



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM105Aug15/ OTH225Jan16

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

**Applicant**

And

RTT GROUP (PTY) LTD

**Respondent**

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Panel : M Mokuena (Presiding Member)  
F Tregenna (Tribunal Member)  
A Ndoni (Tribunal Member)

Heard on : 27 June 2018

Decided on : 29 June 2018

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### SETTLEMENT AGREEMENT

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The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and RTT Group (Pty) Ltd annexed hereto marked "A".

  
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Presiding Member  
Mrs M Mokuena

29 June 2018  
Date

Concurring: Prof. F Tregenna and Ms A Ndoni

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA  
(HELD IN PRETORIA)**

**CT Case No: LM105Aug15**

**CC Case No: 2015Jul0371**


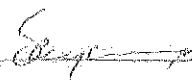
In the matter between

**THE COMPETITION COMMISSION**

**Applicant**

and

**RTT GROUP (PTY) LTD**

 competition tribunal south africa	
2018 -04- 25	
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**Respondent**

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**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND  
THE RTT GROUP (PTY) LTD FOR AN ALLEGED BREACH OF THE MERGER  
CONDITIONS IN THE MERGER BETWEEN THE RTT GROUP (PTY) LTD AND  
COURIERIT SA (PTY) LTD AND WAREHOUSEIT (PTY) LTD**

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The Competition Commission and the RTT Group (Pty) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Competition Tribunal in terms of sections 58(1)(a)(iii) and 59(1)(d)(iii) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, on the terms set out below.

## DEFINITIONS

1. For the purposes of this Agreement the following definitions shall apply:

1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;

1.2 "Affected Employees" means the 568 employees of *Courierit* and *Warehouseit*, 129 owner-driver contractors and 30 casuals.

1.3 "Agreement" means this agreement duly signed and concluded by the *Commission* and RTT;

1.4 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the *Act*, with its principal place of business at 1<sup>st</sup> Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.5 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the *Act*;

1.6 "Conditions" means the *conditions* to the approval of the merger attached as annexure "A" of the order of the *Tribunal* dated 23 September 2015 under case number: LM105Aug15;

1.7 "Courierit" means Courierit SA (Pty) Ltd;



1.8 "Merging parties" means the RTT, Warehouseit and Courierit.

1.9 "Penalty application" means the application by the *Commission* seeking an administrative penalty from the *merging parties* for the non-compliance with certain of the merger *conditions* in terms of section 59(1)(d)(iii);

1.10 "RTT" means RTT Group (Pty) Ltd

1.11 "Second monitoring condition" means the monitoring of the condition to inform the affected employees of the two year moratorium of merger-related retrenchments within five business days of the date on which the merger was approved by the Tribunal; ;

1.12 "Third monitoring condition" means the monitoring of the condition preserving the sub-contracts;

1.13 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the *Act*, with its principal place of business at Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

1.14 "Warehouseit" means Warehouseit (Pty) Ltd.

## BACKGROUND

2. On 4 August 2015 the *Commission* received notice of a large merger whereby RTT intended to acquire the majority of the shares in *Warehouseit* and *Courierit*.



The *merging parties* operate in the broader logistics industry and provide courier and warehousing services.

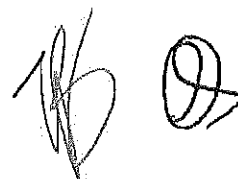
3. The *Commission's* investigation of the merger found that there were public interest concerns arising from the merger, particularly relating to employment. The concern entails the risk of *Courierit's* sub-contractors losing their subcontracts post-merger as a result of RTT's ability and intention to self-provide the services offered by *Courierit's* sub-contractors pre-merger.
4. In order to address the identified public interest concern, the *Commission* recommended to the *Tribunal* that the merger be approved subject to certain *conditions* aimed at *inter alia* addressing the public interest concern.
5. On 23 September 2015, after hearing submissions from the *Commission* and the *merging parties* the *Tribunal* issued an order and merger clearance certificate approving the merger subject to compliance with certain *conditions*, attached hereto as Annexure "A".

#### **The penalty application**

6. The merger *conditions* contained *inter alia* a mechanism for monitoring compliance. In the process of monitoring the compliance with the merger *conditions*, the *Commission* determined that the *merging parties* are in breach of the monitoring *conditions*. In particular the *Commission* determined that the *merging parties* are in breach of:



- 6.1 Paragraph 3.2.1 of the *conditions*, which requires the *merging parties* to notify *affected employees* of the prohibition of merger-related retrenchments for two years;
- 6.2 Paragraph 3.2.2 of the *conditions*, which obliges the *merging parties* to inform the *Commission* of the compliance with the obligation contained in paragraph 3.2.1;
- 6.3 Paragraph 3.3.1 of the *conditions*, which requires the *merging parties* to circulate a copy of the *conditions* to *Courierit's* sub-contractors; and
- 6.4 Paragraph 3.3.2 of the *conditions*, which requires the *merging parties* to notify the *Commission* of their compliance with the condition contained in paragraph 3.3.1.
7. The *second monitoring condition* was breached in that the *merging parties* failed to notify the *affected employees* of the prohibition of the merger-related retrenchments within five business days of the date on which the merger was approved (23 September 2015). The *merging parties* were required to notify the said employees by 1 October 2015.
8. The *merging parties* failed to provide an affidavit to the *Commission* which confirms the notification to *affected employees* regarding the moratorium on

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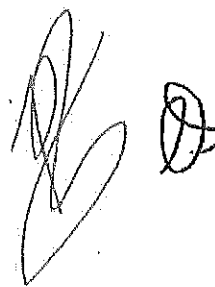
merger related retrenchments within ten days of the date on which the merger was approved. This obligation fell due by 8 October 2015.

9. The *third monitoring condition* was breached in that the *merging parties* failed to notify *Courierit's* subcontractors of the *merger conditions* within five business days of the date on which the merger was approved. The *merging parties* were required to notify *Courierit's* sub-contractors by 1 October 2015.

10. The *merging parties* failed to provide an affidavit to the *Commission* which confirms the distribution of the *merger conditions* to *Courierit's* sub-contractors within ten days of the date on which the merger was approved. This obligation fell due on 8 October 2015.

11. The *Commission* issued a notice of apparent breach against the *merging parties* on 15 October 2015. In terms of this notice, the *merging parties* were required to reply within ten business days of receipt thereof. Under rule 39(2), the *merging parties* were required to either submit to the *Commission* a plan to remedy the breach or request the *Tribunal* to review the notice on the grounds that there was substantial compliance with the *merger conditions*. The *merging parties* failed to submit a remedial plan or request a review of the notice in terms of rule 39(2).

12. The *merging parties* only complied with the *monitoring conditions* on 12 February 2016.

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13. On 27 January 2016 the *Commission* filed an application seeking an administrative penalty in terms of section 59(1)(iii) from the *merging parties* for the non-compliance with the above merger *conditions*, whilst the variation application was pending before the Tribunal. The variation application was filed by the merging parties on 13 October 2015.

#### Admission

14. The *merging parties* admit that they breached the monitoring *conditions* by failing to comply with Rule 39(5)(a), in particular:

14.1 Paragraph 3.2.1 of the *conditions*, which requires the *merging parties* to notify *affected employees* of the prohibition of merger-related retrenchments for two years;

14.2 Paragraph 3.2.2 of the *conditions*, which obliges the *merging parties* to inform the *Commission* of the compliance with the obligation contained in paragraph 3.2.1;

14.3 Paragraph 3.3.1 of the *conditions*, which requires the *merging parties* to circulate a copy of the *conditions* to *Courierit's* sub-contractors; and

14.4 Paragraph 3.3.2 of the *conditions*, which requires the *merging parties* to notify the *Commission* of their compliance with the condition contained in paragraph 3.3.1.

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### **Administrative penalty**

15. Having regard to the provisions of Rule 39(5) and sections 58(1)(a)(iii) as read with sections 59(1)(d)(iii), 59(2) and 59(3) of the *Act*, the *merging parties* accepts that it is liable to pay an administrative penalty.
16. The *merging parties* undertake to pay an administrative penalty in the amount of R75 000.00 (Seventy Five Thousand Rand) within 30 (thirty) days from the confirmation of this *agreement* by the *Tribunal*.
17. The penalty must be paid into the Commission's bank account which is as follows:

NAME: THE COMPETITION COMMISSION

BANK: ABSA BANK BUSINESS BANK

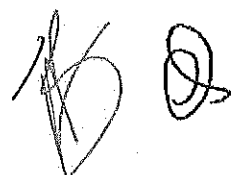
ACCOUNT NUMBER: 40-8764-1778

BRANCH CODE: 632005

PAYMENT REF: 2015Jul0371RTT

### **Full and Final Settlement**

18. This agreement, upon confirmation as an order by the *Tribunal*, is entered into in full and final settlement and concludes all proceedings between the *Commission* and the *merging parties* relating to any alleged breach of the merger *conditions*



that is the subject of the *Commission's* investigation under case number  
2015Jul0371 referred to the *Tribunal* under case number LM105Aug15.

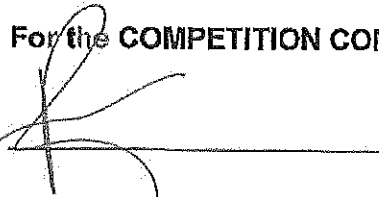
**For the merging parties:**



Dennis Seaton

Dated and signed at Johannesburg on this 19 day of April 2018

**For the COMPETITION COMMISSION**



Tembinkosi Bonakele

Competition Commissioner

Dated and signed at PRETORIA on this 24<sup>th</sup> day of APRIL 2018