

SOUTH AFRICA / JUDGMENT

Shoprite Checkers (Pty) Ltd v Main Street 1883 (Pty) (LM151Dec21) [2022] ZACT 13 (15 March 2022) [2022] ZACT 13

COURT

Competition Tribunal

BEFORE

Enver Daniels, Imraan Valodia, Liberty Mncube

CASE / FILE NUMBER

LM151Dec21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM151Dec21

In the large merger between:

Shoprite Checkers (Pty) Ltd (Primary Acquiring Firm)

And

Main Street 1883 (Pty) (Primary Target Firm)

Heard on: 15 March 2022

Order Issued on: 15 March 2022

REASONS

FOR DECISION

1. On 15 March 2022, the Competition Tribunal unconditionally approved the large merger between Shoprite Checkers (Pty) Ltd ("Shoprite") and Main Street 1883 (Pty) Ltd ("Main Street").
2. The proposed transaction involves Shoprite's acquisition of [...] of the issued share capital in Main Street. Post-merger, Shoprite and the RTT Group (Pty) Ltd ("RTT") will exercise joint control over Main Street.

3. The primary acquiring firm, Shoprite, is controlled by Shoprite Holdings Limited ("Shoprite Holdings"}, a public company listed on the Johannesburg Stock Exchange¹. Shoprite controls various firms, including Computicket (Pty) Ltd and Medirite (Pty) Ltd.^[2]
4. The Acquiring Group retails and distributes a wide range of fast-moving consumer goods ("FMCGs"), through its various stores and supermarkets located across South Africa.^[3] The Acquiring Group's operating divisions include Shoprite, Checkers, Checkers Hyper, Shoprite Usave, and OK Power Express, amongst others. Of relevance to the proposed merger is the Acquiring Group's Checkers division, which offers an e-commerce delivery platform, Checkers Sixty60 ("Sixty60"}, which is available across South Africa.^[4]
5. The primary target firm, Main Street is wholly owned by RTT, which is a subsidiary of RTT Holdings (Pty) Ltd ("RTT Holdings").
6. Main Street provides on-demand delivery ("ODD") services^[5] (i.e., last mile logistics services) to online shopping platforms such as the Acquiring Group's Sixty60 platform and other merchants.

Main Street only renders ODD services but does not constitute an online shopping platform.

Competition assessment

7. While assessing the merger, the Competition Commission (the "Commission") found that the proposed merger raises a vertical overlap, as the Acquiring Group operates an online shopping platform, while Main Street provides ODD services. However, such vertical overlap is pre-existing as Main Street provides the Acquiring Group with ODD services in South Africa.
8. The Commission did not take a definite view on the relevant product market. However, it assessed the effects of the proposed merger in the following markets:
 - 8.1. The upstream market for the national supply of ODD services; and
 - 8.2. The downstream market for the national procurement of ODD services.
9. In assessing input foreclosure, the Commission found that pre-merger, the Acquiring Group procured ODD services from the Target Firm [...] and this arrangement will continue post-merger. In any event, the Commission's investigation revealed that the Acquiring Group's retail grocery competitors such as Pick 'n Pay, Woolworths and Spar all either render ODD services for their online shopping platforms or outsource same from third parties as there are alternative suppliers of ODD services that are active in South Africa, such as Quench, OneCart, Orderin, Zulzi, and Carter. The Commission was of the view that the [...] contemplated

post-merger to result in foreclosure given the presence of alternatives. Additionally, the [...] proposed post-merger is likely to ensure that the Acquiring Group cannot access competitively sensitive information of competitors that may also procure ODD services from the Target Firm.

10. When assessing customer foreclosure, the Commission found that pre-merger, the Acquiring Group procures all of its ODD service requirements for its Sixty60 platform from the Target Firm. Considering the above, the Commission found that the merger is unlikely to change anything as, post-merger, the Acquiring Group will continue to predominately procure ODD services from the Target Firm.
11. No third parties raised concerns with the proposed merger.
12. On the basis of the above, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

Employment

13. Regarding employment, the merger parties have provided an unequivocal undertaking that the proposed transaction will not have a negative effect on employment and, in particular, that no employees will be retrenched because of the proposed transaction.

Spread of Ownership

14. Regarding the spread of ownership, it is noteworthy that the Acquiring Group has an historically disadvantaged person ("HOP") shareholding of 13.45% and Main Street has a HOP shareholding of 13.65%. The proposed merger will not result in the dilution of the HOP shareholding in Main Street as the Acquiring Group is acquiring joint control, which will not affect Main Street's current HOP shareholding.
15. The Commission was of the view that section 12A(3)(e) imposes an obligation on the merging parties to promote a greater spread of ownership, by increasing the levels of ownership by HDPs and workers.[....]

Conclusion

16. For the above reasons, we conclude that the merger is unlikely to result in a substantial prevention or lessening of competition or raise public interest concerns.

Signed by: Enver Daniels

Signed at: 2022-03-15 11:40:21 +02:00

Reason: Witnessing Enver Daniels

15 March 2022

Mr Enver Daniels

Professor Imraan Valodia and Professor Liberty Mncube

concurring

Tribunal Case Managers: Leila Raffee and Camilla Mathonsi

For the Merging Parties: Werner Rysbergen of DLA Piper Attorneys

on behalf of Shoprite Checkers; Burton Phillips,

Shawn van der Meulen, Tenisha Burslem-Rotheroe of Webber Wenzel on behalf of Main Street

For the Commission:

Nonhlanhla Msiza and Wiri Gumbie

- [1] The shares of Shoprite Holdings are widely held and are not controlled by any firm.
- [2] All firms directly and indirectly controlled by Shoprite Holdings are referred to as the "Acquiring Group."
- [3] FMCG products include groceries, food, household, health, beauty, lifestyle consumer products, clothing, home ware, textiles, and cellular telephone products
- [4] Sixty60 enables customers to order groceries from Checkers stores by downloading the Sixty60 application onto their smartphone.
- [5] ODD services refer to the collection of an order placed by a customer on a retailer I merchant's online shopping platform (such as the Acquiring Group's Sixty60 platform), and the delivery of the customer's order to the customer, within a short duration to time.

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