

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM063Aug23

In the matter between:

Beko Europe BV

Beko BV

And

Whirlpool Corporations European Major Domestic Appliances Business, and Whirlpool Maroc S.A.R.L (Morocco) and Whirlpool MEEA (UAE)

Primary Acquiring Firms

Primary Target Firms

Panel: L Mncube (Presiding Member)
A W Wessels (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on: 22 January 2024
Date of last submission: 29 January 2024
Decided on: 05 February 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 at: 2024-02-05 16:34:52 +02:00
Reason: Witnessing Liberty Mncube

L. Mncube

Presiding Member
Prof. Liberty Mncube

05 February 2024

Date

Concurring: Ms Mondo Mazwai and Mr Andreas Wessels

Merger Clearance Certificate

Date : 05 February 2024

To : Cliffe Dekker Attorneys

Case Number: LM063Aug23

Beko Europe B.V., Beko B.V And Whirlpool Corporations European Major Domestic Appliances Business, and Whirlpool Maroc S.A.R.L (Morocco) and Whirlpool MEEA (UAE)

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 **07 August 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
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

Tebogo Mphahlele

ANNEXURE A
BEKO EUROPE B.V.
BEKO B.V.
AND
WHIRLPOOL'S EUROPEAN MAJOR DOMESTIC APPLIANCES BUSINESS;
AND
WHIRLPOOL'S MIDDLE EAST AND NORTH AFRICA MAJOR DOMESTIC APPLIANCES
BUSINESS
CT CASE NUMBER: LM063Aug23

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 Firms**" means Beko Europe B.V. and Beko B.V.;
- 1.1.2 "**Acquiring Group**" means Beko Europe B.V., Beko B.V, all direct and indirect controllers thereof and all firms so directly and indirectly controlled (including Defy);
- 1.1.3 "**Approval Date**" means the date referred to on the Tribunal's merger clearance certificate (Form CT 10), being the date on which the Merger is approved in terms of the Competition Act;
- 1.1.4 "**Beko B.V.**" means Beko B.V, a company incorporated in the Netherlands and previously known as Ardutch B.V.;
- 1.1.5 "**Beko Europe B.V.**" means Beko Europe B.V, a newly incorporated company in the Netherlands;
- 1.1.6 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

- 1.1.7 "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.8 "**Competition Act**" means the Competition Act, 89 of 1998, as amended;
- 1.1.9 "**Conditions**" means these conditions;
- 1.1.10 "**Days**" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.11 "**Defy**" means Defy Appliances Proprietary Limited, a private company incorporated in South Africa, and the Acquiring Group's only subsidiary incorporated in South Africa;
- 1.1.12 "**HDP**" means a historically disadvantaged person as defined in section 3(2) of the Competition Act;
- 1.1.13 "**HDP-owned**" means majority owned, at least as to 50% plus 1 share by HDP(s);
- 1.1.14 "**Implementation Date**" means the date on which the Merger is implemented by the Merging Parties;
- 1.1.15 "**MDA**" means major domestic appliances;
- 1.1.16 "**Merged Entity**" means the Target Business subject to the control of the Acquiring Group following the Implementation Date;
- 1.1.17 "**Merger**" means the proposed acquisition by the Acquiring Firms of the Target Business;
- 1.1.18 "**Merging Parties**" means the Acquiring Group and the Target Business;
- 1.1.19 "**Moratorium Period**" means a period of 3 (three) years from the Implementation Date and includes the period between the Approval Date and the Implementation Date;
- 1.1.20 "**NBI**" means the South African National Business Initiative;
- 1.1.21 "**NQF**" means the South African National Qualifications Framework;
- 1.1.22 "**QCTO**" means the South African Quality Council for Trades and Occupations;

- 1.1.23 "South Africa" means the Republic of South Africa;
- 1.1.24 "Target Business" means Whirlpool's European MDA business and Whirlpool's Middle East and North Africa MDA business;
- 1.1.25 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.1.26 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal; and
- 1.1.27 "Whirlpool" means Whirlpool Corporation, a company incorporated in the United States of America and listed on the New York Stock Exchange.

2. SKILLS DEVELOPMENT

Non-Statutory Employee Skills Development and Training

- 2.1 The Acquiring Group shall, for the next 5 (five) years commencing on the Implementation Date:
- 2.1.1 spend at least [REDACTED] in aggregate over the period, with at least [REDACTED] invested in each individual year, on non-statutory skills development and training for its South African employees ("Training"), the vast majority of which are HDPs. This Training shall include, in aggregate over the period, a variety of learnerships, apprenticeships, skills programmes, study assistance programmes, programmes for disabled learners and artisan recognition of prior learning programmes, covering NQF levels 3 – 7.

3. PROCUREMENT AND CAPITAL EXPENDITURE

Capital Expenditure

- 3.1 The Acquiring Group shall over the next 5 (five) years commencing on the Implementation Date, incur no less than [REDACTED] of capital expenditure in its South African operations, with at least [REDACTED] invested in each individual year.

Procurement

- 3.2 The Acquiring Group shall in aggregate for the next 5 (five) years commencing on the Implementation Date, increase the percentage of the capital expenditure committed to in paragraph 3.1 above being spent on procuring from South African businesses from [REDACTED] as foreseen for the current annual capital expenditure (amounting to approximately [REDACTED] to [REDACTED] [REDACTED] of the committed capital expenditure (amounting to at least [REDACTED] [REDACTED] over the next 5 (five) years), which will be geared [REDACTED] [REDACTED]
- 3.3 To the extent that the procurement commitments in 3.2 above are not met in a specific year, the balance of the commitment shall roll over into the following year to ensure that by the end of the fifth year, capital expenditure [REDACTED] [REDACTED] must have been geared towards [REDACTED] [REDACTED]

4. EMPLOYMENT

- 4.1 Subject to the provisions of clause 4.2 below, the Merged Entity shall not retrench any permanent or fixed-term contract employees in South Africa as a result of the Merger ("**Merger specific retrenchments**") during the Moratorium Period.
- 4.2 The undertaking provided in paragraph 4.1 above means that no retrenchments will result in South Africa as a consequence of the implementation of the Merger. For the sake of clarity, Merger specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (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 (for the purposes of the Labour Relations Act) 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.

5. COLLABORATION WITH THE SOUTH AFRICAN NATIONAL BUSINESS INITIATIVE AND TRAINING COLLEGES

5.1 The Acquiring Group shall continue to provide support to the NBI and other industry stakeholders in obtaining the registration and accreditation, by the QCTO, of the following domestic appliances repairer skills programme curricula:

5.1.1 Domestic Refrigeration Appliance Repairer Curriculum;

5.1.2 MDA Repairer Curriculum; and

5.1.3 Small Domestic Appliance Repairer Curriculum.

5.2 The Acquiring Group undertakes to partner with two Technical and Vocational Education and Training Colleges, located in Ekurhuleni West and Mnambithi (Ladysmith), to roll out the accredited programmes, with the aim of targeting unemployed youth in the surrounding areas.

5.3 The Acquiring Group undertakes to enrol up to 40 students each year in the accredited training program, during the next five years, starting in 2024. The Acquiring Group undertakes to provide the training, set up workstations with pre-installed equipment, provide personal protective equipment, tools and instruments necessary to carry out the training. The Acquiring Group will invest no less than [REDACTED] [REDACTED] to carry out the training over the next five years.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

6.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.

6.2 The Merged Entity shall, within 30 (thirty) Days of the anniversary of the Implementation Date, for the five years commencing after the Implementation Date, provide to the Commission a report detailing its compliance with the Conditions. This report shall be accompanied by an affidavit attested to by a senior official of Defy, confirming the report's accuracy.

6.3 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.

- 6.4 Any person who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission with their complaint. If the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, the matter shall be dealt with in terms of clause 8 below.

7. **VARIATION OF THE CONDITIONS**

The Merging Parties 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.

8. **APPARENT BREACH**

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 Commission Rules read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

9. **GENERAL**

All correspondence concerning the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za