



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019067

In the matter between:

MASSTORES (PTY) LTD

Primary Acquiring Firm

And

DARRYL INVESTMENTS (PTY) LTD

Primary Target Firm

Panel	: Ms Y Carrim (Presiding Member)
	: Dr T Madima (Tribunal Member)
	: Ms A Ndoni (Tribunal Member)
Heard on	: 9 July 2014
Order Issued on	: 9 July 2014
Reasons Issued on	: 4 August 2014

Reasons for Decision

Approval

[1] On 9 July 2014, The Competition Tribunal (“**Tribunal**”) unconditionally approved the acquisition by Masstores (Pty) Ltd (“**Masstores**”) to acquire the entire issued share capital and all of the claims against Darryl Investments (Pty) Ltd (“**Darryl Investments**”).

[2] The reasons for approving the proposed transaction follow.

Parties to the transaction

[3] The primary acquiring firm is Masstores a wholly owned subsidiary of Massmart Holdings Limited ("**Massmart**"), which is a company listed on the Johannesburg Securities Exchange. Massmart is 52.4% controlled by Wal-mart Stores Inc. ("**Wal-mart**") and the remaining 47.6% is spread widely. Wal-mart is a public firm listed on the New York Stock Exchange and is not controlled by any single firm. Wal-mart does not control any other firm in South Africa ("**SA**"). Masstores controls numerous firms in SA such as Massfund (Pty) Ltd, Massmart Trade (Pty) Ltd, Massmart Travel Services (Pty) Ltd and Servestar (Pty) Ltd, collectively referred to as the Massmart Group.

[4] The primary target firm Darryl Investments is controlled by Tiber Developments (Pty) Ltd ("**Tiber Developments**"). Tiber Developments does not control any firm.

Proposed Transaction

[5] Masstores intends to acquire the entire issued share capital and all of the claims against Darryl Investments. Post-merger Masstores will have sole control over Darryl Investments.

Rationale

[6] Masstores is the sole occupier of the space in the building and has been in occupation since 1991 and it intends to remain there for the foreseeable future. Masstores intends to work with Devco, this is a development project between Brass Peak Trading and Darryl Investments to conceptualise the structure development proposal in respect of development of bulk vacant land

attaching to the properties and the re-development of properties.¹ Devco has access to the resources to undertake the development of the bulk vacant land. For Darryl Investments the shareholders of Tiber Developments have mandated their board of directors to negotiate the disposal of the entire property portfolio and any other portfolio's held by their subsidiaries in order to create liquidity for the shareholders to maximise shareholder value.

Relevant Market and Impact on Competition

- [7] Massmart comprises of firms that are involved in wholesale and retail of general merchandise, liquor, home improvement equipment and basic foods supply using its four divisions; Massdiscounters, Masswarehouse, Massbuild and Masscash.
- [8] Darryl Investments is a property holding firm which owns The White House property measuring 15 158m² and Masstores property measuring 1 749m², both are B-Grade office properties. Darryl Investments also owns the Remaining extent Erf 898 measuring 900m², this is currently vacant land used as a parking lot and there are no current plans to develop in Peltier Drive, Sunninghill, Johannesburg. Collectively the properties are referred to as Target Properties and are exclusively used by Masstores.
- [9] Darryl Investments is active in the market for the provision of rentable B-Grade office space in the Sunninghill node.
- [10] There are no horizontal overlaps arising in the activities of the merging parties. Darryl Investments properties are classified as B-Grade office properties and it does not own any other properties other than the Target Properties and its only tenant is Masstores. The Massmart Group comprises of firms involved in the wholesale and retail and it is not involved in the leasing of property. The proposed transaction does result in vertical integration in that

¹ In terms of the project, Brass have right of first refusal to implement a development project with respect to Target Properties. The extension, if implemented will involve an addition of offices for exclusive use of Masstores.

Masstores leases office space from Darryl Investments. Masstores has been occupying the properties since 1991 and the existing exclusive agreement stipulates that Masstores will not lease the Target Property to any other third parties. Masstores will also continue to occupy the property exclusively. The Commission is however satisfied that the transaction is unlikely to result in any vertical foreclosure concerns.

[11] The Commission also considered the effect on employment and Darryl Investment does not have any employees. Massmart employees are represented by South African Commercial, Catering and Allied Workers Union. SACCAWU was informed of the merger but this is an indirect acquisition of the target properties which Masstores intends to occupy post-merger as such the Commission is of the view that the proposed transaction is unlikely to raise any public interest concerns.

Conclusion

[12] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rentable B-Grade office space in the Sunninghill node. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transaction unconditionally.



Ms Y Carrim

4 August 2014
DATE

Dr T Madima and Ms A Ndoni concurring

Tribunal Researcher:	Moleboheng Moleko
For the merging parties:	Chris Charter – DLA Cliffe Dekker Hofmeyr
For the Commission:	Hardin Ratshisusu, Seema Nunkoo, Xolela Nokele and Dineo Mashego.