

In the large merger between:

Masstores (Pty) Limited

and

**The business conducted by Cell-Shack
Communications (Pty) Limited**

Reasons for Decision

Approval

1. The Competition Tribunal issued a Merger Clearance Certificate on 17th March 2005 approving without conditions the merger between Masstores (Pty) Ltd (“Masstores”) and the business of Cell-Shack Communications (Pty) Ltd (“Cell-Shack”). The reasons for approving the merger are set out below.

The merger transaction

2. The proposed transaction entails the acquisition, as a going concern, by Masstores of the business of Cell-Shack comprised of the wholesale of pre-paid and contract airtime products and cellular telephones and accessories, together with related telecommunications support services (the “business”).¹ The transaction will result in Masstores owning the business of Cell-Shack.

Merging parties

3. The **primary acquiring firm** is Masstores, a wholly owned subsidiary of Massmart Holdings Ltd (“Massmart”), a company listed on the JSE Securities Exchange.² The Commission collectively referred to Massmart and its subsidiaries as the “Massmart Group”.

4. The **primary target firm** is the business conducted by Cell-Shack. Cell-Shack is controlled by the Teljoy Group (Pty) Ltd (“Teljoy”), which in turn controls a number of firms.³ The Commission pointed out that neither the subsidiaries of Massmart nor the business of Cell-Shack control any firm.

¹ The business includes the “Business Assets”, but specifically excludes the “Business Liabilities”. (See the Sale of Business Agreement – pages 64-65 of the record).

² Other wholly owned subsidiaries of Massmart are the following: Jumbo Cash & Carry (Pty) Ltd; Shield Buying & Distribution (Pty) Ltd; Massmart Management & Finance Co. (Pty) Ltd; CBW Holdings (Pty) Ltd; Imagegate Ltd; Furnex Stores (Pty) Ltd; Massmart Trade (Pty) Ltd; and Massmart Services (Pty) Ltd.

³ They are Film Fun Holdings (Pty) Ltd; Africell Cellular Services (Pty) Ltd; Teljoy Business Systems (Pty) Ltd; Teljoy Botswana (Pty) Ltd; and New Ultimate Sounds (Pty) Ltd. (See pages 4-5 of the record)

Rationale for the transaction

5. The Massmart Group seeks to expand its business operations in the sale of pre-paid and contract airtime products, together with the ancillary cellular telephones and accessories. The parties expressed that the Cell-Shack will be housed in the Masstrade Division since the current operations of the latter (as regards cellular communications) are limited to the wholesale of pre-paid airtime products, mobile telephone handsets & accessories. According to the parties, Cell-Shack has an established brand which would allow the Masstrade Division to expand its current member base. Lastly, the Cell-Shack call centre would also serve to add value to the broader Massmart Group.

6. Cell-Shack's rationale is, firstly, that the original entrepreneur driving the business wishes to pursue other opportunities within the Teljoy Group of companies. Secondly, the Teljoy Group of companies is concerned with its over-exposure to the cellular market through both wholesale & retail channels and wishes to consolidate its gains and concentrate on its retail route to market.⁴

What is it that the merging parties do?

The Primary Acquiring Firm

7. **Massmart** is a high volume, low margin retailer of food, liquor, general merchandise, tobacco products and, to a limited extent, cellular products.

8. **Masstores** consists of the Masdicounters and the Masswarehouse divisions of Massmart – being the divisions within which the Massmart Group conducts its business.

9. **Masdicounters** comprises a chain of retail discount stores trading under the “**Game**” and “**Dion**” retail brands, which offers a wide range of general merchandise, non-perishable groceries and cellular products to the value-seeking end-consumer.

10. **Masswarehouse** comprises the following 3 business entities:

- ~~///~~ **Makro** – a chain of large wholesale outlets selling a range of food, liquor, tobacco products & general merchandise to commercially affiliated resellers and upper-income end-consumers;
- ~~///~~ **Builders Warehouse** – a chain of warehouse outlets that sells building materials supplies, hardware & related products; and
- ~~///~~ **Tile Warehouse** – a chain of warehouse outlets selling ceramic & other tiles and related products. The latter 2 warehouses operate through various stores located in various localised geographic regions within the Gauteng & the North West provinces.

11. According to the parties, the divisions within the Massmart Group that are involved in the sale of pre-paid and contract airtime products, mobile telephone handsets & accessories are as follows⁵:

⁴ See pages 46-47 of the record. See further a document entitled “*Proposal: Acquisition of Cell-Shack*” – page 263 of the record.

⁵ Refer to page 44 of the record.

- ✂✂ The Masswarehouse Division is involved in the wholesale of pre-paid airtime products, the retail of pre-paid airtime products and contract airtime products. This division also sells mobile telephone handsets and accessories on both wholesale and retail bases;
- ✂✂ Each of the Masscash Division and the Masstrade Division engages in the wholesale of pre-paid airtime products, mobile telephone handsets and accessories; and
- ✂✂ The Massdiscounters Division partakes in the retail of pre-paid airtime products and contract airtime products, and also sells mobile telephone handsets and accessories on a retail basis.

The Primary Target Firm

12. **The business of Cell-Shack** is mainly the wholesale of pre-paid and contract airtime products and cellular telephones as well as the accessories.

The relevant product market⁶

13. It is unquestionable that an overlap exists between the activities of the merging parties insofar as it relates to the wholesale and retail of pre-paid and contract airtime, cellular telephones and accessories.

14. According to the parties, the products sold/provided by the Massmart group of companies, which overlap with those sold/provided by Cell-Shack, are limited to –

- ✂✂ Pre-paid airtime, which embraces starter packs (comprising a sim card, network connection & airtime minutes); and airtime recharge vouchers;
- ✂✂ Contract airtime products, which comprise various categories of airtime contracts;
- ✂✂ Various brands & models of cellular telephones;
- ✂✂ Accessories, which include car kits, cell pouches, antennas, batteries, car chargers, desk top chargers, replacement chargers and walk & talk bits; and
- ✂✂ Value added services such as contract upgrades.

The relevant geographic market

15. The merged entity's operations are rendered on a national basis, throughout South Africa. The Commission pointed out that both parties are active either through their stores (i.e., the acquiring firm) or have distribution network (i.e., the target firm) nationally. We have also been told that the 2 firms adopt a national pricing policy. In light of this, the Commission and the parties defined the geographic market as a national one. We do not have a concern with the parties' and the Commission's view in this regard.

Competition Evaluation

16. The merger filing reflected that the merging parties would have a combined post-merger market shares of 11% in the sale of pre-paid and contract airtime as well as cellular phones and accessories. The table of market share figures provided by the

⁶ The parties defined the relevant market as the "market for the sale of pre -paid airtime products & contract airtime products. See ENF's letter to the Commission dated 13 January 2005 (Pages 279-280 of the record).

parties revealed that **Massmart** enjoys **9%**; Cellular Price Buster (5%); the Pre-Paid Company (5%); Crown Cellular (5%); Future Cell 5%; **Cell-Shack 2%**; and Others 69%.⁷ These figures assume that there is a single relevant market comprised of both retail and wholesale sales. Whether or not they should be considered as separate markets is not a question we have to determine. At the hearing, Mr Richard Millson testified that assuming there is a separate wholesale market for the above products, then the parties would have a combined post-merger market share of 8%.⁸ If this is a true reflection of the post-merger market shares, they are relatively small. The Commission contended that the estimated market share is below the Commission's benchmark of 15%, and therefore unlikely to raise competition concerns. The Commission intimated that the 3 major network providers (i.e., MTN, Vodacom and Cell-C) also sell these products to resellers and individuals in competition with Massmart Group and Cell-Shack. It is the Commission's view that these big three pose a competitive constrain to the merging parties.

17. We are satisfied that the merger does not raise any significant potential vertical concerns that would lessen or prevent competition in the relevant market substantially.⁹

Conclusion

18. The merger raises no public interest concerns militating against the approval of the transaction. Accordingly, the merger is approved unconditionally.

Norman Manoim

18 March 2005
Date

Concurring: **Yasmin Carrim and Lawrence Reyburn**

For the merging parties	: Lee Mendelsohn & Mark Garden (<i>Edward Nathan Corporate Law Advisors</i>)
For the Commission	: Magale Mohlala (<i>Mergers & Acquisitions</i>)

⁷ In the above letter, the merging parties intimated that it is not easy to obtain accurate information on the market share of the competitors due to the lack of accurate market data. They estimated that only 20 firms partake in the relevant market. (See further page 49 of the record).

⁸ See Millson's testimony, page 1 of the transcript of 18th March 2005.

⁹ For a further discussion on this, please refer to pages 280-281 of the record, and page 4 of the Commission's recommendations.