



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM105Aug15

In the matter between:

RTT GROUP (PTY) LTD

Acquiring Firm

And

**COURIERIT SA (PTY) LTD
WAREHOUSEIT (PTY) LTD**

Target Firms

Panel	: Yasmin Carrim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 23 September 2015
Order Issued on	: 23 September 2015
Reasons Issued on	: 15 October 2015

Reasons for Decision

Approval

- [1] On 23 September 2015, the Competition Tribunal ("Tribunal") conditionally approved the merger between RTT Group (Pty) Ltd ("RTT") and Courierit SA (Pty) Ltd ("Courierit") and Warehouseit (Pty) Ltd ("Warehouseit").
- [2] The reasons for the conditional approval follow.

Parties to transaction and their Activities

Primary acquiring firm

- [3] The primary acquiring firm is RTT, a private company incorporated under the company laws of South Africa. RTT is controlled by RTT Holdings (Pty) Ltd (“RTT Holdings”).¹ RTT controls Old RTT Group (Pty) Ltd, Old RTT Holdings (Pty) Ltd and Revert Risk Management Services (Pty) Ltd (“Revert”).
- [4] RTT is an integrated logistics and distribution company that offers secure transportation, warehousing and distribution and other value added services throughout South Africa. RTT delivers its integrated offering through the following three service groups:
- Express parcels and fine distribution which focuses on high value goods;
 - Contract logistics services which provides closed distribution, warehousing and client specific solutions;
 - Risk management and security services in-house and to third-party companies including courier and logistics companies.
- [5] RTT also offers goods in transit insurance as an ancillary service to its core logistics services.
- [6] For the sake of completeness, the merging parties have provided details regarding the activities of RTT Holdings’ shareholders. Ethos is a private equity investment fund which focuses on acquisitions of equity interests in management buy outs. Relevant to the proposed transaction is the fact that GEPF has non-controlling interests in other companies which operate in the broader logistics market.² ADP II is a private equity company established with the objective of building a diversified pan-African portfolio of private equity investments.

¹ RTT Holdings’ shareholders include: Ethos Fund VI (“Ethos”), Government Employees Pension Fund (“GEPF”), Africa Development Partners II L.P (“ADP”), the Management and various management trusts and the BEE Staff Trust. None of these shareholders control RTT Holdings as their respective shareholdings are all under 50%.

² These companies include: Barloworld Limited, Imperial Holdings Limited, Grindrod Limited and Super Group Limited.

Primary target firms

- [7] The target firms are Courierit and Warehouseit which are both private companies registered in accordance with the laws of South Africa.
- [8] Courierit provides domestic courier services whilst Warehouseit provides storage, pick and pack operations and other value add services for a variety of customers including Courierit.

Proposed transaction and rationale:

- [9] In terms of the proposed transaction, RTT intends to acquire 70% of the issued share capital from each of the target firms. Post-merger RTT will control the target firms.
- [10] RTT submits that the proposed transaction ties in with its growth strategy to acquire a majority stake in complimentary companies active in the logistics services industry. The target firms submit that the transaction will enable them to form part of a company that provides extensive courier services with a more established transportation and logistics frame work.

Relevant Market:

- [11] In defining the relevant product market, the Competition Commission ("Commission") found that both RTT and Courierit operate in the markets for the provision of courier and warehousing services which form part of the broader logistics industry. The Commission based its findings on the views of customers and competitors of the merging parties who indicated that courier services differ from traditional logistics services.³ It was also indicated that courier services are distinct from contract logistics and warehousing services which can be procured separately from different logistics companies. Customers also stated that warehousing can be offered as a separate service from an integrated logistics solution depending on customers' needs.

³ Courier services generally entail the collection of goods from point A and delivery to point B whilst traditional logistics services may include warehousing.

- [12] In relation to the geographic market, the Commission found that RTT and the target firms are active throughout South Africa. Further, according to competitors of the merging parties, it is important that suppliers of these services have a national footprint.
- [13] The Commission accordingly assessed the impact of the proposed transaction on the following markets:
- The national market for the provision of courier services;
 - The national market for the provision of warehousing services;

Impact on Competition:

- [14] The Commission considered the activities of the merging parties to determine whether there were any overlaps between them. It found that a horizontal overlap exists in the markets for the supply of courier and warehousing services respectively. In the Commission's view, these overlaps would not result in competition concerns as the merged entity's post-merger market shares would be 9.1% (5.4% accretion) in the market for courier services and 2.0% (0.3% accretion) in the market for warehousing services. Moreover, the merged entity would face significant competition from competitors in both of these markets post-merger.
- [15] The Commission further found that a vertical relationship exists between the merging parties as RTT's subsidiary, Revert, currently supplies security services to the target firms. However, as the target firms only account for 7% of Revert's total revenue and Revert accounts for less than 1% of this market, the Commission found that the proposed transaction would not result in any foreclosure concerns.
- [16] The Commission also considered whether the proposed transaction would result in cross-directorships and potentially facilitate co-ordination between competitors post-merger. This was based on the fact that GEPF, a shareholder of the RTT Group, has board representation in various non-controlling portfolio companies and will be able to appoint directors to the target firms post-merger. As the merging parties did not raise any objection to a condition addressing this aspect, the Commission approved the merger subject to the condition that the directors appointed to the boards of the target firms not be appointed to the boards of the non-controlling portfolio companies.

Public interest:

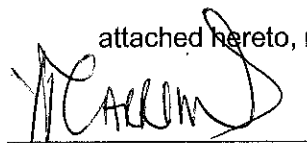
[17] In relation to employment, the merging parties submitted that the firms will continue to operate as separate entities post-merger. Thus there will be no retrenchments. However, upon considering the merging parties' strategic documents, the Commission was concerned that certain cost saving initiatives may be achieved through consolidation of the merging parties' operations. More specifically, that the consolidation of deliveries and collections as well as the incorporation of some of Courierit's branches into RTT's existing facilities would result in retrenchments. When informed of the Commission's concerns, the merging parties indicated that they were amenable to a two year moratorium on retrenchments.

[18] A further employment concern was raised in relation to Courierit's subcontractors which provide the last leg deliveries where Courierit does not have vehicles running. This concern was based on the view that the merger would have a knock-on negative effect on employment as the subcontractors' businesses would run the risk of closure if the merged entity were to refrain from using them post-merger. To remedy this concern, the merging parties agreed to a condition directing them to continue to use their present subcontractors for a period of five years from the approval date of the proposed transaction.

[19] The proposed transaction did not raise any other public interest concerns.

Conclusion:

[20] In light of the above, we agree with the Commission's analysis and conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets and that the merger should be approved subject to the conditions attached hereto, marked "Annexure A".



Yasmin Carrim

15 October 2015

DATE

Mondo Mazwai and Medi Mokuena concurring

Tribunal Researcher: Ammara Cachalia

For the merging parties: Andile Nikani, Fluxman's Attorneys

For the Commission: Maanda Lambani and Kholiswa Mnisi

Annexure A
RTT Group (Pty) Ltd
And
Warehouseit (Pty) Ltd
And
Courierit SA (Pty) Ltd
CC Case Number: 2015Jul0371
CT Case Number: LM105Aug15

Conditions

1. DEFINITIONS

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

- 1.1 **“Acquiring Firm”** means RTT Group (Pty) Ltd (“RTT”);
- 1.2 **“Affected Employees”** mean the five hundred and sixty eight (568) employees of Courierit and Warehouseit, hundred and twenty nine (129) owner-driver contractors and thirty (30) casuals;
- 1.3 **“Approval Date”** means the date referred to in the Competition Tribunal’s clearance certificate (Form CT 10);
- 1.4 **“Business Day”** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.5 **“Commission”** means the Competition Commission of South Africa;
- 1.6 **“Competitively Sensitive Non-Public Information”** includes but is not limited to pricing information, rebates, discounts provided to customers, any planned price increase or price reduction, information on tendering, margin information, customer-specific information (including but not limited to sales volumes and sales value,

service level agreements), investment strategies, advertising, marketing, promotional strategies, business plans and expansion plans.

- 1.7 **"Conditions"** mean these conditions;
- 1.8 **"Courierit"** means Courierit SA (Pty) Ltd;
- 1.9 **"GEPF"** means the Government Employee Pension Fund;
- 1.10 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.12 **"Merging Parties"** means RTT and Courierit and Warehouseit;
- 1.13 **"Non-Controlling Portfolio Companies"** means Barloworld Limited, Eqstra Limited, Imperial Holdings Limited, Grindrod Limited, Super Group Ltd and Tencor Limited;
- 1.14 **"PIC"** means Public Investment Corporation Limited;
- 1.15 **"Merger"** means the acquisition of majority interest by RTT over Courierit and Warehouseit;
- 1.16 **"Target Firms"** means Courierit and Warehouseit;
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa.

1. RECORDAL

- 1.1. The Commission's investigation of the proposed merger found that there are competition concerns arising from the merger relating to the sharing of Competitively Sensitive Non-Public Information. GEPF, represented by PIC has non-controlling interests in Non-Controlling Portfolio Companies which operate in the broader logistics industry and are competitors of the Target Firms in this market. Although the interests are non-controlling, the Commission has established that the GEPF/PIC has the right to appoint directors to the board of each Non-Controlling Portfolio Company. Moreover, this Merger will enable GEPF/PIC to appoint directors to the boards of the Target Firms. Therefore post-merger this structure of cross directorships raises the likelihood for the sharing of Competitively Sensitive Non-Public Information. In addition, the proposed merger raises public interest concerns, particularly relating to employment.

- 1.2. Furthermore, Courierit is currently using sub-contractors to distribute parcels on its behalf. RTT has vehicles running in the same routes. Post-merger, it is the intention of the acquiring firm to conduct Courierit's inter-branch transfers and distribution. This will result in the existing Sub-Contractors or third party service providers currently distributing parcels on behalf of Courierit losing the Courierit business. This is likely to result in significant public interest concerns, in particular job losses. In order to address these concerns, the Commission and the merging parties have agreed on a set of remedies which seek to address these concerns.
- 1.3. In light of the above concerns, the Commission recommends that this Merger be approved subject to the Conditions as set out below.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1. INFORMATION SHARING

- 2.1.1. No board member appointed to the board of directors of the Target Firms by the PIC shall be appointed to serve as a member of the board of directors of any of the Non-Controlling Portfolio Companies.
- 2.1.2. The board member appointed by the PIC to the board of directors of the Target Firms may not have held such a position in the Non-Controlling Portfolio Companies for a period of one year following that board member having ceased to be a board member appointed by the PIC to the board of directors in the Non-Controlling Portfolio Companies.
- 2.1.3. The PIC shall ensure that its investment in the Target Firms is housed in a different division/department to its investments in the Non-Controlling Portfolio Companies, with adequate security and confidentiality safeguards preventing the sharing of Competitively Sensitive Non-Public Information.
- 2.1.4. To the extent that a board member appointed by the PIC to the board of directors of the Target Firms may have access to Competitively Sensitive Non-Public Information pertaining to the

Target Firms, the PIC and that board member shall ensure that such Competitively Sensitive Non-Public Information is only reported to the respective investment committee of the PIC in closed door sessions and that such information is aggregated.

2.1.5. The board member appointed by the PIC to the board of directors of the Target Firms shall sign a confidentiality undertaking confirming that he/she will protect the Competitively Sensitive Non-Public Information of the Target Firms. The PIC shall submit a copy of the confidentiality undertaking to the Commission.

2.1.6. The PIC shall notify the Commission of any change in the identity of the board member appointed by the PIC to the board of directors of the Target Firms and shall confirm that such board member has signed the confidentiality undertaking in line with paragraph 2.1.5 above. The PIC shall submit a copy of the confidentiality undertaking to the Commission.

2.2. **EMPLOYMENT**

2.2.1. The Merging Parties shall not retrench any of the Affected Employees, as a result of the Merger for a period of two years from the Implementation Date. Retrenchments do not include –

2.2.1.1. Voluntary separations;

2.2.1.2. Voluntary early retirement packages;

2.2.1.3. Resignation or retirements in the normal cause;

2.2.1.4. Unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; and

2.2.1.5. Any employee who ceases to be employed by the merging parties in the normal and ordinary course of business including termination owing to the expiry of a temporary and/ or fixed term contract.

2.3. CONDITION RELATING TO THE SUB-CONTRACTORS

- 2.3.1. The Merging Parties undertake that for a period of five years (5) from the Implementation Date, that Courierit will continue to use its current Sub-Contractors on terms and conditions that are no less favourable than the terms and conditions as contained in the current Courierit service level agreement.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. In relation to paragraph 2.1 above:

- 3.1.1. The Merging Parties shall inform the Commission of the Implementation Date within 5 business days of it becoming effective.
- 3.1.2. The PIC shall implement the conditions in paragraph 2.1 above within 10 business days of the Implementation Date and shall submit the confidentiality undertakings referred to in paragraphs 2.1.5 and 2.1.6 above to the Commission within fifteen (15) business days of the Implementation Date.
- 3.1.3. Should the PIC dispose of its interests in the Target Firms, the PIC shall inform the Commission of the disposal within 30 business days of concluding the final sale agreement in regard thereto, notwithstanding whether or not the transaction meets the requisite merger thresholds for notification and shall submit a signed copy of such final sale agreement to the Commission as proof thereof.

- 3.2. In terms of paragraph 2.2 above,

- 3.2.1. The Merging Parties shall inform the Affected Employees of the Conditions in paragraph 2.2 above within five (5) business days of the Approval Date
- 3.2.2. The Merging Parties, through a senior official must provide an affidavit attesting to the notification referred to in paragraph 2.3.2.1 above, and provide a copy of the said notice to the Commission within 10 (ten) business days of the Approval Date.

- 3.2.3. The Merging Parties shall submit a report on an annual basis, on the anniversary of the Approval Date confirming that none of the Affected Employees have been retrenched as a result of the Merger. The report shall be accompanied by an affidavit from a senior official of the Merging Parties, confirming the accuracy of the information contained in the report.
- 3.2.4. The first report shall be submitted on the anniversary of the Implementation Date and the final report a year thereafter.
- 3.3. In order to monitor the Merging Parties' compliance with the condition set out in clause 2.3.1:
 - 3.3.1. The Merging Parties shall circulate a copy of these Conditions to Courierit's Sub-Contractors within 5 business days of the Approval Date.
 - 3.3.2. The Merging Parties, through a senior official must provide an affidavit attesting to the notification referred to in paragraph 3.3.1 above, and provide a copy of the said notice to the Commission within 10 (ten) business days of the Approval Date.
 - 3.3.3. The Merging Parties shall report to the Commission on an annual basis, on the anniversary of the Implementation Date indicating that the service level agreements with the Sub-Contractors are still in place. This report shall be accompanied by an affidavit from a senior official attesting to the accuracy of the information contained in the report.

4. GENERAL

- 4.1. All correspondences in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.
- 4.2. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.
- 4.3. In the event that the Merging Parties appear to have breached the above Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the above Conditions, this shall be

dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules For the Conduct of Proceedings in the Tribunal.

- 4.4. The merging parties shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the conditions.

5. DURATION

- 5.1. The Conditions set out in clause 2.1 shall remain in effect for as long as PIC has an interest in the Target Firms.
- 5.2. The Conditions set out in clause 2.2 shall remain in effect for a period of 2 years from the Implementation Date.