



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM003Apr23

In the matter between:

EMIF II Investment (Pty) Ltd

Primary Acquiring Firm

And

Vector Logistics (Pty) Ltd

Primary Target Firm

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Panel : L Mncube (Presiding Member)  
: A Ndoni (Tribunal Panel Member)  
: S Goga (Tribunal Panel Member)  
Heard on : 20 June 2023  
Decided on : 20 June 2023

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### Order

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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 as Annexure A; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by:Liberty Mncube  
Signed at:2023-06-20 12:50:04 +02:00  
Reason:Witnessing Liberty Mncube

*L.Mncube*

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**Presiding Member**  
**Prof. Liberty Mncube**

**20 June 2023**

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**Date**

**Concurring: Ms Andiswa Ndoni and Ms Sha'ista Goga**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 20 June 2023

**To** : Bowmans Attorneys

Case Number: LM003Apr23  
EMIF II Investment (Pty) Ltd And Vector Logistics (Pty) 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 **30 March 2023** 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](mailto:ctsa@comptrib.co.za)

### The Registrar, Competition Tribunal

*Tebogo Mporze*

## ANNEXURE A

EMIF II INVESTMENT PROPRIETARY LIMITED

AND

VECTOR LOGISTICS PROPRIETARY LIMITED

CASE NUMBER: LM003Apr23

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### CONDITIONS

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#### 1 DEFINITIONS

- 1.1 The following expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings:
- 1.1.1 **"Acquiring Firm"** means EMIF II Investment Proprietary Limited;
- 1.1.2 **"Approval Date"** means the date referred to on the Tribunal's merger Clearance Certificate (Notice CT10) in terms of the Competition Act;
- 1.1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.4 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.5 **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.1.6 **"Conditions"** means these conditions contained in this Annexure A, agreed to by the Merging Parties and the Commission;
- 1.1.7 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.8 **"ESOP"** means an employee share ownership program contemplated in Paragraph 3 of these Conditions;

- 1.1.9 “**HDP firms**” means firms owned or controlled by historically disadvantaged persons in terms of section 3(2) of the Competition Act;
- 1.1.10 “**Implementation Date**” means the date occurring after the Approval Date, on which the Merging Parties implement the Merger;
- 1.1.11 “**LRA**” means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.12 “**Merger**” means the acquisition of sole control of the Target Firm by the Acquiring Firm, which constitutes a large merger;
- 1.1.13 “**Merging Parties**” means the Acquiring Firm and the Target Firm;
- 1.1.14 “**Target Firm**” means Vector Logistics Proprietary Limited;
- 1.1.15 “**Tribunal**” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.16 “**Tribunal Rules**” means the Rules for the Conduct of Proceedings in the Tribunal.

## **2 Capital expenditure**

- 2.1 The Target Firm shall, over a period of 5 (five) years from the Implementation Date, invest at least R [REDACTED] Rand) in additional capital expenditure to the projected replacement capital expenditure by the Target Firm as at the Approval Date.
- 2.2 The Target Firm shall direct at least R [REDACTED] Rand) of the amount set out at 2.1 above towards HDP firms, provided that the relevant goods and services are available and of sufficient quality, that it is commercially viable to do so and that the goods and services can be sourced on competitive terms.

## **3 Employee share ownership scheme**

- 3.1 Within 2 (two) years of the Implementation Date, the Target Firm shall establish an ESOP for an effective [REDACTED] % interest in the Target Firm in accordance with the

design principles set out in Annexure "A1" hereto, that will give all South African employees of the Target Firm and its subsidiaries an opportunity to benefit.

#### **4 Employment**

4.1 Subject to the provisions of clause 4.2 below, the Target Firm shall not retrench any employees in South Africa as a result of the Merger for a period of 2 (two) years from the Approval Date.

4.2 The undertaking provided in paragraph 4.1 above means that no retrenchments will result as a consequence of the implementation of the Merger. For the sake of clarity, 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 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; and (vii) any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

#### **5 Monitoring compliance with the Conditions**

5.1 The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.

5.2 The Target Firm shall circulate a copy of the Conditions to all its employees in South Africa and their relevant trade unions or employee representatives within 5 (five) Days of the Approval Date.

5.3 As proof of compliance thereof, a director of the Target Firm shall, within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions to its employees in South Africa and provide a copy of the notice that was sent to the relevant trade unions or employee representatives.

- 5.4 The Target Firm shall, on the first and until the fifth anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 2.
- 5.5 The Target Firm shall, within 30 Days of the first anniversary and until the second anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 3.
- 5.6 The Target Firm shall, on the second anniversary of the Approval Date, submit a report confirming compliance with the condition in clause 4.1.
- 5.7 Each report submitted in terms of paragraphs 5.4 to 5.6 shall be accompanied by an affidavit by a director of the Target Firm confirming the accuracy of the information contained in the report and attesting to compliance with the relevant Condition/s.
- 5.8 The Commission may request additional information on compliance with the Conditions for the duration of the Conditions.
- 5.9 The Commission may request such additional information from the Merging Parties, which the Commission from time to time regards as necessary for monitoring compliance with these Conditions.

## **6 Apparent breach**

- 6.1 If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

## **7 Variation of the Condition**

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

## 8 General

- 8.1 All correspondence in relation to these Conditions must be submitted to the following email addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).

## Annexure A1 – Design Principles for the ESOP

Design Principle	Applicable Criteria
<b>Structure</b>	<ul style="list-style-type: none"> <li>➤ The merging parties will establish an ESOP that will hold the equivalent of an effective █% of the issued share capital of Vector Logistics.</li> </ul>
<b>Cost to Workers</b>	<ul style="list-style-type: none"> <li>➤ No cost to workers: Workers must not be required to pay to participate in the ESOP.</li> <li>➤ Firms must make provision for independent legal and financial experts to act on behalf of workers in ESOP establishment negotiations.</li> </ul>
<b>Governance</b>	<ul style="list-style-type: none"> <li>➤ If there is a board of trustees, the board must be balanced and workers must be represented on the board, e.g., 1 trustee appointed by merged entity; 1 appointed by Workers and 1 independent.</li> <li>➤ The independent trustee will be recommended and appointed by the workers, subject to the candidate being acceptable to the merged entity.</li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>➤ Perpetual/evergreen to cater for changing workforce</li> </ul>
<b>Participants</b>	<ul style="list-style-type: none"> <li>➤ All current and future workers (not limited to HDPs).</li> <li>➤ Eligibility criteria: permanent employees with a minimum 12 months service period.</li> <li>➤ Maternity leave will have no adverse impact on qualifying criteria.</li> </ul>
<b>Participation Benefits</b>	<ul style="list-style-type: none"> <li>➤ Beneficiaries will be entitled to: (a) dividends and (b) capital growth/upside based on their participation rights calculated with reference to units allocated to beneficiaries.</li> <li>➤ Beneficiaries will cease to participate for bad leaver events: resignations and dismissals.</li> <li>➤ Death, retirement and retrenchment will not affect participation.</li> </ul>
<b>Value &amp; Funding</b>	<ul style="list-style-type: none"> <li>➤ Value of the shares will be based on the same value as the Merger.</li> <li>➤ Merged entity must provide some vendor finance if required.</li> <li>➤ If there is Vendor financing, it should be interest-free.</li> <li>➤ Dividend policy can provide for a “trickle” dividend (in the ratio of 40:60), i.e. at least 40% of any dividends declared will flow to beneficiaries and at most 60% will be utilised to service the vendor financing.</li> </ul>