

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM114Nov21

In the matter between:

ETG Chem FZE LLC

**Primary Acquiring Firm**

And

Cure-Chem South Africa (Pty) Ltd

**Primary Target Firm**

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Panel: I Valodia (Presiding Member)  
E Daniels (Tribunal Member)  
L Mncube (Tribunal Member)

Heard on: 16 March 2022

Order Issued on: 16 March 2022

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### ORDER

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



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**Presiding Member**  
**Professor Imraan I. Valodia**

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**16 March 2022**

**Date**

**Concurring: Mr Enver Daniels and Dr Liberty Mncube**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 16 March 2022

**To** : Adams and Adams Attorneys

Case Number: LM114Nov21

ETG Chem FZE LLC And Cure-Chem South Africa (Pty) Ltd

## 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.

You applied to the Competition Commission on **03 November 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

- 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.

### 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](mailto:ctsa@comptrib.co.za)

### The Registrar, Competition Tribunal

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**CONFIDENTIAL**

**ANNEXURE "A"**

**ETG Chem FZE LLC**

**and**

**Cure-Chem South Africa (Pty) Ltd**

**CT Case No: LM114Nov21**

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**CONDITIONS**

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**1. DEFINITIONS**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings -

1. **"Acquiring Group"** means the Acquiring Firm and all firms it controls, all firms controlling the Acquiring Firm and all firms controlled by those firms;
2. **"Acquiring Firm"** means ETG Chem FZE LLC;
3. **"Act"** means the Competition Act, No. 89 of 1998, as amended;
4. **"Approval Date"** means the date referred to on the Tribunal's Merger Clearance Certificate (Form CT 10);
5. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
6. **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;
7. **"Condition"** mean these conditions;
8. **"Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
9. **"Enterprise development"** means the Acquiring Group's existing initiatives to assist HDPs to establish, expand or improve their business;
10. **"HDPs"** means historically disadvantaged persons, as defined in section 3(2) of the Act;

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11. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
  12. **"Merger"** means the acquisition of control by the Acquiring Firms over the Target Firms;
  13. **"Merging Parties"** mean collectively the Acquiring Firms and the Target Firm;
  14. **"Target Firm"** means Cure-Chem South Africa Proprietary Limited;
  15. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act;
  16. **"SETA"** means Sector Education and Training Authority. SETA is an organization that provides vocational skills training;
  17. **"Skills Development"** means the Acquiring Group's existing initiatives to provide (i) bursaries to HDPs for tuition at South African universities; and (ii) learnerships at institutions at SETA accredited institutions;
  18. **"Socio-economic Development"** means the Acquiring Group's existing initiatives which include the recruitment, placement and training of ■ previously unemployed youth on a production technology learnership programme leading to NQF qualification;
  19. **"Supplier Development"** means the Acquiring Group's existing initiatives to procure from and provide other means of support (e.g., technical) to existing HDP suppliers; and
  20. **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

## 2. CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1. The Acquiring Group shall, within 48 (forty-eight) months of the Implementation Date, increase its expenditure towards the following existing public interest initiatives:

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### **Enterprise Development**

- 2.2. Increase the current [REDACTED] expenditure by an additional [REDACTED]

### **Skills Development**

- 2.3. Increase the current [REDACTED] expenditure by an additional [REDACTED]

### **Supplier Development**

- 2.4. Increase the current [REDACTED] expenditure by an additional [REDACTED]

### **Socio-Economic Development**

- 2.5. Increase the current [REDACTED] expenditure by an additional [REDACTED]

## **3. MONITORING**

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of its occurrence.
- 3.2. Within 30 Days of each anniversary of the Implementation Date, the Acquiring Group shall provide the Commission with an affidavit from a senior representative, attesting to compliance with the Conditions in clause 2 above.

## **4. APPARENT BREACH**

- 4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules.

## **5. VARIATION**

- 5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

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**6. GENERAL**

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