

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 49/LM/Jun09

In the matter between:

Masscash Holdings (Pty) Ltd

Acquiring Firm

and

13 Score Supermarket Stores

Target Firms

Panel	:	N Manoim (Presiding Member), Y Carrim (Tribunal Member) and A Wessels (Tribunal Member)
Heard on	:	07 September 2009
Order issued on	:	07 September 2009
Reasons issued on	:	25 November 2009

Reasons for Decision

Introduction

- [1] On 07 September 2009 the Tribunal approved the acquisition by Masscash Holdings (Pty) Ltd of 13 Score Supermarkets owned and Operated by Pick 'n Pay Retailers (Pty) Ltd and/or its wholly owned subsidiary. The reasons follow below.

Parties

- [2] The primary acquiring firm is Masscash Holdings (Pty) Ltd ("Masscash"), a firm incorporated under the laws of the Republic of South Africa. Masscash is a wholly owned subsidiary of Massmart Holdings Ltd ("Massmart"), a public company listed on the JSE. Massmart is not controlled by any firm.

- [3] The primary target firms are 13 Score Supermarkets situated in Mpumalanga, North West, Gauteng, Limpopo, Northern and Western Cape as well the Free State provinces. These stores are owned and operated by Pick 'n Pay Retailers ("Pick 'n Pay") and/or its wholly owned subsidiary, namely, Score Supermarkets (Trading) (Pty) Ltd.

Parties' Activities

- [4] Massmart is a retailer of grocery products, liquor and general merchandise throughout South Africa. Massmart provides its activities through four divisions, namely, Massdiscounters, Masswarehouse, Massbuild and Masscash.
- [5] The primary target firms are involved in the retailing of grocery products to consumers in the LSM 2-5 categories. The grocery items the target firms offer are grocery, butchery, bakery, fruit and vegetables, deli and non-edible consumables.

Description of the transaction

- [6] This transaction involves Masscash acquiring 13 stores known as Score Supermarkets as a going concern. These stores are owned and operated by Pick n Pay and/or its wholly owned subsidiary, i.e. Score Supermarkets. On completion of the transaction, Masscash will solely control the primary target firms.

Rationale

- [7] Masscash submits that in order for it to compete more strongly with major retailers for customers in the LSM 2-5 categories, it has embarked on a strategy to extend its participation across the supply chain into the retail segment. This strategy involves the "Saverite model" as well as the acquisition of independent traders with proven success in the lower-end retail market.
- [8] According to Pick n Pay, Score Supermarkets have not proven to be profitable over recent years and therefore it has embarked on a strategy of

converting these stores into Pick n Pay Franchise Family Stores. However, Pick n Pay submits that the Score Supermarkets stores in this transaction have been identified as being unsuitable for conversion and hence the decision to dispose them to an outside party.

- [9] The Commission also received a submission from the South Africa Commercial, Catering and Allied Workers Union (“SACCAWU”) in relation to this acquisition. SACCAWU’s submission was that, inter alia, that there is no evidence that the target firms are failing which necessitate that they be disposed of. SACCAWU went on to further submit that the sole intention of this merger is to destroy the Score Supermarkets as competitors to Masscash.
- [10] According to the Commission, the merging parties were requested to provide it with results of any further investigation into the suitability of the stores being sold to Masscash for conversion. The merging parties’ replied by submitting that there are no documents prepared by either Score Trading or Pick ‘n Pay which set out the reasons why the primary target firms were not suitable for conversion. The Commission was therefore unable to come to the conclusion on whether the rationale submitted by Pick ‘n Pay was true as no documentation was provided.
- [11] During the hearing, we asked the merging parties as to whether or not the transaction was considered at any other level in the Pick ‘n Pay group and if documented, that the Tribunal be provided with that documentation. The merging parties’ response was that the decision to sell the primary target firms ultimately lay with Score Trading and accordingly the transaction was discussed only at this level. We were therefore as a result, unable to ascertain the validity of the rationale tendered by Pick ‘n Pay.

Competition Analysis

- [13] The activities of the merging parties overlap in respect of the retailing of grocery products in the LSM 2-5 categories. With regard to the relevant geographic area, the Commission found that the activities of the merging parties overlap only in two areas, namely, Seshego (Limpopo) and New Cross Roads (Western Cape).

[14] The merging parties' post-merger market shares are 3.3% and 0.57% in Seshego and New Crossroads respectively. Competitors in this market include firms such as Shoprite, Usave, Superspar, Checkers etc. The Commission concluded that this transaction is unlikely to substantially lessen or prevent competition in the affected areas as the merging parties' combined post-merger markets shares remains low.

[15] In light of the low post merger market shares of the merging parties, the Tribunal finds that the proposed transaction is unlikely to substantially prevent or lessen competition.

Public Interest

[16] The transaction does not raise any significant public interest concerns.

N Manoim

25 November 2009

Date

Y Carrim and A Wessels concurring.

Tribunal Researcher : I Selaledi

For the merging parties : Edward Nathan Sonnenbogs

For the Commission : T Ravhugoni