

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM185Jan21

In the matter between:

Alviva Holdings Ltd

Primary Acquiring Firm

And

Tarsus Technology Group (Pty) Ltd

Primary Target Firm

Panel : Y Carrim (Presiding Member)
: AW Wessels (Tribunal Panel Member)
: F Tregenna (Tribunal Panel Member)
Heard on : 21 April 2021
Decided on : 21 April 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)(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).

Presiding Member
Ms Yasmin Carrim

21 April 2021
Date

Concurring: Mr Andreas Wessels and Prof. Fiona Tregenna



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 21 April 2021

To : Tugendhaft Wapnick Banchetti and Partners Attorneys

Case Number: LM185Jan21

Alviva Holdings Ltd And Tarsus Technology Group (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 **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.

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

The Registrar, Competition Tribunal

THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM185Jan21

In the matter between:

Alviva Holdings Limited

Primary Acquiring Firm

And

Tarsus Technology Group (Pty) Ltd

Primary Target Firm

CONDITIONS

1. DEFINITIONS

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

- 1.1 **“Acquiring Firm”** means Alviva;
- 1.2 **“Alviva”** means Alviva Holdings Limited;
- 1.3 **“Affected Employees”** means the 68 employees of Tarsus who have been retrenched prior to the Merger;
- 1.4 **“Alviva Group”** means Alviva and its subsidiaries;
- 1.5 **“Approval Date”** means the date referred to in the Competition Tribunal’s merger clearance certificate (Form CT10);
- 1.6 **“Business Days”** mean any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.7 **“Day”** means any calendar day which is not a Saturday, Sunday or public holiday in South Africa;
- 1.8 **“Commission”** means the Competition Commission of South Africa, duly established under the Competition Act;
- 1.9 **“Commission Rules”** means the Rules for the Conduct of Proceedings in the

Commission;

- 1.10 **“Competition Act”** means the Competition Act, No. 89 of 1998, (as amended);
- 1.11 **“Conditions”** mean, collectively, the conditions referred to in this document;
- 1.12 **“HDIs”** means a historically disadvantaged person/s as defined in section 3(2) of the Competition Act;
- 1.13 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.14 **“LRA”** means the Labour Relations Act, No. 66 of 1995, (as amended);
- 1.15 **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.16 **“Merged Entity”** means the Acquiring Firm and the Target Firm following the Merger;
- 1.17 **“Merging Parties”** means the Acquiring Firms and the Target Firm;
- 1.18 **“Minister”** means the honourable Minister for the Department of Trade, Industry and Competition;
- 1.19 **“Moratorium”** means a period of 2 (two) years from the Implementation Date;
- 1.20 **“Rules”** mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;
- 1.21 **“South Africa”** means the Republic of South Africa;
- 1.22 **“Target Firm”** means Tarsus;
- 1.23 **“Tarsus”** means Tarsus Technology Group Proprietary Limited;
- 1.24 **“Tribunal”** means the Competition Tribunal of South Africa; and
- 1.25 **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1 The Merging Parties shall not retrench any employees because of the Merger for the duration of the Moratorium.
- 2.2 For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) retrenchments as a result of 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 contract worker.
- 2.3 For a period of 36 (thirty-six) months post the Implementation Date, if vacancies at the Merged Entity become available, first preference to apply for vacancies at the Merged Entity will be offered to the Affected Employees.
- 2.4 For the sake of brevity for purposes of clause 2.3 of the Conditions, the Affected Employee will be considered for any vacancy on the basis that the Affected Employee (i) has the relevant expertise and experience in respect of the position for which he/she is applying; (ii) is a person of good repute with no criminal record; and (iii) it is understood that preference will be given to applicants who are HDIs, irrespective of whether the applicant in question, is an Affected Employee.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Merging Parties shall circulate a copy of the Conditions to all their employees within 5 (five) Days of the Approval Date.
- 3.2 As proof of compliance with 3.1 above, a director of each Merging Party shall within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees in that regard.
- 3.3 The Acquiring Firms shall inform the Commission in writing of the Implementation

Date within 5 (five) Days of its occurrence.

- 3.4 The Merged Entity shall provide the Commission with a report detailing the extent of its compliance with clause 2.1, 2.3 and 2.4 of the Conditions on each anniversary of the Implementation Date for the duration of the conditions. This report shall be accompanied by an affidavit, duly signed by the Director of the Merged Entity, attesting to the accuracy of the contents of the report.

4. **APPARENT BREACH**

- 4.1 In the event that the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

5. **VARIATION**

- 5.1 The Merger 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**

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