46/44/Sep03

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 46/LM/Sept03

In the large merger between:

The Spar Group Limited

and

Nelspruit Wholesalers (Pty) Limited

Reasons for Decision

APPROVAL

On 15 October 2003 the Competition Tribunal issued a Merger Clearance Certificate in terms of Section 16(2)(a) of the Act approving the merger between the Spar Group Limited and Nelspruit Wholesalers (Pty) Ltd. The reasons for the approval of the merger appear below.

The Parties

1. The acquiring firm is the Spar Group Limited ("SGL"), a subsidiary of Tiger Brands Limited ("Tiger Brands"). Its subsidiaries include, amongst others, Spar South Africa (Pty) Ltd, in which SGL holds 92.4% and in which the target firm has a 7.6% shareholding.

2. SGL owns and operates 5 Spar retail stores which are located in KZN region. There are 740 Spar retail stores located throughout SA and the neighbouring countries. The other 735 are independently-owned.

3. The target firm is Nelspruit Wholesalers (Pty) Ltd ("NW"). NW is controlled as to 82.57% by Fairway Trading Limited; 17.43% by SC Christie (Pty) Ltd ("SCC") and by the SC Christie Trust. Fairway controls no other companies in SA other than NW. SCC controls Royal Anthem Investments (Pty) Ltd; Intrax Investments; Raps Stores (Pty) Ltd; In Excess Trading 134 (Pty) Ltd.

The Merger Transaction

4. Spar is acquiring the entire issued share capital in NW from Fairway Trading Limited and SC Christie (Pty) Ltd.

Rationale for the Transaction

5. Nelspruit Wholesalers is the only Spar business which Spar has never acquired control of, and has been owned by the Christie family for approximately 40 years. The family now wish to sell the business. Both Tiger Brands and SGL want, for strategic reasons, 100% ownership of the Spar name in SA. NW still currently owns the right to the Spar name in Mpumalanga and Swaziland. These two regions are therefore excluded from control of the Spar Group. This transaction will facilitate this.

The Relevant Market

6. SGL wholesales and retails various grocery items. It purchases and wholesales to its independently owned Spar supermarkets, known as the Spar Guild stores and Spar retail stores. The Spar Guild of Southern Africa is a buying association comprising Spar retail members and Spar distribution center members. SGL will negotiate with suppliers to get the best prices for these members of the Guild. It operates through the brands Kwikspar, Spar and SuperSpar.

7. NW owns and operates a Spar distribution center and cash and carry store in Nelspruit, Lowveld region. It is a member of the Spar Guild. The Nelspruit DC only services Spar retails stores in the Lowveld and Swaziland.

8. There is no overlap in the retail market. The Commission found that there is an overlap in the **wholesale and distribution market** (of grocery products and household goods), because SGL wholesales, via its 5 distribution centers, to its Spar Guild members and to its Spar retail stores. NW sells (wholesales) to its retailers and Spar Guild members for resale to final consumers. It also sells to other (non-guild) retailers on a cash and carry basis.

9. Therefore this is the relevant market for the purpose of this analysis.

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[1] Speciality chemicals are defined as those products which act as additives to enhance the process efficiencies of most manufacturing industries.

[2] Amongst other functions, which include the manufacture and supply of chemical products to the petroleum industry; supply of ion exchange resins; supply of water treatment plants and lab equipment, which are not relevant for the purpose of this transaction

Geographic Market

10. The Commission adopted a regional or narrower geographic analysis and found there were no overlaps in these markets, since SGL's main warehouses are in Durban, Cape Town, Port Elizabeth, Johannesburg and Olifantsfontein, whilst NW operates only in Nelspruit. Logistically, it is convenient for the warehouses/distribution centres to be proximate to the retail stores in each area.

11. Therefore, for example, Spar outlets in Johannesburg would only be serviced by the distribution center in Johannesburg, because transport costs are too high for the low margin household/grocery products to be transported beyond these provincial boundaries to another distribution center. This is because transport costs increase as one travels further to retail stores away from the particular region's distribution centre.

Impact on competition

Horizontal Effect

12. There is only a horizontal overlap in respect of the wholesaling of grocery products but there is no geographic overlap because SGL does not operate in either Mpumalanga or Nelspruit. NW has a 45% market share in the Lowveld region. The merger will not alter this by increasing this percentage or eliminating a competitor. Other larger wholesale suppliers include Makro, Metro, Trade Centre, Jumbo Cash and Carry, Lowveld Wholesalers, Nelspruit Cash and Carry, Komati Wholesalers, etc. the parties state that both the cash and carry customers and Spar retail stores located in the Lowveld are free to purchase supplies from any of these wholesalers. They are not obliged to buy from Spar. They will buy from the most competitive supplier, in terms of price and service levels. The cash and carry operation of NW will continue to supply general retailers post this transaction.

Vertical Effect

13. The vertical integration arises from the fact that NW is part of the Spar Guild and obtains its supplies through the guild, which negotiates directly with suppliers. However, this business format exists pre-merger in any event, the transaction merely facilitates a formalisation of this structure. We agree that input foreclosure is unlikely to arise. Other customers of NW will still be able to source products from other suppliers since the

wholesale market in the region is very competitive. Only 15% of NW's sales are derived from independent customers or cash and carry outlets.

We accordingly conclude that this merger will not lead to a substantial lessening of competition. There are no public interest concerns which would alter this conclusion. The merger is therefore approved unconditionally.

N. Manoim

3 November 2003
Date

Concurring: D. Lewis, T.Orleyn

For the merging parties:	Edward Nathan Friedland Attorneys
For the Commission:	L. Mtanga, M.van Hooven Competition Commission