

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM147Jan25

In the matter between:

Pick n Pay Retailers (Pty) Ltd

Primary Acquiring Firm

And

Plumstead Family Store (Pty) Ltd

Primary Target Firm

Panel: I Valodia (Presiding Member)
G Budlender (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on: 14 March 2025

Decided on: 14 March 2025

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

Presiding Member
Prof. Imraan Valodia

14 March 2025

Date

Concurring: Adv Geoff Budlender SC And Ms Andiswa Ndoni

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 : 14 March 2025

To : Fasken Attorneys

Case Number: LM147Jan25

Pick n Pay Retailers (Pty) Ltd And Plumstead Family Store (Pty) Ltd

You applied to the Competition Commission on **18 December 2024** 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

ANNEXURE A: CONDITIONS

PICK N PAY RETAILERS PROPRIETARY LIMITED

AND

PLUMSTEAD FAMILY STORE PROPRIETARY LIMITED

CC CASE NUMBER: 2024DEC0032

CT CASE NUMBER: LM147JAN25

CONDITIONS

1. DEFINITIONS

- 1.1 **"Acquiring Firm"** means Pick n Pay Retailers Proprietary Limited;
- 1.2 **"Approval Date"** means the date referred to on the Tribunal's merger clearance certificate (Form CT 10), being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 **"Commission"** means the Competition Commission of South Africa;
- 1.4 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.5 **"Competition Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.8 **"Labour Relations Act"** means the Labour Relations Act, 66 of 1995 (as amended);
- 1.9 **"Merger"** means the transaction in terms of which the Acquiring Firm will acquire the Target Firm from the Seller as a going concern;

- 1.10 **"Merger Parties"** means the Acquiring Firm and the Seller;
- 1.11 **"Moratorium Period"** means a period of 2 (two) years from the Implementation Date;
- 1.12 **"Seller"** means Plumstead Family Store Proprietary Limited;
- 1.13 **"South Africa"** means the Republic of South Africa;
- 1.14 **"Target Firm"** or **"PnP Plumstead"** means the retail grocery business operated by Pick n Pay Family Store Plumstead Proprietary Limited;
- 1.15 **"Tribunal"** means the Competition Tribunal of South Africa; and
- 1.16 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Competition Tribunal, issued in terms of section 27 of the Competition Act.

CONDITIONS

2. EMPLOYMENT

- 2.1. The Acquiring Firm will employ the employees of PnP Plumstead on the same terms and conditions upon which they are employed by PnP Plumstead prior to the Implementation Date.
- 2.2. The terms and conditions of employment of the employees of PnP Plumstead will, after the Implementation Date, remain unchanged for the duration of the Moratorium Period.
- 2.3. The Acquiring Firm shall not retrench any employees of PnP Plumstead as a result of the Merger, for the duration of the Moratorium Period.
- 2.4. For the avoidance of doubt, retrenchments do not include:
- 2.4.1 voluntary retrenchment and/or voluntary separation arrangements;
 - 2.4.2 voluntary early retirement packages;
 - 2.4.3 unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act;
 - 2.4.4 resignations or retirements in the ordinary course of business;
 - 2.4.5 retrenchments lawfully effected for operational requirements unrelated to the Merger;
 - 2.4.6 terminations in the ordinary course of business, including but not limited to dismissals as a result of misconduct (including breaches of employment terms, conditions and guidelines, unlawful, inappropriate, criminal conduct or similar grounds of misconduct) or poor performance; and

- 2.4.7 any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2. The Merged Entity shall, within 10 (ten) Days of the Implementation Date, circulate a non-confidential version of the Conditions to the employees and/or the employee representatives and/or relevant trade union(s) of the Target Firm. As proof of compliance herewith, the Target Firm shall, within 10 (ten) Days of circulating the non-confidential version of the Conditions, submit to the Commission an affidavit deposed to by a senior official of the Merged Entity, attesting to such compliance.
- 3.3. Within 30 (thirty) Days of each anniversary of the Approval Date, for a period of 2 (two) years, the Merged Entity shall submit a detailed written report to the Commission confirming compliance with the Conditions. Such report shall be accompanied by an affidavit deposed to by a senior official of the Merged Entity attesting to the contents of the report.
- 3.4. The Commission may at any time request any other documentation or information it deems necessary to monitor compliance with the Conditions.
- 3.5. Any employee of the Target Firm who believes that the Merged Entity has not complied with or have acted in breach of the Conditions may approach the Commission.

4. APPARENT BREACH

- 4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determine that there has been an apparent breach by the Acquiring Firms of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION

- 5.1. The Merging 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 or substituted.

6. GENERAL

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