



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM014Apr19

In the matter between:

Rappa Management (Pty) Ltd

Primary Acquiring Firm

And

Rappa Holdings (Pty) Ltd

Primary Target Firm

Panel : A Wessels (Presiding Member)
Y Carrim (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 10 July 2019

Decided on : 10 July 2019

ORDER

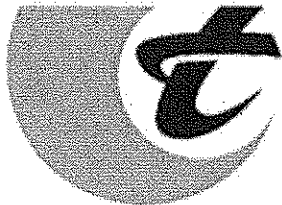
Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that -

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 marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Presiding Member
Mr Andreas Wessels

10 July 2019
Date

Concurring: Ms Yasmin Carrim and Prof. Imraan Valodia



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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: 10 July 2019

To: Roodt Attorneys

(Name and file number of merger:)
Rappa Management (Pty) Ltd and Rappa Holdings (Pty) Ltd
LM014Apr19

You applied to the Competition Commission on 4 April 2019 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

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

The registrar, Competition Tribunal:

Annexure A

Rappa Management (Pty) Ltd

and

Rappa Holdings (Pty) Ltd

CT CASE NUMBER: LM014Apr19

CONDITIONS

1. Definitions

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

- 1.1. **Agreement**” means the sale of shares agreement concluded between Rappa Management and the Rynic Trust on or about 28 February 2019;
- 1.2. **Approval Date**” means the date referred to on the Tribunal’s merger clearance certificate (Form CT10);
- 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 89 of 1998, as amended;
- 1.6. **Conditions**” means these conditions;
- 1.7. **Days**” means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.8. **Gold Doré Bars**” means gold bars which are refined by Rappa Resources to a purity level between 70% to 99%;
- 1.9. **Implementation Date**” means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
- 1.10. **Local Refiners**” means all current and/or future refiners of Gold Doré Bars who have operations in South Africa and who refine Gold Doré Bars to purity levels of at least 99.99% and can refine Gold Doré Bars in compliance with the London Bullion Market Association (LBMA) Good Delivery Rules, and “Local Refinery” shall have a corresponding meaning;
- 1.11. **Merging Parties**” means Rappa Management and Rappa Holdings;
- 1.12. **Merger**” means the acquisition of the entire issued share capital of Rappa Holdings by Rappa Management;

1.13. **“Rappa Holdings”** means Rappa Holdings Proprietary Limited;

1.14. **“Rappa Management”** means Rappa Management Proprietary Limited; and

1.15. **“Rappa Resources”** means Rappa Resources Proprietary Limited, a subsidiary of Rappa Holdings.

2. Conditions to the approval of the merger

2.1. Rappa Resources shall not refuse to supply Gold Doré Bars to a Local Refinery, provided that:

2.1.1. the terms and conditions of supply offered by the relevant Local Refinery are similar to the terms and conditions offered to Rappa Resources by its export customers other than Aulion;

2.1.2. the price, net of carriage, insurance and freight (“CIF”), offered by the relevant Local Refinery shall be not less than the average price offered to Rappa Resources by its export customers other than Aulion, over the preceding twelve months period;

2.1.3. the relevant Local Refinery is registered as an approved manufacturer of minted bars, in accordance with regulation 27B of the Precious Metals Regulations published under GN R570 in Government Gazette 30061 of 9 July 2007, as amended from time to time; and

2.1.4. Rappa Resources shall furnish to each Local Refinery who approaches Rappa Resources for the purchase of Gold Doré Bars and to whom Rappa Resources have not previously sold Gold Doré Bars a copy of the Conditions in clause 2.1.

2.2. The parties to the Agreement amend the Agreement by:

2.2.1. deleting the words and numbers “5 (five)” in the second line of clause 11.1 and the replacement thereof with “4 (four)”; and

2.2.2. deleting the hanging paragraph immediately after clause 11.1.1.3 and the replacement thereof with the following paragraph:

“any business or concern which carries on a business as a refiner of and/or trader in gold and other precious metals in the Republic of South Africa;”

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 it becoming effective.

3.2. Rappa Resources shall, within 10 Days of the Approval Date, publish the Conditions in clause 2.1 on their website for a period of one year.

3.3. As proof of compliance with 2.1 and 3.2 above, Rappa Resources shall:

3.3.1. within 5 Days of publishing the Conditions, provide the Commission with an affidavit deposed to by a senior official of Rappa Resources attesting to the publication of the Conditions and attach proof of such publication;

3.3.2. on or before each anniversary of the Approval Date, submit a written report to the Commission on compliance by Rappa Resources with the Conditions during the 12 month period ending on the date falling on the last day of the month preceding the Approval Date ("Reporting Period") stating:

3.3.2.1. the identity of the Local Refiners who offered to purchase Gold Doré Bars from Rappa Resources during the Reporting Period, including the prices net of CIF, and terms and conditions offered; and

3.3.2.2. the volumes of Gold Doré Bars sold to export customers other than Aulion during the Reporting Period, including the terms and conditions offered by each of those customers and the average price, net of CIF, at which those sales were concluded.

3.4. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, Rule 39 of Commission Rules read together with Rule 37 of the Competition Tribunal Rules will apply.

3.5. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

3.6. All correspondence in relation to these Conditions should be forwarded to mergerconditions@compcom.co.za.