



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM046Jul23

In the matter between:

Pick n Pay Stores Ltd

**Primary Acquiring Firm**

And

Various assets and the businesses belonging to the Tomis group of companies

**Primary Target Firm**

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Panel: S Goga (Presiding Member)  
F Tregenna (Tribunal Member)  
A Ndoni (Tribunal Member)

Heard on: 05 September 2023  
Order Issued on: 05 September 2023

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### ORDER

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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: shaista  
Signed at: 2023-09-05 10:43:42 +02:00  
Reason: Witnessing shaista

*Sha'ista Goga*

**Presiding Member  
Ms Sha'ista Goga**

**Concurring: Prof Fiona Tregenna and Ms Andiswa Ndoni**

**05 September 2023**

**Date**



**competitiontribunal**  
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](mailto:ctsa@comptrib.co.za)

# Merger Clearance Certificate

**Date** : 05 September 2023

**To** : Nortons Attorneys

Case Number: LM046Jul23

Pick n Pay Stores Ltd And Various assets and the businesses belonging to the Tomis group of companies

You applied to the Competition Commission on **28 June 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.

### The Registrar, Competition Tribunal

*Tebogo Mphahlele*

## ANNEXURE A

### PICK N PAY STORES LTD

AND

### VARIOUS ASSETS AND THE BUSINESSES BELONGING TO THE TOMIS GROUP OF COMPANIES

Case number: LM046Jul23

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## CONDITIONS

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### 1 DEFINITIONS

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- 1.1. **"Acquiring Firm"** means Pick n Pay Stores Ltd, together with its subsidiaries Pick n Pay Retailers (Pty) Ltd and Socius Trading (Pty) Ltd, all of which are companies incorporated in accordance with the laws of South Africa;
- 1.2. **"Approval Date"** means the date on which the Competition Tribunal issues a Clearance Certificate in terms of the Competition Act;
- 1.3. **"Commission"** means the Competition Commission of South Africa;
- 1.4. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission issued in terms of section 21 of the Competition Act;
- 1.5. **"Competition Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.6. **"Conditions"** means these conditions;
- 1.7. **"Days"** means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.8. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.9. **"Labour Relations Act"** means the Labour Relations Act 66 of 1995 (as amended);

- 1.10. **"Merged Entity"** means the merged entities of the Acquiring Firm and the Target Firm following the implementation of the Merger;
- 1.11. **"Merger"** means the acquisition of sole control over the Target Firm by the Acquiring Firm;
- 1.12. **"Merger Parties"** means the Acquiring Firm and the Target Firm;
- 1.13. **"South Africa"** means the Republic of South Africa;
- 1.14. **"Target Firm"** means the various assets and the businesses belonging to the Tomis Group which comprise of Tomis Abattoir (Pty) Ltd, Tomis Meat Packers (Pty) Ltd, Tomis Edel-Kompos (Pty) Ltd, and Tomis Trust (IT 2445/98);
- 1.15. **"Tribunal"** means the Competition Tribunal of South Africa; and
- 1.16. **"Tribunal Rules"** means Rules for the Conduct of Proceedings in the Tribunal.

## 2. CONDITIONS TO THE APPROVAL OF THE MERGER

### EMPLOYMENT

- 2.1. The Acquiring Firm shall not retrench any employees of the Target Firm as a result of the Merger for a period of 36 months from the Implementation Date.
- 2.2. For the sake of clarity, retrenchments for purposes of paragraph 3.1 above shall not include: (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed; (iv) resignations or retirement in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and/or (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 fixed-term third party contract employee or contract with a third party.

### INVESTMENT

- 2.3. The Merged Entity shall invest a total of [figure] [REDACTED] in relation to the operational requirements of the Target Firm including in respect of plant and equipment, within 5 years from the Implementation Date.

### HDP PROCUREMENT

- 2.4. The Acquiring Firm commits to increasing procurement spend with HDP owned wholesale meat suppliers by [figure] [REDACTED], within 2 years from the Implementation Date. The

Acquiring Firm's annual procurement spend with HDP owned wholesale meat suppliers as at the Implementation Date, will be the applicable benchmark, for monitoring purposes.

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

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 3.2. The Acquiring Firm and the Target Firm will circulate a copy of the Conditions to their respective employees, trade unions and employee representatives within 5 (five) Days of the Approval Date.
- 3.3. As proof of compliance herewith, the Acquiring Firm shall, within 5 (five) Days of circulating the Conditions as required in paragraph 3.1, submit an affidavit by a senior official attesting to the circulation of the Conditions and provide a copy of the notice sent.
- 3.4. The Acquiring Firm shall submit an affidavit on an annual basis to the Commission within 1 (one) month after the anniversary of the Implementation Date attesting to the compliance with these Conditions for a period of five years following the Implementation Date.
- 3.5. Any transferred employee of the Target Firm who believes that the Acquiring Firm has not complied with or have acted in breach of the Conditions may approach the Commission.
- 3.6. The Commission may request such additional information from the Acquiring Firm which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

### **4. APPARENT BREACH**

- 4.1. An apparent breach by the Acquiring Firm of any of the Conditions 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 Commission or the Acquiring Firm may at any time, on good cause shown, apply to the Tribunal for the Conditions or any part thereof to be lifted, revised or amended.

### **6. GENERAL**

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za)