COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM070Sep21

In the matter between:

DP World Logistics FZE **Primary Acquiring Firm**

And

Imperial Logistics Ltd **Primary Target Firm**

Panel:	M Mazwai (Presiding Member) AW Wessels (Tribunal Panel Member) L Mncube (Tribunal Panel Member)
Heard on:	18 February 2022
Decided on:	23 February 2022

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; and

2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Presiding Member
Ms Mondo Mazwai

23 February 2022
Date

Concurring: Mr Andreas Wessels and Dr. Liberty Mncube

competitiontribunal SOUTH AFRICA

Merger Clearance Certificate

Date : 23 February 2022

To : Webber Wentzel Attorneys

Case Number: LM070Sep21
DP World Logistics FZE And Imperial Logistics Ltd

You applied to the Competition Commission on **30 August 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.
- [x] 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

Tebogo Mputle

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

ANNEXURE A

IN THE LARGE MERGER BETWEEN

DP WORLD LOGISTICS FZE

AND

IMPERIAL LOGISTICS LIMITED

CASE NUMBER: LM070Sep21

CONDITIONS

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1. DEFINITIONS

In this document, the following expressions bear the meanings assigned to them below, and related expressions have corresponding meanings:

1.1 **"Acquiring Group"** means DP World Limited FZE and its subsidiaries, including DP World;

1.2 **"Approval Date"** means the date referred to in the Tribunal's merger clearance certificate (Form CT 10) in respect of the Merger;

1.3 "**B-BBEE Act**" means the Broad-Based Black Economic Empowerment Act No 53 of 2003, as amended;

1.4 "**Black**" means black people as defined in the B-BBEE Act;

1.5 "**Black-owned business**" means a business that is held as to 51% by Black people;

1.6 **"Black women-owned business"** means a business that is held as to 30% by Black women;

1.7 **"Codes"** means the relevant codes of good practice published in terms of the B-BBEE Act in terms of which Imperial's broad-based black economic empowerment score is measured;

1.8 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.9 **"Competition Act"** means the Competition Act No 89 of 1998, as amended;

1.10 **"Conditions**" means these conditions;

1.11 **"Days"** means any calendar day which is not a Saturday, Sunday, or official public holiday in South Africa;

1.12 **"DP World"** means DP World Logistics FZE and its wholly-owned subsidiary Indigo Holdco Proprietary Limited;

1.13 **"EME"** means exempted micro-enterprise as defined in the Codes;

1.14 **"Employee"** means any permanent employee (as contemplated under South African labour law) of Imperial as at the Approval Date;

1.15 **"ESOP"** means an employee share ownership program to be implemented within 24 months from the Approval Date within ILSA through an employee trust which will acquire a shareholding of 5% in ILSA;

1.16 "**HDP**" means a historically disadvantaged person as defined in the Competition Act;

1.17 **"ILSA"** means Imperial Logistics South Africa Group Proprietary Limited, a subsidiary of Imperial;

1.18 **"Implementation Date"** means the date, occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;

1.19 **"Imperial**" means Imperial Logistics Limited and all the firms it controls;

1.20 **"Imperial Employees"** means the permanent South African resident employees who have worked for Imperial for a period of two years (excluding employees who are categorised as top management or senior management for the purposes of Imperial's Employment Equity Plan prepared in terms of the Employment Equity Act No 55 of 1998);

1.21 **"Merged Entity"** means Imperial subject to the control of DP World following implementation of the Merger;

1.22 **"Merger"** means the acquisition of control by DP World of Imperial as contemplated in the large merger notified to the Commission under Commission case number 2021Aug0044 and to the Tribunal under case number LM070Sep21;

1.23 **"Merging Parties"** means DP World and Imperial;

1.24 **"QSE**" means a qualifying small enterprise as defined in the Codes;

1.25 **"South Africa**" means the Republic of South Africa;

1.26 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and

1.27 **"Ukhamba"** means Ukhamba Holdings Proprietary Limited RF.

2. ENTERPRISE AND SUPPLIER DEVELOPMENT AND CORPORATE SOCIAL RESPONSIBILITY INITIATIVES

2.1 Imperial shall, for a period of three years following the Implementation Date:

2.1.1 increase its enterprise and supplier development expenditure in South Africa by one percentage point from 3% per annum to 4% per annum of Imperial's South African net profit after tax;

2.1.2 increase its spend on corporate social responsibility initiatives by not less than 10% per annum over and above the current ZAR16.5 million per annum; and

2.1.3 spend an additional ZAR15 million in total over a three year period post Implementation on training and development of Black persons.

2.2 Imperial shall, for a period of three years following the Implementation Date, increase its below-mentioned annual procurement expenditure targets; provided that the goods and services which Imperial requires to be procured are available on reasonable, practical and competitive terms which comply with Imperial's reasonable requirements, particularly as regards availability, quantity, counterparty risk and pricing. The said annual procurement expenditure increases are set out in clauses 2.2.1 to 2.2.3 below:

2.2.1 Black-owned businesses from 25% to 30%. The 2021 financial year target equated to ZAR2 636 774 282.00;

2.2.2 Black women-owned businesses from 7% to 10%. The 2021 financial year target equated to ZAR738 296 799.00; and

2.2.3 QSEs and EMEs from 20% to 25%. The 2021 financial year target equated to ZAR2 109 419 426.00.

3. EMPLOYMENT CONDITIONS

3.1 Imperial shall, for a period of no less than three years from the Approval Date, and subject to any disposals of businesses which may be made in the ordinary course, maintain at least the same number of Employees as are employed in the aggregate by Imperial in South Africa as at the Approval Date.

3.2 The Merged Entity shall not retrench any Employee as a result of the Merger for a period of three years from the Implementation Date.

3.3 For the avoidance of doubt, retrenchments do not include (i) 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 normal course; and (v) terminations in the normal course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

4. ESOP CONDITIONS

4.1 Within 24 months of the Implementation Date, the Merged Entity shall establish an ESOP for an effective 5% interest in ILSA through an employee trust for the benefit of Imperial Employees.

4.2 The value of the 5% shareholding to be allocated in ILSA to the ESOP shall be determined by an independent and suitably qualified valuer, which will be appointed by the Merged Entity, after the Commission has approved that the proposed valuer is independent and suitably qualified, and shall be based on the financials of ILSA in the preceding financial period.

4.3 The ESOP shall be at no cost to the Imperial Employees. For the avoidance of doubt, the Imperial Employees shall not be required to pay to participate in the ESOP.

4.4 The Merged Entity shall facilitate the acquisition of the shares and implementation of the ESOP in accordance with the following foundational design principles:

4.4.1 the ESOP trust's 5% interest in the Merged Entity will be procured through a notional vendor financing or similar funding arrangement;

4.4.2 the vendor financing will be interest-free;

4.4.3 the beneficiaries of the ESOP will be entitled to:

4.4.3.1 dividends (when declared and paid to the trust);

4.4.3.2 capital growth, based on their participation rights calculated with reference to units allocated to those beneficiaries;

4.4.4 the Merged Entity will procure that the terms of the vendor financing provide for a fixed rate dividend (in the ratio of 50:50) to be paid to the ESOP trust simultaneously with the repayment of vendor financing, meaning that at least 50% of any dividends declared by the Merged Entity in respect of the 5% shareholding of the ESOP trust will flow to the beneficiaries of the trust and the other 50% will be utilised to service the vendor financing;

4.5 The trustees or similar officers of the ESOP shall include representatives nominated and elected by the Imperial Employees.

4.6 Subject to any third-party consents which may be required, a representative (approved of by the founder of the ESOP) shall be entitled to serve as an observer on the board of ILSA.

4.7 The ESOP shareholding should not substitute the existing HDP shareholding in ILSA.

4.8 Prior to the establishment of the ESOP, the Merged Entity shall provide the Commission with the principles which it proposes to apply in the ESOP (in addition to the principles contained in this clause 4) and the Merged Entity shall consult with the Commission thereon. The Merged Entity shall not implement the ESOP prior to the Commission's written approval.

5. CAPITAL EXPENDITURE CONDITIONS

5.1 Imperial shall, during the period of four years expiring on 30 June 2025, incur no less than ZAR2.1 billion (two point one billion Rand) of capital expenditure in its South African operations.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

6.1 The Merging Parties shall circulate a copy of the Conditions to all Employees and/or their respective representatives in South Africa within five Days of the Approval Date.

6.2 DP World shall inform the Commission of the Implementation Date within five Days of its occurrence.

6.3 The Merged Entity shall, within 10 Days of the Approval Date, provide the Commission with an affidavit which provides the total number of employees that are employed by the Merged Entity in South Africa as at the Approval Date. The affidavit referred to herein must be attested to by a senior official of the Merged Entity.

6.4 Imperial shall, within 30 Days of each anniversary of the Implementation Date and for a period of three years, provide to the Commission a report detailing its compliance with these Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the report's accuracy.

6.5 The Merged Entity shall, after every six months following the approval of the Merger, provide to the Commission a report detailing the steps taken to implement the ESOP and the progress made. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the report's accuracy.

6.6 The Merged Entity shall inform the Commission of the commencement date of the ESOP contemplated in clause 4 above within five days of its occurrence.

6.7 Within 10 days of the conclusion of any binding agreement providing for such disposals (reflected in clause 3.1), the Merged entity shall report to the Commission such disposals including the number of employees associated with each disposal prior to the disposal date.

6.8 Within 10 days after implementation of such disposals, the Merged Entity shall provide the Commission with the aggregate number of employees within Imperial as a result of the disposal.

6.9 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with these Conditions.

6.10 Any person who believes that the Merging Parties have failed to comply with these 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 CONDITIONS

7.1 The Merged Entity and/or the Commission may at any time, and on good cause shown (including any adverse effect on the Merged Entity's financial performance or macroeconomic or political conditions), apply to the Tribunal for any of the Conditions to be waived or relaxed, including any resultant modification or substitution thereof.

8. APPARENT BREACH

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

9. GENERAL

9.1 All correspondence concerning these Conditions, and in particular all correspondence in relation to clause 6 above, must be submitted to the email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za