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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 35/LM/Apr11

In the matter between:

Mystic Blue Trading 62 (Pty) Ltd	Acquiring Firm
And	
The Rhino Group	Target Firm

Panel	:	Norman Manoim (Presiding Member) Yasmin Carrim (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	14 December 2011
Order issued on	:	20 December 2011
Reasons issued on	:	29 February 2012

Reasons for Decision

APPROVAL

[1] On 20 December 2011 the Competition Tribunal ("Tribunal") approved the acquisition by Mystic Blue Trading 62 (Pty) Ltd of the Rhino Group with conditions. In brief the conditions required the merging parties to sell the retail and liquor businesses of the Rhino Group in Nongoma, Kwazulu Natal Province as well as the wholesale and liquor businesses of the Rhino Group in Matatiele, Eastern Cape Province.

[2] The divestiture conditions were agreed to by the merging parties and the Commission. We therefore only need to consider whether these conditions are sufficient to remedy the anti-competitive effects arising from the proposed merger.

PARTIES TO THE TRANSACTION

[3] The primary acquiring firm is Mystic Blue Trading 62 (Pty) Ltd ("Newco"), a wholly owned subsidiary of Luzupu Trading (Pty) Ltd t/a Masscash Retail ("Masscash Retail"). Masscash Retail is a wholly owned subsidiary of Masscash (Pty) Ltd ("Masscash"), a subsidiary of Massmart Holdings Ltd ("Massmart"). Massmart is a subsidiary of Wal-mart Inc.

[4] The primary target firms are 16 Rhino stores, mostly based in Kwazulu-Natal and the Eastern Cape. These stores are collectively referred to as the Rhino Group stores.

DESCRIPTION OF THE TRANSACTION

[5] In this transaction, Masscash, thorough Newco, intends to acquire the entire issued share capital of each of the various firms comprising the Rhino Group stores ("Rhino"). On completion of the proposed transaction, Masscash will have sole control over the Rhino business.

ACTIVITIES OF THE PARTIES

[6] Newco is a newly formed entity and as such it does not provide or render any service. The Wal-mart Group trading companies are divided in to four divisions, namely:

- Massdiscounters – comprises of retail stores trading under the named Game and Dion Wired;
- Masswarehouse – comprises of Makro chain of large wholesale club outlets;

- Massbuild – comprises of Builders Warehouse, Builders Express and Builders Trade Depot; and
- Masscash - predominantly wholesale outlets supplying grocery products, liquor and general merchandise and includes stores such as CBW (trading as CBW, Browns or Weirs), Finro, Jumbo and Shield. Masscash also comprises of retail/hybrid outlets which sell grocery products, liquor and general merchandise under the names Buy-Rite, Sunshine, Mikeva, Cambridge, DF Astor Savemoor and Score.

[7] The Rhino stores are active in the sale of grocery and liquor products. Rhino is a family controlled company.

RATIONALE FOR THE TRANSACTION

[8] According to Masscash, this transaction will enable it to realise its strategy of expanding its presence in the retailing of grocery in urban and peri-urban areas. For Rhino, the proposed transaction presents an opportunity for its shareholders to realise a return on their investment and sell the business, due to lack of a succession plan within the family.

THE RELEVANT MARKET AND IMPACT ON COMPETITION

[9] In defining the relevant product market the Commission made a distinction between the wholesaling and retailing of grocery products. Grocery products encompass food, cigarettes, health and beauty products and non-edible consumables such as detergents and house care products. According to the Commission, the factors that distinguish a wholesale store from a retail one include the location of the store, the format of display as well as the nature of the sale of the products.

[10] In relation to wholesale stores the Commission found that these stores are located outside of the main hub (although this differs from town to town), have fewer till points, sell on credit and customers buy in bulk. The Commission, however, also found that there are number of wholesale stores that are hybrid in nature, i.e. they have a retail component and that retail component competes with other retail stores. The merging parties submitted to the Commission that although Massmart's stores relevant for this transaction are predominantly wholesale, they also derive limited revenue from retail sales.

[11] In respect of retail stores, the Commission found that these stores are generally located in town centres, offer no credit facilities, have more till points than wholesale stores and sell mainly single items to people who buy for their own consumption. Rhino's 16 stores being acquired are all exclusively engaged in the retail of grocery with the exception of one store which trades as a wholesale store, namely, Matat Wholesalers.

[12] In respect of liquor products, the Commission found that although the National Liquor Authority allows for the distinction between the retailing and wholesaling of liquor (in that separate licences are required for each trade), market players hardly adhere to this distinction. In this regard the Commission's field investigation as well as interviews with customers and competitors revealed that although Rhino owns a retail licence, it also sells liquor in bulk. For purposes of this transaction the Commission only took into account the retailing of liquor as the merging parties' activities do not effectively overlap in the wholesale of liquor and Rhino only has a retail licence while Masscash has a licence for both retail and wholesale of liquor.

[13] The Commission has further, in identifying the relevant product market, taken into account the Living Standard Measure ("LSM")[1] categories of the

[1] According to the Commission the LSM is a widely used tool that segments the South African market according to various characteristics such as owning a car and/or major appliances. The LSM is often used as a proxy for a household' purchasing power and stores target different LSM groups in terms of their position, offerings and advertising.

customers whom the merging parties target. In this regard the Commission found that Masscash and Rhino are involved in the wholesaling and retailing of grocery products to lower income consumers in the LSM 2-6 categories. The Commission concluded that the relevant product markets are as follows:

- The market for the retail of grocery, including the retail component of wholesale stores, aimed at low income consumers;
- The market for the wholesale of grocery aimed at low income consumers; and
- The market for the retail of liquor targeting low income consumers.

[14] In respect of the relevant geographic market for the retail of grocery and liquor, the merging parties' activities overlap in the following areas: Nongoma, Ulundi, Mtubatuba, Mthatha, Lusikisiki and Matatiele. The Commission found that the merging parties and their competitors operate in city centres close to the taxi ranks as most of their customers use public transport. The Commission therefore defined the relevant geographic market for the retail of grocery and liquor as being 1.5 km radius surrounding the main taxi ranks in the towns where the parties' activities overlap.[2]

[15] In relation to the wholesale of grocery, the merging parties' activities overlap only in Matatiele. The Commission defined the relevant geographic market as being in Matatiele and the surrounding 120km radius as Rhino's Matat Wholesale delivers as far as this area.

[2] The 1.5km distance was given as an answer by the merging parties and their competitors when they were asked by the Commission to give an approximate parameter value within which they believed most retailers were concentrated.

Market shares

[16] Out of all the areas in which the activities of the merging parties overlap, the Commission found that the combined post-merger market shares of the parties are high in respect of only the following:

- Retail of grocery in Nongoma - 72.4%;
- Retail of Liquor in Matatiele and Nongoma – 56.4% and 51.6% respectively; and
- Wholesale of grocery in Matatiele – 64%.

[17] Based on the above market shares, the Commission came to the conclusion that the markets for retailing of grocery and liquor in Nongoma as well as the wholesaling of grocery and the retail component of liquor in Matatiele are highly concentrated and likely to result in a substantial lessening or prevention of competition. Accordingly, the Commission proposed that the Rhino stores in these two towns be divested to independent third parties in order to address the concerns. The merging parties did not object to the divestiture conditions proposed by the Commission. The conditions mean that post divestiture competition in respect of retailing of grocery and liquor in Nongoma and the wholesaling of grocery and the retail component of liquor in Matatiele will be restored.

PUBLIC INTEREST

[18] The merging parties submitted to the Commission that the proposed transaction will not have any significant effect on employment.

CONCLUSION

[19] We agree with the Commission that the markets for the retail of grocery and liquor in Nongoma as well as the wholesaling of grocery and the retail component of liquor in Matatiele are highly concentrated and are therefore likely to lead to a substantial lessening or prevention of competition. We are satisfied that the divestiture conditions proposed are adequate to remedy the anti-competitive effects arising from the proposed transaction. For this reason we approved the transaction subject to the conditions agreed upon on 20 December 2011. A copy of these conditions is attached to these reasons as Annexure "A".

____________________	<u>29 February 2012</u>
Norman Manoim	**Date**

Yasmin Carrim and Andreas Wessels concurring.

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Chris Charter of Cliffe Dekker Hofmeyr Inc.

For the Commission: Nomveliso Ntanjana and Dr. Nicholas Ngepah