



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM105Aug15/ AME161Oct15

In the matter between:

RTT GROUP (PTY) LTD

Applicant

And

COMPETITION COMMISSION OF SOUTH AFRICA

Respondent

In re: the large merger between:

RTT GROUP (PTY) LTD

Acquiring Firm

And

WAREHOUSEIT PROPRIETARY LIMITED

Target Firm

And

COURIER IT SA PROPRIETARY LIMITED

Target Firm

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

Heard on : 27 June 2018

Decided on : 29 June 2018

ORDER

HAVING READ the documents filed of record, I hereby make the following order:

1. That paragraph 2.3 of the merger conditions dated 23 September 2015 be deleted and replaced with the following as per the attached Annexure A:

"The *Merging Parties* undertake that, for a period of five (5) years from the Approval Date, *Courierit* shall continue to use the services of a Sub-contractor on the Affected Routes and on the same basis that prevailed before the merger, provided that this condition will not preclude *Courierit* from using the services of historically disadvantaged persons, as referred to in section 3(2) of the Competition Act 89 of 1998 (as amended), in areas where such businesses are present."

2. The term "sub-contractor" to be defined as "any of the persons set out in annexure B".
3. That "Affected Routes" be defined as "all the routes where Sub-contractors provide services to *Courierit* as at the Approval Date".


Presiding Member
Mrs M Mokuena

29 June 2018
Date

Concurring: Prof. F Tregenna and Ms A Ndoni

Annexure A

RTT Group (Pty) Ltd

and

Warehouseit (Pty) Ltd and Courierit SA (Pty) Ltd

CC Case Number: 2015Jul0371

CT Case Number: LM105Aug15

Conditions

1. DEFINITIONS

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

- 1.1 **"Acquiring Firm"** means RTT Group (Pty) Ltd (**"RTT"**);
- 1.2 **"Affected Employees"** mean the five hundred and sixty eight (568) employees of Courierit and Warehouseit, hundred and twenty nine (129) owner-driver contractors and thirty (30) casuals;
- 1.3 **"Approval Date"** means the date referred to in the Competition Tribunal's clearance certificate (Form CT 10);
- 1.4 **"Business Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.5 **"Commission"** means the Competition Commission of South Africa;
- 1.6 **"Competitively Sensitive Non-Public Information"** includes but is not limited to pricing information, rebates, discounts provided to customers, any planned price increase or price reduction, information on tendering, margin information, customer-specific information (including but not limited to sales volumes and sales value, service level agreements), investment strategies, advertising, marketing, promotional strategies, business plans and expansion plans.
- 1.7 **"Conditions"** mean these conditions;
- 1.8 **"Courierit"** means Courierit SA (Pty) Ltd;
- 1.9 **"GEPF"** means the Government Employee Pension Fund;

- 1.10 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.12 **"Merging Parties"** means RTT and Courierit and Warehouseit;
- 1.13 **"Non-Controlling Portfolio Companies"** means Barloworld Limited, Eqstra Limited, Imperial Holdings Limited, Grindrod Limited, Super Group Ltd and Trencor Limited;
- 1.14 **"PIC"** means Public Investment Corporation Limited;
- 1.15 **"Merger"** means the acquisition of majority interest by RTT over Courierit and Warehouseit;
- 1.16 **"Target Firms"** means Courierit and Warehouseit;
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa.

1. RECORDAL

- 1.1. The Commission's investigation of the proposed merger found that there are competition concerns arising from the merger relating to the sharing of Competitively Sensitive Non-Public Information. GEPP, represented by PIC has non-controlling interests in Non-Controlling Portfolio Companies which operate in the broader logistics industry and are competitors of the Target Firms in this market. Although the interests are non-controlling, the Commission has established that the GEPP/PIC has the right to appoint directors to the board of each Non-Controlling Portfolio Company. Moreover, this Merger will enable GEPP/PIC to appoint directors to the boards of the Target Firms. Therefore post-merger this structure of cross directorships raises the likelihood for the sharing of Competitively Sensitive Non-Public Information. In addition, the proposed merger raises public interest concerns, particularly relating to employment.
- 1.2. Furthermore, Courierit is currently using sub-contractors to distribute parcels on its behalf. RTT has vehicles running in the same routes. Post-merger, it is the intention of the acquiring firm to conduct Courierit's inter-branch transfers and distribution. This will result in the existing Sub-Contractors or third party service providers currently distributing parcels on behalf of Courierit losing the

Courierit business. This is likely to result in significant public interest concerns, in particular job losses. In order to address these concerns, the Commission and the merging parties have agreed on a set of remedies which seek to address these concerns.

- 1.3. In light of the above concerns, the Commission recommends that this Merger be approved subject to the Conditions as set out below.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1. INFORMATION SHARING

- 2.1.1. No board member appointed to the board of directors of the Target Firms by the PIC shall be appointed to serve as a member of the board of directors of any of the Non-Controlling Portfolio Companies.
- 2.1.2. The board member appointed by the PIC to the board of directors of the Target Firms may not have held such a position in the Non-Controlling Portfolio Companies for a period of one year following that board member having ceased to be a board member appointed by the PIC to the board of directors in the Non-Controlling Portfolio Companies.
- 2.1.3. The PIC shall ensure that its investment in the Target Firms is housed in a different division/department to its investments in the Non-Controlling Portfolio Companies, with adequate security and confidentiality safeguards preventing the sharing of Competitively Sensitive Non-Public Information.
- 2.1.4. To the extent that a board member appointed by the PIC to the board of directors of the Target Firms may have access to Competitively Sensitive Non-Public Information pertaining to the Target Firms, the PIC and that board member shall ensure that such Competitively Sensitive Non-Public Information is only reported to the respective investment committee of the PIC in closed door sessions and that such information is aggregated.

2.1.5. The board member appointed by the PIC to the board of directors of the Target Firms shall sign a confidentiality undertaking confirming that he/she will protect the Competitively Sensitive Non-Public Information of the Target Firms. The PIC shall submit a copy of the confidentiality undertaking to the Commission.

2.1.6. The PIC shall notify the Commission of any change in the identity of the board member appointed by the PIC to the board of directors of the Target Firms and shall confirm that such board member has signed the confidentiality undertaking in line with paragraph 2.1.5 above. The PIC shall submit a copy of the confidentiality undertaking to the Commission.

2.2. EMPLOYMENT

2.2.1. The Merging Parties shall not retrench any of the Affected Employees, as a result of the Merger for a period of two years from the Implementation Date. Retrenchments do not include –

2.2.1.1. Voluntary separations;

2.2.1.2. Voluntary early retirement packages;

2.2.1.3. Resignation or retirements in the normal cause;

2.2.1.4. Unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; and

2.2.1.5. Any employee who ceases to be employed by the merging parties in the normal and ordinary course of business including termination owing to the expiry of a temporary and/ or fixed term contract.

2.3. CONDITION RELATING TO THE SUB-CONTRACTORS

2.3.1 "The Merging Parties undertake that, for a period of five (5) years from the Approval Date, Courierit shall continue to use the services of a Sub-contractor on the Affected Routes and on the same basis that prevailed

before the merger, provided that this condition will not preclude Courierit from using the services of historically disadvantaged persons, as referred to in section 3(2) of the Competition Act 89 of 1998 (as amended), in areas where such businesses are present.”

2.3.2 The term “sub-contractor” to be defined as “any of the persons set out in annexure B”.

2.3.3 That “Affected Routes” be defined as “all the routes where Sub-contractors provide services to Courierit as at the Approval Date”.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1. In relation to paragraph 2.1 above:

3.1.1. The Merging Parties shall inform the Commission of the Implementation Date within 5 business days of it becoming effective.

3.1.2. The PIC shall implement the conditions in paragraph 2.1 above within 10 business days of the Implementation Date and shall submit the confidentiality undertakings referred to in paragraphs 2.1.5 and 2.1.6 above to the Commission within fifteen (15) business days of the Implementation Date.

3.1.3. Should the PIC dispose of its interests in the Target Firms, the PIC shall inform the Commission of the disposal within 30 business days of concluding the final sale agreement in regard thereto, notwithstanding whether or not the transaction meets the requisite merger thresholds for notification and shall submit a signed copy of such final sale agreement to the Commission as proof thereof.

3.2. In terms of paragraph 2.2 above,

- 3.2.1. The Merging Parties shall inform the Affected Employees of the Conditions in paragraph 2.2 above within five (5) business days of the Approval Date
- 3.2.2. The Merging Parties, through a senior official must provide an affidavit attesting to the notification referred to in paragraph 2.3.2.1 above, and provide a copy of the said notice to the Commission within 10 (ten) business days of the Approval Date.
- 3.2.3. The Merging Parties shall submit a report on an annual basis, on the anniversary of the Approval Date confirming that none of the Affected Employees have been retrenched as a result of the Merger. The report shall be accompanied by an affidavit from a senior official of the Merging Parties, confirming the accuracy of the information contained in the report.
- 3.2.4. The first report shall be submitted on the anniversary of the Implementation Date and the final report a year thereafter.
- 3.3. In order to monitor the Merging Parties' compliance with the condition set out in clause 2.3.1:
 - 3.3.1. The Merging Parties shall circulate a copy of these Conditions to Courierit's Sub-Contractors within 5 business days of the Approval Date.
 - 3.3.2. The Merging Parties, through a senior official must provide an affidavit attesting to the notification referred to in paragraph 3.3.1 above, and provide a copy of the said notice to the Commission within 10 (ten) business days of the Approval Date.
 - 3.3.3. The Merging Parties shall report to the Commission on an annual basis, on the anniversary of the Implementation Date indicating that the service level agreements with the Sub-Contractors are still in place. This report shall be accompanied by an affidavit from a senior official attesting to the accuracy of the information contained in the report.

4. GENERAL

- 4.1. All correspondences in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.
- 4.2. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.
- 4.3. In the event that the Merging Parties appear to have breached the above Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the above Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules For the Conduct of Proceedings in the Tribunal.
- 4.4. The Merging Parties shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the Conditions.

5. DURATION

- 5.1. The Conditions set out in clause 2.1 shall remain in effect for as long as PIC has an interest in the Target Firms.
- 5.2. The Conditions set out in clause 2.2 shall remain in effect for a period of 2 years from the Implementation Date.

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

CC CASE No: 2015Jul0371

CT CASE NO: LM105Aug15

THE COMPETITION COMMISSION

APPLICANT

and

RTT GROUP PROPRIETARY LIMITED

FIRST RESPONDENT

WAREHOUSEIT PROPRIETARY LIMITED

SECOND RESPONDENT

COURIERIT SA PROPRIETARY LIMITED

THIRD RESPONDENT

ANNEXURE B TO MERGER CONDITIONS

NO.	SUPPLIER	BRANCH
1	AK Couriers	CPT
2	Kenny	CPT
3	Ash Couriers	CPT
4	Dwayne Marais - C/Stores	CPT
5	Relay Couriers/N Abrahams	CPT
6	Dwayne Marais-Cpt Sdx	CPT
7	Eugene -Cpt Sdx	CPT
8	Gino Isaacs	CPT
9	Kurt Dennis -Cpt Sdx	CPT
10	Mark Maqungo -Cpt Sdx	CPT
11	William Davids	CPT

12	Diloshni Naidoo	DUR
13	Wenzil 107	DUR
14	Aa Marketing/Good Converters	DUR
15	BI Couriers	DUR
16	J Naidoo -Sdx	DUR
17	Jefferson Naidoo	DUR
18	Justin Naidoo Route 77	DUR
19	Lungstar Express	DUR
20	Nn Couriers	DUR
21	P.Naidoo Sdc Dur	DUR
22	Rezana Ahmed Sdc	DUR
23	Rishi -Dur Sdx	DUR
24	Sandhir Baijnath	DUR
25	Santosh - Dur Sdx/Sunal	DUR
26	Wenzil 106-Sdx Dur	DUR
27	National Courier Connection	ELS
28	Jaques Gouws	ELS
29	Michele's Deliveries/Aloe Transport	ELS
30	Aspen Logistics-Blood	JHB
31	Freshly Transport	JHB
32	Matumelo Selepe	JHB
33	Olebogeng Mosai	JHB

34	Chrovis R Legodi	JHB
35	Donald Legodi	JHB
36	Jabu Mtileni	JHB
37	Jacob Legodi	JHB
38	Jacob Transport Mogoroga -Jnb Sdx	JHB
39	Lungisane Myeza-Jnb	JHB
40	Makgabo Trans - Jnb Sdx	JHB
41	Paul Masenya	JHB
42	Sbusiso Makhaya	JHB
43	Steven Nmako - Jnb K&D	JHB
44	Jd Vervoer -Sdx Plz	PLZ
45	Tosbie Trading	PLZ
46	Hendrik Makgota	PTA
47	Ja Lotriet	PTA
48	Prince Mthimunye	PTA
49	Walter Makakase	PTA
50	Tumelo J Matsobane-Pta	PTA
51	Manoko Cosnath Mojela	PTA
52	Mb Legodi	PTA
53	Vusi Makhubela	PTA
54	GF Trans	JHB
55	VDN	JHB

56	ITT	JHB
57	ORE	JHB

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