

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM100Aug20

In the matter between:

Retailability Proprietary Limited

Primary Acquiring Firm

And

Parts of the Edgars business conducted by Edcon Limited
in South Africa, as a going concern, consisting of certain
assets and liabilities

Primary Target Firm

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

Heard on: 4 September 2020
Decided on: 4 September 2020

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, No. 89 of 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).



Ms Mondo Mazwai
Presiding Member

4 September 2020
Date

Concurring: Mr Enver Daniels and Ms Yasmin Carrim

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CONDITIONS

1. DEFINITIONS

In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings-

- 1.1. **“Acquiring Firm”** means Retailability (Pty) Ltd;
- 1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
- 1.3. **“Approval Date”** means the date referred to on the Tribunal’s Merger Clearance Certificate (Form CT10);
- 1.4. **“Business Rescue Plan”** means the Board of Directors approved Business Rescue Plan Prepared in terms of section 150 of the Companies Act, No. 71 of 2008 in relation to Edcon (under business rescue) (Registration No. 2007/003525/06) prepared by: Piers Michael Marsden and Lance Schapiro.
- 1.5. **“Commission”** means the Competition Commission of South Africa;
- 1.6. **“Conditions”** mean these conditions;
- 1.7. **“Days”** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.8. **“Edcon”** means Edcon Ltd;

- 1.9. **“Edcon Employees”** means former employees of Edcon affected by the Business Rescue Plan;
- 1.10. **“Employees”** means employees of the Acquiring Firm and the Target Business;
- 1.11. **“Implementation Date”** means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
- 1.12. **“Merged Entity”** means the Retailability business and the Target Business operated pursuant to the successful implementation of the Merger;
- 1.13. **“Merger”** means the acquisition by the Acquiring Firm of the Target Business.
- 1.14. **“Merging Parties”** mean the Acquiring Firm and the Target Business;
- 1.15. **“Target Business”** means Parts of the Edgars business conducted by Edcon Limited in South Africa, as a going concern, consisting of certain assets and liabilities; and
- 1.16. **“Tribunal”** means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1. The Merging Parties shall not retrench any Employees for a period of three (3) years from Implementation Date as a result of the merger. For the avoidance of doubt, the moratorium will not apply to retrenchments for operational reasons in the normal course of business, voluntary separation/severance arrangements or terminations for disciplinary or incapacity reasons.
- 2.2. The Acquiring Firm shall give preference to any erstwhile Edcon Employees should vacancies arise for a period of three (3) years from Implementation Date of the Merger. In the event that the Acquiring Firm, acting reasonably, satisfies itself that an applicant for a position is an erstwhile Edcon Employee and subject to all else being equal, the Merged Entity shall give preference to the erstwhile Edcon Employee in the appointment process.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merging Parties shall circulate a copy of the Conditions to all employees / and or their respective representatives within five (5) Days of the Approval Date.
- 3.2. As proof of compliance thereof, the Merging Parties shall within five (5) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 3.3. The Merging Parties shall inform the Commission of the Implementation Date within five (5) Days of its occurrence.
- 3.4. The Merged Entity shall, for the duration of the conditions, submit an affidavit on each anniversary of the Implementation Date, confirming compliance with clause 3

of the Conditions. This affidavit must be deposed to by a senior official of the Acquiring Firm.

- 3.5. 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. APPARENT BREACH

- 4.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5. VARIATION OF THE CONDITION

- 5.1. The Merged Entity, upon good cause shown, and/or the Commission are each entitled to apply to the Tribunal for the waiver, relaxation, modification and/or substitution of one or more of the Conditions.

6. GENERAL

- 6.1. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.