

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM020May24

In the matter between:

MSC II Investments

Primary Acquiring Firm

And

Mertech Marine Holdings (Pty) Ltd

Primary Target Firm

Panel:	L Mncube (Presiding Member) I Valodia (Tribunal Member) A Ndoni (Tribunal Member)
Heard on:	24 July 2024
Decided on:	24 July 2024

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved subject to the conditions set out in “**Annexure A**” 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 Liberty Mncube
Signed: 2024-07-24 11:35:34 +02:00
Reason/Witnessing: Liberty Mncube

L.Mncube

Presiding Member
Prof. Liberty Mncube

24 July 2024

Date

Concurring: Prof. Imraan Valodia and Ms Andiswa Ndoni

Merger Clearance Certificate

Date : 24 July 2024

To : Cliffe Dekker Attorneys

Case Number: LM020May24

MSC II Investments And Mertech Marine Holdings (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 **22 April 2024** 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

Tebogo H. Mphahlele

ANNEXURE A

MSC II Investments And Mertech Marine Holdings (Pty) Ltd

Case Number: LM020May24

CONDITIONS

1. DEFINITIONS

1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -

1.1.1. "**Acquiring Firm**" means MSC II Investments;

1.1.2. "**Alurite Services**" means Alurite Services (Pty) Ltd, with registration number 2022/875460/07, being a wholly owned subsidiary of the Target Firm;

1.1.3. "**Approval Date**" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);

1.1.4. "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.1.5. "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Commission;

1.1.6. "**Competition Act**" means the Competition Act 89 of 1998, as amended;

1.1.7. "**Conditions**" means these conditions, and "Condition" means, as the context requires, any one of them;

- 1.1.8. **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.9. **"HDPs"** means a Historically Disadvantaged Person/s as contemplated in section 3(2) of the Competition Act;
- 1.1.10. **"IGT"** means Ilitha Greentech (Pty) Ltd;
- 1.1.11. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12. [REDACTED];
- 1.1.13. **"Merged Entity"** means the Target Firm subject to control of the Acquiring Firm, following the Implementation Date;
- 1.1.14. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.1.15. **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 1.1.16. **"Reporting Period"** means a period of 36 months after the Implementation Date, or until such time that the Acquiring Firm no longer has control over the Target Firm;
- 1.1.17. **"Target Firm"** means Mertech Marine Holdings (Pty) Ltd;
- 1.1.18. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act; and
- 1.1.19. **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS

CREATION OF SPECIALIST E-WASTE RECLAMATION BUSINESS THAT IS MAJORITY HDP OWNED

- 2.1. The Merged Entity has established the IGT legal entity. 51% of the shares in IGT have been issued to ██████████, an HDP. 49% of the shares have been issued to Alurite Services. IGT is currently a dormant entity which cannot trade because it lacks operating capital.
- 2.2. The Merged Entity undertakes that it shall:
 - 2.2.1. within 3 years of the Implementation Date, make available an incremental of up to R██████████ to IGT for purposes of establishing operations. It is planned that the amount will be made available as follows over the period:
 - 2.2.1.1. Phase 1 – investment of R██████████ to be invested between 6 to 12 months from the Implementation Date;
 - 2.2.1.2. Phase 2 - subject to obtaining the requisite refining license, an additional investment between R██████████ and R██████████, to be invested within 36 months of the Implementation Date.
- 2.3. The amounts above will be made available in the form of equipment purchased on behalf of IGT, loan funding, preference share financing or direct capital contribution, or a combination of these mechanisms, as the case may be.
- 2.4. The Merged Entity undertakes to ensure that Alurite Services enters into an e-waste materials supply contract with IGT on reasonable commercial terms.
- 2.5. The Merged Entity will provide access to skills and expertise to assist in the establishment and ongoing operation of the IGT business, including appropriate financial systems support, governance, accounting and necessary information technology services.
- 2.6. To the extent that the IGT business is intended to, in future, render its services to third parties as suppliers of e-waste in addition to Alurite Services, the Merged Entity will also provide marketing support to the IGT business for a period of 36 months post the Implementation Date.

- 2.7. The Merged Entity anticipates that the IGT business could result in the creation of up to ■ jobs over time. In furtherance of the public interest, the Merged Entity undertakes to use reasonable efforts to create such jobs within a period of 36 months from the IGT business commencing operations. This undertaking is subject to the IGT business obtaining the necessary regulatory approvals, including the requisite refining license, and achieving the projected return on investment implicit in the underlying decision to invest in the IGT business.
- 2.8. Although it is currently anticipated that IGT will be the entity utilised for purposes of these Conditions, in the alternative, the Merged Entity shall, on the basis of the above qualifications (such as they may apply) invest R■■■■■ in another HDP owned entity, which may or may not be in the same line of business, albeit that such alternative entity will be no less than 50% black owned.

HDP SKILLS DEVELOPMENT PROGRAM

- 2.9. The Merged Entity undertakes that it shall, as a consequence of the Merger, establish a focused and incremental skills development program aimed at assisting both current employees of the Merged Entity and young HDPs in obtaining qualifications and certifications within the technical and chemical fields.
- 2.10. ■■■■ apprentices will be selected. ■■■■ apprentices selected from within the Target Firm will be trained and certified as Radiation Protection Officers. The other apprentices will be selected from the local community to train as electricians.
- 2.11. It is intended that the program will run as follows:
- 2.11.1. Remainder of 2024 – the Merged Entity will apply for Workplace Approval for the program from the Transport Education Training Authority (TETA), to commence training for workplace mentors/ coaches and recruit apprentices;
 - 2.11.2. 2025 – the Merged Entity will officially launch the skills development program and training for the selected apprentices will commence; and
 - 2.11.3. 2027 – the ■■■■ selected apprentices will undertake the relevant Trade Test Certification in order to obtain their respective qualifications.

2.12. The Merging Parties estimate that the program will cost approximately R [REDACTED] to implement.

2.13. For the avoidance of doubt, compliance with this condition will be measured according to the number of apprentices to be trained and not against the amount spent to execute the program.

3. MONITORING OF COMPLIANCE

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

3.2. The Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 3 years (three years), provide to the Commission a report detailing its compliance with the Condition. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report. The Merged Entity will provide a final report to the Commission at the end of the skills development program reporting on the outcome of the program.

3.3. The Commission may request additional information from the Merged Entity, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Condition.

3.4. Any person, including any employee, who believes that the Merged Entity has not complied with or has acted in breach of the Condition may approach the Commission.

4. APPARENT BREACH

4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by Merging Parties of these Conditions, the alleged 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 Merging Parties and/or the Commission may at any time, on good cause shown and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified or substituted.

6. GENERAL

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