

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM170Jan22

In the matter between:

Magnesium Bidco Limited

Primary Acquiring Firm

And

Mimecast Limited

Primary Target Firm

Panel: L Mncube (Presiding Member)
M Mazwai (Tribunal Panel Member)
I Valodia (Tribunal Panel Member)

Heard on: 04 April 2022
Decided on: 07 April 2022

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: Liberty Mncube
Signed at: 2022-04-07 09:46:48 +02:00
Reason: Witnessing Liberty Mncube

L Mncube

**Presiding Member
Prof. Liberty Mncube**

07 April 2022

Date

Concurring: Ms Mondo Mazwai and Prof. Imraan Valodia



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 07 April 2022

To : ENS africa Attorneys

Case Number: LM170Jan22

Magnesium Bidco (Magnesium) Ltd And Mimecast 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 **19 January 2022** 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

The Registrar, Competition Tribunal

Tebogo Mputle

IN THE LARGE MERGER BETWEEN:

Magnesium Bidco Limited

and

Mimecast Limited

Case No: LM170Jan22

ANNEXURE "A": CONDITIONS

1. DEFINITIONS

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

- 1.1. **"Acquiring Firm"** means Magnesium Bidco Limited;
- 1.2. **"Acquiring Group"** means the Acquiring Firm, its controlling shareholders and their subsidiaries;
- 1.3. **"Approval Date"** means the date referred to on the Competition Tribunal's Merger Clearance Certificate (Form CT 10);
- 1.4. **"B-BBEE"** means the Broad-Based Black Economic Empowerment as defined in the B-BBEE Act;
- 1.5. **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act No. 53 of 2003, as amended;
- 1.6. **"Beneficiaries"** means external parties that qualify to participate in bursary schemes, youth programmes, mentorship programmes, supplier development, enterprise development and socio-economic development;
- 1.7. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

- 1.8. **"Competition Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.9. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.10. **"Conditions"** means the conditions set out herein;
- 1.11. **"Days"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.12. **"dtic"** means the Department of Trade, Industry and Competition of South Africa;
- 1.13. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.14. **"Magnesium"** means Magnesium Bidco Limited;
- 1.15. **"Mimecast"** means Mimecast Limited;
- 1.16. **"Mimecast South Africa"** means Mimecast South Africa (Pty) Ltd;
- 1.17. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.18. **"Merged Entity"** means the Merging Parties, following the Implementation Date;
- 1.19. **"Merging Parties"** mean collectively the Acquiring Firm and the Target Firm;
- 1.20. **"Target Firm"** means Mimecast Limited;
- 1.21. **"Target Group"** means the Target Firm and its subsidiaries;
- 1.22. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.23. **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS

2.1. For a period of at least [REDACTED] following the Implementation Date, the Merging Parties will ensure that the Target Group will continue to contribute (at a minimum) to the following initiatives per annum:

2.1.1. Skills development:

2.1.1.1. External bursaries to underprivileged individuals (including stipends) in the amount of, no less than, [REDACTED]

2.1.1.2. External bursaries for students with disabilities in the amount of, no less than [REDACTED]

2.1.1.3. Training (including bursaries) for RSA Mimecasters in the amount of, no less than, [REDACTED]

2.1.1.4. Youth Employment Services (YES) programme in the amount of, no less than, [REDACTED]

2.1.1.5. Partners for Possibilities (mentoring programme) in the amount of, no less than, [REDACTED] and

2.1.2. Supplier Development in the amount of, no less than, [REDACTED]

2.1.3. Enterprise Development in the amount of, no less than, [REDACTED] and

2.1.4. Socio-Economic Development in the amount of, no less than, [REDACTED]
[REDACTED]

3. MONITORING

3.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within five (5) Days of it becoming effective.

3.2. The Merged Entity shall submit a detailed written report within five (5) Days after the anniversary of the Implementation Date and for a period of three (3) years, to the Commission and the dtic, confirming compliance with clause 2 of the Conditions. The report must include amongst others details regarding the spend in respect of each initiative, names of beneficiaries and the amount paid in respect

of each beneficiary. The report must be accompanied by an affidavit which must be deposed to by a Director and/or Chief Executive Officer of the Merged Entity attesting to the contents of the report.

3.3. The Commission may request any additional information from the Merging Parties, which the Commission may from time to time deem necessary for purposes of monitoring the extent of compliance with these Conditions.

3.4. Any person who believes that the Merged Entity have not complied with or have acted in breach of the Conditions may approach the Commission.

4. APPARENT BREACH

4.1. 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 Tribunal Rules read together with Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Parties and/or the Commission may at any time, on good cause shown and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted. Either party may oppose or support such an application.

6. GENERAL

6.1. All correspondence in relation to the Condition must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.