

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM099Oct21

In the matter between:

Invicta Holdings Ltd

Primary Acquiring Firm

And

Dartcom SA (Pty) Ltd

Primary Target Firm

Panel: Y Carrim (Presiding Member)
M Mazwai (Tribunal Member)
AW Wessels (Tribunal Member)

Heard on: 13 December 2021

Order Issued on: 13 December 2021

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)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Yasmin Fayal Carrim

**Presiding Member
Ms Yasmin Carrim**

13 December 2021

Date

Concurring: Ms Mondo Mazwai and Mr Andreas Wessels



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 13 December 2021

To : ENSafrica Attorneys

Case Number: LM099Oct21

Invicta Holdings Ltd And Dartcom SA (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 **12 October 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



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM099Oct21

Invicta Holdings Limited (Primary Acquiring Firm)

and

Dartcom SA (Pty) Ltd (Primary Target Firm)

REASONS FOR DECISION

- [1] On 13 December 2021, the Competition Tribunal unconditionally approved a large merger between the Invicta Holdings Limited (“Invicta”) and Dartcom SA (Pty) Ltd (“Dartcom”).
- [2] In terms of this transaction, Invicta Holdings intends to acquire as one indivisible transaction:
- a. [REDACTED] of the entire issued share capital of Dartcom from Tuludi; and
 - b. All of the shares in and claims against Kgalauwane 2 (Pty) Ltd (“Kgalauwane 2”) which are held by Kgalauwane Properties.
- [3] Dartcom and Kgalauwane 2, are both ultimately controlled by the [REDACTED] prior to the transaction.
- [4] Pursuant to the implementation of the transaction, Invicta Holdings will acquire sole control over Dartcom and Kgalauwane 2.

- [5] The Competition Commission (“the Commission”) did not find any horizontal overlaps between the activities of the merging parties as Invicta does not sell any products or render any services that are functionally substitutable with those offered by Dartcom and Kgalauwane 2.
- [6] Furthermore, the Commission found no vertical relationship between the activities of the merging parties.
- [7] Therefore, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.
- [8] The transaction does not have any adverse effect on employment.
- [9] As a direct result of the proposed transaction, the BBBEE shareholdings in Dartcom will decrease and Dartcom will move from being a level [REDACTED] BBBEE contributor to being a level [REDACTED] BBBEE contributor.
- [10] However, the merging parties indicate that as part of the purchase price for the acquisition of share in Dartcom, Tuludi will gain a shareholding in Invicta. Thus, the proposed merger will allow a Historically Disadvantaged Firm, Tuludi (indirectly the [REDACTED] to diversify its equity stake in Dartcom through its shareholding in Invicta.
- [11] The Commission also notes the BBBEE Shareholders of Dartcom (Tuludi) will now have a shareholding in a bigger firm with a higher total revenue as opposed to the lower total revenue of Dartcom.
- [12] With respect to a greater spread of ownership, the merging parties indicate that since the proposed transaction will result in Dartcom forming part of the broader Invicta Group, the merger will enable the employees of the Dartcom to participate as beneficiaries of the Humulani Employee Incentive Trust.
- [13] In addition to above, the parties submitted that the employees of Dartcom will benefit from Invicta Holding's SETA accredited training initiatives with online and practical courses and qualifications on offer for free of charge and also the Dartcom's employees will benefit from Invicta Holdings mentorship programmes where employees are mentored to ensure they reach their full potential in the workplace.

[14] There are no other public interest concerns.

[15] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest.

13 December 2021

Ms Yasmin Carrim

Date

Ms Mondo Mazwai and Ms Andreas Wessels concurring

Tribunal Case Manager:

Kameel Pancham

For the Merging Parties:

Richardt van Rensburg from ENS Africa

For the Commission:

Zintle Siyo and Themba Mahlangu