



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM125Nov21

In the matter between:

Main Street 1878 (Pty) Ltd

Primary Acquiring Firm

And

Grindrod Intermodal Business, Ocean African
Container Lines and Maersk Inland Business

Primary Target Firms

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

Heard on: 24 May 2022

Decided on: 24 May 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 as Annexure A; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Presiding Member
Ms Yasmin Carrim

24 May 2022
Date

Concurring: Mr Enver Daniels and Prof. Imraan Valodia



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 24 May 2022

To : Webber Wentzel Attorneys

Case Number: LM125Nov21

Main Street 1878 (Pty) Ltd And Grindrod Intermodal Business,
Ocean African Container Lines and Maersk Inland Business

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 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

The Registrar, Competition Tribunal

CONFIDENTIAL

ANNEXURE A

IN THE LARGE MERGER INVOLVING:

MAIN STREET 1878 PROPRIETARY LIMITED

AND

**GRINDROD INTERMODAL BUSINESS, OCEAN AFRICAN CONTAINER LINES,
MAERSK INLAND BUSINESS**

CASE NUMBER: LM125Nov21

1. DEFINITIONS

The following words shall, unless otherwise stated or inconsistent with the context in which they appear, have the following meanings:

- 1.1 **"APMM"** means A.P. Moller-Maersk A/S, an integrated transport and logistics company;
- 1.2 **"Business Days"** means any day, other than a Saturday, Sunday or statutory public holiday in South Africa;
- 1.3 **"Commencement Date"** means the later date of implementation of the merger by the Merger Parties;
- 1.4 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5 **"Conditions"** means the conditions to the Merger contained herein;
- 1.6 **"Confidential Information"** means competitively sensitive information of the Joint Venture Parent Companies relating to Freight Forwarding and Customs Clearance in South Africa, including but not limited to pricing, pricing policies, strategic plans, customer information and market know-how not generally available to or known by the public;
- 1.7 **"Customs Clearance"** means customs house brokerage services provided to customers to advise on and obtain customs clearances for when ocean cargo crosses a national border;

- 1.8 **"Day-to-Day Operations"** means market-facing activities in relation to the provision of Freight Forwarding and Customs Clearance in South Africa, such as engaging with customers on a daily basis;
- 1.9 **"Freight Forwarding"** means intermediary logistics services provided to customers to assist with the efficient import and export of cargo through the ocean container logistics supply chain¹;
- 1.10 **"GI"** means Grindrod Intermodal business to be contributed to the Joint Venture, comprising container depot, warehousing, rail and trucking services;
- 1.11 **"Grindrod"** means Grindrod Limited, an international integrated transport and logistics company based in South Africa;
- 1.12 **"Joint Venture"** means Main Street 1878 Proprietary Limited, a newly incorporated company which post-closing will be jointly controlled by APMM and Grindrod;
- 1.13 **"Joint Venture Parent Companies" or "Joint Venture Parent Company"** means APMM and Grindrod, or either, as the context may require;
- 1.14 **"Merger"** means the establishment of the jointly controlled Joint Venture in terms of which the Joint Venture will acquire MI from APMM, and GI and OACL from Grindrod;
- 1.15 **"Merger Parties"** means the Joint Venture Parent Companies and the Joint Venture;
- 1.16 **"MI"** means APMM's Maersk inland business to be contributed to the Joint Venture, comprising container depot services, limited trucking and rail services, and limited warehousing services;
- 1.17 **"OACL"** means Grindrod's Ocean Africa Container Lines business to be contributed to the Joint Venture, comprising container feeder shipping and port terminal services; and

¹ Freight forwarders are intermediaries acting on behalf of the customer to facilitate the transportation of goods from the consignor to the consignee at the request of its customer (who may be the consignor or the consignee). The main responsibilities of a freight forwarder are finding a carrier, working with a carrier and other providers to arrange the collection, processing, packing, loading/unloading and transportation of goods. Freight forwarders typically do not own/control the assets (e.g., they do not own container ships).

- 1.18 “**South Africa**” means the Republic of South Africa;
- 1.19 “**the Act**” means the Competition Act 89 of 1998, as amended;
- 1.20 “**Tribunal**” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.21 “**Tribunal Rules**” means the Rules for the Conduct of Proceedings in the Tribunal.

2. INFORMATION EXCHANGE CONDITIONS FOR THE APPROVAL OF THE MERGER

- 2.1 The Joint Venture Parent Companies shall not disclose or exchange any Confidential Information in contravention of the Act.
- 2.2 The Joint Venture employees employed in the Day-to-Day Operations shall not simultaneously be employed in the Joint Venture Parent Companies' Freight Forwarding and Customs Clearance businesses in South Africa.
- 2.3 The Joint Venture Parent Companies' representatives on the board of directors of the Joint Venture shall sign confidentiality undertakings confirming that they shall maintain confidentiality over Confidential Information which may be in their possession and shall not share the Confidential Information with any director, manager, representative or employee of the Joint Venture or the other Joint Venture Parent Company.
- 2.4 The Joint Venture Parent Companies shall design and implement a confidentiality and information exchange policy to the satisfaction of the Commission. The confidentiality and information exchange policy will stipulate, *inter alia*, that the Joint Venture Parent Companies' representatives on the boards of the Joint Venture will not share or discuss any Confidential Information with each other.

3. DURATION OF THE CONDITIONS

These conditions shall endure for as long as the Joint Venture is in existence.

4. MONITORING COMPLIANCE WITH THE CONDITIONS

- 4.1 The Merger Parties shall inform the Commission in writing of the Commencement Date, within 5 (five) Business Days of it becoming effective.

- 4.2 The Joint Venture Parent Companies shall, on an annual basis, for a period of 5 (five) years from the Commencement Date, provide the Commission with an affidavit from a senior representative, attesting to compliance with the conditions in clause 2 above.
- 4.3 The Joint Venture Parent Companies shall within 3 (three) months of the Commencement Date, develop and submit a confidentiality and information exchange policy to the Commission in line with the Conditions.
- 4.4 The Commission shall provide comments to the confidentiality and information exchange policy contemplated in these Conditions within 10 (ten) Business Days of receipt.
- 4.5 The Commission may request any additional information from the Merger Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

In the event that the Commission receives any complaint in relation to noncompliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merger Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

6. VARIATION OF THE CONDITIONS

The Merger Parties or the Commission may at any time after the Commencement Date, on good cause shown, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted.

7. CORRESPONDENCE

All correspondence in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.