

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM177Dec20

In the matter between:

Afrique Pet Food (Pty) Ltd ("Afrique")

Primary Acquiring Firms

And

The Dry Pet Food Business of Philafrica Foods (Pty)
Ltd

Primary Target Firms

Panel:	E Daniels (Presiding Member) H Cheadle (Tribunal Panel Member) Y Carrim (Tribunal Panel Member)
Heard on:	24 March 2021
Order Issued on:	24 March 2021
Reasons Issued on:	24 March 2021

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)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

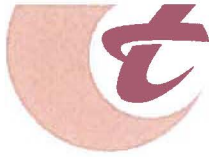
Enver Daniels

Presiding Member
Mr Enver Daniels

24 March 2021

Date

Concurring: Ms Yasmin Carrim and Mr Halton Cheadle



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 : 24 March 2021

To : Webber Wentzel Attorneys

Case Number: LM177Dec20

Afrique Pet Food (Pty) Ltd ("Afrique") and the Dry Pet Food Business of Philafrica Foods (Pty) Ltd

You applied to the Competition Commission on 14 December 2020 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

Lebogang Mphahlele



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM177Dec20

Afrique Pet Food (Pty) Ltd (Primary Acquiring Firm)
and
The Dry Pet Food Business of Philafrica Foods (Pty) Ltd (Primary Target Firm)

REASONS FOR DECISION

- [1] On 24 March 2021, the Competition Tribunal unconditionally approved the large merger between Afrique Pet Food (Pty) Ltd (“Afrique”) and the Dry Pet Food Business of Philafrica Foods (Pty) Ltd (“Philafrica Target Business”).
- [2] The transaction involves Afrique acquiring control of Philafrica Target Business.¹ This is the first part of a divisible transaction. The second part involves Afrique acquiring control of part of the dry pet food business of Martin and Martin (Pty) Ltd.²
- [3] Afrique is a newly incorporated company, and it does not control any firms.³
- [4] Philafrica Target Business currently manufactures and sells dry dog food under its brand JOCK and co-manufactures dry pet food for other brand owners.⁴
- [5] The Competition Commission identified no horizontal or vertical overlaps in the activities of the merger parties. Therefore, the transaction will not result in any market share accretion or changes to the market.
- [6] [REDACTED] which has an agreement with Philafrica in terms of which Philafrica co-manufactures and packages certain of [REDACTED]'s pet food brands, expressed a concern that this agreement will be terminated early as a result of the transaction and thus, negatively impact [REDACTED] business. However, the Commission found that the merged entity has no ability or incentive to terminate the existing agreement and as a result, will not foreclose [REDACTED]. We find no reason to disagree with the Commission's findings.

¹ Philafrica Target Business comprises the dry pet food manufacturing business of Philafrica Foods (Pty) Ltd (“Philafrica”) at its manufacturing facility in Isando.

² The Tribunal simultaneously approved the second part of the transaction under CT case number: LM171Dec20 on 24 March 2021.

³ Afrique is currently a wholly owned subsidiary of Philafrica, which is in turn controlled by AFGRI Group Holdings (Pty) Ltd, an entity ultimately controlled [REDACTED]. Prior to the implementation of the proposed transaction, QSA Holdings Limited (“QSA”) will acquire 50% of the ordinary issued share capital of Afrique, such that Afrique will be jointly controlled by Philafrica and QSA.

⁴ Such as Nutribyte, SA Complete Pet Food and PnP (in respect of its Nutriphase brand).

- [7] We conclude that the proposed transaction does not substantially prevent or lessen competition in any relevant market.
- [8] In relation to public interest considerations, the Minister of Trade, Industry and Competition (DTIC) required that the employees of the Philafrica Target Business being transferred to the merged entity, do so on conditions no less favourable than their current employment. The merger parties confirmed that the employees of the Philafrica Target business will transfer to Afrique on either (i) new terms and conditions mutually agreed upon with the merged entity; or (ii) if no mutual agreement can be reached, will transfer as per section 197 of the Labour Relations Act of 1995.
- [9] Further, the merger parties also made an unequivocal undertaking that there shall be no retrenchments as a result of this transaction.
- [10] We also note that the transaction will not have a negative effect on the level of Broad-Based Black Economic Empowerment or worker ownership in the merged entity.

Enver Daniels

24 March 2021

Mr Enver Daniels

Date

Ms Yasmin Carrim and Mr Halton Cheadle concurring.

Tribunal Case Manager: D Mogapi

For the Merging Parties: D Rudman and A Liebenberg of Webber Wentzel

For the Commission: W Gumbi and N Myoli