

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 21/LM/Feb09

In the matter between:

Federated Timbers (Pty) Ltd t/a Builders Trade Depot Acquiring Firm

and

KBS Building Supplies CC
KBS Trusses CC
Runnel Investments CC
Gonubie Building Supplies CC Target Firms

Panel : D Lewis (Presiding Member), N Manoim (Tribunal
Member) and Y Carrim (Tribunal Member)
Heard on : 21 May 2009
Order issued on : 21 May 2009
Reasons issued on : 5 June 2009

Reasons for Decision

Introduction

[1] On 21 May 2009 the Tribunal approved the acquisition by Federated Timbers (Pty) Ltd's acquisition of four businesses namely KBS Supplies CC, KBS Trusses CC, Runnel Investments CC and Gonubie Building Supplies CC, collectively referred to as the Buildrite Group. The reasons for approving the transaction follow.

The transaction and parties

[2] The proposed transaction involves the acquisition by Federated Timbers (Pty) Ltd, trading as Builders Trade Trade Depot ("Builders Trade Depot"), of the entire business of the Buildrite Group comprising:

- (1) KBS Supplies CC (“Buildrite King Williams Town”)
- (2) KBS Trusses CC (“Buildrite Trusses”)
- (3) Runnel Investments CC (“Buildrite Queenstown”)
- (4) Gonubie Building Supplies CC (“Buildrite Gonubie”)

Post the transaction Builders Trade Depot will have sole control of the Buildrite Group.

- [3] Builders Trade Depot is controlled by Massmart Holdings Ltd (“Massmart”), a public company listed on the JSE Ltd. Massmart controls various entities including Builders Warehouse, Builders Express, Game, Dion, Jumbo and Makro.
- [4] The Buildrite Group is controlled by Mr Edward Barry Goetsch (“Goetsch”).

The parties’ activities

- [5] The Massmart Group operates four divisions:

- 1) Massdiscounters
- 2) Masswarehouse
- 3) Masscash
- 4) Massbuild

- [6] For purposes of this transaction we will mainly focus on the activities of the three chains within the Massbuild division which comprise of Builders Warehouse, Builders Express and Builders Trade Depot.¹ Builders Warehouse and Builders Express are building material retail chains which also provide home improvement/DIY products. Builders Trade Depot also supplies building materials and home improvement/DIY products but are mainly focussed on supplying medium to large contractors or construction companies. These chains are all located throughout South Africa.

- [7] The target firms supply building materials to construction companies in bulk and mostly on credit. Buildrite King Williams Town also owns a truss plant where it builds customised roof frames on special order. The Buildrite Group

¹ We will refer to them collectively as Massmart in our analyses.

also sells some home improvement/DIY products to homeowners. The stores are all situated in the Eastern Cape.

Rationale for the transaction

[8] The transaction will afford Massmart Group the opportunity to increase its presence in the Eastern Cape, which is currently limited to the western coastline of the Eastern Cape. It will also expand the merged entity's product range on offer to customers in this region.

[9] Goetsch wishes to sell the target businesses.

Effect on Competition

[10] The merging parties' activities overlap in the market for the retail of building materials and home improvement products.

[11] The merging parties argued that there were two distinct markets, a market for the supply of building material which was a regional market, because building materials were usually transported over longer distances and in bulk, and the market for the supply of home improvement/DIY products, which was local.

[12] In defining the relevant market the Commission found that competitors used a different set of factors to classify products as building materials or as home improvement products. For instance, when sold in bulk and on credit to a contractor the products would be classified as building materials, but if sold in small quantities and in cash to homeowners, it would be considered a home improvement product. Certain products such as cement, bricks, doors, windows, frames and roofing were consistently regarded as building materials.

[13] The Commission chose not to define the relevant markets but assessed the transaction's impact on a combined product market for the retail of building supplies, hardware and related products as well as on each of the markets separately. With regard to the geographic markets the Commission assessed the markets on a local and regional basis.

- [14] Since we found that the transaction would not significantly prevent or lessen competition on either a wide or narrow definition of the relevant market, we do not have to decide it in this case.

The market for the supply of building supplies, hardware and other related products in the Eastern Cape

- [15] The merging parties indicated that the merged entity's market share for the supply of building material in the Eastern Cape would be approximately 12%, with the largest competitors being Cashbuild with 16%, (a company listed on the JSE with a national footprint owning 20 stores in the Eastern Cape area), Hardware Warehouse with 15%, (it owns 12 stores in the Eastern Cape) and Build-It with 15%, which owns 31 stores in the Eastern Cape. Other smaller players are Iliads with a market share of 9% and Pennypinchers with 8%.

The local market for the retail building material

- [16] The Commission established that, based on turnover figures submitted by some competitors, Massmart was a small player in each the local markets. It had less than 1% market share each in King Williams Town, Queenstown and East London and that post the transaction the merged entity's market share would be approximately 25% in King Williams Town, 14% in Queenstown and 8% in East London, including Gonubie.
- [17] In each of the local markets there are a number of players that compete with the merging parties such as Cashbuild, Hardware Warehouse, Build-It, Mica and various smaller competitors.

The local market for the supply of home improvement/DIY products

- [18] The Commission found that the merged entity's market shares in the market for home improvement/DIY products would be approximately 13% in King Williams Town, 14% in Queenstown and 9% in East London. Within each of these markets the Commission found that there were alternative players that competed with the merged entity.

Other factors taken into account

- [19] The Commission indicated that there were no significant barriers to entry. Competitors such as Burmeisters, Hardware Warehouse and Cashbuild had also recently opened new stores in East London and other areas.
- [20] The merging parties submitted that their customers were mainly large construction companies that tend to compare prices and ultimately source their requirements from suppliers that offered the lowest prices while home owners were extremely price sensitive and did not remain loyal to only one store.
- [21] The merged entity also indicated during the hearing that its combined purchases would not exceed 20% in any category of products purchased from any of the main suppliers of cement, bricks, timber or roofing supplies, all which have are large companies with a national presence. The merged entity would therefore not have buyer power.

Conclusion

- [22] In light of the above the Tribunal finds that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.

Public Interest

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

N Manoim

9 June 2009
Date

D Lewis and Y Carrim concurring.

Tribunal Researcher: R Badenhorst
For the merging parties: Cliffe Dekker Hofmeyr
For the Commission: Edwina Ramohlola