

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM161Nov20

In the matter between:

**Blue Falcon 188 Trading (Pty) Ltd**

**Primary Acquiring Firm**

And

**Certain portions and assets of the "John Craig"  
business, a Division of Pepkor Speciality (Pty)  
Ltd**

**Primary Target Firm**

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Panel: M Mazwai (Presiding Member)  
Y Carrim (Panel Member)  
AW Wessels (Panel Member)

Heard on: 05 February 2021

Decided on: 08 February 2021

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



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Ms Mondo Mazwai  
Presiding Member

08 February 2021

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Date

**Concurring: Ms Yasmin Carrim and Mr Andreas Wessels**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 08 February 2021

**To** : Werksmans 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: LM161Nov20

Blue Falcon 188 Trading (Pty) Ltd And Certain portions and assets of The "John Craig" business, a Division of Pepkor Speciality (Pty) Ltd

You applied to the Competition Commission on **19 November 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**

**COMPETITION TRIBUNAL OF SOUTH AFRICA**

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And

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**Primary Target Firm**

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**CONDITIONS**

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**1. DEFINITIONS**

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

- 1.1. **"Acquiring Firm"** / **"Blue Falcon"** means Blue Falcon 188 Trading Proprietary Limited (registration number 2012/034644/07);
- 1.2. **"Affected Employees"** means the employees of the Closure Stores of Pepkor Speciality who have been or will be retrenched as a result of the closure of the Closure Stores;
- 1.3. **"Approval Date"** means the date on which the Merger is approved by the Tribunal and as set out in the Tribunal's clearance certificate;
- 1.4. **"Closing Date"** has the same meaning as that ascribed in the Sale of Business Agreement, per paragraph 1.16;
- 1.5. **"Closure Stores"** means the John Craig stores in South Africa which have stopped trading and been closed, as specified as such in Annexure B of the Sale of Business Agreement between the Merging Parties, as well as any Sale Stores which, for any reason, are unable to be transferred to the Acquiring Firm. This is limited to 22 John Craig Stores already closed by Pepkor;
- 1.6. **"Commission"** means the Competition Commission of South Africa;
- 1.7. **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;

- 1.8. **“Conditions”** mean the conditions set out herein;
- 1.9. **“Days”** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa. A public holiday shall also include such days as may be declared by the President of the Republic of South in terms of the Public Holidays Act, No. 36 of 1994;
- 1.10. **“DTIC”** means the Department of Trade, Industry and Competition;
- 1.11. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.13. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.14. **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.15. **“Pepkor Speciality”** means Pepkor Speciality Proprietary Limited (registration number 1998/007991/07);
- 1.16. **“Sale of Business Agreement”** means the Sale of Business Agreement entered into between Pepkor Speciality and Blue Falcon on 10 November 2020, as amended;
- 1.17. **“Sale Stores”** means the John Craig stores that will be acquired by the Acquiring Firm as specified in Annexure A of the Sale of Business Agreement;
- 1.18. **“Target Firm” / “Transferred Firm”** means certain portions and assets of the "John Craig" business conducted from the Sale Stores operating as a division of Pepkor Speciality; and
- 1.19. **“Tribunal”** means the Competition Tribunal of South Africa.

## **2. EMPLOYMENT CONDITIONS**

- 2.1. Blue Falcon shall not retrench any employees in South Africa as a result of the Merger for a period of 24 (twenty-four) months from the Implementation Date.
- 2.2. For the sake of clarity, retrenchments for purposes of paragraph 2.1 above will not include (i) 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 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.

2.3. The Acquiring Firm and Pepkor Speciality must establish a database of all the Affected Employees and make this database available within Pepkor Speciality and John Craig post-implementation for the purpose of availing employment opportunities to the Affected Employees.

2.4. For a period of 24 (twenty-four) months from the Implementation Date, Pepkor Speciality and the Acquiring Firm shall give preference to the Affected Employees suitably qualified for the relevant position in respect of available positions and when job opportunities arise at John Craig or Pepkor Speciality. In this regard, where internal positions are advertised or circulated internally to the staff at Pepkor Speciality or John Craig, the Affected Employees must simultaneously receive communication about such available positions.

### **LOCAL PROCUREMENT CONDITION**

2.5. The Acquiring Firm shall always use its best efforts to procure the labels it intends to offer from the John Craig stores from local manufacturers.

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

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

3.2. The Merging Parties shall each circulate a copy of the Conditions to their employees in South Africa, the relevant trade unions and employee representatives within 5 (five) Days of the Approval Date.

3.3. As proof of compliance thereof, the Chief Executive Officer (or accounting officer) of the Acquiring Firm, on behalf of the merged entity, shall within 10 (ten) Days of

circulating the Conditions, submit an affidavit to the Commission attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees, the relevant trade unions and/or employee representatives.

- 3.4. Any employee, relevant trade union or employee representative of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.
- 3.5. For a period of two years, within ten (10) business days of the anniversary of the Implementation Date, the Merging Parties shall provide the Commission with a detailed report regarding their compliance with the Conditions. Specifically, as part of their reporting, Pepkor Speciality and the Acquiring Firm must set out details on compliance with the employment Conditions above, and the Acquiring Firm shall explain the factors considered in reaching the outcome outlined at paragraph 2.5 above. The local procurement reporting should include the percentage of clothing apparel the Merging Parties have sourced from local manufacturers or suppliers for the respective seasons, e.g. winter order and summer orders.
- 3.6. In order to monitor compliance with these Conditions, the Commission may require the Merging Parties, in writing, to respond to any issue arising out of its efforts in the monitoring of these Conditions. This includes, but is not limited to, requests for clarification or additional information following the submission of the annual reports referred to in paragraph 3.5.
- 3.7. In the event that the Commission receives a complaint relating to a breach by the Merging Parties of any of these Conditions, the Commission is entitled to request the Merging Parties to provide further information pursuant to the complaint.
- 3.8. Upon request and reasonable notice to provide such information (in terms of 3.7), the relevant firm shall grant the Commission access to the relevant information as may be required by the Commission to enable it to analyse and further investigate such a complaint.

#### **4. BREACH**

- 4.1. In the event that the Commission receives a complaint regarding non-compliance by either the Acquiring Firm or Pepkor Speciality with these Conditions, or otherwise determines that there has been an apparent breach by either the Acquiring Firm or

Pepkor Speciality of any of the above Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

**5. VARIATION**

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

**6. GENERAL**

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