of Newco.

THE PARTIES' ACTIVITIES

Primary acquiring firm

- [6] Newco is a newly formed company that has not traded before. Masscash, which will acquire 51% in Newco, is a wholly owned subsidiary of Massmart. Massmart is a retailer and wholesaler of grocery products, liquor and general merchandise throughout South Africa. It operates through four divisions namely Massdiscounters, Masswarehouse, Massbuild and Masscash.

Massdiscounters

- [7] This division is comprised of retail stores around South Africa trading as Game, Dion Wired stores. Game offers a wide range of general merchandise and limited non-perishable grocery products. Dion Wired offers a wide range of hi-tech appliances and audio and digital products.

Masswarehouse

² KTT owns the property from which Sunshine's store situated at the corner of Main Reef Road and Van Wyk Street, Roodepoort Plaza Shopping Centre, Roodepoort, conducts its business. Sunshine leases this property from KTT

³ Nelicor owns the property from which Sunshine's store situated at Number 2 Electron Road, Manufacta, Roodepoort, conducts its business. Sunshine leases this property from Nelicor.

⁴ See letter dated 30 March 2009 from the merging parties to the Commission and the Commission's further submissions dated 31 March 2009.

- [8] This division comprises wholesale stores located in Gauteng, Western Cape, Eastern Cape and KwaZulu Natal trading as Makro. Makro stores offer a broad range of food, liquor and general merchandise.

Massbuild

- [9] The division comprises of the Builders Warehouse and Builder Trade Depot stores. These stores offer building supplies, hardware and related products throughout South Africa.

Masscah

- [10] This division comprises CWB and Jumbo stores which are primarily engaged in the wholesale distribution of grocery products, cosmetics toiletries and hair care products.
- [11] Masscash also owns Shield, a voluntary buying association serving independently owned food wholesale and retail outlets.

Primary target firm

- [12] Sunshine is primarily described as a retail supermarket with two stores in Roodepoort. Its activities include a butchery, grocery (perishable and non-perishable items), limited general merchandise and fresh produce. Approximately 20% of Sunshine's products are sold at a wholesale level.

Rationale for the transaction

- [13] Massmart submits that the proposed transaction presents an opportunity to acquire an interest in a successful business in a growing market where it is underrepresented, in particular the retail market targeting lower LSM customers in urban and peri-urban areas.
- [14] Theo and George, current owners of the business of Sunshine, view the transaction with Massmart as an attractive opportunity to realise a return on their investment, while retaining a significant stake in and continued input into the business of Sunshine. It is also expected that Massmart will bring additional resources which will allow the business to expand.

The relevant market

- [15] There is an overlap in the merging parties' activities, as both the merging parties are involved in the provision of grocery products. Grocery products encompass food, cigarettes, health and beauty products and non-edible consumables such as detergents and house care products. The Commission further delineated the market into two sub markets namely wholesale grocery product market and retail grocery product market in line with previous Tribunal decisions.⁵ The parties further submitted that the LSM classification targeted by the relevant stores could be used to further delineate the product market as stated in the *Pick 'n Pay/Boxer*⁶ case.
- [16] The Commission further submitted that the market for wholesale grocery is local and covers a radius of 40km from Sunshine stores in Roodepoort; and the market for retail grocery is local covering a 10km radius of the Sunshine stores in Roodepoort. The merging parties have averred that the relevant geographic market covers a radius of 5-7km. We will analyse competition in the relevant market using the Commission's approach as it defines the geographic market broadly and gives a clearer picture of the competition being faced by Sunshine.

Competition analysis

Horizontal analysis

- [17] The merging parties are both active in the wholesale provision of grocery products within a 40km radius from Sunshine stores in the Roodepoort area. The market participants are as follows:

Table 1: The wholesale grocery market in Roodepoort and surrounding areas

Company	Market share (%)
Masscash	30.3
Metcash	24
Sunshine	0.6
Kit Kat	6
Crown Cash & Carry	3.4
Saania Distributors	3
Orient Cash & Carry	2.5
Yarona Cash & Carry	6.4
Devland Cash & Carry	9

⁵ *Massmart and Jumbo* Case No. 47/LM/Aug01, para 13; and *Pick 'n Pay Retailers (Pty) Ltd and Boxer Holdings (Pty) Ltd* Case No. 52/LM/Jul02.

⁶ *Pick 'n Pay Retailers (Pty) Ltd and Boxer Holdings (Pty) Ltd* Case No. 52/LM/Jul02.

Key Distributors	5
Frontline Cash & Carry	2
Hikma Cash & Carry	2
Lenasia Halal	5
Astor Cash & Carry	2
Total	100

Source: Merging parties' and competitors' estimates

- [18] As shown above, Sunshine has an insignificant presence in the wholesale grocery market in Roodepoort and surrounding areas with a 0.7% market share, relative to Masscash with 30.3% of the total wholesale grocery market in Roodepoort and surrounding areas.
- [19] As far as the retail grocery market is concerned the Commission submitted that there is not sufficient evidence to conclude on the LSM categories targeted by Sunshine. It averred further, that there are many participants in the retail grocery market within a 10km radius from Sunshine stores in Roodepoort.⁷ These include Shoprite Roodepoort, Multisave Roodepoort, Game Westgate, Pick 'n Pay Roodepoort, Spar (both Florida Junction and Gold Reef), and Makro Strubens Valley. While the Commission did not provide relative market shares of this relevant market, all of the listed players are much larger than Sunshine, some having more than one branch within that radius.

Vertical integration

- [20] The vertical integration in this transaction stems from the fact that Sunshine purchases products from Shield, a voluntary buying group owned by Masscash. Input foreclosure is unlikely even if Shield were to opt to foreclose other independent supermarkets that compete with Sunshine as there are other buying groups that serve independent traders, which include but are not limited to UCM, ICC, IBC, and Elite.
- [21] Customer foreclosure is unlikely as Sunshine is an insignificant wholesale buyer of groceries. As a result, the elimination of Sunshine as a customer to competitors of the Shield buying group is therefore unlikely to have an impact on Shield's competitors' ability to compete.

Public Interest

⁷ The merging parties intimated that Sunshine serves a region of 5-7km as a typical customer is limited by means of transport and the concomitant need for a supermarket offering to be on or very close to that customer's daily commute, as well as the significant levels of competition within the vicinity of the Sunshine store.

[22] There are no public interest issues.

Conclusion

[23] The merger is approved without conditions for the reasons mentioned above.

Y Carrim

Tribunal Member

18 September 2009

DATE

D Lewis and N Manoim concurring.

Tribunal Researcher : R Kariga

For the merging parties: Cliffe Dekker Hofmeyr

For the Commission : N Mateane and T Ravhugoni (Mergers and Acquisitions)