

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM181Jan21

In the matter between:

Dis-Chem Pharmacies Ltd

Primary Acquiring Firm

And

Pure Pharmacy Holdings (Pty) Ltd

Primary Target Firm

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Panel: E Daniels (Presiding Member)  
Y Carrim (Tribunal Panel Member)  
I Valodia (Tribunal Panel Member)

Heard on: 17 September 2021

Last submission date: 17 September 2021

Decided on: 20 September 2021

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### ORDER

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; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by: Enver Daniels  
Signed at: 2021-09-20 16:11:59 +02:00  
Reason: I approve this document

*Enver Daniels*

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

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**20 September 2021**  
**Date**

**Concurring: Ms Yasmin Carrim and Prof. Imraan Valodia**



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** : 20 September 2021

**To** : Bowmans Attorneys

Case Number: LM181Jan21

Dis-Chem Pharmacies Ltd And Pure Pharmacy Holdings (Pty) Ltd

You applied to the Competition Commission on **15 December 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.

**The Registrar, Competition Tribunal**

*Tebofo Mputle*

**Dis-Chem Pharmacies Limited**

and

**Pure Pharmacy Holdings Proprietary Limited**

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**ANNEXURE A: CONDITIONS**

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**1. DEFINITIONS**

The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning:

- 1.1. **“Acquiring Firm”** means Dis-Chem;
- 1.2. **“Affected Employees”** means the maximum of 13 (thirteen) employees occupying positions which may potentially be redundant as a result of the Merger and which may form part of a potential retrenchment process and who are at the management and executive level. [REDACTED]  
[REDACTED]  
[REDACTED]
- 1.3. **“Affected Stores”** means any [REDACTED] [REDACTED] [REDACTED] identified loss-making stores of the Target Firm;
- 1.4. **“Approval Date”** means the date referred to in the Competition Tribunal's clearance certificate (Form CT 10);
- 1.5. **“Commission”** means the Competition Commission of South Africa;
- 1.6. **“Competing Platforms”** means video telemedicine platforms of competitors of Healthforce such as Udok and Allegra;
- 1.7. **“Competition Act”** means the Competition Act No 89 of 1998, as amended;
- 1.8. **“Conditions”** means these conditions;

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- 1.9. “**Day**” means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
  - 1.10. “**Dis-Chem**” means Dis-Chem Pharmacies Limited, being the Acquiring Firm;
  - 1.11. “**Healthforce**” means Healthforce Proprietary Limited;
  - 1.12. “**Healthforce Video Telemedicine Platform**” means the clinic management and video telemedicine platform of Healthforce as acquired by Dis-Chem on 1 March 2021, excluding versions and/or modules which may be developed and customized on request by any third party, including Dis-Chem, for an appropriate fee;
  - 1.13. “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
  - 1.14. “**Interoperability**” means the feature that, within the confines of the law, including the laws applicable to the protection of personal information and subject to patient consent, enables the sharing and use of data or resources between unrelated systems via local area networks (LANs) or wide area networks (WANs);
  - 1.15. “**Loss-Making Store Employees**” means a maximum of 24 (twenty-four) employees who may be subject to a potential retrenchment process in the event that any of the Affected Stores are closed;
  - 1.16. “**LRA**” means the Labour Relations Act No 66 of 1995, as amended;
  - 1.17. “**Merged Entity**” means the Acquiring Firm and the Target Firm;
  - 1.18. “**Merging Parties**” means the Acquiring Firm and the Target Firm;
  - 1.19. “**Merger**” means the acquisition of control by the Acquiring Firm over the Target Firm;
  - 1.20. “**Open Access**” means access to the Healthforce Video Telemedicine Platform by Third-Party Retail Pharmacy groups to supplement the primary healthcare offering in their respective retail pharmacy stores;
  - 1.21. “**PPH**” means Pure Pharmacy Holdings Proprietary Limited, being the Target Firm;
  - 1.22. “**Pharmaceutical Market**” means the retail pharmacy store market for the provision of scheduled and unscheduled pharmaceutical products as well as front shop products;
  - 1.23. “**Small Merger**” means a proposed merger, in the Pharmaceutical Market, that would fall within section 11(5)(a) of the Competition Act;

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1.24. “**Target Firm**” means PPH;

1.25. “**Third-Party Retail Pharmacy**” means *bona fide* retail pharmacy entities who operate pharmacy stores and provide primary healthcare services in these stores in South Africa; and

1.26. “**Tribunal**” means the Competition Tribunal of South Africa.

## **COMPETITION CONDITIONS**

### **2. OPEN ACCESS CONDITION**

2.1. For a period of 5 (five) years from the Implementation Date, the Merged Entity shall grant Third-Party Pharmacies Open Access to the Healthforce Video Telemedicine Platform on fair, reasonable and non-discriminatory commercial and pricing terms.

### **3. CONDITION RELATING TO INTER-OPERABILITY OF HEALTHFORCE**

3.1. The Merged Entity shall ensure that the Healthforce Video Telemedicine Platform has the ability to be implemented in any Third-Party Retail Pharmacy (subject to the Third-Party Retail Pharmacy meeting the minimum system requirements in terms of physical infrastructure and connectivity) and that electronic patient health records and telemedicine functionality is readily available (**Interoperability as defined in clause 1.14 above**).

3.2. The Merged Entity shall not preclude any patient, having consulted via the Healthforce Video Telemedicine Platform at any of the Merged Entity’s pharmacy stores, from filling their prescription at any other pharmacy store unaffiliated to the Merged Entity.

3.3. The Merged Entity shall ensure that the medical practitioners subscribing to Healthforce are not restricted from subscribing to Competing Platforms.

3.4. For the avoidance of doubt, in the event that a medical practitioner (including but not limited to medical doctors and nurses) is an employee of Healthforce, the medical practitioner may as a consequence of the existence of an employment relationship with Healthforce, be restricted from subscribing to Competing Platforms.

### **4. CONDITION RELATING TO CREEPING MERGERS**

4.1. The Acquiring Firm undertakes to inform the Commission in writing (the **Notice**), for a

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5 (five) year period from the Implementation Date, of any Small Merger in terms of which it may acquire control over another entity in the Pharmaceutical Market.

- 4.2. For the avoidance of doubt, the Acquiring Firm's obligation set out in clause 4.1 above, will not automatically trigger the provisions of sections 13(2) and (3) of the Competition Act. In this regard, the Commission will exercise its powers in terms of section 13(3) in the ordinary course upon receipt of the Notice.
- 4.3. The obligation in clause 4.1 above shall not in any way affect the notification requirements provided for in the Competition Act for transactions that meet the requirements of the Competition Act for merger notification.

## **PUBLIC INTEREST CONDITIONS**

### **5. EMPLOYMENT CONDITION**

- 5.1. Other than the Affected Employees and the Loss-Making Store Employees, the Merging Parties shall not retrench any employees as a result of the Merger for a period of 2 (two) years from the Implementation Date as well as the period between the Approval Date and the Implementation Date.
- 5.2. For the sake of clarity, retrenchments for purposes of these Conditions, will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) 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; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance;
- 5.3. The Merged Entity commits for a period of 2 (two) years after the Implementation Date, to give preference to the Affected Employees and the Loss-Making Store Employees provided they have the requisite qualifications, skills, know-how and experience should there be available vacancies at the Merged Entity.
- 5.4. The Merged Entity shall use its reasonable endeavours to communicate available vacancies at the Merged Entity to the Affected Employees and the Loss-Making Store Employees for a period of 2 (two) years after the Implementation Date.
- 5.5. The Merged Entity commits to use its reasonable endeavors to ensure that the aggregate

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employment level in the pharmacy stores within the Merged Entity does not decrease for a period of 3 (three) years from the Implementation Date. For the avoidance of doubt, it is not intended that this undertaking extend to variations to the employment levels which may occur as a result of *bona fide* operational requirements, natural attrition, voluntary severance packages, dismissals, resignations, or similar unilateral acts by employees which are beyond the control of the Merged Entity.

## 6. POTENTIAL STORE CLOSURES

6.1. The Acquiring Firm shall use its reasonable endeavours to limit the closure of the Target Firm's stores.

6.2. [REDACTED]

## 7. LOCAL INPUTS

7.1. The Acquiring Firm shall use its reasonable endeavours to ensure that it maintains, and if possible, improves its current level of procurement of products made in South Africa, including from Small Medium and Micro Enterprises (**SMME**) and Historically Disadvantaged Persons (**HDP**), to develop its South African supplier base and promote local manufacturing.

7.2. For the avoidance of doubt, a HDP controlled supplier in these Conditions refers to an entity in which HDP/s hold over 50% of the shareholding or membership interest, whichever is applicable.

7.3. Pursuant to clause 7.1 above and clause 8.1 below, it is recorded that Dis-Chem's procurement spend on South African HDP controlled businesses, as at 28 February 2021, was [REDACTED]. The Acquiring Firm shall ensure that it increases this figure by a minimum of [REDACTED] over a cumulative period of 5 (five) years from the Implementation Date.

7.4. Pursuant to clause 7.3 above, the Acquiring Firm shall increase the spend on South African HDP controlled businesses by a minimum of [REDACTED] of the Base Figure annually with the objective of ensuring that the Target Figure envisaged in 7.3 above is achieved over a cumulative period of 5 (five) years from the Implementation Date.

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## 8. SUPPLIER DEVELOPMENT

- 8.1. The Acquiring Firm shall use its reasonable endeavours to procure locally manufactured products from its current and/or new SMME and HDP suppliers on reasonable commercial terms including credit terms, price, quality, provided that such products meet the requisite industry norms and standards and/or comply with any regulatory requirements imposed on the specific products by law.
- 8.2. It is recorded that Dis-Chem currently has a Supply Chain Finance programme which allows suppliers to receive payment for goods procured upon delivery. The suppliers referred to in clause 7 above as well as this clause 8 are eligible to participate in this programme.

## 9. TRAINING

- 9.1. The Acquiring Firm shall for a 5 (five) year period from the Implementation Date commit to:
- 9.1.1. provide up to 150 (one hundred and fifty) learnership opportunities to qualifying pharmacists' assistants;
  - 9.1.2. provide 2 (two) bursaries for every new Greenfield Pharmacy store (**Newly opened stores**) opened by the Merged Entity after the Implementation Date; and
  - 9.1.3. provide internship opportunities to graduating pharmacists and full-time employment as fully qualified pharmacists' post-community service.

## 10. GENERAL PROVISIONS

- 10.1. The Conditions shall apply for a period of 5 (five) years from the Implementation Date.

## 11. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 11.1. The Merging Parties shall circulate a copy of the Conditions to their employees, the Affected Employees and Loss-Making Store Employees and/or their respective representatives within 10 (ten) Days of the Approval Date.
- 11.2. The Merging Parties shall within 10 (ten) Days of the Approval Date publish clauses 2 and 3 of the Conditions on their respective websites for a period of one year.
- 11.3. As proof of compliance with clause 11.1 above and the publication of the Conditions on their websites, the Merging Parties shall within 10 (ten) Days of circulating the Conditions



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and the publishing the Conditions, provide the Commission with an affidavit from a director employed by the Merged Entity attesting to the circulation and publication of the Conditions and attach copies of said notices.

- 11.4. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 11.5. The Merged Entity shall submit a comprehensive annual compliance report to the Commission, setting out the extent of its compliance with clauses 2, 3, 4, 6, 7, 8 and 9 of the Conditions for the duration of the Conditions.
- 11.6. The Merged Entity shall submit a comprehensive annual compliance report to the Commission, setting out the extent of its compliance with clauses 5.2 above, 5.3 above and 5.4 above for a period of 2 (two) years after the Implementation Date.
- 11.7. Pursuant to clauses 6 and 11.5 above, in the event that the Merged Entity proceeds to close any of the remaining 36 (thirty-six) stores of the Target Firm, the Merged Entity shall ensure that the annual compliance report submitted includes the following detail:
- 11.7.1. efforts that the Merged Entity made to implement the relevant turn-around plan, including any potential alternatives, such as a sale of the pharmacy as a going concern, considered prior to the closure of the store; and
  - 11.7.2. an assessment of the relevant market within a 5km radius of the store closed, detailing the impact of the closure of the store on access to retail pharmacy services and employment.
- 11.8. For the avoidance of doubt, the provisions in clause 11.7 above shall not be construed as imposing any obligation on the Merged Entity to seek permission from the Commission and/or Tribunal prior to closing any store.
- 11.9. The Merged Entity shall submit a comprehensive annual compliance report to the Commission, setting out the extent of its compliance with clauses 5.5 above for a period of 3 (three) years after the Implementation Date.
- 11.10. These compliance reports shall be accompanied by an affidavit (deposed to by a senior official of the Merged Entity) confirming the accuracy of the information contained in the compliance reports.

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11.11. Any Affected Employee or Loss-Making Store Employee who believes that his/her employment with the Merging Parties has been terminated in contravention of the Conditions may approach the Commission with his/her complaint.

## **12. APPARENT BREACH**

12.1. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

## **13. VARIATION**

13.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

## **14. GENERAL**

14.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).