

Also at Cape Town

Louise du Plessis  
Head of the Inquiry Technical Team  
Market Inquiry into the Grocery Retail Sector

Our Reference  
Account Number  
Your Reference  
Direct Line  
Direct Telefax  
Direct Email  
Date

C Charter / N Loopoo  
21962578  
Market Inquiry - Grocery Retail Sector  
+27 11 562 1053  
+27 11 562 1653  
[chris.charter@cdhlegal.com](mailto:chris.charter@cdhlegal.com)  
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**Attention:** Louise du Plessis  
By Email: [retail@compcom.co.za](mailto:retail@compcom.co.za)

Dear Sirs

**SUBMISSIONS TO THE GROCERY RETAIL SECTOR MARKET INQUIRY BY MASSMART HOLDINGS LIMITED**

- 1 As you are aware, we act for Massmart Holdings Limited ("**Massmart**").
- 2 In terms of the administrative timelines published by the Grocery Retail Sector Market Inquiry ("**RMI**"), we take note that the anticipated date for the RMI to receive responses from affected stakeholders to the non-confidential submissions was 13 October 2016. We thank the RMI for granting our client additional time to prepare a response.
- 3 Please see the attached "Annexe A".
- 4 Massmart is available to supplement these submissions through *inter alia* questionnaires, information requests and targeted meetings with the RMI and presentations at the public hearings if the need arises.

Yours faithfully



**CHRIS CHARTER**  
**CLIFFE DEKKER HOFMEYR INC**

**CHAIRMAN** AW Pretorius **CHIEF EXECUTIVE OFFICER** B Williams **CHIEF FINANCIAL OFFICER** ES Burger

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**EXECUTIVE CONSULTANTS:** M Chenia HS Coetzee PJ Conradie HC Dagut NW Muller AM Potgieter

**CONSULTANTS:** A Abercrombie JMA Evenhuis\* Prof A Govindjee EJ Kingdon FF Kolbe

**SENIOR ASSOCIATES:** F Ameer-Mia B Batista A Bezuidenhout AS Bezuidenhout B Brown L Brunton K Caddy L Chance NS Comte N Du Sart T Erasmus TV Erasmus KJ Keanly JA Krige HJ Louw NS Mbambisa NL Meyer N Mia T Moodley V Moodley MB Mpahlwa AP Pillay Y Raffie BJ Scriba M Somrey KS Spies FJ Terblanche T Tosen M Treurnicht R Valayathum C Van der Berg NI Zwane

**CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS:** ES Burger JA Cassette TR Cohen AB Hoek MW Lington B Williams

\*British <sup>§</sup>Dutch <sup>§</sup>Cape Town Managing Partner

**MASSMART HOLDINGS LIMITED**

**Response to Non-Confidential Submissions**

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Massmart's comments are limited to the non-confidential submissions made by Pick 'n Pay Retailers Proprietary Limited ("PnP") on 31 August 2016. Having regard to PnP's statements and observations on the impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy as well as on market definition, Massmart wishes to bring certain of its own observations to the attention of the RMI.

## 1 IMPACT ON SMALL AND INDEPENDENT RETAILERS

1.1 Throughout its non-confidential submissions, PnP makes the following statements and observations on the impact of the expansion, diversification and consolidation of national supermarket chains on small and independent retailers in townships, peri-urban areas and rural areas and the informal economy:

1.1.1 *In relation to the issue of exclusive leases, it is clear that exclusive lease arrangements do not affect small, informal businesses such as spaza shops, which have not traditionally entered into lease arrangements in shopping centres. Insofar as other small, formal businesses are concerned, Pick n Pay has in a number of cases agreed to relax exclusivity arrangements or not enforce them in the limited instances where landlords have approached Pick n Pay to facilitate the entry of small businesses into shopping centres. (Our emphasis). In respect of large retail grocers, the evidence attached to this submission will demonstrate that there is a wide variety of shopping centres in close proximity to every shopping centre in which Pick n Pay has outlets and that, accordingly, exclusive lease arrangements have not negatively diminished the extent of competition between the large retail grocery chains. In addition, because Pick n Pay sets its prices on a national basis, there is no reason to believe that exclusive lease arrangements have any impact on the manner in which Pick n Pay supermarkets set their prices in particular stores.(Our emphasis) [Executive Summary]*

1.1.2 *Furthermore, there is a suggestion in paragraph 72 of the statement of issues that exclusivity clauses in lease agreements “tend to most significantly affect small and independent retailers who may not be in a position to attract customers if located outside the shopping centre”. **In many instances where Pick n Pay has exclusive lease arrangements, and landlords have requested access for small and independent retailers to particular shopping malls, Pick n Pay has generally consented thereto.** (Our emphasis). Indeed, it is not Pick n Pay’s experience that small and independent retailers have been disproportionately affected by exclusive lease arrangements and that, in fact, the primary rationale for such lease arrangements was to ensure that other large retail grocers did not “free ride” on the goodwill which Pick n Pay had established in particular shopping centres and thereby seek to undermine the profitability of particular Pick n Pay stores in those centres. [Page 42 at Paragraph 105.3]*

1.2 It is noted that PnP has not cited any specific examples of where, when and to what extent it has consented to access for small and independent retailers. We respectfully submit that the RMI should more carefully interrogate the circumstances under which PnP has relaxed its exclusivity, including:

1.2.1 How does PnP classify a small and independent retailer? What types of retailers are usually favoured in this way?

1.2.2 What factors do PnP take into account when it agrees to relax its exclusivity clauses in favour of small independent retailers?

1.3 It has been Massmart’s experience that PnP has not been willing to relax exclusivity (on the contrary, it has actively sought legally to enforce exclusivities) wherever there is likely to be a material level of constraint posed by the entrant concerned (which PnP describes as “undermining its profitability”). Moreover, it should not be seen as a virtue for PnP to allow (for instance) a specialist bakery, butchery or delicatessen to enter a market, as such stores do not operate as a constraint on a full-line grocery store (or what PnP describes as a “formal supermarket format”).

- 1.4 PnP's submission suggests that local pricing by national retailers is not constrained at a local level. Should that be true, it stands to reason that the prospect of increased competition at a national level should be fostered. In this regard, Massmart's current complaint referral *inter alios* against PnP alleges that the enforcement of lease exclusivities against Game has the effect of retarding Game's (and ultimately Massmart's) ability to leverage its national footprint of stores in order to develop a fresh strategy to become a more credible national grocery retailer. The complaint documents are a matter of public record and can be made available to the RMI.
- 1.5 In regard to PnP's assertion that relaxing exclusivities would amount to a "free ride" for competitors, Massmart submits (without conceding that the notion is valid justification) that any such apprehension cannot remain a justification for leases of many years standing and in certain cases *de facto* indefinite duration, and that it would not apply to those more recent lease agreements where other possible anchor tenants (including all of those mentioned by PnP in its submission) would have been happy to accept a lease without similar restraints.
- 1.6 In any event, there is an obvious tension between PnP's argument on the one hand that "*exclusive lease arrangements have not negatively diminished the extent of competition between the large retail grocery chains*" and its claim that exclusivities are required to combat "free riding" by these rivals that would "undermine the profitability" of PnP's stores.
- 1.7 The suggestion that other shopping malls might exist in an area is to miss the point that Game is a potential competitor already located in the same mall and providing a key offering to the mall in question and consumers that frequent it. It makes neither economic nor competitive sense for Game to relocate.

## 2 MARKET DEFINITION

- 2.1 PnP makes the following statements and observations on the section dealing with market definition:

2.1.1 *The retail grocery industry in South Africa comprises what can, broadly speaking, be classified as the so-called “formal” and “informal” trade. The so-called “formal trade” comprises large-scale supermarket chains such as Shoprite Checkers, Pick n Pay, Spar, Woolworths, Food Lovers Market, Choppies, etc. Other large-scale grocery retailers include the likes of Makro and Game FoodCo which fall within the Walmart/Massmart stable. There are also convenience-oriented formats such as those found in fuel refilling stations (sometimes referred to as ‘petrol forecourt food marts’) as well as chains such as OK MiniMark and Friendly stores (sometimes referred to as ‘superettes’). The revenues of convenience formats, such as PFMs and superettes, are typically skewed towards food, beverages and tobacco, whereas the revenues of larger, formal formats like supermarkets are more balanced across food and beverages, on the one hand, and non-food household items (such as toiletries, detergents, household appliances, and so on) on the other. [Page 6 at Paragraph 5]*

2.1.2 *Third, from a competition law perspective the appropriate manner in which exclusivity arrangements should be assessed is to determine the appropriate parameters of the relevant geographic market in which a particular Pick n Pay store is situated and then determine whether any exclusivity arrangements in respect of the store in question, substantially lessen competition within the confines of that particular geographic market. There is no suggestion in any of the decisions handed down by the Competition Tribunal in South Africa or for that matter in any of the international competition inquiries which have considered the issue of exclusive leases, that a single shopping centre could be considered a relevant geographic market in its own right. In other words, in order to assess whether exclusive lease arrangements substantially reduce competition between retail grocers, a competition inquiry needs to determine the relevant parameters of the applicable geographic market in each particular case. Based on previous precedent of the Competition Tribunal, relevant geographic markets of this kind would typically be at least within a 2-5km radius and, in certain cases, would be even wider and potentially encompass anywhere from between 10-30km.*

*Accordingly, it would have to be demonstrated that within local geographic markets of this kind, exclusivity arrangements in individual shopping centres somehow materially reduce competition. Pick n Pay will demonstrate by means of a detailed geo-mapping exercise that in fact there are multiple competitors within these local markets and that there is no material reduction in competition (whether in relation to large or small retail groceries) within these areas as a consequence of any of the exclusivity arrangements which Pick n Pay currently has in place. In this regard, the GRSMI is referred to the various maps which have been provided together with this submission, which illustrate the significant extent of supermarket competition in each local area where Pick n Pay has its stores. Moreover, Pick n Pay has also prepared a pivot table (attached marked **Appendix B**) which demonstrates the number of competitors in relation to each Pick n Pay store across the country. This table clearly indicates that in each locality in which Pick n Pay operates a store, there are numerous competitors, which pose a competitive constraint. This belies any suggestion that exclusivity arrangements materially diminish competition in any particular area across the country.*

*[Page 43 at Paragraph 105.6]*

2.2 PnP has not conceded to make its maps available for comment by stakeholders. But in any event, PnP employs a rather traditional approach to defining the relevant product and geographic market based merely on a local geographic radius. In context, this does not provide a true reflection of the competitive dynamics at play in the grocery retail sector, including ignoring those that predominate at a national level. Moreover, specific locations matter a great deal (not mere proximity) given parochial conditions in a given catchment area of a shopping mall. It is also important to note that "mall trading" is quite a distinct trading environment and shopping offering to that of stand-alone stores.

2.3 Massmart (and no doubt incumbent national supermarkets also) perceives numerous advantages in being present in a shopping mall, which is an advantage that PnP and others seeking to rely on exclusivity seek to



preserve for themselves. Relying on a strictly local market definition also ignores the important national dimension to competition that PnP itself has mentioned and ignores the supply chain investment and development that is required to create and maintain it.

### 3 OTHER GENERAL REMARKS

3.1.1 *Since the conclusion of the previous Supermarkets Inquiry in 2014, the retail grocery industry has witnessed additional new entry or expansion, particularly into the segment in which Pick n Pay operates. Competition has intensified even further than was the case at the time of the previous Inquiry. In addition to the large retail grocers (Shoprite, Pick n Pay, Spar and Woolworths), there are a number of other competitors, which have relatively recently introduced new formats into the industry. These include the likes of Fruit & Veg City (including Food Lovers Market), Massmart's Game FoodCo and Cambridge stores, and Choppies, as well as independent supermarket chains, such as the Save group, which tend to be regionally-focused. It should be noted that Massmart's Game FoodCo offering is owned by the biggest retailer in the world, Walmart, which has indicated that it intends expanding its grocery retail offerings considerably in South Africa. In addition to the various retail grocery competitors, there are also a host of grocery wholesalers and cash and carry stores, as well as hybrid wholesaler-retailers such as Makro, which also pose a competitive constraint to the major supermarket chains, given the fact that they also carry a wide range of grocery products, which they sell at competitive prices. [Page 11 at Paragraph 20]*

3.2 Although PnP asserts that Makro and Game (note that Game is no longer making use of the Foodco sub-brand) should be considered "large scale grocery retailers" the truth is that Massmart has been unable to realise its aim (and the expectations of many) of expanding rapidly into the market as it remains constrained by a lack of available suitable trading locations, while a number of locations that it could use to trade in fresh groceries are subject to exclusivities. As Massmart's submission to the RMI in relation to its supplier development fund indicates, its attempt to replicate Walmart's farm

supply model has faltered due to a lack of a sufficient retail footprint to serve as outlets for the supply chain.

- 3.3 Although Massmart remains ambitious in regard to competing more fully with PnP and other large national chains, lease exclusivities continue to raise barriers to realising this ambition, as Massmart is forced to adjust its strategy to take these artificial barriers into account, rather than responding to competitive market forces.