



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM016May23

In the matter between:

Auto Industrial Investment Holdings (Pty) Ltd

Primary Acquiring Firm

And

Auto Industrial Group (Pty) Ltd

Primary Target Firms

Panel:	J Wilson (Presiding Member) A Wessels (Tribunal Member) I Valodia (Tribunal Member)
Heard on:	11 July 2023
Last date of submission:	26 July 2023
Order issued on:	26 July 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 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: Jerome Wilson
Signed at: 2023-07-26 14:12:17 +02:00
Reason: Witnessing Jerome Wilson

Jerome Wilson

**Presiding Member
Adv. Jerome Wilson SC**

26 July 2023

Date

Concurring: Mr Andreas Wessels and Professor Imraan Valodia

Merger Clearance Certificate

Date : 26 July 2023

To Webber Wentzel Attorneys

Case Number: LM016May23

Auto Industrial Investment Holdings (Pty) Ltd And Auto Industrial 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 **09 May 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
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

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CONFIDENTIAL

ANNEXURE A

AUTO INDUSTRIAL INVESTMENT HOLDINGS PROPRIETARY LIMITED

AND

AUTO INDUSTRIAL GROUP PROPRIETARY LIMITED

CASE NUMBER: LM016MAY23

CONDITIONS

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 AIH;
 - 1.1.2 **"AIG"** means Auto Industrial Group Proprietary Limited;
 - 1.1.3 **"AIH"** means Auto Industrial Investments Holdings Proprietary Limited;
 - 1.1.4 **"Approval Date"** means the date referred to on the Tribunal's Merger Clearance Certificate (Form CT 10);
 - 1.1.5 **"B-BBEE"** means the Broad-Based Black Economic Empowerment as defined in the B-BBEE Act;
 - 1.1.6 **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;
 - 1.1.7 **"B-BBEE Codes"** means the Codes of Good Practice on Broad-Based Economic Empowerment issued under section 9(1) of the B-BBEE Act;
 - 1.1.8 "Black" means black people defined in the B-BBEE Act;
 - 1.1.9 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.10 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
 - 1.1.11 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
 - 1.1.12 **"Conditions"** means these conditions;

- 1.1.13 **"Days"** means any calendar day other than Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.14 **"IDC"** means the Industrial Development Corporation of South Africa Limited;
- 1.1.15 **"Implementation Date"** means occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.16 **"Merged Entity"** means AIG subject to the control of the AIH following the Implementation Date;
- 1.1.17 **"Merger"** means the acquisition of control by the Acquiring Firm over the Target firm;
- 1.1.18 **"Merging Parties"** means collectively the Acquiring Firm and the Target Firm;
- 1.1.19 **"South Africa"** means the Republic of South Africa;
- 1.1.20 **"Target Firm"** means AIG;
- 1.1.21 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.22 **"Tribunal Rules"** means the Rules for the conduct of proceedings in the Tribunal.

2. **ESTABLISHMENT OF AN EMPLOYEE SHARE OWNERSHIP PLAN**

- 2.1 The Merging Parties shall, within a period of 12 (twelve) months of the Implementation Date, establish an employee share ownership plan ("ESOP") in accordance with the key design principles set out in **Annexure A.1**.

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

- 3.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 The Merged Entity shall, within 10 (ten) days of the date of the implementation of the ESOP, submit an affidavit from a senior official, confirming compliance with the Conditions.
- 3.3 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary to monitor the extent of compliance with the Conditions.

4. **VARIATION OF THE CONDITIONS**

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

5. **APPARENT BREACH**

- 5.1 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 with Rule 39 of the Commission's Rules.

6. **GENERAL**

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

Annexure A.1

Description	Term
Shareholding	10% of the shareholding in AIG has been earmarked for the ESOP subject to the implementation of the proposed transaction.
Funding	The IDC will provide the funding for the ESOP's shareholding based on IDC's funding terms for transactions of this nature. The IDC's funding shall bear interest at a rate of 0% but the IDC shall earn a real after-tax internal rate of return ("RATIRR") of [REDACTED] on its funding of the ESOP at the end of the funding period (as defined below).
Calculation of the RATIRR	<p>The RATIRR will be calculated utilising the XIRR functionality of the Microsoft® Excel Version 2003, which allows for the calculation of an internal rate of return based on a series of cash-flow events that are not regular in interval.</p> <p>The methodology for calculating the RATIRR is set out more fully in the agreements concluded between the Merging Parties and the IDC.</p>
Funding period	<p>The funding period will be for a minimum of 7 years from the date of the establishment of the ESOP. The maximum funding period will be based on the ability of the ESOP to repay the funding from dividends declared by AIG.</p> <p>If the ESOP does not receive sufficient dividends from its shares in AIG to repay the IDC funding within the 7 year period referred to above, the funding period will be extended for so long as is necessary to enable the ESOP to do so. For the sake of clarity, the IDC will not have any recourse against the ESOP or its participants in the event that the RATIRR hurdle rate is not met, whether at the end of the minimum 7 year period, or thereafter.</p>
Participants	<p>The ESOP will benefit all employees of AIG (excluding AIG's management shareholders) regardless of race.</p> <p>The management shareholders who will not participate in the ESOP are all those members of AIG's management who are investing their own equity into the transaction and who will collectively hold approximately 14.14% of the shares in AIG.</p>
Participation/ allocation	All participating employees of AIG will participate equally in the ESOP. The ESOP participants will be entitled to full distributions accruing from the ESOP's 10% shareholding in AIG, subject to the IDC's funding terms referred to above. They will receive their proportionate share of the distributions on the egalitarian (1:1) allocation methodology.
Demographics	<p>Currently, AIG has 816 employees of which:</p> <ul style="list-style-type: none"> - 87.6% are Black - 10.8% are White - 1.6% non-South African - 9.9% are Black female - 36.0% are Black youth - 2.6% are people with disability. <p>As per the demographics, at least 85% of value of the ESOP will accrue to Black employees (as defined in the B-BBEE Codes).</p>
Duration of ESOP	The ESOP will be evergreen.

Description	Term
Governance	At least 50% of the board of trustees will be Black people and at least 25% Black women. The chairperson of the board of trustees will be independent. The participants will be entitled to appoint 50% of the board of trustees.