



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM201Mar23

In the matter between:

BidAir Cargo (Pty) Ltd

Primary Acquiring Firm

and

Interloc Freight Services (Pty) Ltd

Primary Target Firm

Panel	:	J Wilson (Presiding Member)
	:	AW Wessels (Tribunal Member)
	:	I Valodia (Tribunal Member)
Heard on	:	22 August 2023
Last submission	:	21 September 2023
Order issued on	:	04 October 2023

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

Signed by: Jerome Wilson
Signed at: 2023-10-04 22:31:27 +02:00
Reason: Witnessing Jerome Wilson

A handwritten signature in black ink, appearing to be 'JW'.

Presiding Member
Adv. Jerome Wilson SC.

04 October 2023

Date

Concurring: Professor Imraan Valodia and Mr Andreas Wessels

COMPETITION TRIBUNAL OF 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: 04 October 2023

To: MVR Attorneys

Case Number: LM201Mar23

BidAir Cargo (Pty) Ltd and Interloc Freight Services (Pty) Ltd

You applied to the Competition Commission on 20 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

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal:

Tebogo Mphahle

CONFIDENTIAL

ANNEXURE A: CONDITIONS

IN THE LARGE MERGER INVOLVING:

BIDAIR CARGO (PROPRIETARY) LIMITED

AND

INTERLOC FREIGHT SERVICES (PROPRIETARY) LIMITED

CASE NUMBER: LM201MAR23

1. DEFINITIONS

In this document, the expressions used below will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 **"Acquiring Firm"** means BidAir;
- 1.2 **"Approval Date"** means the date referred to on the Tribunal's merger clearance certificate, being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 **"BidAir"** means BidAir Cargo Proprietary Limited;
- 1.4 **"CAA"** means the South African Civil Aviation Authority, a Schedule 3A public entity in terms of the Public Finance Management Act No. 1 of 1999;
- 1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.6 **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.7 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.8 **"Conditions"** means 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 South Africa in terms of the Public Holidays Act 36 of 1994;
- 1.10 **"HDP"** means a historically disadvantaged person as contemplated in the Competition Act;

CONFIDENTIAL

- 1.11 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12 **"Interloc"** means Interloc Freight Services Proprietary Limited;
- 1.13 **"Learnership"** means a structured learning process for gaining theoretical knowledge and practical skills in the workplace, leading to a qualification registered on the NQF;
- 1.14 **"Merger"** means the acquisition by BidAir of Interloc as notified to the Commission under Case No: 2023MAR0027;
- 1.15 **"Merging Parties"** means collectively the Acquiring Firm and the Target Firm, and **"Merging Party"** means any one of them, as the case may be;
- 1.16 **"NQF"** means the National Qualifications Framework as overseen by the South African Qualifications Authority, established in terms of section 18 of the Skills Development Act 97 of 1998, as amended;
- 1.17 **"South Africa"** means the Republic of South Africa;
- 1.18 **"SMME"** means Small, Medium and Micro Enterprises as defined in the National Small Enterprise Act, Act No. 102 of 1996 (as amended);
- 1.19 **"Target Firm"** means Interloc;
- 1.20 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.21 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal; and
- 1.22 **"Youth"** means individuals from the age of 18 to 35.

CONFIDENTIAL

CONDITIONS FOR THE APPROVAL OF THE MERGER

2. COMMERCIAL AVIATION PILOT'S LICENCE PROGRAMME

- 2.1 The Acquiring Firm will, within 12 months after the Implementation Date, identify an HDP candidate to sponsor in order for that HDP candidate to obtain a commercial pilot's licence at a facility accredited by the CAA.
- 2.2 The Acquiring Firm's sponsorship of the HDP candidate will be in the amount of at least [REDACTED] expended over a 2 (two) year period post the identification of a suitable HDP candidate.

3. HDP / SMME SUPPLIER SUPPORT

- 3.1 The Acquiring Firm will contribute a minimum of [REDACTED] or 2% of the Acquiring Firm's net profit after tax - whichever is greater - in interest and security-free loans, or any other initiative aimed at preferential procurement, supplier development and enterprise development, for the Acquiring Firm's SMME and/or HDP suppliers in the first twelve-month period following the Implementation Date.
- 3.2 Thereafter, the Acquiring Firm will contribute 2% of the Acquiring Firm's net profit after tax each year, in interest and security-free loans, or any other initiative aimed at preferential procurement, supplier development and enterprise development, for the Acquiring Firm's SMME and/or HDP suppliers for a period of 4 (four) years.

4. SMME ENTERPRISE DEVELOPMENT

- 4.1 The Acquiring Firm will contribute [REDACTED] or at least 1% of the Acquiring Firm's net profit after tax; - whichever is greater - in the form of discounts, for the development of at least 4 (four) SMMEs in the first twelve-month period following the Implementation Date, to at least 4 (four) SMMEs in the first twelve months following the Implementation Date.
- 4.2 Thereafter, the Acquiring Firm will contribute 1% of its net profit after tax each year, in the form of discounts, for the development of at least 4 (four) SMMEs for a period of 4 (four) years.

CONFIDENTIAL

5. SKILLS DEVELOPMENT

- 5.1 The Acquiring Firm will provide a minimum of 12 (twelve) Learnerships to matric qualified and unemployed HDP Youths, to the aggregate value of [REDACTED] per year, for a period of 5 (five) years post the Implementation Date.
- 5.2 The Acquiring Firm will use its best endeavors to absorb the above HDP Youths into its workforce should suitable vacancies arise. Alternatively, the Acquiring Firm will use its best endeavors to assist the above HDP Youths who have undertaken the Learnerships, with finding employment at other firms.

6. UNDERTAKINGS IN RESPECT OF MARKET PARTICIPANTS

- 6.1 For a period of five years from the Implementation Date:
- 6.1.1 There will be no change to the availability, pricing or any other terms and conditions relating to the Acquiring Firm's air freight service offering to market participants as a result of the Merger.
- 6.1.2 The merged entity will not discriminate against the Target Firm's competitors.
- 6.1.3 The Acquiring Firm will not compel or induce any customers using its air cargo service to also use its road cargo services, or vice versa.
- 6.2 The Acquiring Firm and the Target Firm will each display a notice on its website alerting its customers to these undertakings for a period of one year from the Implementation Date.

7. MONITORING

- 7.1 For a period of five years from the Implementation Date, the Acquiring Firm shall submit a report accompanied by an affidavit deposed to by a senior executive from the Acquiring Firm to the Commission detailing its compliance with clauses 2, 3, 4, 5 and 6 of the Conditions annually, on the anniversary of the Implementation Date.
- 7.2 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 7.3 The report referred to in clause 7.1 shall include but not be limited to details and supporting documents regarding –
- 7.3.1 The name of the sponsored HDP individual that will conduct a commercial pilot training course;
- 7.3.2 Proof of registration for the commercial pilot training course;

CONFIDENTIAL

- 7.3.3 The name of each HDPs and/or SMMEs benefitting from the supplier support initiative and the benefits derived in each case;
 - 7.3.4 The name of each of the SMMEs benefitting from the enterprise development and the amount contributed to each SMME; and
 - 7.3.5 The numbers, names, and demographic details of each of the HDP Youth beneficiaries of the Learnership programme.
- 7.4 The Commission may request such additional information from the Merging Parties that the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.
- 7.5 The conditions in 6 above will no longer be operative should the Acquiring Firm cease to control the Target Firm for purposes of the Competition Act.

8. APPARENT BREACH

- 8.1 Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determine 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.

9. VARIATION OF CONDITIONS

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

10. GENERAL

- 10.1 All correspondence concerning these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.