

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM067Jul19

In the matter between:

Namane Logistics (Pty) Ltd

Primary Acquiring Firm

And

Crossroads Distribution (Pty) Ltd

Primary Target Firm

Panel : Y Carrim (Presiding Member)
: AW Wessels (Tribunal Panel Member)
: E Daniels (Tribunal Panel Member)
Heard on : 21 August 2019
Decided on : 23 August 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 the 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:
Ms Yasmin Carrim

23 August 2019
Date

Concurring: Mr Andreas Wessels and Mr Enver Daniels



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
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date : 23 August 2019

To : Falcon & Hume Inc.

Case Number: LM067Jul19

Namane Logistics (Pty) Ltd And Crossroads Distribution (Pty) Ltd

You applied to the Competition Commission on **18 June 2018** 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

IN THE COMPETITION TRIBUNAL OF THE REPUBLIC OF SOUTH AFRICA

Case Number: LM067JUL19

In Re the large merger between:

NAMANE LOGISTICS (PTY) LTD ("*NAMANE*")

Acquiring Firm

And

CROSSROADS DISTRIBUTION (PTY) LTD ("*CRD*")

Target firm

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 Namane Logistics (Pty) Ltd;
- 1.2 "**Approval Date**" means the date referred to in the Tribunal's merger Clearance Certificate (Form CT10);
- 1.3 "**Commission**" means the Competition Commission of South Africa;
- 1.4 "**Competition Act**" means the Competition Act No. 89 of 1998, as amended;
- 1.5 "**Competition Authorities**" mean the Commission and the Tribunal;
- 1.6 "**Commission Rules**" mean the Rules for the Conduct of Proceedings in the Commission;

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- 1.7 **"Conditions"** mean these conditions;
- 1.8 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday;
- 1.9 **"Implementation Date"** means the date on which the Proposed Transaction is implemented by the Merging Parties;
- 1.10 **"LRA"** means the Labour Relations Act 66 of 1995;
- 1.11 **"Merging Parties"** mean the Acquiring Firm and the Target Firm;
- 1.12 **"Proposed Transaction"** means the acquisition of a 43% shareholding in the Target Firm by the Acquiring Firm, as set out in greater detail in the joint competitiveness report and Schedule 4 to Form CC 4(2) of the Acquiring Firm, submitted to the Commission as part of the merger filing;
- 1.13 **"Target Firm"** means Crossroads Distribution (Pty) Ltd; and
- 1.14 **"Tribunal"** means the Competition Tribunal of South Africa.

2. CONDITIONS

- 2.1 The Target Firm shall not retrench any employees as a result of the Proposed Transaction for a period of 3 (three) years from the Implementation Date.
- 2.2 For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation agreements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Proposed Transaction; and (vi) terminations in the ordinary course of business, including but not limited to dismissals as a result of misconduct or poor performance.
- 2.3 The Target Firm shall circulate a copy of these Conditions to all employees of the Target Firm and their trade unions.
- 2.4 On or before the Approval date, the Merging Parties shall submit to the Competition Authorities a list of each employment position in the Target Firm which is potentially affected by the retrenchments contemplated in the Section 189A Notice provided to affected staff in the Target Firm on 10 July 2019 (**"the Section 189A Notice"**). This list must specify the gender and geographic location of each employee holding each such potentially affected employment position as at the Approval Date.

2.5 Within 10 (ten) business days of the consultations in terms of the Section 189A Notice being concluded and retrenchments being effected by the Target Firm in terms of that Section 189A Notice, the Merging Parties shall submit to the Competition Authorities an affidavit deposed to by the Managing Director of the Target Firm which confirms and provides:

- 2.5.1 the name, job description, gender and geographic location of each employee of the Target Firm who has been retrenched as a result of the operational requirements of the Target Firm, as set out in the Section 189A Notice;
- 2.5.2 that these retrenchments were based on the operational requirements of the Target Firm set out in the Section 189A Notice and are not related to the Proposed Transaction;
- 2.5.3 a description of the operational requirements of the Target Firm that lead to the retrenchments; and
- 2.5.4 that all employees of the Target Firm and their trade unions have been notified of these Conditions, in accordance with clause 2.3.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

As proof of compliance with the condition set out in clause 2.1, the Target Firm shall submit an affidavit deposed to by the Managing Director of the Target Firm on each anniversary of the Implementation Date, during the 3 (three) year period that this condition remains in place.

4. VARIATION

The Merging Parties and the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

5. BREACH

In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been a breach by the Merging Parties of the Conditions, the breach will be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

6. GENERAL

7.1. All correspondence in relation to the Conditions shall be submitted to the following email address:
mergerconditions@compcom.co.za.