

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM270Mar19

In the matter between:

New Holdco

Primary Acquiring Firm

And

Edgars Consolidated Stores Ltd

Primary Target Firm

Panel : E Daniels (Presiding Member)
M Mazwai (Tribunal Member)

Heard on : 9 May 2019

Decided on : 9 May 2019

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that -

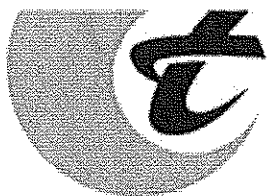
1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



Presiding Member
Mr Enver Daniels

9 May 2019
Date

Concurring: Ms Mondo Mazwai



competitiontribunal

SOUTH AFRICA

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date: 09 May 2019

To: ENS

(Name and file number of merger:)

Case Number: LM270Mar19

New Holdco And Edgars Consolidated Stores Ltd

You applied to the Competition Commission on 13 March 2019 for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for Consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- ☐ no conditions.
- ☒ the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

The registrar, Competition Tribunal:

ANNEXURE A: CONDITIONS

NEW HOLDCO

and

EDGARS CONSOLIDATED STORES LIMITED

CONDITIONS TO THE APPROVAL OF THE MERGER

1. DEFINITIONS

Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings.

- 1.1. **“Approval Date”** means the date referred to in the Tribunal’s merger clearance certificate (Form CT 10) in respect of the Proposed Transaction;
- 1.2. **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, Number 53 of 2003, as amended;
- 1.3. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4. **“Competition Act”** means the Competition Act, Number 89 of 1998, as amended;
- 1.5. **“DTI”** means the Department of Trade and Industry of South Africa;
- 1.6. **“ECSL”** means Edgars Consolidated Stores Limited, registration number 1946/022751/06;
- 1.7. **“Edcon Group”** means ECSL, OpCo and all of their subsidiaries;

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- 1.8. **“EDD”** means the Economic Development Department of South Africa;
- 1.9. **“Edcon Staff Empowerment Trust”** means that Edcon Staff Employment Trust created in July 2005 as part of the Edcon group’s black economic empowerment programme, which holds 10,6% (ten comma six percent) of the issued share capital of Edcon Holdings Limited.
- 1.10. **“Government”** means the Government of the Republic of South Africa; in particular the EDD and DTI, duly represented by their respective Directors General;
- 1.11. **“IDC”** means The Industrial Development Corporation of South Africa SOC Limited, a public corporation registered in the Republic of South Africa;
- 1.12. **“Merging Parties”** means NewHoldCo and ECSL;
- 1.13. **“New HoldCo”** means a new company formed for the purposes of the Proposed Transaction which is yet to be incorporated;
- 1.14. **“NGO”** means a non-profit organisation, operating independently of any government, with an interest in promoting the textile and apparel industry value chains in South Africa;
- 1.15. **“OpCo”** means Edcon Limited, registration number 2007/003525/06;
- 1.16. **“Previous Conditions”** means the conditions attached as Annexure A to the Tribunal’s order in relation to the financial restructuring of the Edcon Group, dated 23 November 2016, under case number LM117Sep16;
- 1.17. **“Proposed Transaction”** means the acquisition of control over ECSL by New HoldCo, as contemplated in the transaction notified to the Commission under Commission Case Number 2019Mar0040;
- 1.18. **“Small Enterprises”** has the meaning set out in the National Small Enterprises Act, Number 102 of 1996;
- 1.19. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
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2. BACKGROUND AND RECORDAL

- 2.1. On 13 March 2019, the Merging Parties notified the Commission of a large merger involving the acquisition by New HoldCo of ECSL.
- 2.2. The Edcon Group is in financial distress and at risk of being forced into business rescue or insolvency proceedings. The Proposed Transaction is intended to achieve a restructuring and recapitalisation of the debt and equity structure of OpCo so as to provide a stable platform for the planned turnaround of the Edcon Group.
- 2.3. Notwithstanding the challenges (both financial and otherwise) facing the Edcon Group, the Merging Parties are cognisant of the important role it plays in the South African economy and undertake to use their best efforts to pursue and achieve the public interest objectives set out below, it being recognised that the Edcon Group operates in a difficult trading environment and the extent of progress against these public interest goals will be influenced by external circumstances (such as prevailing macro and micro economic conditions and trading conditions) and internal circumstances (such as the state of the Edcon Group's financial position and operating performance).

3. REPLACEMENT OF THE PREVIOUS CONDITIONS

As from the Approval Date, the conditions set out herein shall replace the Previous Conditions which shall cease to be of force and effect.

4. SOUTH AFRICAN INPUTS

- 4.1. ECSL and OpCo are committed to fostering and developing a more competitive production environment in South Africa through –
 - 4.1.1. continuation of the Import Replacement Programme which entails expanding OpCo's procurement from South African suppliers (including small, medium and large enterprises);

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- 4.1.2. building relationships with South African suppliers of products for re-sale in OpCo's stores to *inter alia* mitigate the risk of exchange rate fluctuation, secure faster supply chain turnaround and cater for local consumer preferences; and
 - 4.1.3. participation in initiatives by *inter alia* Government, IDC and NGOs aimed at improving capacity and competitiveness and to create jobs in the textile and apparel industry value chains in South Africa.
- 4.2. In furtherance of the commitments set out in paragraph 4.1 above, OpCo will run –
- 4.2.1. quality assurance information sessions with South African producers to assist them in manufacturing world class products at competitive local prices; and
 - 4.2.2. orientation sessions with Small Enterprises in South Africa to assist them in doing business with OpCo.
- 4.3. In furtherance of the commitments set out in paragraph 4.1 above, ECSL and OpCo will engage with South African suppliers and manufacturers relevant to the Edcon Group's operations in South Africa with the aim of exploring opportunities –
- 4.3.1. to expand production for the domestic market;
 - 4.3.2. to accelerate OpCo's local procurement; and
 - 4.3.3. for partnerships, initiatives and programs to build the capacity, technological capabilities (including equipment and intellectual property requirements) and competitiveness of those local suppliers and manufacturers,
- including, where appropriate, working with Government, IDC and/or NGOs.
- 4.4. To give effect to the above, for a period of 5 (five) years from the Approval Date, OpCO commits to meeting on a biannual basis with representatives of the EDD and other public entities that may be invited by the EDD from time to time, which may include the DTI and IDC, to help identify local sourcing opportunities and measures that can improve the competitiveness of local suppliers and manufacturers.
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5. **BEE**

- 5.1. The financial difficulties of the Edcon Group have wholly eroded the value of and benefits attributable to the Edcon Staff Empowerment Trust and its beneficiaries.
- 5.2. Through the Proposed Transaction, the Merging Parties will ensure that a replacement scheme is introduced to safeguard the rights and interests of the beneficiaries of the Edcon Staff Empowerment Trust.

6. **EMPLOYMENT**

Subject to external circumstances (such as prevailing macro and micro economic conditions and trading conditions) and internal circumstances (such as the state of the Edcon Group's financial position and operating performance), the Edcon Group will use its best endeavours to implement measures aimed at avoiding involuntary retrenchments, particularly amongst non-management related store staff, including offering employees of stores that are closed down equivalent positions in alternate stores.

7. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 7.1. For a period of 5 (five) years from the Approval Date, OpCo shall, within 30 (thirty) days of each anniversary of the Approval Date, provide to the Commission and the EDD a report detailing its efforts in pursuing and achieving the public interest objectives set out in clauses 4, 5 and 6 above.
- 7.2. Any person who believes that the Merging Parties have not complied with these conditions may approach the Commission. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 7.3. All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.
- 7.4. For the avoidance of doubt, with effect from the Approval Date, OpCo's reporting obligations to the Commission and EDD set out in clause 5 of the Previous Conditions shall be replaced by the reporting obligations set out in this clause 7.

8. **VARIATION**

- 8.1. The Merging Parties or the Commission shall be entitled, on good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of any of these conditions at any time after the Approval Date.