



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: IM053Aug21

In the request for consideration between:

ECP Africa Fund IV LLC	<b>First Applicant</b>
ECP Africa Fund IV A LLC	<b>Second Applicant</b>
Burger King (South Africa) RF (Pty) Ltd	<b>Third Applicant</b>
Grand Foods Meat Plant (Pty) Ltd	<b>Fourth Applicant</b>

And

Competition Commission of South Africa	<b>Respondent</b>
--	-------------------

*In re:* intermediate merger between

ECP Africa Fund IV LLC	
ECP Africa Fund IV A LLC	<b>Primary Acquiring Firms</b>

And

Burger King (South Africa) RF (Pty) Ltd	
Grand Foods Meat Plant (Pty) Ltd	<b>Primary Target Firms</b>

---

Panel:	M Mazwai (Presiding Member) Y Carrim (Tribunal Panel Member) F Tregenna (Tribunal Panel Member)
Heard on:	18 August 2021
Last submission date:	17 September 2021
Decided on:	17 September 2021

---

### ORDER

---

Further to the request for consideration in terms of section 16(1)(a) of the Competition Act, No. 89 of 1998 ("the Act") the Competition Tribunal orders that–

1. the merger between the Primary Acquiring Firms and the Primary Target Firms be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



---

Presiding Member  
Ms Mondo Mazwai

17 September 2021

---

Date

**Concurring: Ms Yasmin Carrim and Prof. Fiona Tregenna**



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 : 17 September 2021

To : Edward Narthan Sonnenberg Inc

Case Number: IM053Aug21

ECP Africa Fund IV LLC; ECP Africa Fund IV A LLC And Burger King (South Africa) RF (Pty) Ltd; Grand Foods Meat Plant (Pty) Ltd

You applied to the Competition Commission on **04 March 2021** 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

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

Signed by: Sibongile Mshoeshe  
Signed at: 2021-09-22 12:24:18 +02:00  
Reason: I approve this document

**The Registrar, Competition Tribunal**

Sibongile Mshoeshe

NON-CONFIDENTIAL

CASE NUMBER: IM053Aug21

ECP Africa Fund IV LLC

ECP Africa Fund IV A LLC

and

Burger King (South Africa) RF Proprietary Limited

Grand Foods Meat Plant Proprietary Limited

---

ANNEXURE A: CONDITIONS

---

1. DEFINITIONS

Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings.

- 1.1. **"Acquiring Group"** means ECP Africa Fund and its controlling shareholders;
- 1.2. **"Approval Date"** means the date referred to in the Tribunal's merger clearance certificate (Form CT 10) in respect of the Proposed Transaction;
- 1.3. **"B-BBEE"** means broad-based black economic empowerment as defined in the B-BBEE Act;
- 1.4. **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;
- 1.5. **"B-BBEE Codes"** means the Codes of Good Practice on Broad-Based Black Economic Empowerment issued in terms of section 9(1) of the B-BBEE Act;
- 1.6. [REDACTED]
- 1.7. **"BKSA"** means Burger King (South Africa) RF Proprietary Limited;

- 1.8. "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.9. "**Competition Act**" means the Competition Act, 89 of 1998, as amended;
- 1.10. "**Conditions**" means these conditions;
- 1.11. "**DTIC**" means the Department of Trade, Industry and Competition of South Africa;
- 1.12. "**Days**" means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.13. "**Divestiture Agreement**" means the sale agreement to be entered into between the Acquiring Group [REDACTED] and the Meat Plant Purchaser relating to the Meat Plant Disposal;
- 1.14. [REDACTED]  
[REDACTED]
- 1.15. "**ECP Africa Fund**" means ECP Africa Fund IV LLC and ECP Africa Fund IV A LLC;
- 1.16. "**ESD**" means the Enterprise and Supplier Development element of the B-BBEE Codes, [REDACTED]  
[REDACTED]  
[REDACTED] the compliance with which is independently assessed as part of BKSA's annual B-BBEE verification process;
- 1.17. [REDACTED]  
[REDACTED]
- 1.18. "**Global Standards**" means the standards, specifications and procedures for Burger King Restaurants issued, directed and amended by Burger King Global and/or its Affiliates from time to time [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

- 1.19. **“Grand Foods Meat Plant”** means Grand Foods Meat Plant Proprietary Limited;
- 1.20. **“Historically Disadvantaged Person”** means a historically disadvantaged person as defined in sections 3(2)(a) to (e) of the Competition Act;
- 1.21. **“Implementation Date”** means the date that the Merger becomes unconditional in accordance with its terms;
- 1.22. **“Labour Relations Act”** means the Labour Relations Act, 66 of 1995 (as amended);
- 1.23. **“Meat Plant”** means Grand Foods Meat Plant or the business conducted by Grand Foods Meat Plant, as the case may be;
- 1.24. **“Meat Plant Disposal”** means the sale of the Meat Plant to the Meat Plant Purchaser pursuant to clause 5 of these Conditions;
- 1.25. **“Meat Plant Purchaser”** means the purchaser of the Meat Plant pursuant to the sale set out in clause 5 of these Conditions. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 1.26. **“Merged Entity”** means the Target Firms subject to the control of ECP Africa Fund following implementation of the Merger;
- 1.27. **“Merger”** means the Acquiring Group’s acquisition of the issued shares of the Target Firms, as contemplated in the transaction notified to the Commission under Commission Case Number 021Mar00021;
- 1.28. **“Merging Parties”** means the Acquiring Group and the Target Firms;
- 1.29. [REDACTED]  
[REDACTED]  
[REDACTED]

- 1.30. [REDACTED]  
[REDACTED]
- 1.31. “**South Africa**” means the Republic of South Africa;
- 1.32. “**Target Firms**” means BKSA and the Grand Foods Meat Plant;
- 1.33. “**Tribunal**” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.34. [REDACTED]  
[REDACTED]  
[REDACTED]
- 1.35. [REDACTED]  
[REDACTED]
- 1.36. [REDACTED]  
[REDACTED] and
- 1.37. “**Workers**” means employees as defined in the Labour Relations Act, and in the context of ownership, refers to ownership of a broad base of workers.

## 2. **EXPANSION COMMITMENTS**

- 2.1. Within 5 (five) years of the Implementation Date, BKSA shall –
- 2.1.1. procure the investment of no less than ZAR500,000,000 (five hundred million rand) in aggregate capital expenditure;
- 2.1.2. establish at least 60 (sixty) new Burger King® outlets in South Africa (thereby increasing the current profile of 90 (ninety) Burger King® outlets to at least 150 (one hundred and fifty) Burger King® outlets in South Africa;
- 2.1.3. in addition to the number of permanent BKSA employees in South Africa as at the Approval Date, employ no less than 1,250 (one thousand two hundred and fifty) natural Historically Disadvantaged Persons as permanent BKSA employees in South Africa; and

2.1.4. increase the total value of all payroll and employee benefits in respect of the 1,250 (one thousand two hundred and fifty) BKSA employees referred to in paragraph 2.1.3 above by no less than ZAR120,000,000 (one hundred and twenty million rand).

### 3. SOUTH AFRICAN SUPPLIERS

3.1. The Merged Entity is committed to fostering, developing and strengthening local production of supply inputs, local procurement and the development of South African businesses in general, and Historically Disadvantaged Persons in particular, thereby contributing to a more competitive and inclusive production and procurement environment in South Africa that deepens the industrialisation of South Africa and helps create employment.

3.2. The Merged Entity commits to do so through a concerted focus on BKSA's ESD initiatives to ensure that South African producers find additional opportunities as investors and suppliers to the merged entity and, consequently, improving its compliance with the ESD element of its B-BBEE scorecard.

3.3. In furtherance of this commitment, within 5 (five) years of the Implementation Date, BKSA shall -

3.3.1. as part of its measurement and rating under the B-BBEE Codes, achieve [REDACTED] [REDACTED] for the ESD element under its B-BBEE scorecard; and

3.3.2. maintain [REDACTED] [REDACTED] South African produced input products [REDACTED]

### 4. EMPLOYEE SHARE OWNERSHIP PROGRAM

4.1. Within 36 (thirty six) months of the Implementation Date, the Merged Entity shall establish an employee share ownership program (ESOP) for an effective 5% (five percent) [REDACTED] [REDACTED] interest into BKSA, in accordance with the design principles set out in Annexure C hereto, that will give all Workers employed by BKSA [REDACTED] an opportunity to benefit.



5. **DISPOSAL OF THE MEAT PLANT**

5.1. Following the Approval Date, the Acquiring Group shall seek to conclude the Meat Plant Disposal [REDACTED]

5.2. [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]

5.3. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

5.4. Once the Divestiture Agreement has been concluded, the Acquiring Group shall submit a signed copy of the Divestiture Agreement to the Commission.

5.5. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

5.6. To the extent that the Meat Plant Disposal is classified as a small merger in terms of section 11(5)(a) of the Competition Act, it shall be notified to the Commission for consideration in the prescribed manner and form.

5.7. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

6. **OBLIGATIONS OF THE ACQUIRING GROUP** [REDACTED]

6.1. [REDACTED] the Acquiring Group shall –

- 6.1.1. preserve and maintain the economic and competitive value of the Meat Plant in accordance with good commercial practice;
- 6.1.2. manage the Meat Plant in the ordinary course of business with reasonable care and skill, pursuant to good business practices;
- 6.1.3. not carry out any act that might negatively alter the nature and scope of the current activity or the current commercial strategy of the Meat Plant in a material way; and
- 6.1.4. provide sufficient resources for the maintenance of the Meat Plant in accordance with any approved strategic business plans.

**7. SUPPLY AGREEMENT**

7.1. [REDACTED]  
[REDACTED]  
[REDACTED] BKSA shall conclude a [REDACTED] supply agreement with the Meat Plant and/or the Meat Plant Purchaser in terms of which BKSA will continue to procure inputs from the Meat Plant [REDACTED]  
[REDACTED]

7.2. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**8. [REDACTED]**

8.1. [REDACTED]  
[REDACTED]

- 8.2. [Redacted]  
[Redacted]  
[Redacted]
- 8.3. [Redacted]  
[Redacted]  
[Redacted]
- 8.4. [Redacted]  
[Redacted]
- 8.5. [Redacted]  
[Redacted]  
[Redacted]
- 8.6. [Redacted]  
[Redacted]  
[Redacted]
- 8.7. [Redacted]  
[Redacted]  
[Redacted]
- 8.8. [Redacted]  
[Redacted]
- 8.9. [Redacted]  
[Redacted]
- 8.10. [Redacted]
- 8.11. [Redacted]  
[Redacted]

8.12. [Redacted]  
[Redacted]  
[Redacted]

8.13. [Redacted]  
[Redacted]

8.14. [Redacted]  
[Redacted]  
[Redacted]

8.15. [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

9. [Redacted]

9.1. [Redacted]  
[Redacted]  
[Redacted]

9.2. [Redacted]  
[Redacted]

9.3. [Redacted]

9.4. [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

9.5. [Redacted]  
[Redacted]

9.6. [REDACTED]

9.7. [REDACTED]

9.8. [REDACTED]

9.9. [REDACTED]

**10. EMPLOYMENT**

- 10.1. The Merged Entity shall not retrench any employees as a result of the Merger.
- 10.2. For the sake of clarity, 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 Labour Relations Act; (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.

**11. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 11.1. The Acquiring Group shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 11.2. The Acquiring Group shall provide the Commission with a copy of BKSA's B-BBEE Scorecard as at the Approval Date, within 5 (five) Days of the Implementation Date.
- 11.3. The Acquiring Group shall inform the Commission of the commencement date of the employee share ownership program contemplated in clause 4 above within 5 (five) Days of its occurrence.
- 11.4. For a period of 5 (five) years from the Approval Date, the Acquiring Group shall, within 30 (thirty) Days of each anniversary of the Approval Date, provide to the Commission and the DTIC a report detailing its compliance with these Conditions. This report shall be accompanied by an affidavit, attested to by a senior official of the Merged Entity, confirming the accuracy of the report.
- 11.5. The Commission and/or the DTIC may request any additional information from the Merging Parties, which the Commission and/or the DTIC from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.
- 11.6. Any person who believes that the Merging Parties have not complied with these conditions may approach the Commission. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 11.7. All correspondence in relation to these Conditions must be submitted to the following email addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).

## 12. **VARIATION**

- 12.1. The Merging Parties or the Commission shall be entitled, on good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of any of these conditions at any time after the Approval Date.

## 13. **BREACH**

13.1. In the event that the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules For the Conduct of Proceedings in the Tribunal.

---

**ANNEXURE B**

---

**[CONFIDENTIAL]**

\*\*\*

---

**ANNEXURE C**

---

**[CONFIDENTIAL]**