

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM082Aug20

In the matter between:

K2020211444 (South Africa) (Pty) Ltd

Primary Acquiring Firm

And

Barrie Cline Clothing (Pty) Ltd

Primary Target Firm

Panel : M Mazwai (Presiding Member)
: Y Carrim (Panel Member)
: F Tregenna (Panel Member)

Heard on : 07 and 09 October 2020

Final additional
submission received on : 09 October 2020

Decided on : 12 October 2020

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)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



Presiding Member
Ms Mondo Mazwai

12 October 2020

Date

Concurring: Ms Yasmin Carrim and Prof. Fiona Tregenna

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM082Aug20

In the matter between:

K2020211444 (South Africa) (Pty) Ltd

Primary Acquiring Firm

And

Barrie Cline Clothing (Pty) Ltd

Primary Target Firm

CONDITIONS

1. DEFINITIONS

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

- 1.1. **“Acquiring Firm”** means K2020211444 (South Africa) (Pty) Ltd;
- 1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
- 1.3. **“Approval Date”** means the date referred to on the Tribunal’s Merger Clearance Certificate (Form CT10);
- 1.4. **“Barrie Cline Clothing”** means Barrie Cline Clothing (Pty) Ltd;
- 1.5. **“Commission”** means the Competition Commission of South Africa;
- 1.6. **“Companies Act”** means the Companies Act, No. 71 of 2008 (as amended);
- 1.7. **“Conditions”** means these conditions;
- 1.8. **“Days”** means any calendar day which is not a Saturday, Sunday or official public holiday in South Africa;

- 1.9. **“Implementation Date”** means the date, occurring after the Approval Date, on which the last condition precedent to the Sale Agreement is fulfilled or waived, as the case may be;
- 1.10. **“K2020211444”** means K2020211444 (South Africa) (Pty) Ltd;
- 1.11. **“Labour Relations Act”** means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.12. **“Merged Entity”** means the combined K2020211444 and Barrie Cline Clothing business that will be operated by Truworths pursuant to the successful implementation of the Merger;
- 1.13. **“Merger”** means the acquisition by K2020211444 of Barrie Cline Clothing;
- 1.14. **“Merging Parties”** mean K2020211444 and Barrie Cline Clothing;
- 1.15. **“Target Firm”** means Barrie Cline Clothing (Pty) Ltd; and
- 1.16. **“Tribunal”** means the Competition Tribunal of South Africa.

CONDITIONS FOR APPROVAL

2. EMPLOYMENT

- 2.1. The Acquiring Firm shall not retrench any employees for a period of one (1) year from the Implementation Date, as a result of the Merger. Retrenchments 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 Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of

business, including but not limited to, dismissals as a result of misconduct or poor performance. The Merged Entity and/or the Commission shall, upon good cause shown, be entitled to apply to the Tribunal for the waiver, relaxation or modification of this condition.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merging Parties shall circulate a copy of the Conditions to all employees / and or their respective representatives within five (5) Days of the Approval Date.
- 3.2. As proof of compliance thereof, the Merging Parties shall within five (5) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 3.3. The Merging Parties shall inform the Commission of the Implementation Date within five (5) Days of its occurrence.
- 3.4. The Merging Parties shall inform the Commission within five (5) Days of any merger related retrenchments that might be effected after the expiry of the one (1) year period in clause 2.1, indicating the number of retrenchments, the skills level of the retrenched employees, and the reasons therefor.
- 3.5. 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. APPARENT BREACH

- 4.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5. **GENERAL**

- 5.1. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.



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 October 2020

To : Fullard Mayer Morrison Attorneys

Case Number: LM082Aug20

K2020211444 (South Africa) (Pty) Ltd And Barrie Cline Clothing (Pty) Ltd

You applied to the Competition Commission on 31 July 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