

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.:
LM262Jan18/INT024May19

In the intervention application between:

Gold Leaf Tobacco Corporation (Proprietary)
Limited

Applicant

and

British American Tobacco Holdings South Africa
Proprietary Limited and Twisp Proprietary Limited

Respondents

In the large merger between:

Case no.: LM262Jan18

British American Tobacco Holdings South Africa
Proprietary Limited

Primary Acquiring Firm

and

Twisp Proprietary Limited

Primary Target Firm


Panel	: Yasmin Carrim (Presiding Member)
	: Enver Daniels (Tribunal Panel Member)
	: AW Wessels (Tribunal Panel Member)
Heard on	: 16 May 2019
Last submissions Received	: 20 May 2019
Decided on	: 21 May 2019

ORDER

1. The applicant, Gold Leaf Tobacco Corporation Proprietary Limited (“GLTC”), is recognised as a participant in the large merger proceedings before the Competition Tribunal (“Tribunal”) under the above case number.

2. **GLTC** is permitted to participate in the merger hearing in respect of the portfolio / conglomerate effects of the proposed merger, but limited to the following issues:
 - 2.1. The incentive and ability of the merged entity to engage in exclusionary conduct at the retail level by:
 - 2.1.1. Limiting Tobacco-Heated Products (“THPs”) and other Potentially Reduced Risk Products (“PRRPs”) suppliers’ access to retail shelf space, product visibility and promotional opportunities;
 - 2.1.2. Bundling / tying and loyalty / rebate arrangements; and
 - 2.1.3. Exclusive agreements or arrangements with retailers, and/or owners or administrators of retail space, in terms of which the latter parties are prevented or disincentivized from selling, or renting retail space for the sale of, any THPs or other PRRPs other than those of the merged entity.
 - 2.2. The conditions that should be imposed by the Tribunal in order to address the portfolio/conglomerate effects of the proposed merger.
 - 2.3. Any increase in barriers of entry as a result of the proposed transaction to the market(s) for e-cigarettes / PRRP’s in South Africa.
3. **GLTC**’s participation in the merger hearing before the Tribunal shall include the right:
 - 3.1. To attend pre-hearing conferences;
 - 3.2. To have access to, and to inspect, any documents filed by any of the merger parties, the Commission and any other participants in the merger proceedings, including documents under a claim of confidentiality subject to the provision of appropriate confidentiality undertakings;
 - 3.3. To file factual witness statements. These factual witness statements must include **GLTC**’s proposed behavioral remedies, i.e. conditions, to address its concerns relating to the portfolio / conglomerate effects of the proposed merger;
 - 3.4. To file a concise expert witness statement focusing on the need for behavioural remedies to address the portfolio / conglomerate effects of the proposed merger and the formulation of the proposed remedies;
 - 3.5. To adduce oral and documentary evidence at the merger hearing;

- 3.6. To cross-examine any of the witnesses of the merger parties, the Commission and any other participants in the merger hearing; and
- 3.7. To present written and oral argument at the merger hearing.
4. **GLTC**'s external legal representatives and economic experts are granted access to all documents filed in the merger proceedings under a claim of confidentiality, subject to the provision of appropriate confidentiality undertakings.
5. The merging parties' external legal representatives and economic experts are granted access to all documents discovered by **GLTC** under a claim of confidentiality, subject to the provision of appropriate confidentiality undertakings.
6. The Tribunal will regulate the amount of time allocated to each party during the hearing. **GLTC**'s total time allocation at the hearing for the leading of evidence, cross-examination of witnesses and argument will thus be restricted, as determined in due course by the Tribunal.
7. There is no order as to costs.



Presiding Member
Ms Yasmin Carrim

21 May 2019
Date

Concurring: Mr Enver Daniels and Mr AW Wessels