

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: LM034May24

In the matter between:

Liquid Cartons (Pty) Ltd

Primary Acquiring Firm

And

The Liquid Cartons Business Carried on by Nampak
Products Ltd

Primary Target Firm

Panel: L Mncube (Presiding Member)
I Valodia (Tribunal Member)
G Budlender (Tribunal Member)

Heard on: 30 July 2024

Decided on: 30 July 2024

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved subject to the conditions set out in “**Annexure A**” 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. Liberty Mncube**

30 July 2024

Date

Concurring: Prof. Imraan Valodia and Adv. Geoff Budlender SC



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 30 July 2024

To : Werksmans Attorneys

Case Number: LM034May24

Liquid Cartons (Pty) Ltd And The Liquid Cartons Business Carried on by Nampak Products Ltd

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 **07 May 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.

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

The Registrar, Competition Tribunal

ANNEXURE A

LIQUID CARTONS (PTY) LTD AND THE LIQUID CARTONS BUSINESS CARRIED ON BY NAMPAK PRODUCTS LTD

CASE NUMBER: LM034May24

CONDITIONS

1. DEFINITIONS

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

- 1.1 **"Approval Date"** means the date on which the Merger is approved by the Tribunal in terms of the Competition Act;
- 1.2 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.3 **"Competition Act"** means the Competition Act No 89 of 1998, as amended;
- 1.4 **"Competition Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.5 **"Conditions"** means the conditions in this **Annexure A**;
- 1.6 **"Days"** means any calendar day that is not a Saturday, Sunday, or official public holiday in South Africa;
- 1.7 **"DLP"** means Diversified Liquid Packaging Group Proprietary Limited, a company which will, on the Implementation Date, hold the majority of the shares in the Primary Acquiring Firm;
- 1.8 **"Fillers"** means equipment used by customers of Target Business to fill the paper cartons supplied to them by the Target Business with the customer's products, comprising fresh liquid or dry food products, which equipment can be provided by the Target Business to its customers or otherwise procured by those customers;
- 1.9 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger Parties implement the Merger;
- 1.10 **"LRA"** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.11 **"Merged Entity"** means the combined firm resulting from the acquisition of the Target Business by Liquid Cartons (Pty) Ltd;

- 1.12 **"Merger"** means the proposed acquisition by the Primary Acquiring Firm of the Target Business as notified to the Commission under Case No. 2024MAY0015;
- 1.13 **"Merger Parties"** means the Primary Acquiring Firm and Nampak Products Ltd;
- 1.14 **"Minister"** means the Minister of Trade, Industry and Competition, South Africa;
- 1.15 **"Moratorium Period"** means the period commencing on the Implementation Date and continuing thereafter for a period of 3 (three) years;
- 1.16 **"MUA" means My Urban Africa Proprietary Limited;**
- 1.17 **"Primary Acquiring Firm"** means Liquid Cartons (Pty) Ltd;
- 1.18 **"South Africa"** means the Republic of South Africa;
- 1.19 **"Target Business" means** the Liquid Cartons Business carried on by Nampak Products Ltd;
- 1.20 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.21 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal; and
- 1.21 **"UNB CSI"** means confidential, competitively sensitive information of the Target Business's customer, United National Breweries (SA) Proprietary Limited ("**UNB**"), of which the Target Business is in the possession, or comes into the possession, by virtue of the provision by the Target Business of services (including the supply of products) to UNB from time to time, comprising all and any information regarding -
- 1.22.1. the price paid by UNB to the Target Business for services and/or paper cartons (including discounts, rebates and credit terms);
- 1.22.2. the number, capacity and location of any Fillers situated at any of UNB's breweries that the Target Business knows by virtue of UNB being a customer;
- 1.22.3. any of the following changes at any of UNB's breweries that the Target Business knows by virtue of UNB being a customer: fluctuations in production, changes in capacity (e.g. from investments, expansions or partial or complete closure), or any disruption in operations;
- 1.22.4. the volume of paper cartons ordered and/or supplied by the Target Business to UNB from time to time; and
- 1.22.5. provided that if any of the foregoing information becomes public (otherwise than by virtue of any breach of confidentiality by the Target Business or the persons contemplated in

paragraphs 3.1.1 and/or 3.1.1 below), such information shall not constitute UNB CSI for the purpose of these merger conditions.

2. EMPLOYMENT CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1 For the duration of the Moratorium Period, the Merged Entity shall not retrench any employees of the Target Business of as a result of the Merger.
- 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 LRA; (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; (vii) any decision not to renew or extend a contract of a contract order; and (viii) any transfer of employees to the employment of a third party as a result of any sale of business operations, including related assets and liabilities, or any joint venture or similar business arrangements.

3. PROTECTION OF UNB CSI

- 3.1 The Primary Acquiring Firm shall procure that any person who is -
 - 3.1.1 a director of the Primary Acquiring Firm and/or DLP; or
 - 3.1.2 otherwise involved in the management and/or operations of the Primary Acquiring Firm, having access to any UNB CSI, shall, within 5 (five) Days after the Implementation Date or before such person is appointed to any position as contemplated in paragraphs 3.1.1 and 3.1.1 (as the case may be), sign a confidentiality and non-disclosure agreement undertaking ("NDA") to treat as strictly confidential any UNB CSI and not to (a) disclose or disseminate, or cause the disclosure or dissemination, of such information to any director or employee of MUA and (b) use UNB CSI for any purpose other than in relation to the activities of the Target Business. Without limiting the generality of the foregoing, in terms of the NDA the persons contemplated in paragraphs 3.1.1 and 3.1.1 shall undertake not to use any UNB CSI for any purpose in relation to, or for the benefit of, the activities of MUA.
- 3.2 Within 10 (ten) Days after the Implementation Date, the Primary Acquiring Firm shall provide the Commission with copies of all the NDAs concluded pursuant to paragraph 3.1.
- 3.3 With effect from the third anniversary of the Implementation Date, the Primary Acquiring Firm shall not be required to report to the Commission annually in regard to compliance with the conditions in this paragraph 3, but shall ensure that it retains accurate and complete

records of all NDAs signed by such persons to be provided to the Commission within a reasonable period after request from the Commission.

3.4 Subject to the provisions of paragraph 3.3, the Primary Acquiring Firm's obligations in this paragraph 3 shall continue for as long as (i) any director or employee of the Primary Acquiring Firm and/or DLP and/or (ii) any direct or indirect shareholder of the Primary Acquiring Firm has –

3.4.1. any involvement in the business of MUA whatsoever; and/or;

3.4.2. any shareholding or other interest, directly or indirectly, in MUA.

3.5 Notwithstanding anything else contained in these conditions, the obligations contained in this paragraphs 3 shall terminate in the event that UNB ceases to be a customer of the Target Business.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1 The Primary Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.

4.2 The Primary Acquiring Firm shall circulate a copy of the Conditions to all the employees of the Target Business within 5 (five) Days of the Approval Date.

4.3 As proof of compliance thereof, the Primary Acquiring Firm shall within 10 (ten) Days of circulating the Conditions to all the employees of the Target Business, provide the Commission with an affidavit by a senior official of the Primary Acquiring Firm attesting to the circulation of the Conditions and attaching a copy of the notice sent.

4.4 The Primary Acquiring Firm shall, within 30 (thirty) Days of the first, second and third anniversaries of the Implementation Date, provide the Commission with an affidavit attested to by a senior official of the Primary Acquiring Firm, confirming its compliance with the Conditions.

4.5 The Commission may request such additional information from the Primary Acquiring Firm, which the Commission may, from time to time, deem necessary to monitor the extent of compliance with these Conditions.

5. APPARENT BREACH

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 Primary Acquiring Firm 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 Rules for the Conduct of Proceedings in the Tribunal.

6. VARIATION OF CONDITIONS

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.

7. GENERAL

All correspondence concerning the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.