



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: LM112Oct24

In the matter between:

DSV Holding Germany GmbH

Primary Acquiring Firm

And

Schenker Aktiengesellschaft

Primary Target Firm

Panel: I Valodia (Presiding Member)
G Budlender (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on: 12 December 2024

Decided on: 12 December 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).

Signed by Imraan
Signed at 2024-12-12 17:22:47 +02:00
Reason: Witnessing Imraan

A small, stylized signature of Prof. Imraan Valodia.

**Presiding Member
Prof. Imraan Valodia**

12 December 2024

Date

Concurring: Adv. Geoff Budlender SC and Ms Andiswa Ndoni



competitiontribunal
SOUTH AFRICA

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

Merger Clearance Certificate

Date : 12 December 2024

To : ENSafrica Attorneys

Case Number: LM112Oct24
DSV Holding Germany GmbH And Schenker Aktiengesellschaft

You applied to the Competition Commission on **08 October 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

Tebogo H. Mphahlele

CONFIDENTIAL

ANNEXURE A

IN THE LARGE MERGER INVOLVING:

DSV HOLDING GERMANY GMBH

AND

SCHENKER AKTIENGESELLSCHAFT

CT CASE NUMBER: LM112OCT24

CONDITIONS

1. **DEFINITIONS**

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

- 1.1. “**Approval Date**” means the date referred to in the Tribunal’s merger clearance certificate (Form CT10), being the date on which the Merger is conditionally approved in terms of the Competition Act;
- 1.2. “**Commission**” means the Competition Commission of South Africa, a statutory body duly established under the Competition Act;
- 1.3. “**Commission Rules**” means the Rules for the Conduct of Proceedings in the Commission;
- 1.4. “**Competition Act**” means the Competition Act No. 89 of 1998 (as amended);

- 1.5. “**Conditions**” means these conditions, as imposed by the Tribunal in terms of section 16(b) of the Competition Act;
- 1.6. “**Days**” means any calendar day other than a Saturday, a Sunday, or an official public holiday in the Republic of South Africa (i.e., business days);
- 1.7. “**DSV**” means DSV A/S (together with all affiliated companies);
- 1.8. “**Implementation Date**” means the date, which follows the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.9. “**LRA**” means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.10. “**Merged Entity**” means the combined firm resulting from the Merger between DSV and Schenker;
- 1.11. “**Merger**” means the acquisition of control over Schenker by DSV via an acquisition vehicle wholly owned and solely controlled by DSV, namely DSV Holding Germany GmbH;
- 1.12. “**Merging Parties**” means DSV and Schenker;
- 1.13. “**Moratorium Period**” means the period between the Approval Date and the Implementation Date and thereafter, a period of 3 (three) years from the Implementation Date;
- 1.14. “**Relevant Trade Unions**” means the Trade Unions notified of the Merger in terms of section 13A of the Competition Act, being –
 - 1.14.1. South African Transport and Allied Workers Union (SATAWU);
 - 1.14.2. General Industries Workers Union of South Africa (GIWUSA);
 - 1.14.3. National Association of South African Workers (NASA Workers);

- 1.14.4. Motor Transport Workers Union of South Africa (MTWU);
 - 1.14.5. Democratised Transport Logistics and Allied Workers Union (DETAWU); and
 - 1.14.6. National Union of Metal Workers of South Africa (NUMSA).
- 1.15. “**Schenker**” means Schenker Aktiengesellschaft (together with all subsidiaries);
- 1.16. “**Top and Senior Management**” means the most senior and qualified employees of the Merged Entity in South Africa and includes the roles / functions as set out in Annexure 1 to the Conditions. For the avoidance of doubt, Top and Senior Management does not include any employees falling within the following skills levels / categories: Professionally Qualified Employees (Professionally Qualified, Experienced Specialists and Middle Management); Skilled Employees (Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen, Superintendents); and Semi-Skilled Employees (Semi-Skilled and Discretionary Decision Making);
- 1.17. “**Tribunal**” means the Competition Tribunal of South Africa, a statutory body duly established under the Competition Act; and
- 1.18. “**Tribunal Rules**” means the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1. EMPLOYMENT

2.1.1. For the duration of the Moratorium Period, the Merged Entity shall –

2.1.1.1. not retrench any employees in South Africa below the levels of Top and Senior Management as a result of the Merger; and

2.1.1.2. retrench no more than 27 (twenty-seven) employees falling within the Top and Senior Management category as a result of the Merger.

2.1.2. For the sake of clarity, retrenchments for purposes of these Conditions do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (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 fixed-term third party contract employee or contract with a third party; or (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. **MONITORING PROCEDURES IN COMPLIANCE WITH THE CONDITIONS**

- 3.1. The Merging Parties shall circulate a copy of the Conditions to all their employees and Relevant Trade Unions in South Africa within 5 (five) Days of the Approval Date.
- 3.2. As proof of compliance thereof, the Merging Parties shall within 5 (five) Days of circulating the Conditions to all their employees and relevant trade unions in South Africa, provide the Commission with an affidavit by a senior official (director or other suitable senior employee) of the Merging Parties attesting to the circulation of the Conditions and attaching a copy of the notice sent.
- 3.3. The Merging Parties shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 3.4. For the duration of the Conditions, the Merged Entity shall submit a report to the Commission on each anniversary of the Implementation Date, setting out its compliance with clause 2 of the Conditions. This report shall be in the form of, or accompanied by, an affidavit attested to by a director or other suitable senior employee of the Merged Entity in South Africa, confirming the accuracy of the contents of the report.
- 3.5. Any employee of either of the Merging Parties or any trade union representative of such employee who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission with their complaint.

4. **APPARENT BREACH**

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

5. **VARIATION OF THE CONDITION**

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

6. **GENERAL**

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

Annexure 1

Top and Senior Management

Skill Level / Employee Category	Indicative Role / Function
Top Management	[Redacted]
Senior Management	[Redacted]