

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM247Jan19

In the matter between:

Mondi Plc

Primary Acquiring Firm

And

Mondi Limited

Primary Target Firm

Panel : N Manoim (Presiding Member)
Y Carrim (Tribunal Member)
I Valodia (Tribunal Member)

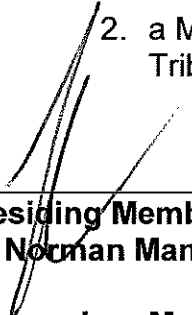
Heard on : 10 July 2019

Decided on : 10 July 2019

ORDER – PUBLIC VERSION

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 -

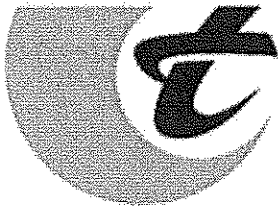
1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



Presiding Member
Mr Norman Manoim

10 July 2019
Date

Concurring: Ms Yasmin Carrim and Prof. I Valodia



competitiontribunal

SOUTH AFRICA

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
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date: 10 July 2019

To: Webber Wentzel Attorneys

(Name and file number of merger:)

Mondi Plc and Mondi Ltd
LM247Jan19

You applied to the Competition Commission on 18 January 2019 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:

NON-CONFIDENTIAL

ANNEXURE A: Conditions

CC CASE NUMBER: 2019Jan0014

CT CASE NUMBER: LM247JAN19

MONDI PLC

PRIMARY ACQUIRING FIRM

AND

MONDI LIMITED

PRIMARY TARGET FIRM

MERGER CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —
- 1.1.1 “**Act**” means the Competition Act No. 89 of 1998;
- 1.1.2 “**Approval Date**” means the date referred to in the Form CT10 issued by the Tribunal;
- 1.1.3 “**Black-owned Business**” means a business directly or indirectly majority owned and controlled by Black Persons;
- 1.1.4 “**Black Person**” means person/s defined as “Black” in the Broad-Based Black Economic Empowerment Act No. 53 of 2003;
- 1.1.5 “**Commission**” means the Competition Commission of South Africa duly established under the Act;
- 1.1.6 “**Competition Authorities**” means a collective reference to the Commission and the Tribunal;
- 1.1.7 “**Days**” means any business day being a day which is not a Saturday, Sunday or an official public holiday in South Africa;

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- 1.1.8 “**EDD**” means the Economic Development Department of the Government or its successors;
- 1.1.9 “**Government**” means the government of South Africa;
- 1.1.10 “**Implementation Date**” means the date on which the Merger closes and MLTD becomes a subsidiary of MPLC;
- 1.1.11 “**Merger**” – means MPLC’s proposal to become the holding company of MLTD;
- 1.1.12 “**Merging Parties**” mean MLTD and MPLC;
- 1.1.13 “**Minister**” means the minister of the EDD;
- 1.1.14 “**MLTD**” means Mondi Limited, the primary target firm;
- 1.1.15 “**Mondi Group**” means MLTD and MPLC;
- 1.1.16 “**Mondi Zimele**” means Mondi Zimele Proprietary Limited which is the small business development initiative of MLTD. Mondi Zimele makes available equity, loans and business development support to small businesses within the Mondi Group value chain and surrounding communities.
- 1.1.17 “**MPLC**” means Mondi plc, the primary acquiring firm;
- 1.1.18 “**Small Business**” means a business generally regarded in South Africa as a small business, including SMMEs;
- 1.1.19 “**SMME**” means a business generally recognised as a small, medium or micro-enterprise, including those defined as “small business” under the National Small Business Act No. 102 of 1996;
- 1.1.20 “**South Africa**” means the Republic of South Africa; and
- 1.1.21 “**Tribunal**” means the Competition Tribunal of South Africa duly established under the Act.

2. SUB-SAHARAN AFRICA HEADQUARTERS

- 2.1 The Merging Parties shall ensure that the investments of the Mondi Group in Sub-Saharan Africa will continue to be held under MLTD (or another South African holding company), that will accordingly remain the investment headquarter company of the Mondi Group for this region.
- 2.2 The Merging Parties shall ensure that at least one South African citizen will be a director on the MPLC Board at all times.

3. EMPLOYMENT COMMITMENTS

- 3.1 The Merging Parties shall not retrench any MLTD employees as a result of the Merger for a period of 3 (three) years from the Implementation Date.
- 3.2 For the sake of clarity, 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 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 contract worker.

4. RESEARCH COMMITMENTS

- 4.1 The Mondi Group will continue over the next 5 (five) years to work with South African universities, colleges and/or other educational or public bodies conducting scientific research to support research and development in forestry, paper, packaging and associated sectors and to deploy funding to the aforementioned institutions to that end.

5. COMMITMENTS IN RESPECT OF COMMUNITY PROGRAMMES AND SMALL BUSINESS DEVELOPMENT

- 5.1 The Mondi Group shall invest a total of [...] ¹ over and above its current investment plans, within a period of 5 (five) years from the Implementation Date towards, towards:

¹ Amount claimed as confidential.

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- 5.1.1 Programs aimed at developing communities, including where the Mondi Group conducts its business activities;
 - 5.1.2 Programs aimed at developing and providing support to Small Businesses within the Mondi Group; and/or
 - 5.1.3 The Mondi Zimele Programme and any other similar initiative aimed at supporting and developing particularly small-scale businesses of historically disadvantaged persons/groups as part of an integrated supply chain, supported by local contractors and growers.

6. COMMITMENTS IN RESPECT OF CAPITAL EXPENDITURE

- 6.1 The Merging Parties shall invest a total of R8 000 000 000.00 (eight billion Rand) in its South African operations over a period of 5 (five) years from the Implementation Date.

7. MONITORING

- 7.1 The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
- 7.2 MLTD shall circulate a copy of the Conditions relating to employment to all its employees and their trade unions or employee representatives, within 10 (ten) Days of the Approval Date. As proof of compliance herewith, MPLC shall within 5 (five) days of circulating the Conditions, provide the Commission with an affidavit by the Chief Executive Officer attesting to the circulation of the Conditions and attach a copy of the said notice.
- 7.3 For a five (5) year period following the Implementation Date, the Merging Parties shall, within 90 (ninety) calendar days of each anniversary of the Implementation Date, provide a suitable and appropriately detailed annual report to the EDD and the Commission regarding its compliance of the above Conditions.
- 7.4 The report referred to in paragraph 7.3 above shall be accompanied by an affidavit attested to by the Chief Executive Officer of MPLC confirming the accuracy of the annual report and full compliance with these Conditions.

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- 7.5 The Commission may request any additional information from the Merging Parties which the Commission from time to time deems necessary for the monitoring of compliance with these Conditions.
- 7.6 An apparent breach by the Merging Parties of the Conditions shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
- 7.7 All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

8. VARIATION

- 8.1 Either or both of the Merging Parties may at any time, on good cause shown, apply with or without the Commission's consent to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted, provided that "good cause" shall not include any circumstances giving rise to the request for variation which are reasonably capable of being mitigated in another manner, or which could reasonably have been foreseen at the Date of Approval of these Conditions. The Commission will not be precluded from opposing such application.
- 8.2 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. The Merging Parties will not be precluded from opposing such application.