

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM191Mar22

In the matter between:

K2021134577 (South Africa) (Pty) Ltd

Primary Acquiring Firm

And

Emerald Safari Resort (Pty) Ltd t/a Emerald Hotel
Resort & Casino South Africa

Primary Target Firm

Panel : L Mncube (Presiding Member)
: Y Carrim (Tribunal Panel Member)
: T Vilakazi (Tribunal Panel Member)
Heard on : 21 July 2022
Order Issued on : 27 July 2022

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: Liberty Mncube
Signed at: 2022-07-27 09:35:46 +02:00
Reason: Witnessing Liberty Mncube

L-Mncube

Presiding Member
Prof. Liberty Mncube

27 July 2022

Date

Concurring: Ms Yasmin Carrim and Dr Thando Vilakazi



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 27 July 2022

To : Nortons 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: LM191Mar22

K2021134577 (South Africa) (Pty) Ltd And Emerald Safari Resort (Pty) Ltd t/a Emerald Hotel Resort & Casino South Africa

You applied to the Competition Commission on **08 March 2022** 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

ANNEXURE A

K2021134577 (SOUTH AFRICA) (PTY) LTD

AND

EMERALD SAFARI RESORT (PTY) LTD

CASE NUMBER: LM191Mar22

CONDITIONS

1. DEFINITIONS

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

- 1.1 **"Acquiring Firm"** means K2021134577 (South Africa) (Pty) Ltd, a private company incorporated in accordance with the laws of South Africa;
- 1.2 **"Approval Date"** means the date on which the Tribunal issues a Clearance Certificate (Notice CT10) 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 Competition 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 **"Merger"** means the acquisition of sole control over the Target Firm by the Acquiring Firm;
- 1.11 **"Merger Parties"** means the Acquiring Firm and the Target Firm;

- 1.12 “**South Africa**” means the Republic of South Africa;
- 1.13 “**Target Firm**” means Emerald Safari Resort (Pty) Ltd;
- 1.14 “**Tribunal**” means the Competition Tribunal of South Africa; and
- 1.15 “**Tribunal Rules**” means the Rules for the Conduct of Proceedings in the Competition Tribunal, issued in terms of section 27 of the Competition Act.

CONDITIONS TO THE APPROVAL OF THE MERGER

2. EMPLOYMENT

- 2.1. The Merger Parties shall not retrench any employees of the Target Firm as a result of the merger for a period of twenty-four (24) months following the Approval Date.
- 2.2. For the sake of clarity, merger-specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; or (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (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.
- 2.3. If any positions become available at the Target Firm within twenty-four (24) months from the Approval Date, the Acquiring Firm will consider employing the former employees of the Target Firm who had been retrenched by the Target Firm in 2021, in circumstances where their skillsets are similar to, and/or suitable for, the relevant positions which may become available at the Target Firm, and the Acquiring Firm and the relevant employee(s) are able to agree to mutually agreeable terms of employment.

3. PROCUREMENT OF GOODS/SERVICES FROM SUPPLIERS IN THE SURROUNDING AREA

- 3.1. The following types of goods and services are predominantly sourced from suppliers located in the surrounding area:
- 3.1.1. [REDACTED]
- 3.1.2. [REDACTED];

- 3.1.3. [REDACTED]
- 3.1.4. [REDACTED]
- 3.1.5. [REDACTED] and
- 3.1.6. [REDACTED].

3.2. It is recorded that for the 12-month period to 31 December 2021, the Target Firm procured goods and services referred to in paragraph 3.1 from suppliers located in the surrounding area of the Target Firm to the value of [REDACTED]

3.3. In order to continue to support the local suppliers of the goods and services referred to in paragraph 3.1 above, the merged business shall, for a period of 2 (two) years from the Implementation Date, use its reasonable endeavours to continue to procure the goods and services listed in paragraph 3.1 above to the value of [REDACTED] on an annual basis from the relevant local suppliers concerned, provided that the relevant goods and services are available and of sufficient quality, and that it is commercially viable to do so, and that the goods and services can be sourced on competitive terms.

4. INVESTMENT AND COMMITMENT REGARDING RELOCATION

4.1. The Acquiring Firm commits to investing [REDACTED] in relation to the Target Firm's business operations over a period of 5 (five) years from the Implementation Date.

4.2. In addition, for a period of 5 (five) years from the Implementation Date, as well as the period between the Approval Date and the Implementation Date, the Acquiring Firm commits not to relocate the casino licence in respect of the Target Firm from the current site on which the Target Firm's operations are located to another site within the Gauteng province.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

5.1. The Merger Parties will each circulate a copy of the Conditions to their employees, the trade union and employee representatives within five (5) Days of the Approval Date.

5.2. As proof of compliance herewith, each Merger Party must, within five (5) Days of circulating the Conditions as required in paragraph 5, submit an affidavit by a senior official authorised

by, and on behalf of, that Merger Party attesting to the circulation of the Conditions and provide written evidence of such circulation.

5.3. The Merger Parties shall inform the Commission in writing of the Implementation Date within five (5) Days of its occurrence.

5.4. An affidavit and a compliance report will be submitted by the Merger Parties to the Commission on an annual basis within three (3) months after the anniversary of the Implementation Date for a period of two (2) years in respect of the conditions set out in paragraphs 2.1, 2.3, and 3.3, and for a period of five (5) years in respect of the conditions set out in paragraphs 4.1 and 4.2. An affidavit referred to in this paragraph 5.4 must be deposited to by a senior official of the Merger Parties.

5.5. Any person who believes that the Merger Parties have failed to comply with the Conditions may approach the Commission with their complaint.

5.6. The Commission may, from time to time, request any additional information from the Merger Parties which the Commission deems necessary for the monitoring of compliance with these Conditions.

6. **BREACH OF CONDITIONS**

6.1. In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been an apparent breach of the Conditions, the matter will be dealt with in terms of Rule 39 of the Commission Rules.

7. **VARIATION**

7.1. The Commission or the Merger Parties 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.

8. **GENERAL**

8.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.