



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: LM199Mar22**

In the matter between:

Hapag-Lloyd Aktiengesellschaft

**Primary Acquiring Firm**

And

DAL Deutsche Africa-Linien GmbH & Co. KG

**Primary Target Firm**

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Panel: Y Carrim (Presiding Member)  
E Daniels (Tribunal Member)  
T Vilakazi (Tribunal Member)

Heard on: 24 May 2022

Decided on: 24 May 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 subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

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**Presiding Member**  
**Ms. Yasmin Carrim**

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**24 May 2022**

**Date**

**Concurring: Mr. Enver Daniels and Dr. Thando Vilakazi**

## Annexure “A”

### Hapag-Lloyd Aktiengesellschaft

and

### DAL Deutsche Africa-Linien GmbH & Co. KG

CT case No: LM199Mar22

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## CONDITIONS

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### DEFINITIONS

1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
  - 1.1 “**Acquiring Firm**” means Hapag-Lloyd Aktiengesellschaft;
  - 1.2 “**Approval Date**” means the date referred to on the Commission’s merger Clearance Certificate;
  - 1.3 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
  - 1.4 “**Commission Rules**” mean Rules for the Conduct of Proceedings in the Commission;
  - 1.5 “**Conditions**” mean, collectively, the conditions referred to in this document;
  - 1.6 “**Days**” mean any day other than a Saturday, Sunday or official public holiday in the South Africa;
  - 1.7 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
  - 1.8 “**LRA**” means the Labour Relations Act 66 of 1995 as amended;
  - 1.9 “**Merger**” means the acquisition of the business of the Target Firm by the Acquiring Firm;
  - 1.10 “**Merged Entity**” means the Acquiring Firm and the Target Firm following the Merger;
  - 1.11 “**Merging Parties**” means collectively, the Acquiring Group and the Target Firm;
  - 1.12 “**South Africa**” means the Republic of South Africa;
  - 1.13 “**Target Firm**” means the liner business and certain related assets, including the vessel DAL Kalahari, as well as shares in the agency business currently operated by DAL Deutsche Afrika-Linien GmbH & Co. KG. This includes DAL Agency (Pty) Ltd, DAL Transport (Pty) Ltd (“DAL Transport”) and Simba Africa Maritime (Pty) Ltd;

- 1.14 “**Tribunal**” means the Competition Tribunal of South Africa; and
- 1.15 “**Tribunal Rules**” mean Rules for the Conduct of Proceedings in the Tribunal.

## **CONDITIONS TO THE APPROVAL OF THE MERGER**

### **2. Employment**

- 2.1 The Merging Parties shall not retrench any employees in South Africa as a result of the Merger for a period of 3 (three) years from the Implementation Date as well as the period between the Approval Date and the Implementation Date.
- 2.2 For the sake of clarity, retrenchments for purposes of paragraph 2.1 above will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed; (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.

### **3. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 3.1 The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 The Merging Parties shall each circulate a copy of the Conditions to their employees, recognised trade unions and employee representatives of the Target and Acquiring Firm within 5 (five) Days of the Approval Date.
- 3.3 As proof of compliance with 3.2 above, a director of each of the Merging Parties shall within 10 (ten) Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees and, the relevant trade union(s).
- 3.4 The Acquiring Firm shall, within 30 (thirty) Days of the first three anniversaries of the Implementation Date, submit a report to the Commission, setting out the extent of its compliance with the Condition set out in paragraph **Error! Reference source not found.** above. The compliance report shall be accompanied by an affidavit from a director of the Acquiring Firm attesting to the correctness of the report.

#### 4. **APPARENT BREACH**

- 4.1 In the event that the Commission receives 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 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

#### 5. **VARIATION**

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

#### 6. **GENERAL**

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



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 24 May 2022

**To** : Nortons Incorporated

Case Number: LM199Mar22

Hapag-Lloyd Aktiengesellschaft and Dal Deutsche Afrika-Linien  
GMBH and CO.KG

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

### The Registrar, Competition Tribunal