

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM090Oct21

In the matter between:

Shoprite Checkers (Pty) Ltd

Primary Acquiring Firm

And

The Trademarks Owned by Mr Basil Synodinos

Primary Target Firm

Panel: E Daniels (Presiding Member)
I Valodia (Tribunal Panel Member)
T Vilakazi (Tribunal Panel Member)

Heard on: 09 & 15 December 2021

Decided on: 17 December 2021

ORDER

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

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Presiding Member
Mr Enver Daniels

17 December 2021
Date

Concurring: Prof. Imraan Valodia and Dr. Thando Vilakazi

ANNEXURE A

NON-CONFIDENTIAL

Shoprite Checkers Proprietary Limited

and

The Trademarks owned by Mr Basil Synodinos

CT CASE NUMBER: LM090Oct21

1. DEFINITIONS

- 1.1 **"Acquiring Firm"** means Shoprite Checkers Proprietary Limited and its subsidiaries;
- 1.2 **"Act"** means the Competition Act 89 of 1998, as amended;
- 1.3 **"Approval Date"** means the date referred to on the Commission's merger Clearance Certificate;
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Conditions"** mean, collectively, the conditions referred to in this document;
- 1.6 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.7 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

- [REDACTED]
- [REDACTED]
- [REDACTED]
- 1.9 **"Merger"** means the Acquiring Firm's acquisition of the Trademarks owned by Mr Basil Synodinos;
- 1.10 **"Merging Parties"** means the Acquiring Firm and the Transferred Firm;
- 1.11 **"Option Agreement"** means the call and put option agreement entered into between Shoprite Checkers Proprietary Limited and the owners of the President Outlets on 9 September 2021;

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- 1.12 **"President Outlets"** means three retail grocery outlets located in Gauteng described as (i) President Hyper Krugersdorp; (ii) President Hyper Vaal; and (iii) President Supermarket, ultimately controlled by the Seller;
- 1.13 **"Seller"** means the Seller of the Trademarks being Mr Basil Synodinos;
- 1.14 **"South Africa"** means the Republic of South Africa;
- 1.15 **"Trademarks"** means the various "President" trademarks owned by the Seller and which are being sold to the Acquiring Firm as contemplated in this proposed Merger;
- 1.16 **"Tribunal"** means the Competition Tribunal of South Africa; and
- 1.17 **"Transferred Firm"** means the Trademarks.

2. **RECORDAL**

- 2.1 On 17 September 2021, the Merging Parties filed the Merger.
- 2.2 The Commission found that the Merger is unlikely to result in any substantial lessening or prevention of competition in any relevant market/s.
- 2.3 However, the Commission understands that the Option Agreement contemplates the exercise of various contractual options by either the Acquiring Firm or the owners of the President Outlets, which may result in the Acquiring Firm collectively acquiring the President Outlets.
- 2.4 The Commission and the Merging Parties have agreed that the exercise of the contractual options in the Option Agreement will constitute a merger/s for the purposes of the Act. Consequently, the Commission has an interest to assess the impact of such merger/s.
- 2.5 Accordingly, the Commission and the merging parties agree to the Conditions recommended herein to the effect that the Acquiring Firm and the owners of the President Outlets are required to notify the Commission of the exercise of the options contemplated in the Option Agreement.

3. **CONDITIONS**

Exercise of option

- 3.1 Should the call option granted in the Option Agreement be exercised, resulting in the Acquiring Firm acquiring the business of the President Outlets, the Acquiring Firm and the owners of the President Outlets will notify such acquisition to the Commission as a merger, in the prescribed manner and form, irrespective of whether or not the mandatory merger notification thresholds as contemplated by the Act, have been met.
- 3.2 Should the put option granted in the Option Agreement be exercised, resulting in the owners of the President Outlets selling the business of the President Outlets to the Acquiring Firm, the Acquiring Firm and the owners of the President Outlets will notify such acquisition to the Commission as a merger, in the prescribed manner and form, irrespective of whether or not the mandatory merger notification thresholds contemplated by the Act, have been met.
- 3.3 To the extent that the options granted in the Option Agreement are not exercised, which results in the Acquiring Firm not acquiring the business of the President Outlets, the Acquiring Firm will inform the Commission of the lapsing of the Option Agreement.

4. **EXPANSION PLANS**

- 4.1 The Acquiring Firm shall use its best endeavours, in line with its proposed expansion plans for the Trademarks, to open [REDACTED] outlets operated by a franchisee [REDACTED] under the name of the Trademarks over the course of the next 5 (five) years measured from the Approval Date.
- 4.2 For the avoidance of doubt, the commitment to open the abovementioned [REDACTED] additional outlets is subject to the economic conditions prevailing in the South African economy over the course of the next 5 (five) years and that such economic conditions warrant the opening of such outlets. To the extent that the Acquiring Firm believes the economic conditions do not warrant the opening of [REDACTED] additional outlets within the period contemplated in this paragraph, the Merging Parties will apply to the Tribunal, in accordance with clause 6 herein for a waiver, relaxation, modification, variation and/or substitution of this condition.

5. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 5.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 5.2 The Acquiring Firm shall inform the Commission, on each anniversary of the Approval Date, of the progress of the expansion plans as contemplated in clause 4 above.
- 5.3 The Acquiring Firm shall inform the Commission in writing of the exercise of any of the options contemplated in the Option Agreement, within 10 (ten) Days of such option being exercised. For the avoidance of any doubt, this does not derogate from any obligations imposed on the Merging Parties in clause 3.1 and 3.2 of these Conditions.
- 5.4 A representative of the Acquiring Firm shall, upon the lapsing of the Option Agreement contemplated above, submit an affidavit to the Commission confirming the lapsing of the Option Agreement and compliance with these Conditions.

6. **VARIATION**

The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the waiver, relaxation, modification, variation and/or substitution of one or more of the Conditions.

7. **GENERAL**

All correspondence in relation these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za.



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
e-mail: ctsa@comtrib.co.za

Merger Clearance Certificate

Date: 17 December 2021

To: Werksmans Attorneys

(Name and file number of merger:)
Case number: LM090Oct21
Shoprite Checkers (Pty) Ltd And The Trademarks Owned By Mr Basil Synodinos

You applied to the Competition Commission on 17 September 2021 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: