

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM183Mar24

In the matter between:

RMB Investments and Advisory Proprietary Limited/  
Investec Bank Limited

**Primary Acquiring Firms**

And

Azrapart Proprietary Limited

**Primary Target Firm**

---

Panel: T Vilakazi (Presiding Member)  
G Budlender (Tribunal Member)  
A Ndoni (Tribunal Member)

Heard on: 17 April 2024

Decided on: 17 April 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. Thando Vilakazi**

---

**17 April 2024**

**Date**

**Concurring: Adv. Geoff Budlender and Ms. Andiswa Ndoni**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 17 April 2024

**To** : ENSafrica Attorneys

## 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](mailto:ctsa@comptrib.co.za)

Case Number: LM183Mar24

RMB Investments and Advisory Proprietary Limited/ Investec Bank Limited And Azrapart Proprietary Limited

You applied to the Competition Commission on **22 February 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**

CONFIDENTIAL

**ANNEXURE A: CONDITIONS**

**CONFIDENTIAL**

**RMB INVESTMENT AND ADVISORY (PTY) LTD/ INVESTEC BANK LTD AND  
AZRAPART (PTY) LTD**

**CASE NUMBER: LM183Mar24**

---

**1. DEFINITIONS**

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

- 1.1. **"Accelerate"** means Accelerate Property Fund (Pty) Ltd;
- 1.2. **"Acquiring Firms"** means RMB Investments and Advisory (Pty) Ltd and Investec Bank Ltd;
- 1.3. **"Approval Date"** means the date referred to on the Tribunal's merger clearance certificate (Notice CT 10), being the date on which the Merger is approved in terms of the Competition Act;
- 1.4. **"Azrapart"** means Azrapart (Pty) Limited;
- 1.5. **"Commission"** means the Competition Commission of South Africa;
- 1.6. **"Competing Shopping Centres"** means (i) The Buzz, (ii) Design Square, (iii) The Leaping Frog, (iv) Cedar Square, (v) Jackal Creek and (vi) Waterfall Ridge.
- 1.7. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.8. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.9. **"Competitively Sensitive Information"** includes any and all such information of Fourways Mall and the Competing Shopping Centres, that is not in the public domain, relating to:
  - 1.9.1 pricing – including but not limited to pricing of specific rental services, prices/discounts offered to specific clients and planned price reductions or increases;

CONFIDENTIAL

- 1.9.2 margin information by product or client;
- 1.9.3 cost information for particular services;
- 1.9.4 information on specific clients and client strategy, including information with respect to the sales volumes of clients; and business plans and marketing strategies;
- 1.9.5. Advertising strategies;
- 1.9.6. Customer information;
- 1.9.7. Budgets and business plans; and
- 1.9.9. Agreements and other (non-standard) terms and conditions relating to the rentals of retail rentable space.
- 1.10. **"Conditions"** mean these conditions;
- 1.11. **"Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.12. **"Fourways Mall"** means Fourways Mall Shopping Centre;
- 1.13. **"Fourways Mall Executive Committee"** means the executive committee established for the purposes of making certain decisions relating to Fourways Mall;
- 1.14. **"Implementation Date"** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.15. **"Investec"** means Investec Bank Ltd;
- 1.16. **"Merger"** means the proposed acquisition by the Acquiring Firms over the Target Firm as notified to the Commission under Case No. 2024Feb0044;
- 1.17. **"Merging Parties"** means RMBIA, Investec and Azrapart;
- 1.18. **"RMBIA"** means RMB Investments and Advisory (Pty) Limited
- 1.19. **"The Target Firm"** means Azrapart (Pty) Ltd;
- 1.20. **"Tribunal"** means the Competition Tribunal of South Africa; and

CONFIDENTIAL

1.21. Tribunal Rules” means the Rules for the Conduct of Proceedings in the Tribunal.

**2. INFORMATION EXCHANGE CONDITIONS**

**2.1. Board seats and management**

2.1.1. For as long as the Acquiring Firms hold shares in Azrapart, the Acquiring Firms shall ensure that they do not nominate or appoint any appointees of the Fourways Mall Executive Committee to the boards or management committees of the Competing Shopping Centres.

**2.2. Information flow restrictions**

2.2.1. The Acquiring Firms shall procure that their representative/s on the Fourways Mall Executive Committee shall sign confidentiality undertakings in terms of which they agree that they shall maintain confidentiality over Competitively Sensitive Information which may be in their possession and shall not share or discuss the Competitively Sensitive Information with any representatives of the Acquiring Firms and/or Accelerate on the boards or management committees of any of the Competing Shopping Centres.

2.2.2. The Acquiring Firms shall procure that the provisions of clause 2.2.1 are contained in a separate policy which shall have an independent existence for so long as the Acquiring Firms hold shares in Azrapart.

**3. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

3.1. The Acquiring Firms shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.

3.2. Within 30 (thirty) Days of the Implementation Date, the Acquiring Firms shall submit to the Commission an affidavit, deposed to by an Authorised Signatory for each of the Acquiring Firms:

3.2.1. Listing the names of the Acquiring Firms and Accelerate’s representatives on the Fourways Mall Executive Committee;

3.2.2. Listing the names of the Acquiring Firms representatives on the boards or management committees of the Competing Shopping Centres;

## CONFIDENTIAL

- 3.2.3. Attaching a copy of the signed confidentiality undertakings referred to at clause 2.2.1 of these Conditions; and
  - 3.2.4. Confirming that a copy of these conditions has been circulated to the Acquiring Firms' and Accelerate's representatives on (i) the Fourways Mall Executive Committee and (ii) the boards or management committees of the Acquiring Firms' Competing Shopping Centres.
- 3.3. On each anniversary of the Implementation Date, for a period of three years, the Acquiring Firms shall provide the Commission with an affidavit, deposed to by an Authorised Signatory of each of the Acquiring Firms –
- 3.3.1. Attesting to compliance with clauses 2.1 and 2.2 of the Conditions; and
  - 3.3.2. Highlighting any changes to the Acquiring Firms and Accelerate's representatives on the Fourways Mall Executive Committee and the Acquiring Firms' representative/s on the boards or management committees of the Competing Shopping Centres.
- 3.4. The Commission may request any additional information from the Merging Parties which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

#### **4. APPARENT BREACH**

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the alleged breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

#### **5. VARIATION**

The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

**6. GENERAL**

All correspondence in relation to the conditions must be submitted to the following e-mail addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).