

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 09/LM/Feb02

In the large merger between:

Sociedad Investments (Pty) Ltd

and

Furnex Stores (Pty) Ltd/ Furnex Dealers Indemnity (Pty) Ltd

Reasons for Decision

APPROVAL

On 8 May 2002 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Sociedad Investments (Pty) Ltd and Furnex Stores (Pty) Ltd, Furnex Dealers Indemnity (Pty) Ltd in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The parties

1. The acquiring firm is Sociedad Investments (Pty) Ltd (“Sociedad”). Sociedad is a private company, a subsidiary of Massmart Holdings Limited (“Massmart”), which has a 90% controlling interest in Sociedad .
2. Massmart is described as a high volume, low margin retailer and wholesaler of food, liquor and general merchandise. It is a public company, listed on the JSE in the retailing sector. Massmart has the following subsidiaries, which are more fully described in Table 1 below:
 - a. Masstores (Pty) Ltd – the Game and Dions retail chains;
 - b. Shield Buying & Distribution (Pty) Ltd (“Shield”);
 - c. CCW Holdings (Pty) Ltd;
 - d. Browns & Weirs Cash & Carry Holdings (Pty) Ltd;

- e. Jumbo Cash & Carry (Pty) Ltd;
 - f. Massmart Management & Finance Company (Pty) Ltd
3. The target firm is Furnex Stores (Pty) Ltd, (“Furnex”) a wholesale trader or buying group that buys general merchandise for its members, consisting of independent retailers, who on sell them to the public¹. The parties state that Furnex operates by “agglomerating” the purchasing requirements of its 415 members or retailers in order to secure certain benefits for them. More specifically, by negotiating bulk discounts on behalf of retailers, Furnex enables the independent retailers to price competitively to the large retail chains, while it at the same time guarantees payments to suppliers.
 4. Furnex Dealers’ Indemnity, (“FDI”), the other target firm, provides insurance to retailers who grant credit, as well as to their customers to cover the cases of death, fire, theft, flood, etc. (in cases where such customers do not already have household cover).²

The merger transaction

5. There are 3 agreements comprising this transaction.
 - ❖ Between Sociedad, Furnex, Furnex Capital and Massmart - Sociedad acquires business conducted by Furnex ;
 - ❖ Between Sociedad and Furnex Capital – Sociedad will acquire all the shares in and claims on loan account of FDI from FC.
 - ❖ Between Fluxrab Investments No. 37 and Massmart Holdings and Sociedad – creating an arrangement in terms of which Fluxrab will hold 10% of the B shares in Sociedad and Massmart 90% of the A³ shares therein.
6. Post-merger, Furnex Stores would become a subsidiary of Massmart, to be incorporated into its Shield division.

¹ It seems the major difference of buying groups from wholesalers per se is that the former do not hold stock, whereas the latter do warehousing and logistics and potentially, transport. (record page 37) Buying groups also offer suppliers guaranteed payment and reduced risk to fragmented, independent retailers.

² Both target firms are being acquired from Furnex Capital Limited, which is the holding company of FDI and Furnex Stores.

³ The distinction between A and B shares is merely that B grade shares will not be entitled to a dividend prior to 30 June 2004.

Rationale for the Transaction

7. Furnex is disposing of the business to Massmart, which promises greater benefits to members in the form of improved prices, rebate structures and settlement discounts. In addition, Furnex will be able to benefit from Massmart's expertise in merchandising, marketing and advertising, thereby contributing to increased shareholder value. By contrast, Massmart intends acquiring information technology skills, as well as gaining access to wholesaling activity in the furniture and appliance industry. Despite having a strong presence in the retail appliance industry, Massmart does not presently have a foothold in the wholesale portion of this market. The merger will also allow both Shield and Furnex to exploit synergies between their similar business models, as well as generally achieving greater shareholder value.

The relevant product market

8. Each Massmart subsidiary is either involved in grocery or general merchandise or both, and operate in either the wholesale or retail markets, or both, as set out below:

Table 1: Profile of Massmart Subsidiaries

	<i>Grocery</i>	<i>General Merchandise</i>	<i>Wholesale</i>	<i>Retail</i>
Makro	v	v	v	v
Brown's & Weir's	v		v	v
Shield Buying and Distribution ⁴		v	v	
Massdiscounters (Game & Dions)		v		v
Jumbo Cash and Carry	v	v	v	v

Source: Company Info and Parties' Competitiveness Report

9. While Massmart procures a range of general and grocery merchandise, Furnex is not involved in grocery products at all. They only buy general merchandise, namely furniture, white goods and other products such as hi-tech products, household appliances, clothing, DIY equipment, office supplies and cellular services. Massmart do not wholesale appliance

⁴ A voluntary buying organization assisting independent wholesalers and retailers to procure food more efficiently for resale to lower income consumers. (Record page 61)

products, only a small amount of hi-tech products and cellular service products.

10. According to the parties, the customer profile of the parties differs - the target market for Furnex is the independent furniture and appliance retailer while that for Massmart wholesalers is the independent food and liquor retailer or wholesaler. (
11. Indeed Massmart is more involved specifically in grocery products at the retail level, rather than at the wholesale level. According to the Commission, the only firms in the Massmart stable that trade at the wholesale level with general merchandise are Shield and Makro.
12. The Commission accordingly identifies the area of overlap as being general merchandise, specifically the wholesale of cellular handsets, recharge vouchers and starter packs.
13. The parties define the relevant market as that of wholesaling furniture, appliances and hi-tech products and cellular recharge vouchers through buying groups or alternative wholesaling companies to independent traders in the furniture, appliance, and hi-tech industries throughout South Africa.⁵
14. This latter market definition is somewhat broad, in that while having a small share in the retail furniture market, Massmart is not involved in the wholesaling of furniture whatsoever. Nor is Massmart active in the appliance wholesale market, save to a limited extent, in the high-tech appliance market. We therefore define the market as that of wholesale of high-tech products and cellular recharge vouchers.

Geographical Market

15. The Commission regards the geographical market as regional (approx. 250 km radius) because general merchandise is not as high-turnover intensive as grocery products. We have no reason to dispute this definition.⁶

⁵ This is, in actual fact, the affected market, since Massmart wholesales only a small sub-market of the appliance market, namely hi-tech products, through its Shield, CCW and Makro chains, together with cellular service products.

⁶ The parties describe the geographic area in which Furnex is active as peri-urban.

Impact on competition

16. Despite confining the relevant market to that of the wholesaling of hi-tech appliances and recharge vouchers, it is useful to use an industry analyst's figures based on the total turnover of the entire retail appliance market, to serve as a proxy for an estimate of their post-merger wholesale market shares.⁷

Table 2: Market Shares in the Wholesaling of Appliances and Hi-tech Product Category

Firm	Share
Furnex	8%
Massmart	27%
Post-Merger	35%

Source: Perry & Associates Market Report

17. Furnex's market share in the market for the wholesale of appliances and high-tech products is some 8%. Massmart's market share is 27%⁸ Though post-merger this would yield a combined market share of some 35%⁹, our concerns were eased by the fact that post-merger the members are not contracted-in to Furnex and are free to procure their suppliers from other buying groups or wholesalers. We were advised that Furnex members were also members of rival buying groups and that they would be free to continue to do so in the future. Furthermore, the parties assured the Tribunal that barriers to entry into this market are low, as evidenced by the rapid emergence of other buying groups over the last few years. Furnex competes with other buying groups such as the Shaw Group, ISER and Group Appliances, as well as importers, agents and manufacturers supplying directly to independent retailers.

⁷ Perry & Associates "Massmart Appliance and Hi-Tech Category Research" August 2001.

⁸ Technically probably much less, because Massmart only wholesales a small proportion of hi-tech products – 1.2% of its total group turnover - that is, a subset of the appliance category. It wholesales high-tech products worth R135 million, which, out of a total market value of R2.9bn, amounts to approximately 4.7%.

⁹ We must be cautious about attributing the 7% of the market enjoyed by Furnex as if it was a single entity. The 7% represents the sales of Furnex's individual members who are free to set prices themselves and are subject to no constraints in this regard.

Table 3: Buying groups: Appliance and High-Tech Appliances

<i>INSTITUTION</i>	<i>ESTIMATED MARKET SHARE</i>
The Shaw Group	33%
Furnex Stores	22%
ISER	28%
Group Appliances	17%
TOTAL	100

Source: Parties' Competitiveness Report

18. Taking the parties' estimates of market share figures in the cellular recharge voucher category alone, the market shares appear as follows:

Table 4: Market Shares in the Wholesaling of Cellular Recharge Vouchers Product Category

Firm	Share
Furnex	1.88
Massmart	1.44
Post-Merger	3.32

Source: Parties' Competitiveness Report

19. We accept the submissions that this market is subject to effective competition both directly from the manufacturers and the retail stores themselves, who can source the products from MTN, Cell C and Vodacom direct.
20. There is furthermore no danger of the combined entity exerting pressure on the suppliers, both of hi-tech appliances and cellular services, since they are all large companies who have the option of distributing their products via other channels.

Conclusion

The Tribunal endorses the Commission's finding that this transaction will not substantially lessen or prevent competition in the relevant market and accordingly approves the transaction unconditionally. There are no public interest concerns which would alter this conclusion.

D.H. Lewis

15 May 2002
Date

Concurring: N. Manoim, U. Bhoola