

Shoprite gets go-ahead to acquire some Massmart stores - with conditions

The Competition Tribunal has conditionally approved the Shoprite Group's acquisition of certain Massmart-owned supermarkets, wholesalers and liquor stores, as well as the Massfresh business from the retail group that's now wholly-owned by Walmart.



Source: Massmart (File photo)

Shoprite Group initially made an offer to buy 56 grocery stores from Cambridge Food and Rhino Cash and Carry and 43 adjacent liquor stores earlier this year. It also wanted to buy 10 wholesale cash and carry stores, two wholesale liquor stores, Massfresh and Fruitspot. It made an offer of R1.36bn to Massmart, and the Competition Commission recommended that the Tribunal approve the deal in May.

The competition authority approved the proposed transaction with certain conditions, which seek to address identified competition and public interest concerns and include the divestiture of certain retail stores by Massmart as well as public interest commitments relating to employment; the spread of ownership, localisation, and retailer, supplier and skills development.

The Tribunal's order follows a three-day merger hearing in which the merging parties, the Department of Trade, Industry and Competition (DTIC), intervenors Pick n Pay and Spar, and the South African Commercial Catering and Allied Workers Union (Saccawu) participated. The hearing was further followed by information requests from the Tribunal and consideration of the numerous responses received.



Massmart sells most food assets to Shoprite for R1.36bn

Nqobile Dlodla 23 Aug 2021



A summary of the Tribunal's conditions follows.

Conditions aimed at addressing competition concerns

The commission identified 10 grocery retail stores is described as “highly problematic”, namely Cambridge Botshabelo, Cambridge Thaba Nchu, Cambridge Nkandla, Cambridge Ladybrand, Cambridge Mitchell’s Plain, Rhino Qumbu, Cambridge Nongoma, Cambridge/Savemoor Tembisa, Rhino Ulundi, and Cambridge Evaton.

To address the competition concerns in relation to these stores, the commission recommended franchising four of the 10 stores and a funding package to facilitate competition from one existing, high potential, Black-controlled independent retail competitor for the remaining six. Pick n Pay and Spar argued for a prohibition of the merger.

The tribunal ultimately approved the proposed merger on the basis that the ten "highly problematic" stores must be divested by Massmart to a suitable purchaser/s within a specified period from the approval of the merger . The purchaser/s must be an independent third party/ies unrelated to Shoprite; must be a SMMEs and/or historically disadvantaged; and must possess the necessary financial resources, proven technical expertise and incentive to develop the stores as viable and competitive in the relevant geographic areas.

During the divestiture period, the tribunal said Massmart must:

- preserve and maintain the economic and competitive value, independence and marketability of the highly problematic stores in the ordinary course of business;
- provide the necessary funding including working capital for the highly problematic stores;
- extend any supply arrangements and/or enter into new supply arrangements with suppliers to ensure the continued uninterrupted supply and security of supply to the highly problematic stores;
- extend any lease agreements, and enter into any lease agreements that may be necessary to ensure the continued operation of the highly problematic stores;
- ensure that the highly problematic stores are managed with reasonable care and skill, in line with good business and commercial practices; and
- refrain from doing anything outside of the ordinary course of business that may alter the economic value or competitiveness of the highly problematic stores or which could alter the commercial strategy in a significantly adverse way.

The tribunal has provided for the appointment of an independent trustee to monitor Massmart's compliance with this.



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Conditions aimed at addressing public interest concerns

Employment

The tribunal ordered that there will be no retrenchments as a result of the merger "since all employees of the stores that are being disposed of by Massmart to Shoprite will be transferred to the Shoprite Group in line with the Labour Relations Act on no less favourable terms (including wages, working conditions and benefits) to those which apply pre-merger".

In addition, Shoprite Group undertakes to create additional permanent employment opportunities at its local operations.

Greater spread of ownership

The Shoprite Group is ordered to establish and implement the Shoprite Employee Share Ownership Programme within 60 days of the merger, which will hold 40 million shares in the company at no cost to employees. Employees must have been employed by the Shoprite Group for a minimum specified period to become part of the scheme. Employees that are part of any other long term incentive scheme will not be eligible to join the Shoprite Employee Share Ownership Programme.

Localisation

The Shoprite Group has implemented a policy to only import goods for resale in circumstances where the goods are not produced in South Africa or where there is a shortage of supply at competitive prices. It commits to increasing its procurement of locally produced foods and will endeavour to increase its procurement of locally manufactured general merchandise using Shoprite Group's annual procurement spend as the benchmark.

Suppliers and leases

The tribunal noted that Shoprite will maintain the supply agreements with SMMEs, suppliers owned by historically disadvantaged persons (HDPs) and current suppliers of no-name or in-store brands that currently supply the Massmart businesses being disposed of.

"The terms and conditions must be on par with those offered by Massmart and will incorporate additional benefits to SMMEs and suppliers owned by HDPs. The Shoprite Group will also waive any exclusivity provisions in leases that will transfer to it when the merger is implemented," the tribunal said.



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Retailer and supplier development

Shoprite undertakes to further invest in the development of independent retailers, spaza shops, SMME suppliers, and small farmers and caterers. It will also spend a specified minimum amount on various programmes developed jointly with the dtic.

Skills development

The Shoprite Group will enroll additional students in its SMMEs mentorship programme and the government's Yes programme which is a joint initiative by the private sector and government that aims to help the youth to gain work experience through employment placements.

The Shoprite Group will also contribute a minimum specified amount to the Shoprite Academy annually, to enhance internal training and skills development within the Shoprite Group.

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