



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM131Nov23

In the matter between:

Devland Cash and Carry (Pty) Ltd

Primary Acquiring Firm

And

Various Grocery Retail and Wholesales Stores
Operated Under The Brand Names “Cambridge
Foods” and “Rhino” and Ultimately Owned by
Massmart Holdings (Pty) Ltd

Primary Target Firms

Panel: L Mncube (Presiding Member)
A Kessery (Tribunal Member)
I Valodia (Tribunal Member)

Heard on: 05 March 2024

Decided on: 05 March 2024

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved subject to the conditions set out in “**Annexure A**” in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Presiding Member
Prof. Liberty Mncube

05 March 2024

Date

Concurring: Ms Anisa Kessery and Prof. Imraan Valodia



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 05 March 2024

To : ENSafrica Attorneys

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
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e-mail: ctsa@comptrib.co.za

Case Number: LM131Nov23

Devland Cash and Carry (Pty) Ltd And Various Grocery Retail and Wholesales Stores Operated Under The Brand Names "Cambridge Foods" and "Rhino" and Ultimately Owned by Massmart Holdings (Pty) Ltd

You applied to the Competition Commission on **16 November 2023** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

ANNEXURE A: CONDITIONS

IN THE LARGE MERGER INVOLVING:

DEVLAND CASH AND CARRY (PROPRIETARY) LIMITED

AND

VARIOUS GROCERY AND WHOLESALE STORES OPERATED UNDER THE BRAND NAMES "CAMBRIDGE FOODS" AND "RHINO" OWNED BY MASSMART HOLDINGS (PROPRIETARY) LIMITED

CASE NUMBER: LM131Nov23

1. DEFINITIONS

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "**Act**" means the Competition Act No. 89 of 1998, as amended;
- 1.2 "**Commission**" means the Competition Commission of South Africa;
- 1.3 "**Conditions**" means these merger conditions, included in this Annexure A;
- 1.4 "**Devland**" means Devland Cash and Carry (Proprietary) Limited;
- 1.5 "**Days**" means any day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.6 "**Implementation Date**" means the date on which the Merger is implemented by Devland and Massmart;
- 1.7 "**LRA**" means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.8 "**Massmart**" means Massmart Holdings Proprietary Limited, the seller of the Target Businesses;
- 1.9 "**Merger**" means the proposed acquisition by Devland of the Target Businesses, as notified to the Commission under Case No. 2023Nov0028;

- 1.10 “**Merged Firm**” means the combination of Devland and the Target Businesses pursuant to the Merger;
- 1.11 “**Merging Parties**” means Devland and the Target Businesses;
- 1.12 “**South Africa**” means the Republic of South Africa;
- 1.13 “**Target Businesses**” means the grocery and wholesale stores being acquired by Devland from Massmart, namely: Cambridge Botshabelo; Cambridge Thaba Nchu; Cambridge Nkandla; Cambridge Ladybrand; Cambridge Mitchells Plain; Rhino Qumbu; Cambridge Nongoma; Cambridge / Savemoor Tembisa; Rhino Ulundi; and Cambridge Evaton;
- 1.14 “**Tribunal**” means the Competition Tribunal of South Africa;
- 1.15 “**Tribunal Rules**” means the Rules for the Conduct of Proceedings in the Tribunal;

2. **EMPLOYMENT**

- 2.1 Pursuant to the implementation of the Merger, all employees of the Target Businesses shall be transferred to Devland in accordance with section 197 of the LRA, on no less favourable terms of employment (including without limitation with respect to wages, working conditions and/or benefits) compared to those which currently apply to such employees as employees of Massmart.
- 2.2 The Merged Firm shall for a period of 2 (two) years after the Implementation Date, not retrench any employees as a result of the Merger.

For the sake of clarity, retrenchments for purposes of these Conditions, will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

3. **MONITORING**

- 3.1 Devland will notify the Commission in writing of the Implementation Date within 10 (ten) Days of the Implementation Date.
- 3.2 Within 10 (ten) Days of the approval of the Merger by the Tribunal, Devland shall circulate a non-confidential version of the Conditions to its employees, their employee

representatives and representative trade unions. As proof of compliance herewith, Devland shall within 10 (ten) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.

3.3 Within 10 (ten) Days of the approval of the Merger by the Tribunal, Massmart shall circulate a non-confidential version of the Conditions to the Target Businesses' employees, their employee representatives and representative trade unions. As proof of compliance herewith, Massmart shall within 10 (ten) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.

3.4 As proof of compliance with clauses 2.1 and 2.2, Devland shall, within 2 weeks of each of the first and second anniversary of the Implementation Date, provide an affidavit attested to by a senior official of Devland confirming compliance with these Conditions.

4. **APPARENT BREACH**

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by Devland of these Conditions, the alleged breach shall be dealt with in terms of Rule 37 of the Tribunal Rules.

5. **VARIATION**

The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

6. **GENERAL**

6.1 All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.