



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM169Dec20

In the matter between:

DSV South Africa (Pty) Ltd

Primary Acquiring Firm

And

Globeflight Worldwide Express SA (Pty) Ltd

Primary Target Firm

Panel:	M Mazwai (Presiding Member) E Daniels and (Tribunal Panel Member) A Ndoni (Tribunal Panel Member)
Heard on:	21 April 2021
Date of last submission:	23 April 2021
Decided on:	26 April 2021

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).

A handwritten signature in black ink, appearing to read 'M Mazwai'.

Presiding Member
Ms Mondo Mazwai

26 April 2021

Date

Concurring: Mr Enver Daniels and Ms Andiswa Ndoni

In the large merger between:

DSV SOUTH AFRICA PROPRIETARY LIMITED

AND

GLOBEFLIGHT WORLDWIDE EXPRESS (SA) PROPRIETARY LIMITED

Annexure “A” - CONDITIONS

1. DEFINITIONS

In this document, the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings:

- 1.1. **“Acquiring Firm”** means DSV;
- 1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
- 1.3. **“Affected Employee”** means any employee of DSV or Globeflight retrenched as a result of the Merger;
- 1.4. **“Approval Date”** means the date referred to on the Tribunal’s Merger Clearance Certificate (Form CT10);
- 1.5. **“Close Family member”** means the spouse, children, brother, sister, mother, father, sister’s children and brother’s children of the Affected Employee that may be dependent on the Affected Employee;
- 1.6. **“Commission”** means the Competition Commission of South Africa;
- 1.7. **“Conditions”** means these conditions;

- 1.8. **“Days”** means any calendar day which is not a Saturday, Sunday or official public holiday in South Africa;
- 1.9. **“DSV”** means DSV South Africa Proprietary Limited;
- 1.10. **“Eligible Employees”** means Affected Employees that are classified as Skilled Employees;
- 1.11. **“Fund”** means an allocation of money to the value of R1.2 million for the purposes of skills development;
- 1.12. **“Globeflight”** means Globeflight Worldwide Express (SA) Proprietary Limited;
- 1.13. **“Implementation Date”** means the date, occurring after the Approval Date, on which the last condition precedent to the Sale Agreement is fulfilled or waived, as the case may be;
- 1.14. **“Labour Relations Act”** means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.15. **“Merged Entity”** means the combined DSV and Globeflight that will be operated by DSV pursuant to the successful implementation of the Merger;
- 1.16. **“Merger”** means the acquisition by DSV of Globeflight;
- 1.17. **“Merging Parties”** mean DSV and Globeflight;
- 1.18. **“NTM”** means National Transport Movement;

- 1.19. **“Professionally Qualified Employees”** means employees whose job functions are classified as ‘Professionally Qualified, Experienced Specialists and Middle Management’ in Annexure 2 to these Conditions;
- 1.20. **“Sale Agreement”** means the Sale and Purchase of Shares and Claims Agreement between DSV and SA Express Wine Delivery Service Proprietary Limited, Eddie Meyer, Mankopo Richard Mooa, Roshan Bisaal, Gareth Watkins-Neethling and Globeflight;
- 1.21. **“SATAWU”** means the South African Transport and Allied Workers Union;
- 1.22. **“Semi-skilled Employees”** means employees whose job functions are classified as ‘Semi-Skilled and Discretionary Decision Making’ in Annexure 2 to these Conditions;
- 1.23. **“Skilled Employees”** means employees whose job functions are classified as ‘Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen, and Superintendents’ in Annexure 2 to these Conditions;
- 1.24. **“Target Firm”** means Globeflight; and
- 1.25. **“Tribunal”** means the Competition Tribunal of South Africa.

2. EMPLOYMENT

- 2.1. For a period of three (3) years from the Implementation Date, the Merged Entity will -

- 2.1.1. not retrench any Semi-Skilled Employees;
 - 2.1.2. limit the number of retrenchments of Skilled Employees to no more than one hundred and forty (140) employees; and
 - 2.1.3. limit the number of retrenchments of Professionally Qualified Employees to no more than fifty-nine (59) employees.
- 2.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.
- 2.3. In circumstances where a particular employee does not possess the requisite skills or experience for redeployment in a particular role, DSV will consider whether, to the extent feasible, such employee would be able to fulfil the role (within a reasonable period) following receipt of training, mentoring or other re-skilling initiative.
- 2.4. DSV will maintain a database of the names and contact details of all Affected Employees and, should any vacancies arise within the broader DSV business, undertake to inform such employees of relevant vacancies. For a period of 3 (three) years following the Implementation Date, and where an Affected Employee applies for a vacant position, and DSV, acting reasonably, satisfies itself that the applicant for such

position is eligible and subject to all other employment criteria being equal, DSV shall give preference to the Affected Employee in the appointment process. Should any trade union members be impacted, DSV will engage with the relevant trade union in the assessment of skills required for vacancies identified.

- 2.5. In relation to any process instituted in terms of Section 189 of the Labour Relations Act regarding an employee not covered by the above moratorium, to the extent that such employee is a trade union member, DSV will consult with the relevant trade union and such consultations will include a skills assessment.
- 2.6. Post the approval of the transaction by the Competition Authorities and for a period of six (6) months thereafter ("**Recognition Period**"), DSV shall continue to recognise the NTM in accordance with the current recognition agreement (including in relation to the definition of the workplace and the representivity thresholds). Currently, and during the Recognition Period, NTM will be recognised in relation to the Globeflight Worldwide Express workplace as it currently applies. After the Recognition Period and post-integration, DSV will need to reassess the delineation of the workplace(s) for the purpose of recalculating the representation of all unions operating within the DSV group.
- 2.7. DSV will establish the Fund to re-skill or re-train the Eligible Employees. The Fund shall be applied in accordance with the principles and conditions set out in Annexure A1 of these Conditions.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merging Parties shall circulate a copy of the Conditions to all employees and/or their respective representatives, including but not limited to SATAWU and NTM, within five (5) Days of the Approval Date.
- 3.2. As proof of compliance thereof, the Merging Parties shall within five (5) Days of circulating the Conditions, provide the Commission with an affidavit from a senior official of each of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 3.3. The Merging Parties shall inform the Commission of the Implementation Date within five (5) Days of its occurrence.
- 3.4. The Merged Entity shall, for a period of three (3) years from the Implementation Date, submit a report on each anniversary of the Implementation Date, detailing its compliance with clause 2 of the Conditions.
- 3.5. Any person who believes that the Merging Parties have failed to comply with the Conditions may approach the Commission with their complaint.

4. APPARENT BREACH

- 4.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission, read with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

5. VARIATION OF THE CONDITION

- 5.1. The Commission or the Merged Entity shall be entitled, upon good cause shown, to apply to the Tribunal for the waiver, relaxation, modification and/or substitution of one or more of the Conditions.

6. GENERAL

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

Annexure 1

1. The Chief Financial Officer or any appointed Finance or Human Resources Manager in the employment of DSV (**Fund Manager**) shall be appointed to control and manage all financial and accounting aspects of the Fund.
2. Each Eligible Employee will be allocated a maximum of R15 000 for purposes of training or reskilling.
3. Any Eligible Employee wishing to make use of the designated Fund shall apply to the Fund Manager within 12 (twelve) months from the Implementation Date, for the allocation of all or a portion of the fees payable for the training. The application shall be fully motivated and shall include details (on accredited document of the training facility in question) of the cost of the training programme, the material covered in the course and the certification or other accreditation conferred on participants upon successful completion of the training programme. DSV will, upon request from any Eligible Employee, assist or arrange for the assistance of any prospective applicant with the application process to respective institution where the training programme is offered.
4. Should an application for the training be successful, DSV shall make payment of the fees in question (or the portion thereof granted to the Eligible Employee) directly to the training institution in question.
5. DSV shall not unreasonably refuse to disburse funds to any Eligible Employee who wishes to undertake any skills training or programme.
6. DSV shall continue to offer funding from the Fund to the Eligible Employees for a period of 3 (three) years from the Implementation Date or until the Fund is exhausted, whichever occurs sooner.
7. In the event that the Eligible Employee does not opt for training or reskilling, the Eligible Employee can request that the Fund be utilized by a nominated Close Family member for the purposes of paying school fees and/or any other expense related to the education of the nominated Close Family member.
8. Clause 4 above will also apply in instances where the Eligible Employee nominate a Close Family member as a beneficiary.
9. Any portion of the amount allocated to the Fund that remains unclaimed by the Eligible Employees will be retained by DSV.

Annexure 2

	Professionally Qualified Employees <i>Professionally Qualified, Experienced Specialists and Middle Management</i>	Semi-skilled Employees <i>Semi-Skilled and Discretionary Decision Making</i>	Skilled Employees <i>Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen, and Superintendents</i>
DSV roles	1. Account Manager 2. Assistant Manager 3. Branch Manager 4. Business Development Manager 5. HR Business Partner 6. IT Specialist 7. Key Account Manager 8. Logistics Engineer 9. Manager 10. Sales Representative 11. Security Manager 12. Senior Logistics Engineer 13. Senior Team Lead (employees)	1. Administrative Assistant 2. Capturer 3. Facility Specialist 4. Learnership 5. Receptionist 6. ZAF - Checker 7. Drivers (all categories) 8. ZAF - General Worker 9. ZAF - Team Leader (employees)	1. Administrative Assistant 2. Administrative Specialist 3. Compliance Specialist 4. Credit Controller 5. Customer Service Agent 6. Freight Forwarder Assistant 7. HR Assistant 8. Junior IT Specialist 9. Operational Finance Assistant 10. Operations 11. Process Specialist 12. Sales Assistant / Coordinator 13. Secretary 14. Supervisor 15. Team Lead 16. ZAF - Clerk – Dispatch (employees)

	Professionally Qualified Employees <i>Professionally Qualified, Experienced Specialists and Middle Management</i>	Semi-skilled Employees <i>Semi-Skilled and Discretionary Decision Making</i>	Skilled Employees <i>Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen, and Superintendents</i>
Globeflight roles	1. Account Manager 2. Accountant 3. Branch Manager 4. Brand Manager 5. IT Specialist 6. Legal Counsel 7. Manager 8. Process Owner 9. Quality Assurance Manager 10. Sales Manager 11. Senior Manager 12. Training Specialist (█ employees)	1. Administrative Assistant 2. Capturer 3. Learnership 4. Operations Assistant 5. Receptionist 6. ZAF - Driver - Heavy Vehicle Articulated (9-16 Ton) 7. ZAF - Driver - Light Vehicle Driver (<3.5 Ton) 8. ZAF - Driver - Medium Vehicle Articulate (3.5-9 Ton) 9. ZAF - Driver - Medium Vehicle Rigid (3.5-9 Ton) 10. ZAF - Driver - Motor Cycle 11. ZAF - General Worker 12. ZAF - General Worker - Vehicle Assistance (█ employees)	1. Administrative Assistant 2. Administrative Specialist 3. Assistant Account Manager 4. Assistant Credit Controller 5. Brand Assistant 6. Broker Assistant 7. Credit Controller 8. Customer Service Agent 9. Executive Secretary 10. Freight Forwarder 11. Intern 12. Operations 13. Process Specialist 14. Procurement Specialist 15. Sales Assistant / Coordinator 16. Secretary 17. Senior Credit Controller 18. Supervisor 19. Team Lead (█ employees)



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
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date: 26 April 2021

To: Edward Nathan Sonnenbergs

(Name and file number of merger:)

DSV South Africa (Pty) Ltd And Globeflight Worldwide
Express SA (Pty) Ltd
Case Number: LM169Dec20

You applied to the Competition Commission on 4 December 2020 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:

Tebogo H. Mphahlele