

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM021May20

In the matter between:

Capitalworks Atlanta GP (Pty) Ltd, acting in its  
Capacity as the general partner of the Project  
Atlanta Investment Partnership III

**Primary Acquiring Firm**

And

Peregrine Holdings Ltd

**Primary Target Firm**

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Panel : Enver Daniels (Presiding Member)  
: Mondo Mazwai (Tribunal Panel Member)  
: Halton Cheadle (Tribunal Panel Member)  
Heard on : 29 July 2020  
Decided on : 30 July 2020

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### ORDER

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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).

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**Presiding Member**  
**Enver Daniels**

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**30 July 2020**  
**Date**

**Concurring: Ms Mondo Mazwai and Prof. Halton Cheadle**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 30 July 2020

**To** : Cliffe Dekker Attorneys

## 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.

Case Number: LM021May20

Capitalworks Atlanta GP (Pty) Ltd, acting in its Capacity as the general partner of the Project Atlanta Investment Partnership III And Peregrine Holdings Ltd

You applied to the Competition Commission on **05 May 2020** 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.

### 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](mailto:ctsa@comptrib.co.za)

### The Registrar, Competition Tribunal

## ANNEXURE A

**Capitalworks Atlanta GP Proprietary) Limited, (acting in its capacity as the  
general partner of Project Atlanta Investment Partnership III)**

**And**

**Peregrine Holdings Limited**

**CC CASE NUMBER: 2020May0013**

**CT CASE NUMBER: LM021MAY20**

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### CONDITIONS

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#### 1. DEFINITIONS

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

- 1.1 **"Acquiring Firms"** means Capitalworks, BidCo and InvestCo;
- 1.2 **"Affected Employees"** means up to 4 Target Firm employees that are responsible to facilitate the various administrative and governance functions that are required from the Target Firm as a listed entity , who will be retrenched as a result of the Merger;
- 1.3 **"Approval Date"** means the date referred to in the Competition Tribunal's merger clearance certificate (Form CT10);
- 1.4 **"BidCo"** means Business Venture Investments No. 2138 (RF) Proprietary Limited;
- 1.5 **"Business Day"** means any calendar day which is not a Saturday, Sunday or public holiday in South Africa;
- 1.6 **"Capitalworks"** means *Capitalworks* Atlanta GP Proprietary Limited ("**Capitalworks**

**Atlanta GP**") (acting in its capacity as the general partner of the Project Atlanta Investment Partnership III) ("**Capitalworks Partnership**"). Capitalworks Atlanta GP and Capitalworks Partnership are collectively referred to as ("**Capitalworks**");

- 1.7 "**Commission**" means the Competition Commission of South Africa;
- 1.8 "**Competition Act**" means the Competition Act, No. 89 of 1998, (as amended);
- 1.9 "**Conditions**" mean these conditions;
- 1.10 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 "**InvestCo**" means Business Venture Investments No. 2137 (RF) Limited;
- 1.12 "**LRA**" means the Labour Relations Act, No. 66 of 1995, (as amended);
- 1.13 "**Merger**" means the acquisition of the Target Firm by the Acquiring Firms;
- 1.14 "**Merging Parties**" means the Acquiring Firms and the Target Firm;
- 1.15 "**Minister**" means the honourable Minister for the Department of Trade, Industry and Competition;
- 1.16 "**Moratorium**" means a period of 2 years from the Approval Date;
- 1.17 "**Rules**" mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;
- 1.18 "**Target Firm**" means Peregrine Holdings Limited including its subsidiaries in South Africa; and
- 1.19 "**Tribunal**" means the Competition Tribunal of South Africa.

## **2. CONDITIONS TO THE APPROVAL OF THE MERGER**

- 2.1 Other than the Affected Employees, the Merging Parties shall not retrench any employees as a result of the Merger for a period of 2 (two) years from the Approval Date.
- 2.2 For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) retrenchments as a result of 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 Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

## **3. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 3.1 The Merging Parties shall circulate a copy of the Conditions to all their employees within 5 (five) Business Days of the Approval Date.
- 3.2 As proof of compliance with 3.1 above, a director of each Merging Party shall within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees in that regard.
- 3.3 The Acquiring Firms shall inform the Commission of the Implementation Date within 5 (five) Business Days of its occurrence.
- 3.4 The Acquiring Firms shall, on each anniversary of the Implementation Date, during the period referred to in 2.1 above submit an affidavit confirming compliance with the condition 2.1 above.
- 3.5 In the event that the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be

dealt with in terms of Rule 39 of the Competition Commission Rules read together with Rule 37 of the Competition Tribunal Rules.

- 3.6 Any individual who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.

#### 4. **VARIATION**

- 4.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Condition to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Condition to be lifted, revised or amended.

#### 5. **GENERAL**

- 5.1 All correspondence in relation these conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).