COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:30/LM/Apr11

In the matter between:

Shoprite Checkers (Pty) Ltd Acquiring Firm

And

Metcash Seven Eleven (Pty) Ltd & a Portion of the Friendly Distribution Division of Metcash Trading Africa (Pty) Ltd Target Firm

Panel	:	Yasmin Carrim (Presiding Member), Medi Mokuena (Tribunal Member)
Andreas Wessels (Tribunal Member)		
Heard on	:	01 August 2011
Order issued on	:	01 August 2011
Reasons issued on	:	26 August 2011

Reasons for Decision

Approval

1] On 01 August 2011 the Competition Tribunal ("Tribunal") conditionally approved the large merger between Shoprite Checkers (Pty) Ltd ("acquiring firm") and Metcash Seven Eleven (Pty) Ltd & a portion of the Friendly Distribution Division of Metcash Trading Africa (Pty) Ltd ("target firm"). The Tribunal's reasons for approving the transaction are set out below.

The Parties to the transaction

2] The acquiring firm is Shoprite Checkers (Pty) Ltd ("Shoprite"), a private company incorporated under the laws of the Republic of South Africa and a wholly owned subsidiary of the Johannesburg Stock Exchange ("JSE") listed public company, Shoprite Holdings Ltd.[1] Shoprite Holdings states that it is Africa's largest food retailer, it operates 1225 corporate and 280 franchise outlets in 16 countries across Africa and the Indian Ocean Islands.[2]

3] With Secondary listings in the Namibian and Zambian Stock Exchanges, Shoprite Holdings has in excess of 5000 shareholders and is not controlled by any single entity.

4] The primary target firms are Metcash Seven Eleven (Pty) Ltd ("Metcash Seven Eleven")[3] and the business of Friendly Distribution division ("Friendly Distribution") of Metcash Trading Africa (Pty) Ltd ("Metcash Trading"). Metaf Investments Holdings (Pty) Ltd is the holding company of both target firms and its major shareholders include Nedbank Limited (32.84%), Old Mutual Life Assurance Company (S.A.) Ltd (9.72%), and Investec Employee Benefits Limited (41.72%).

Description of Transaction

5] In terms of the proposed transaction, Shoprite is acquiring 100% shareholding interest in Metcash Seven Eleven and the "business" of the Friendly Distribution division of Metcash Trading.

6] Effectively, the proposed transaction will result in Shoprite having full control of the abovementioned target firms through its OK Franchise Division ("OKFD").

1 http://www.shopriteholdings.co.za/pages/1019812640/Home.asp
2 http://www.shopriteholdings.co.za/pages/1019812640/about-our-company/overview.asp
3 http://www.metcash.co.za/index.shtml

Rationale

7] Shoprite's rationale for the proposed transaction is to expand its business operations by engaging in further franchise agreements, the OKFD, and thereby increase OKFD's turnover in the supply of merchandise to its franchisees.

8] Metcash Trading is disposing of its interest in the target firms as part of its group restructuring in order to enable Metcash Trading to focus on its core business being wholesale distribution of fast moving consumer goods ("FMCG").

The activities of the parties

9] The acquiring firm is predominantly involved in the retail of a wide range of FMCG and the distribution thereof through its various stores and supermarkets.

10] The acquiring firm retails and distributes FMCG including groceries, food, household, health, beauty, lifestyle consumer products, clothing retain, home ware, textiles, and cellular telephone products.

11] The acquiring group operates through various operational divisions namely Shoprite, Checkers, Checkers Hyper, Shoprite Usave, OK Power Express, House and Home, Hungry Lion and OKFD.

12] OKFD, which is of relevance to the proposed transaction, is also divided into several operational divisions and the target firms will form part of this division of the acquiring group post merger.

13] The first target firm, Metcash Seven Eleven is not a trading entity but simply acts as the franchisor for and holds intellectual property rights in respect of Seven Eleven and Friendly Seven Eleven franchise stores.

14] The second target firm, Friendly Distribution, consists of various large distribution centres strategically located throughout South Africa to provide product support to the abovementioned stores and to Metcash Trading's other franchise stores.[4] The distribution centres hold stock to suit the requirements of the stores in the respective areas they supply and depending on the size of the store, the distribution centres provide weekly of bi-weekly deliveries.

Competition Analysis

15] The Competition Commission (the "Commission") concluded that the relevant product markets are as follows:

a. The market for convenience retail stores for FMCG;

b. The market for supermarket retail stores for FMCG;

The market for franchise opportunities in relation to convenience stores for FMCG; and
The market for franchise opportunities in relation to supermarket stores for FMCG.

16] The merging parties further submitted that there is a horizontal overlap in their activities in respect of FMCG retail franchises specifically in the submarkets for convenience and supermarket franchise stores for FMCG in that both Shoprite and Metcash Seven Eleven provide franchise opportunities in these submarkets.

17] In relation to the vertical relationship, the parties submitted that OKFD, which has a separate distribution centre to Shoprite, occasionally supplies some Seven Eleven stores when they have for some reason not been able to obtain their full stock requirements from Metcash's distribution division. In 2010 approximately 0.1% of OKFD's turnover was made up from the above purchases.

4 Friendly Supermarket, Price Club, Friendly Mega Market, Friendly Everyday and Liquor Market.

18] In its analysis, the Commission found that the market shares for the merging parties for the franchise opportunities market for FMCG are below the *de minimus* threshold and would therefore not raise any significant competition concerns.

19] With regard to the retail market for FMCG, the Commission took the view that supermarkets are constrained by other supermarkets and convenience stores are similarly also constrained by other convenience stores. Convenience stores generally cannot compete with supermarkets in terms of pricing their products; this is due to their smaller size and inability to negotiate lower prices from their suppliers.

20] Barriers to entry into both the retail and the franchising for FMCG are fairly low in that numerous franchises opportunities are available and the costs of setting up a new venture are fairly low.

21] Further, the Commission concluded that the South African retail market for FMCG is very competitive, it is highly saturated and it is further characterized by low operating profits. The above was confirmed by a representative of a competitor of the merging parties which also indicated that it had franchised 70 stores in the preceding 24 months.

22] The Commission's analysis revealed that if the merged entity were to engage in any anti competitive behaviour, it would face competition from other retailers and possible new entrants into these markets.

23] Concerns raised by third parties in with regards to this transaction seem to only be premised on the growth in size of Shoprite in relation to its competitors. The growth in size and the consequential ability to obtain discounts from its suppliers is likely to be passed on to the consumer as Shoprite will continue to face competition from the other retailers.

24] In light of the above the Commission holds the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

Public Interest

25] The Commission received complaints from ("NAFCOC") concerning the proposed transaction with regards to *inter alia* employment losses but these employment losses occurred and are expected in the Friendly Distribution Division of Metcash Trading and not in the franchise operation. The rest of NAFCOC's concerns are not merger specific and could not be dealt with by the Commission in its investigation into the proposed transaction.

26] The South African Commercial, Catering and Allied Union ("SACCAWU") raised objections to the proposed transaction due to the negative effects on employment at the Friendly Division. In the course of the Commission's investigation the Tribunal had issued an order granting SACCAWU the opportunity to file submissions with regards to their concerns. SACCAWU however made no submissions. Notwithstanding this at the hearing of the matter the merging parties undertook to find employment for all employees who faced retrenchment as a result of the transaction and agreed that this could be imposed as a condition of the transaction.

27] The proposed transaction does not raise any other significant public interest issues.

Conclusion

28] In light of the aforementioned factors and the Commission's analysis, the Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition.

29] Accordingly, the above merger is approved subject to the condition that:

Metcash shall find alternative employment for the remaining 8 employees, who have not yet been retrenched or have not been provided with alternative employment. With respect to 18 employees who have applied for retrenchments but whose applications have not yet been accepted by Metcash, Metcash shall also find them alternative employment unless Metcash accepts such applications for voluntary retrenchments.

____________________	<u>26 August 2011</u>
Y Carrim	**Date**

Medi Mokuena and A Wessels concurring.

Tribunal Researcher: Songezo Ralarala

For the merging parties: Paul Coetser and Louella Tindale of Werksmans Attorneys.

For the Commission: Werner Rysbergen