



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM206Mar23

In the matter between:

K2023645019 (South Africa) (Pty) Ltd A SPV
Controlled by RMB Ventures Eight (Pty) Ltd and
Bopa Moruo Fund 2 (Pty) Ltd

Primary Acquiring Firms

And

Aurex Holdings (RF) (Pty) Ltd

Primary Target Firm

Panel : S Goga (Presiding Member)
: F Tregenna (Tribunal Panel Member)
: M Mazwai (Tribunal Panel Member)
Heard on : 31 May 2023
Decided on : 01 June 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 Sha'ista Goga
Signed at 2023-06-01 16:27:47 +02:00
Reason: Witnessing Sha'ista Goga

Sha'ista Goga

**Presiding Member
Ms Sha'ista Goga**

01 June 2023

Date

Concurring: Prof. Fiona Tregenna and Ms Mondo Mazwai

Merger Clearance Certificate

Date : 01 June 2023

To : Fairbridges Wertheim Becker 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

Case Number: LM206Mar23

K2023645019 (South Africa) (Pty) Ltd A SPV Controlled by RMB Ventures Eight (Pty) Ltd and Bopa Moruo Fund 2 (Pty) Ltd And Aurex Holdings (RF) (Pty) Ltd

You applied to the Competition Commission on **29 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 Mphahlele

ANNEXURE A

IN THE LARGE MERGER BETWEEN:
K2023645019 (SOUTH AFRICA) (PTY) LIMITED,
A SPV CONTROLLED BY RMB VENTURES EIGHT (PTY) LIMITED and
BOPA MORUO FUND 2 (PTY) LIMITED,
AND
AUREX HOLDINGS RF (PTY) LIMITED

CONDITIONS

1. DEFINITIONS

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

- 1.1 **“Acquiring Firms”** means RMB Ventures Eight (Pty) Limited and Bopa Moruo Fund 2 (Pty) Limited;
- 1.2 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.3 **“Approval Date”** means the date on which the Merger is approved in terms of the Act;
- 1.4 **“Commission”** means the Competition Commission of South Africa;
- 1.5 **“Conditions”** means the merger conditions included in this Annexure A;
- 1.6 **“Days”** means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **“ESOP”** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.8 **“ESOP Establishment Period”** means a period no longer than 18 months from the Implementation Date;

- 1.9 "HDPs" means historically disadvantaged persons as defined in section 3(2) of the Act;
- 1.10 "Implementation Date" means the date ,occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 "Merger" means the Acquiring Firms' proposed acquisition through K2023645019 (South Africa) (Pty) Limited, of a controlling minority interest of [REDACTED] in the Target Firm;
- 1.12 "Merged Entity" means the combination of Acquiring Firms and the Target Firm;
- 1.13 "Merging Parties" means collectively the Acquiring Firms and the Target Firm;
- 1.14 "South Africa" means the Republic of South Africa;
- 1.15 "Target Firm" means Aurex Holdings RF (Pty) Limited;
- 1.16 "Tribunal" means the Competition Tribunal of South Africa;
- 1.17 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.18 "Qualifying Workers" means Workers employed by the Target Firm with at least a D1 Patterson Grade; and
- 1.19 "Worker" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESTABLISHMENT OF THE ESOP

- 2.1. By the end of the ESOP Establishment Period, the Merging Parties shall have established the ESOP for the benefit of Qualifying Workers. The ESOP shall hold at least [REDACTED] of the issued shares in the Target Firm as at the Implementation Date, in accordance with the design principles set out in **Annexure B**.

3. MONITORING

- 3.1. Within 10 (ten) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, submit to the

Commission an affidavit deposed to by a senior official, attesting to such compliance.

- 3.2. Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 3.3. The Merged Entity shall submit a compliance report (including a trust deed the ESOP) within 5 (five) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of the Acquiring Firms confirming the accuracy of the information contained in the report.
- 3.4. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. APPARENT BREACH

- 4.1. 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 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 Merging Parties or the Commission may at any time, on good cause shown (including any adverse effect on the Merged Entity's financial performance or macroeconomic or political conditions or healthcare or other applicable regulations impacting the Merged Entity's operations, for example, the impact of COVID-19) 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 Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

ANNEXURE B – CONFIDENTIAL

| Design Principle | Applicable Criteria |
|---|--|
| <i>Structure</i> | <ul style="list-style-type: none"> ○ Will be a unitised structure whereby a trust will be established, and Qualifying Workers will receive units |
| <i>Cost to Workers and participating HDPs</i> | <ul style="list-style-type: none"> ○  |
| <i>Governance</i> | <ul style="list-style-type: none"> ○ ESOP – Workers will be represented on the board of trustees of the ESOP by an employee/s of the Target Firm. |
| <i>Duration</i> | <ul style="list-style-type: none"> ○ ESOP- will endure until terminated by the Trustees |
| <i>Participants</i> | <ul style="list-style-type: none"> ○ ESOP – All Workers with at least 2 years employment tenure at the Target Firm |
| <i>Participation Benefits</i> | <ul style="list-style-type: none"> ○ ESOP – Qualifying Workers will be entitled to dividends |