

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM011Apr21

In the matter between:

Texmex 57 (Pty) Ltd

Primary Acquiring Firm

And

Bidvest Car Rental (Pty) Ltd

Primary Target Firm

Panel : Y Carrim (Presiding Member)
: AW Wessels (Tribunal Panel Member)
: H Cheadle (Tribunal Panel Member)
Heard on : 23 June 2021
Decided on : 23 June 2021

PUBLIC 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).

Presiding Member
Ms Yasmin Carrim

23 June 2021
Date

Concurring: Mr Andreas Wessels and Prof. Halton Cheadle



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 23 June 2021

To : Werksmans Attorneys

Case Number: LM011Apr21

Texmex 57 (Pty) Ltd And Bidvest Car Rentals (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 **16 April 2021** 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

Public Version

ANNEXURE A

TEXMEX 57 PROPRIETARY LIMITED

AND

BIDVEST CAR RENTAL PROPRIETARY LIMITED

CC CASE NO.: 2021APR0019

CT CASE NO.: LM011Apr21

1 DEFINITIONS

The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meaning: –

- 1.1 **“Acquiring Firm”** means Texmex 57 Proprietary Limited;
- 1.2 **“Affected Employees”** means the [REDACTED] former permanent employees of the Target Firm who were retrenched between September and December 2020;
- 1.3 **“Approval Date”** means the date on which the Merger is approved by the Tribunal and as set out in the Tribunal’s clearance certificate;
- 1.4 **“Commission”** means the Competition Commission of South Africa;
- 1.5 **“Competition Act”** means the Competition Act, No. 89 of 1998, as amended;
- 1.6 **“Days”** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa. A public holiday shall also include such days as may be declared by the President of the Republic of South in terms of the Public Holidays Act, 36 of 1994;
- 1.7 **“DTIC”** means the Department of Trade, Industry, and Competition;
- 1.8 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.9 **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.10 **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.11 **“Target Firm” / “BCR”** means Bidvest Car Rental Proprietary Limited; and

Public Version

1.12 “**Tribunal**” means the Competition Tribunal of South Africa.

2 CONDITION

- 2.1 The Target Firm will, within 15 (fifteen) days of the Approval Date, establish a database of the Affected Employees and their contact details, and will send a communication to such Affected Employees informing them of the Target Firm's commitments in terms of these conditions, requesting them to update their contact details and offering them to opt out of receiving vacancy communications for the duration of these undertakings;
- 2.2 For a period of 24 (twenty-four) months from the Implementation Date, if any employment opportunity arises within the Target Firm, the Target Firm will, simultaneously with internal notification of such opportunity to existing employees, procure that a batch notification is sent, at the Target Firm's election, either to –
- 2.2.1 all Affected Employees whose addresses fall within reasonable proximity to the location at which such opportunity has arisen; or
- 2.2.2 Affected Employees who are suitably experienced and/or qualified for the position/s in question and whose addresses fall within reasonable proximity to the location at which such opportunity has arisen, informing them of the position, requirements and location.
- 2.3 The provisions of 2.2 will not apply in circumstances where the vacant position is of such a nature that it is evident that no Affected Employee has the requisite skills and/or qualifications for the position.
- 2.4 Under all circumstances, the onus will rest on the Affected Employees to apply for the vacant position. Applying Affected Employees will only be considered if their applications are received within the specified time period and comply with specified requirements, subject to operational requirements at the time, it being recorded that there may be circumstances in which vacant positions need to be filled urgently which may require shortened time periods.
- 2.5 The Target Firm's assessment of any such application will be subject to applicable employment and related laws, the Target Firm's recruitment practices at the time and operational requirements. Subject to applicable employment and related laws, applicable recruitment practices and operational requirements, favourable consideration will only be given to suitably qualified Affected Employees, residing

Public Version

in reasonable proximity of the location in which the opportunity arises, in circumstances where a qualified applicant Affected Employee is equally qualified as an external applicant for that position.

- 2.6 The undertakings in this Annexure "A", exclude the Affected Employees who have found alternative employment and those who will have elected to opt out from receiving vacancy communications during the period of the undertakings' operation.

3 MONITORING OF UNDERTAKINGS

- 3.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of it becoming effective.
- 3.2 Within 10 (ten) Days of the second anniversary of the Implementation Date, the Merging Parties shall provide the Commission with a report regarding their compliance with the undertakings in this Annexure "A" comprising a report on the number of vacancies that became available during the 24 (twenty-four) month period following the Implementation Date, the number of applications received from Affected Employees and the number of Affected Employees who have been employed within the Target Firm.

4 VARIATION

- 4.1 The Merger Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

5 GENERAL

- 5.1 All correspondence in relation to these undertakings must be submitted to the following email address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za