

**NOTICE 295 OF 2013****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****CLIVE THEODORE MENNE****AND****MATAT WHOLESALERS (PTY) LTD AND MATAT LIQUORS (PTY) LTD****CASE NUMBER: 2012OCT0586**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary firm is Mr Clive Theodore Menne ("Menne"), the current store manager of the target stores being Matat Wholesalers (Pty) Ltd and Matat Liquors (Pty) Ltd. Menne is an individual and does not directly or indirectly provide any products or services.

The primary target firms are Matat Wholesalers (Pty) Ltd ("Matat Wholesalers") and Matat Liquors (Pty) Ltd ("Matat Liquors") which form part of the Rhino Group, collectively referred to as the "divested stores". Matat Wholesalers is a full-line wholesale store situated in Matatiele in the Eastern Cape. Matat Wholesalers' customers are independent retailers and general dealers that sell to end consumers. Matat Wholesalers is predominantly a wholesaler of groceries and store manager estimates that incidental retail sales constitute less than a specific percentage of total sales. Rhino Liquors Matatiele is involved in the wholesale and retail sale of liquor products in Matatiele and surrounding areas. It offers a full range of liquor products including beer, wine and spirits.

In terms of the Sale of Shares and Loan Account Agreement, Menne will acquire shares in the target stores. On completion of the proposed transaction, Menne will have sole control over the target firms.

The Commission finds that there is no overlap in the activities of the merging firms. In addition, the proposed merger does not raise any public interest concerns. However, due to the relationship that will exist between the merging parties post-merger, the Commission is concerned that the proposed transaction might lead to:

1. The possibility of information sharing and collusion through access to the buying channels and back office support function provided by the Rhino Head Office to Menne; and
2. The independence of Menne being affected by the guarantee provided by Massmart
3. To address these potential competition concerns regarding information sharing and the independence of Menne, the Commission engaged with the merging parties and the parties have agreed to the following conditions:

**1. Definitions**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. "Access to Favourable Trading Terms" means the undertaking by Massmart, in terms of the Obligations and Services Agreement, to procure that the Divested Store is able to purchase the stock it requires at the same prices at which Rhino is able to purchase stock, including the same promotional prices and subject to the same discounts and rebates as those which are granted to Rhino (as set out in clause 4.1 of the Obligations and Services Agreement);
- 1.2. "Annexure A" means the services set out in Annexure A of the Obligations and Services Agreement;
- 1.3. "Annexure B" means that services set out in Annexure B of the Obligations and Services Agreement.

- 1.4. "Approval Date" means the date referred to in the Competition Commission's merger clearance certificate (Form CC 15) in respect of the merger between the Purchaser and the Divested Store (case number: 2012OCT0586);
- 1.5. "Commission" means the Competition Commission of South Africa;
- 1.6. "Conditions" means these conditions;
- 1.7. "Divested Store" means Matat Wholesalers (Pty) Ltd and Matat Liquors (Pty) Ltd;
- 1.8. "Implementation Date" means the first day of the month following the month in which the Divested Store is transferred to the Purchaser;
- 1.9. "Massmart" means Massmart Holdings Ltd or any of its subsidiaries;
- 1.10. "Obligations and Services Agreement" means the agreement between Massmart and the Divested Store in respect of the services to be provided by Massmart to the Divested Store in terms of clause 4 of this agreement;
- 1.11. "Purchaser" means Clive Theodore Menne or any company or trust managed and/or controlled by him;
- 1.12. "Rhino" means numerous Massmart subsidiary companies trading as Rhino Cash & Carry and Rhino Liquors;
- 1.13. "Sale Agreement" means the sale of shares and loan account agreement between the Seller, the Purchaser and the Divested Store;
- 1.14. "Seller" means the Embabe Trust; and
- 1.15. "Tribunal" means the Competition Tribunal of South Africa.

## **2. Recordal**

In order to maintain the competitive independence of the divested store and to prevent the flow of competitively sensitive information which might facilitate coordination, the Commission imposes the following conditions:

### 3. Conditions to the approval of the merger

- 3.1. Massmart shall ensure that the back office services provided to the Divested Store as set out in Annexure A will be limited to a maximum period of **[CONFIDENTIAL]** from the Implementation Date.
- 3.2. Massmart will provide the Divested Store with Access to Favourable Trading Terms, for a period of **[CONFIDENTIAL]** from the Implementation Date which **[CONFIDENTIAL]** period may be extended at the election of the Purchaser for a further period which may not exceed **[CONFIDENTIAL]** from the expiry of the **[CONFIDENTIAL]** period on the terms set out in Annexure B of the Obligations and Services Agreement.
- 3.3. Massmart and the Divested Store shall ensure that no competitively sensitive information will be shared with the Massmart group which would enable the parties to collude in the relevant market for the duration of the period during which the back office services (referred to in clause 3.1), or the Access to Favourable Trading Terms (referred to in clause 3.2) are provided. Competitively sensitive information shall include, but is not limited to:
  - 3.3.1. Any pricing information including selling or promotional price of specific products;
  - 3.3.2. Customers details including sales volumes, and any discounts, or rebates provided to customers for specific products;
  - 3.3.3. Any planned price increases, price reductions or promotional sales for specific products;
  - 3.3.4. Margin information by product line;
  - 3.3.5. Financial data including sales value, sales volume, per product or line item.
  - 3.3.6. Promotional, advertising, and marketing strategies;
  - 3.3.7. Budget and business plans; and
  - 3.3.8. Store specific deals from local suppliers.

3.4. The Purchaser may at any time during the [CONFIDENTIAL], terminate the Obligations and Services Agreement.

4. It is recorded that in order to secure funding for the transaction, Massmart may be required to act as guarantor to the bank for the funding of the deal. In the event of default by the Purchaser such that Massmart is required to pay such guarantee to the bank, Massmart undertakes that, notwithstanding any obligations that may thereby arise between Massmart and the Purchaser, it shall not seek to take over the Divested Store or otherwise acquire or exercise any control, whether direct or indirect, over the business of the Divested Store.

4.1. The Purchaser shall submit to the Commission a copy of the final signed loan agreement entered into with the bank within 30 days of finalising such agreement.

4.2. Massmart shall provide a final signed copy of any agreement reached with the bank in respect of its role as guarantor for the funding of the deal within 30 days of concluding such agreement.

4.3. Massmart shall provide a signed final copy of any agreement reached with the purchaser with respect to the funding of the deal and its role as guarantor, to the Commission within 30 days of concluding such an agreement.

## 5. Monitoring of compliance with the Conditions

5.1. A senior executive of Massmart shall submit an affidavit on an annual basis confirming its compliance with the above merger conditions for a period of [CONFIDENTIAL].

5.1.1. The first affidavit will be submitted within 1 month of the Implementation Date and must confirm the parties' implementation of and compliance with the conditions.

5.1.2. All affidavits thereafter will be provided on the anniversary of the Implementation Date.

5.2. Should the Purchaser elect to extend the assistance envisaged in clause 3.2 for a further [CONFIDENTIAL], Massmart shall inform the Commission in writing and submit a

signed copy of any renewed agreement within 1 month of such renewal.

5.2.1. Massmart's reporting obligations as specified in terms of clause 4.1 above shall continue until the expiry of the further **[CONFIDENTIAL]**.

5.3. Should the Purchaser elect to terminate the Obligations and Services Agreement, it shall notify the Commission in writing of such termination.

All documents or correspondences in relation to these conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za)

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

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