



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM151Dec21

In the matter between:

Shoprite Checkers (Pty) Ltd

Primary Acquiring Firm

And

Main Street 1883 (Pty)

Primary Target Firm

Panel: E Daniels (Presiding Member)
I Valodia (Tribunal Member)
L Mncube (Tribunal Member)

Heard on: 15 March 2022
Decided on: 15 March 2022

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by: Enver Daniels
Signed at: 2022-03-15 07:26:13 +02:00
Reason: Witnessing Enver Daniels

Enver Daniels

**Presiding Member
Mr Enver Daniels**

15 March 2022

Date

Concurring: Prof. Imraan Valodia and Prof. Liberty Mncube



competitiontribunal
SOUTH AFRICA

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date : 15 March 2022

To : DLA Piper Attorneys, Webber Wentzel Attorneys

Case Number: LM151Dec21

Shoprite Checkers (Pty) Ltd And Main Street 1883 (Pty) Ltd

You applied to the Competition Commission on **13 December 2021** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

Tebogo Mporle



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM151Dec21

In the large merger between:

Shoprite Checkers (Pty) Ltd (Primary Acquiring Firm)

And

Main Street 1883 (Pty) (Primary Target Firm)

Heard on: 15 March 2022

Order Issued on: 15 March 2022

REASONS FOR DECISION

1. On 15 March 2022, the Competition Tribunal unconditionally approved the large merger between Shoprite Checkers (Pty) Ltd (“Shoprite”) and Main Street 1883 (Pty) Ltd (“Main Street”).
2. The proposed transaction involves Shoprite’s acquisition of [REDACTED] of the issued share capital in Main Street. Post-merger, Shoprite and the RTT Group (Pty) Ltd (“RTT”) will exercise joint control over Main Street.
3. The primary acquiring firm, Shoprite, is controlled by Shoprite Holdings Limited (“Shoprite Holdings”), a public company listed on the Johannesburg Stock Exchange¹. Shoprite controls various firms, including Computicket (Pty) Ltd and Medirite (Pty) Ltd.²
4. The Acquiring Group retails and distributes a wide range of fast-moving consumer goods (“FMCGs”), through its various stores and supermarkets located across South Africa.³ The Acquiring Group’s operating divisions include Shoprite, Checkers, Checkers Hyper, Shoprite Usave, and OK Power Express, amongst others. Of relevance to the proposed merger is the Acquiring Group’s Checkers division, which offers an e-commerce delivery platform, Checkers Sixty60 (“Sixty60”), which is available across South Africa.⁴
5. The primary target firm, Main Street is wholly owned by RTT, which is a subsidiary of RTT Holdings (Pty) Ltd (“RTT Holdings”).

¹ The shares of Shoprite Holdings are widely held and are not controlled by any firm.

² All firms directly and indirectly controlled by Shoprite Holdings are referred to as the “Acquiring Group.”

³ FMCG products include groceries, food, household, health, beauty, lifestyle consumer products, clothing, home ware, textiles, and cellular telephone products.

⁴ Sixty60 enables customers to order groceries from Checkers stores by downloading the Sixty60 application onto their smartphone.

6. Main Street provides on-demand delivery (“ODD”) services⁵ (i.e., last mile logistics services) to online shopping platforms such as the Acquiring Group’s Sixty60 platform and other merchants. Main Street only renders ODD services but does not constitute an online shopping platform.

Competition assessment

7. While assessing the merger, the Competition Commission (the “Commission”) found that the proposed merger raises a vertical overlap, as the Acquiring Group operates an online shopping platform, while Main Street provides ODD services. However, such vertical overlap is pre-existing as Main Street provides the Acquiring Group with ODD services in South Africa.
8. The Commission did not take a definite view on the relevant product market. However, it assessed the effects of the proposed merger in the following markets:
 - 8.1. The upstream market for the national supply of ODD services; and
 - 8.2. The downstream market for the national procurement of ODD services.
9. In assessing input foreclosure, the Commission found that pre-merger, the Acquiring Group procured ODD services from the Target Firm [REDACTED] and this arrangement will continue post-merger. In any event, the Commission’s investigation revealed that the Acquiring Group’s retail grocery competitors such as Pick ‘n Pay, Woolworths and Spar all either render ODD services for their online shopping platforms or outsource same from third parties as there are alternative suppliers of ODD services that are active in South Africa, such as Quench, OneCart, Orderin, Zulzi, and Carter. The Commission was of the view that the [REDACTED] contemplated post-merger are unlikely to result in foreclosure given the presence of alternatives. Additionally, the [REDACTED] proposed post-merger is likely to ensure that the Acquiring Group cannot access competitively sensitive information of competitors that may also procure ODD services from the Target Firm.
10. When assessing customer foreclosure, the Commission found that pre-merger, the Acquiring Group procures all of its ODD service requirements for its Sixty60 platform from the Target Firm. Considering the above, the Commission found that the merger is unlikely to change anything as, post-merger, the Acquiring Group will continue to predominately procure ODD services from the Target Firm.
11. No third parties raised concerns with the proposed merger.
12. On the basis of the above, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.


⁵ ODD services refer to the collection of an order placed by a customer on a retailer / merchant’s online shopping platform (such as the Acquiring Group’s Sixty60 platform), and the delivery of the customer’s order to the customer, within a short duration to time.

Public interest

Employment

13. Regarding employment, the merger parties have provided an unequivocal undertaking that the proposed transaction will not have a negative effect on employment and, in particular, that no employees will be retrenched because of the proposed transaction.

Spread of Ownership

14. Regarding the spread of ownership, it is noteworthy that the Acquiring Group has an historically disadvantaged person (“HDP”) shareholding of 13.45% and Main Street has a HDP shareholding of 13.65%. The proposed merger will not result in the dilution of the HDP shareholding in Main Street as the Acquiring Group is acquiring joint control, which will not affect Main Street’s current HDP shareholding.
15. The Commission was of the view that section 12A(3)(e) imposes an obligation on the merging parties to promote a greater spread of ownership, by increasing the levels of ownership by HDPs and workers.
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Conclusion

16. For the above reasons, we conclude that the merger is unlikely to result in a substantial prevention or lessening of competition or raise public interest concerns.

Signed by: Enver Daniels
Signed at: 2022-03-15 11:40:21 +02:00
Reason: Witnessing Enver Daniels

Enver Daniels

15 March 2022

Mr Enver Daniels
Professor Imraan Valodia and Professor Liberty Mncube
concurring

Date

Tribunal Case Managers:
For the Merging Parties:

Leila Raffee and Camilla Mathonsi
Werner Rysbergen of DLA Piper Attorneys on behalf
of Shoprite Checkers; Burton Phillips, Shawn van der
Meulen, Tenisha Burslem-Rotheroe of Webber
Wenzel on behalf of Main Street
Nonhlanhla Msiza and Wiri Gumbie

For the Commission: