

**OUTCOME OF COMPETITION TRIBUNAL HEARING**

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**Tribunal approves Adcock / BB Investment merger with employment conditions**

Today the Competition Tribunal issued its confidential reasons for approving the merger between BB Investment Company (Pty) Ltd (“BB”) and Adcock Ingram Holdings(Pty) Ltd (“Adcock”) on condition that Adcock will not retrench any employees for one year from the day the deal is approved. BB is a wholly owned subsidiary of Bidvest Group Ltd (“Bidvest”). The Tribunal made an order to this effect on 19 August and earlier today issued the confidential reasons for this decision. A non-confidential version of the reasons will be available in due course.

The Tribunal’s reasons follow a one-day hearing on 6 August 2014. There were no competition concerns arising from the merger but the deal raised employment concerns which came about as a result of Adcock embarking on a restructuring exercise. In this exercise, Adcock identified a total number of 51 positions as being redundant. At the time the Competition Commission, which assesses large mergers before referring them to the Tribunal for decision, was satisfied that Adcock followed a rational and fair process in identifying the redundant positions, therefore it initially concluded that a moratorium on the retrenchment of the 51 employees was not warranted.

However Bidvest later informed the Commission that it intended to implement a turnaround strategy upon completion of the merger that could institute further retrenchments over and above the 51 positions. Consequently, the Commission saw the need to safeguard any further negative effects on employment that would be introduced by Bidvest after the merger. The Commission therefore recommended that the Tribunal approve the proposed transaction subject to a condition that would limit the number of retrenchments at Adcock to only the 51 employees identified and that it impose a moratorium on “merger specific retrenchments” for a period of three years. This condition was opposed by the merging parties on the ground that the proposed retrenchments were not merger-specific, that is: that the retrenchments were not taking place as a result of the merger.

After considering submissions from both the Commission and the merging parties, and hearing evidence from Kevin Wakeford the newly appointed chief executive officer of Adcock, the Tribunal decided to approve the proposed transaction subject to the condition that Adcock will not retrench any employees for a period of one year from date of approval of this transaction.

Related to this issue, the Commission also alleged that Bidvest had already acquired control over Adcock before filing this merger with the Commission for assessment. In terms of the Competition Act it is a contravention of the merger provisions to implement a large merger before getting the required approval from the Tribunal. However, the merging firms denied this allegation saying the take-over would only occur once it was approved by the Tribunal and once Bidvest acquired further shares in Adcock beyond the 34.5% it already had at the time it filed the merger.

The Commission indicated during the hearing that it would be investigating a separate case of prior implementation of a merger, in contravention of the Competition Act. For this reason the Tribunal did not need to make a finding on this issue.

What the Tribunal did need to make a finding on, was whether Bidvest had acquired material influence over Adcock, as that was relevant to its analysis about whether the proposed retrenchments were merger specific as opposed to operational. After examining the facts the Tribunal concluded that Bidvest had at least acquired material influence over Adcock before filing the transaction with the Commission. It therefore concluded that the proposed retrenchments were merger specific. It then examined whether being merger specific they had been justified. The Tribunal concluded that because there had not been adequate consultation with the Commission and the representative trade union involved, the retrenchments could not be said to have been justified, because justification must be based on a proper consultation process.

For this reason the Tribunal decided to impose the remedy it did. Note that the Tribunal remedy differs from that of the Commission in that it applies to all retrenchments not just merger specific ones and in this sense is wider in scope. The Tribunal explained that because of the possible prior implementation the distinction between merger specific and operational retrenchments had become blurred and that the Commission remedy would have led to future uncertainty and dispute. However whilst the Commission’s proposed moratorium would have applied for three years, the Tribunal felt that a period of only one year was justified.

Despite the moratorium the Tribunal’s order makes it clear that the firm may still embark on voluntary retrenchments nor does it apply to employees at Adcock facilities outside of South Africa who are not subject to the Tribunal’s jurisdiction.

The non-confidential version of the Tribunal’s reasons will be available on the Tribunal’s website ([www.comptrib.co.za](http://www.comptrib.co.za)) once the merging parties have confirmed that the Tribunal’s judgment does not contain any information which they have claimed as confidential.

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