

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 20/LM/Feb09

In the matter between:

Masscash Holdings (Pty) Ltd

Acquiring Firm

And

Sherewa Investments (Pty) Ltd

Target Firm

Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and N Manoim (Tribunal Member)
Heard on : 21 April 2009
Order issued on : 21 April 2009
Reasons issued on : 05 June 2009

Reasons for Decision

Introduction

[1] On 21 April 2009 the Tribunal unconditionally approved the acquisition by Masscash Holdings (Pty) Ltd of Sherewa Investments (Pty) Ltd. The reasons follow below.

Parties

[2] The primary acquiring firm is Masscash Holdings (Pty) Ltd ("Masscash"), a wholly owned subsidiary of Massmart Holdings Ltd ("Massmart"). Massmart is not controlled by any single shareholder. Masscash controls CCW Property Holdings (Pty) Ltd, Masscash (Pty) Ltd and CCW Marketing (Pty) Ltd. In addition, Masscash has a 50% share in Kangela Supply (Pty) Ltd and the remaining 50% is held by Kangela Trading, an indirect subsidiary of Sherewa Investments (the primary target firm in the instant transaction).

[3] The primary target firm is Sherewa Investments (Pty) Ltd (“Sherewa Investments”). Sherewa Investments is not controlled by any single shareholder. It controls the following firms¹:

- Kangela Trading (Pty) Ltd (“Kangela Trading”)
- Kangela Energy Solutions (Pty) Ltd (“Kangela Energy”)
- Kawena Distributors (Pty) Ltd (“Kawena Distributors”)
- Kangela International (Pty) Ltd (“Kangela International”)
- Southern Power Products (Pty) Ltd (“Southern Power”)
- Chalmar Industries (Pty) Ltd (“Chalmar”)

[4] The parties submit that Sherewa Investments will restructure its group prior to the proposed transaction in order to package selected assets and carve out others. Both Chalmar and Southern Power will be carved out and will therefore not be part of the instant transaction following the internal restructuring.

[5] Pursuant to the internal restructuring Kangela Procurement Services (Pty) Ltd (“Kangela Procurement”) and Kawena Services (Pty) Ltd (“Kawena Services”) will be incorporated as new wholly owned subsidiaries of Sherewa Investments.

[6] Kangela Procurement will incorporate the business of Kangela International (Pty) Ltd, which will in turn incorporate the businesses of Kangela Trading, Kangela Supply and Kangela Energy. Kawena Services will incorporate the business of Kawena Distributors.

Description of the transaction

[7] Masscash intends to acquire 51% of the entire issued share capital of Sherewa Investments. On completion of the transaction Masscash will have sole control over Sherewa Investments.

¹The parties submit that Sherewa Investments intends to restructure its group. Therefore these firms are controlled by Sherewa Investments prior to the internal restructuring.

Parties' Activities

The Acquiring Group

- [8] Massmart is a retailer and wholesaler of grocery products, liquor and general merchandise throughout South Africa. It is divided into four divisions, namely, Massdiscounters, Masswarehouse, Massbuild and Masscash. Massdiscounters is comprised of retail stores around South Africa trading under Game and Dion Wired.
- [9] Masswarehouse is comprised of wholesale stores trading under the name Makro. Makro offers a broad range of food, liquor and general merchandise. Massbuild is comprised of Builders Warehouse, Builders Express and Builders Trade Depot stores. These stores offer building supplies, hardware and related products throughout South Africa.
- [10] Masscash comprises of CBW, Jumbo and Shield. CBW is primarily engaged in the supply of essential grocery items through stores located in South Africa, Lesotho, Namibia and Botswana. Jumbo Cash and Carry is a wholesaler of cosmetics, toiletries and hair care products and has a limited range of food and other groceries. Shield is a voluntary buying association serving independently owned food wholesale and retail outlets.

The Target Group

- [11] Sherewa Investments trades through Kawena Services and Kangela Procurement. Kawena Services supplies and distributes a wide range of retail products to Mozambique.² These products include major food products, building materials, hardware, beverages, toiletries, fuel and household items.
- [12] Kangela Procurement incorporates the business of Kangela International, which in turn incorporates the business of Kangela Trading, Kangela Supply

² The parties submit that as far as they are aware, Kawena Services (incorporating the business of Kawena Distributors) is the only firm whereby products are purchased and paid for in South Africa and collected or distributed in Mozambique.

and Kangela Energy. Kangela International procures building materials, hardware and related products in South Africa for export to Mozambique.

- [13] Kangela Supply, a joint venture between Kangela Trading and Masscash provide approximately 600 line items of non-perishable foods and refreshments, catering requirements, kitchen disposals, cleaning agents, toiletries and general merchandise to hotels, lodges and non-governmental organisations in Mozambique. Kangela Energy supplies solar power products and other alternative energy products to retailers.

Rationale for the transaction

Masscash

- [14] Masscash submits that Mozambique (where Sherewa Investments is active), is a potential target for entry and expansion both at the level of a wholesaler and a retailer.

- [15] The Commission also noted some key features of the broader rationale of the Masscash Group which are contained in Masscash's strategy Documents.³ In these documents, Masscash states that it has been challenged by the aggressive expansion of the major retail chains, i.e. Shoprite, Spar, Pick 'n Pay and Woolworths into the lower LSM (2-5) markets. This expansion has resulted in these retail chains depending less on the wholesale market and using their own distribution channels to a greater degree, thereby bypassing the wholesale level where Masscash is prevalent.

- [16] As a result of this, Masscash has engaged in a broader strategy of entering the retail market. By acquiring Sherewa Investments it is expanding into the wholesale level as well as the retail level.

Sherewa Investments

- [17] Sherewa Investments submitted that it is anticipating the reduction in certain tariffs between South Africa and Mozambique which will greatly stimulate cross-border trade resulting in far greater levels of retail competition in

³ These documents are dated May 2008 and are from page 454 of the record.

Mozambique. Sherewa Investments further submitted that this transaction will allow its existing shareholders to realise a return on their investments.

Competition Analysis

- [18] This transaction results in a horizontal overlap as well as a vertical integration in the activities of the merging parties. The overlap is as a result of Massmart's prior shareholding in Kangela Supply. This overlap will, however, not result in an increase in market share or a change in the market structure.
- [19] Regarding the vertical relationship between the merging parties, Kangela Energy supplied Massmart with generators to the value of R6 million in the previous financial year. This amount represents 47% of Kangela Energy's total sales of generators in the previous financial year. It has 5.5% market share for the supply of generators and competes with firms such as Honda South Africa (Pty) Ltd (17%), Midmacor (15%), Akitron Electronics (Pty) Ltd (12.5), Ellies Electronics CC (11.5%) and Stevens and Co (Pty) Ltd (9%).
- [20] Given Kangela Energy's low market share for the supply of generators, it is unlikely that this integration will result in any foreclosure concerns.

Public Interest

- [21] The transaction does not raise any significant public interest concerns.

Y Carrim

05 June 2009

Date

D Lewis and N Manoim concurring.

Tribunal Researcher : I Selaledi
For the merging parties : Cliffe Dekker Hofmeyr Inc.
For the Commission : A Constantinou