



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM272Mar19

In the matter between:

Boundary Terraces 042 (Pty) Ltd

Primary Acquiring Firm

And

Bravo Group (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	:	26 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).

A handwritten signature in black ink, appearing to read 'Y Carrim'.

Presiding Member
Yasmin Carrim

26 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 : 26 August 2019

To : Werksmans Attorneys

Case Number: LM272Mar19

Boundary Terraces 042 (Pty) Ltd And Bravo Group (Pty) Ltd

You applied to the Competition Commission on **12 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:

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no conditions.

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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

BOUNDARY TERRACES 042 PROPRIETARY LIMITED

AND

BRAVO GROUP PROPRIETARY LIMITED

CASE NUMBER: LM272Mar19

CONDITIONS

1 DEFINITIONS

- 1.1 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings, namely:
- 1.1.1 "**Act**" means the Competition Act No. 89 of 1998, as amended;
- 1.1.2 "**Acquiring Firm**" means Boundary Terraces 042 (Pty) Ltd (Boundary Terraces);
- 1.1.3 "**Affected Employees**" means the 253 employees who were retrenched (whether on a voluntary basis or not) prior to the proposed transaction at the Target Firms' Alpine factory in Cape Town and Grafton Everest factory in KwaZulu-Natal and who have not been re-employed by the Target Firms;
- 1.1.4 "**Approval Date**" means the date referred to on the Tribunal's merger clearance certificate (Form CT10);
- 1.1.5 "**Bravo**" means Bravo Group Proprietary Limited;
- 1.1.6 "**Close Family Member**" means the spouse, child, grandchild, sibling, mother, father, niece or nephew that may be dependent on the Affected Employee;
- 1.1.7 "**Commission**" means the Competition Commission of South Africa;
- 1.1.8 "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.1.9 "**Conditions**" means these conditions;

- 1.1.10 **"Days"** mean any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.1.11 **"Development Fund"** means an amount of R6,325,000.00 (six million three hundred and twenty-five thousand Rand) which is to be set aside for the Affected Employees for reskilling purposes and/or for the purpose of funding small businesses in accordance with the principles and conditions set out in Annexure A hereto;
- 1.1.12 **"Development Fund Period"** means a period not exceeding 24 (twenty-four) months after the Implementation Date;
- 1.1.13 **"Implementation Date"** means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
- 1.1.14 **"Merger"** means the acquisition of the Target Firms by the Acquiring Firm;
- 1.1.15 **"Merging Parties"** means the Target Firms and the Acquiring Firm;
- 1.1.16 **"Retrenched employees"** means the 111 employees at Alpine Lounge and Grafton Everest who were retrenched;
- 1.1.17 **"Target Firms"** means Bravo and all its subsidiaries; and
- 1.1.18 **"Tribunal"** means the Competition Tribunal of South Africa.

2 Conditions to the Approval of the Merger

- 2.1 Save for the Affected Employees, the Merging Parties shall not retrench any other employees as a result of the Merger for a period of 3 (three) years from the Implementation Date.
- 2.2 The Target Firms shall set up a Development Fund to help either reskill the Affected Employees or to afford them an opportunity to start up small business ventures or to provide educational opportunities to Close Family Members. The Development Fund shall be funded by the Target Firms in an initial amount of R6,325,000.00 on the Implementation Date. The Development Fund shall be applied in accordance with the principles and conditions set in Annexure A1 of these Conditions.

- 2.3 The Target Firms, upon the implementation of the Merger, shall use reasonable endeavours to inform Affected Employees of any relevant job opportunities which arise at the Target Firms. To the extent that any of the Affected Employees apply for these jobs, and to the extent that such employees are suitably qualified for the relevant job, preference shall be given to the Affected Employees over other equally qualified applicants who are not Affected Employees.
- 2.4 The Target Firms will publish a communicate via SMS to the last known number, email at the last known email address and/or community notice boards to all the Affected Employees, providing them with the information and details of the position as well as contact details as to whom to contact within the Target Firms' Human Resources department to enable them to apply, should they wish to do so. Under all circumstances the onus will rest on the Affected Employees to apply for a vacant position.
- 2.5 Should any Affected Employee meet the relevant criteria and job requirements in terms of qualification, experience and skills required, the application will be facilitated through the Target Firms' Human Resources department.
- 2.6 For the sake of clarity, Merger Related Retrenchments do not include (i) voluntary separation arrangements; (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; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

3 Monitoring compliance with the Conditions

- 3.1 The Target Firms shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2 The Target Firms shall circulate a copy of the Conditions within 5 (five) Days of the Approval Date to all employees of the Target Firms and/or their employee representatives including relevant trade unions.

- 3.3 As proof of compliance with 3.2 above, the Target Firms shall within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit by the Chief Executive Officer of the Target Firms attesting to the circulation of the Conditions and attach a copy of the said notice.
- 3.4 The Target Firms shall submit a report on the first anniversary of the Implementation Date, confirming its compliance with clauses 2.1 to 2.5. This report shall be accompanied by an affidavit, attested to by the Chief Executive Officer of the Target Firms, confirming the accuracy of the report. In the event of any retrenchments, the report must reflect, *inter alia*, the name, gender, location (in the Target Firms) and position (job description) of the employees to be retrenched as well as reasons therefor.
- 3.5 With respect to the Development Fund, the Target Firms shall, on the first anniversary of the Implementation Date and thereafter within 30 days from the date of expiry of the Development Fund Period, submit a report to the Commission detailing, *inter alia*, the number of Affected Employees that have applied for funding, their names, the purpose to which the funding was applied for, the amount disbursed to or on behalf of each Affected Employee, and proof of payment to or on behalf of each Affected Employee that has applied for the Development Fund.

4 Apparent breach

- 4.1 In the event that the Commission receives any complaint in relation to non-compliance with the Conditions or otherwise determines that there has been an apparent breach of any of the Conditions by the Target Firms, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.
- 4.2 Any employee of the Merging Parties who believes that his or her employment with the Merging Parties has been terminated as a result of merger related retrenchments may approach the Commission with his or her grievance.

5 Variation of the Condition

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

6 General

- 6.1 All correspondences in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

Annexure 1

1. The chief financial officer of the Target Firms shall be appointed to control and manage all financial and accounting aspects of the Development Fund.
2. Each Affected Employee will be allocated a maximum of R25,000.00 for purposes of training or reskilling or for seed capital to establish a small business venture or for educational purposes for a Close Family Member.
3. The Affected Employees shall have the sole right to make an election of what they intend to use the Development Fund for.
4. In relation to training or reskilling, any Affected Employee wishing to make use of the designated fund shall apply to the appointed Chief Financial Officer, within 12 (twelve) months from the Implementation Date, for the allocation of all or a portion of the fees payable for the training. The application shall be fully motivated and shall include details (on accredited documentation of the training facility in question) of the cost of the training programme, the material covered in the course and the certification or other accreditation conferred on participants upon successful completion of the training programme. The Target Firms will, upon request from any Affected Employee, assist or arrange for the assistance of any prospective applicant with the application process to the relevant institution where the training programme is offered.
5. Should an application for training fees be successful, the Target Firms shall make payment of the fees in question (or the portion thereof granted to the Affected Employee) directly to the training institution in question.
6. In relation to setting up a small business venture, any Affected Employee wishing to make use of the designated fund shall apply to the appointed Chief Financial Officer within 12 (twelve) months from Implementation Date, for the allocation of all or a portion of the amount available from the Development Fund. The application shall be accompanied by a business plan or business concept the Affected Employee wishes to pursue with the designated funds. The Target Firms shall provide or arrange for assistance to be available to the Affected Employees in coming up with a credible business plan, should the assistance be required.
7. Target Firms shall not unreasonably refuse to disburse the relevant proportion of the Development Fund to an Affected Employee who wishes to set up a small business venture where a credible business plan has been provided.

8. The Target Firms shall offer funding from the Development Fund to the Affected Employees for a period two years from the Implementation Date.
9. In the event that an Affected Employee does not opt for training, reskilling or establishment of a small business, the Affected Employee may request that the amount available to that Affected Employee from the Development Fund be utilized by a nominated Close Family Member for the purposes of paying school fees and/or any other expense related to the education of the nominated Close Family Member.
10. Clause 4 above will also apply in instances where the Affected Employee elects a Close Family Member as a beneficiary.
11. Any portion of the amount allocated to the Development Fund that remains unclaimed by the Affected Employees will be retained by the Target Firms.