

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 25/LM/Mar05; 26/LM/Apr05; and 28/LM/Apr05

In The Large Merger Between:

Massmart Holdings Limited
Firm
And

Acquiring

Thabile Trade 22 (Pty) Limited

Nabuild (Pty) Limited

Servistar (Pty) Limited

Target Firms

Reasons for Decision

APPROVAL

1. On 08 June 2005 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Massmart Holdings Limited (“Massmart”) and Thabile Trade 22 (Pty) Ltd (“Thabile”), Nabuild (Pty) Ltd (“Nabuild”) and Servistar (Pty) Ltd (“Servistar”).¹

THE TRANSACTION

2. The parties to this merger are Massmart Holdings Limited (“Massmart”) and Thabile Trade 22 (Pty) Ltd (“Thabile”), Nabuild (Pty) Ltd (“Nabuild”) and Servistar (Pty) Ltd (“Servistar”). Massmart, a publicly listed company on the JSE Securities Exchange, owns a number of subsidiaries in South Africa and one in Mauritius. Thabile² is a South African private company solely controlled by one of its shareholders, the Carlos Gomes Trust (the “Gomes Trust”) which holds 87% of the issued shares in Thabile.³ Nabuild is

1 Massmart, the acquiring firm, entered into three separate and divisible transactions with Thabile, Nabuild and Servistar (“the target firms”). The merging parties notified these transactions separately to the Competition Commission (“Commission”). The Commission after having considered that the target firms compete in the same relevant product markets made its recommendation to the Tribunal in a single consolidated report. We adopt the same approach as that of the Commission in this single consolidated judgment. Save for consolidating these transactions in a single judgment, we, however, analysed the competitive impact of these transactions separately and independently of each other.

2 Thabile controls three firms, viz., one active firm: De La Rey 1001 Building Materials (Pty) Ltd; and two dormant firms: De La Rey Cape Gate (Pty) Ltd and De La Rey West Coast (Pty) Ltd.

3 Thabile’s other shareholder is the RJ Best Family Trust (the “Best Trust”) which holds the remaining 13% of the issued share capital in Thabile.

a South African private company. The transferred firm is the business conducted by Nabuild as Federated Timbers and Feds DIY, which operate 34 retail outlets countrywide. Servistar is a South African private company, which conducts its business through 14 retail stores. The Ferndale Trust and John Lancelot respectively hold 24.4% and 75.6% of the entire issued share capital in Servistar.

3. In terms of the Thabile transaction, Thabile and its respective shareholders together with Massmart entered into a shareholders agreement in terms of which Massmart acquired 51% of the entire issued share capital held by the Gomes Trust and the Best Trust in Thabile.⁴ Post-transaction, Massmart would own 51% of the issued share capital in Thabile whilst the aforesaid two trusts would hold 42.47% and 6.53% in Thabile respectively.
4. The Nabuild transaction entailed the acquisition by Massmart of the business of the supply of building material conducted by Nabuild at its head office and through its 34 retail outlets.
5. In the Servistar transaction, Massmart acquired 24.4% and 75.6% of the entire issued share capital held by the Ferndale Trust and John Lancelot Keil in Servistar respectively.⁵

RATIONALE FOR THE TRANSACTION

6. On the acquiring firm's side the stated commercial rationale for the proposed transactions remains the same throughout the three transactions as Massmart asserted that the present deals would enable it to expand its business of building supplies, hardware and related products throughout the country. These appeared to be the case as all three target firms operate in different regions countrywide.
7. The reasons for the target firms were quite different particularly because they are independent of each other and did not form part of the same stable. Thabile needed additional capital resources and expertise in order to achieve its growth plan. Nabuild believed that the deal would better secure the future of the Federated Timbers and Feds DIY businesses, both from an employee perspective and in improving the businesses' performance. Nabuild further recognised the need for additional resources and expertise to grow the business of Federated Timbers.⁶ Servistar recognised the need for its DIY concept stores to be developed further under the umbrella of Massmart, which, in turn, will provide Servistar with a number of synergistic benefits including *inter alia* increased working capital to fund a new store expansion program.⁷

4 The Gomes Trust and the Best Trust would sell 51% of the shareholder claims on loan account held by themselves against Thabile to Massmart.

5 Page 49 of the record.

6 Pages 54-55 of the Nabuild merger filing.

7 See page 50 of the Servistar merger filing.

The relevant market

Product market

8. Massmart is a high volume retailer of food, liquor and general merchandise (sold for cash in Southern Africa). General merchandise encompasses a large variety of products including office supplies, DIY equipment, hi-tech products, household appliances and categories of clothing.
9. The Massmart group consists of three operating divisions, viz., Massdiscounters, Masswarehouse and Masscash. Massdiscounters comprises a chain of retail discount stores trading under the two retail brand names, namely, *Game* and *Dion*. These retail stores offer a wide range of general merchandise and non-perishable groceries to the value-seeking end-consumer.
10. The Masswarehouse division comprises the following businesses: -
 - *Makro* – a chain of large wholesale outlets that markets a range of food, liquor and general merchandise to commercially affiliated retailers and upper-income end-consumers;
 - *Builders Warehouse* – a chain of warehouse outlets selling building supplies, hardware and related products; and
 - *Tile Warehouse* – a chain of warehouse outlets selling ceramic and other tiles and related products. Both Builders Warehouse and Tile Warehouse operate through various stores located in various geographic regions within the Gauteng, one in the North West and one in Limpopo provinces.
11. Masscash comprises wholesale (“cash & carry”) outlets (serving independent traders who target lower income consumers) and voluntary buying associations (serving independently owned food wholesale and retail outlets aimed primarily at lower income consumers under the *Shield* trading name and independent furniture, appliance and home electronic outlets under the *Furnex* trading name. Other business entities forming part of the Massmart group are Jumbo Cash & Carry (Pty) Ltd (“Jumbo”); Browns and Weirs Cash & Carry (“Browns and Weirs”); and CCW Wholesalers (Pty) Ltd (“CCW”). Jumbo is a wholesale distributor of cosmetics, toiletries, and hair care products for the lower to middle income urban consumers. Browns and Heirs and CCW are wholesale distributors of basic grocery products and a limited range of general merchandise.⁸
12. Thabile conducts three retail outlets best known as De La Rey which are all operative in the Western Cape, i.e., in Parrow, Table View and Brackenfell. De La Rey is primarily involved in the business of selling building supplies, hardware and related products.
13. Nabuild is involved in the business of the supply of building material, and conducts at its head office and through 34 outlets under the names “Federated Timbers” and “Feds

⁸ For more detail on the Massmart group’s activities, refer to pages 22-24 of the record.

DIY” throughout all nine provinces in South Africa.⁹

14. Servistar sells a range of building supplies, hardware and related products for use in DIY / home and garden improvement projects through its 14 stores situated along the coastal region of South Africa: 8 in the Eastern Cape, 4 in KwaZulu-Natal and 2 in the Western Cape.¹⁰
15. It is evident from the above that an overlap exists in the merging parties’ products. Both the target firms and Builders Warehouse, a division of the Masswarehouse division of the Massmart, conduct business as retailers of building supplies, hardware and related products. Thabile also compete to a certain extent with certain products offered by other Massmart stores such as Dion, Game and Makro.
16. In its investigation, the Commission found that there have not been significant changes in the market to warrant a different product market definition to the one postulated by the Commission and endorsed by the Tribunal in its previous decisions.¹¹ In the instant case, the Commission remained of the view that the markets in which the merging parties compete are particular product categories which consist of a wide range of products – these being hardware, building supplies and related products with different products that form part of these markets.¹² We have no difficulty with the Commission’s observation in this regard.

Geographic market

17. According to the merging parties, Massmart ordinarily operates through national chains which adopt a national pricing policy. They further pointed out that Builders Warehouse and Tile Warehouse constitute the majority of Massmart’s business operations in the Gauteng, Limpopo and North West provinces. From the evidence before us, it appeared that Massmart’s presence in the relevant product market nationally is through Game and Makro.
18. The target firms’ businesses are generally limited to certain geographic regions. As stated above, the business operations of Thabile are limited to the Western Cape only. Nabuild through Federated Timbers has stores throughout the country, but has a strong presence in KwaZulu-Natal and the Western Cape. Servistar operates in the country’s coastal region in the Eastern and Western Cape and KwaZulu-Natal. According to the

⁹ See page 9 of the Commission’s Report setting out the respective Nabuild stores located in each and every province in the country. See further, pages 53-54 of the Nabuild merger filing.

¹⁰ The acquiring firm and the three target firms classified all the ranges of building supplies, hardware and related products into the following categories: motor accessories, electrical and lighting, DIY (handtools and ladders), household (sanitary, home décor and housewares), paint, allied products and accessories, powertools, swimming pool accessories and chemicals, yard (generally used to refer to bulk building supplies such as timber, joinery, board products, cement and lime, door and window frames, floor accessories and ceramic tiles) and garden and patio.

¹¹ See *Masstores (Pty) Ltd and Massana Ltd & another* Case No.: 93/LM/Dec02, and *Masstores (Pty) Ltd and Hentiq 2869 (Pty) Ltd & another* Case No.: 53/LM/Jul04.

¹² See the table set out on page 12 of the Commission’s recommendations. See further, footnote 10 *supra*.

Commission the Massmart brand that competes directly with stores owned by Thabile is Builders Warehouse, which has stores only in Gauteng.

19. After having considered the fact that the merging parties generally trade in particular regions, the Commission contended that the market should be analysed from a regional perspective. The Commission nevertheless contended further that because the Massmart chain of stores follow a national pricing policy it is therefore possible that the market may be wider, that is, national.¹³ On the same basis, the merging parties contended that there seems to be no reason from their side to deviate from a geographic analysis on both a national and a regional perspective.¹⁴

Impact on competition

20. As already pointed out above, the three independent transactions would result in Massmart acquiring three firms - separate and independent of each other – all competing in the so-called broader housewares market. We based our conclusion on the fact that the three target companies appeared in all likelihood to sell the range of products substantially similar to that of Builders Warehouse, which falls under the Massmart umbrella. Furthermore, the transactions afforded Massmart a greater opportunity to gain a national footprint as it can be seen that the three target companies and Builders Warehouse operate in different regions of the country.
21. We found based on all the evidence before us that the merger would not result in the substantial lessening or prevention of competition irrespective of whether the market is defined on a broader or a narrower basis. The merging parties provided us with market share data on the products they currently provide and/or sell.¹⁵ However, we observed the following from the aforesaid market share data. Firstly, the merged entity appeared to enjoy a small market share in certain products. Secondly, the merged entity seemed to possess very high market shares in products such as garden and patio, paint and household. We were nevertheless persuaded that those high market shares might not necessarily influence or lead the merged entity to engage in conduct condemned by the Competition Act. For reasons already stated, it appears unlikely that the merged entity might behave to the detriment of consumers and to competition itself. We found that there were numerous other retail players such as Cash Build, Build It, Timbercity and Mica franchise chain of stores who were retailing in the same range of products as the merging parties. With respect to the Thabile transaction, apart from the merged entity, there are at least six other competing firms such as Penny Pinchers, Campbell Hardware, Brights, Maitland Timbers, Airton Timbers, Pryde Trust in the Western Cape. Some of the various small independent and specialised firms trade either as hardware stores or as specialist paint outlets or electrical suppliers. Generally larger retail stores such as Trade Centre, Pick 'n Pay and Hyperama as well as the existing agricultural firms (the previous co-operatives) also compete with the merged entity.

¹³ Page 13 of the Commission's Report.

¹⁴ See the record, pages 56, 63 and 58 of the Thabile, Nabuild and Servistar merger filings respectively.

¹⁵ See pages 13-18 of the Commission's Report.

Public Interest

22. According to the merging parties no job losses are anticipated pursuant to the merger. In fact, it is Massmart's intention in the foreseeable future to continue operating Thabile, Nabuild and Servistar as independent businesses.¹⁶

Conclusion

23. The Tribunal is satisfied that it is unlikely that the merger will lead to lessening or prevention of competition in the relevant markets. There are no significant public interest issues which would alter our conclusion.

Y Carrim

15 August 2005

Concurring: M Madlanga, M Holden

For the merging parties: Lee Mendelsohn and Mark Garden (*Edward Nathan Corporate Law Advisers*).

For the Commission: Edwell Mtantato assisted by Maarten van Hooven (*Mergers and Acquisitions*).

¹⁶ See pages 68, 86 and 80 of the Thabile, Nabuild and Servistar merger filings respectively.