



20 February 2018

Merger for the supply of mining support bags to Mining houses is conditionally approved

The Competition Tribunal has approved with conditions the intermediate merger in terms of which Timrite (Pty) Ltd (Timrite) will acquire the Mining Bag Division of Tufbag (Pty) Ltd (Mining Bag Division). Timrite is a wholly-owned subsidiary of Thebe Investment Corporation and is active in the provision of timber based and non-timber based mining support products. The Mining Bag Division is one of the divisions of Tufbag involved with the designing, jointly with Timrite, and manufacturing of polypropylene-based mining support (PBMS) bags

Concerns were raised by the Competition Commission, who had prohibited the merger, that the transaction would facilitate and enhance potential market allocative arrangements in the manufacturing and distribution of polypropylene-based mining support (PBMS) bags as well as facilitate the potential loss of competition. In particular, the Commission had found in its assessment that the Purchase and Sale Agreement (PSA) went beyond the supposed intention by ensuring that Timrite and Tufbag did not compete against each other in the market for the manufacture and distribution of PBMS bags, as opposed to only securing supply volumes. Timrite and Tufbag then referred the matter to the Tribunal.

The Commission said it found evidence that Timrite had entered into similar market allocation arrangements with Brits Bag Manufacturers (BBM) and Polystar Tape and Fabric (Polystar) which required the two companies to manufacture specific engineered PBMS bags exclusively for Timrite bearing the Timrite logo and required that BBM and Polystar not deal with other downstream players. However during the hearing the merging parties indicated that they no longer have a manufacturing agreement with BBM and that they had also since received notice of termination of their manufacturing agreement with Polystar.

Conditions to the approval of the merger issued this week will enable competitors of the merged firm to enter or expand into the market and will protect employees from merger specific retrenchments for a period of two years.

In particular, the conditions prevent Future Manufacturing agreements that contain exclusivity supply provisions, other than one aimed at the protection of Timrite's Intellectual Property and Know-how. Future Manufacturing agreements also shall not preclude any third party manufacturer from manufacturing competing products provided the products do not infringe on Timrite's Intellectual Property and Know-how.

In addition, for as long as it holds a dominant position, the merged entity must not induce any Input Supplier not to deal with any of its competitors. Employment conditions have also been imposed to prevent any merger related job losses.

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