

NOTICE 202 OF 2015**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****TAKEALOT ONLINE (PTY) LTD****AND****KALAHARI.COM, A DIVISION OF MIH INTERNET AFRICA (PTY) LTD****2014OCT0543**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

Parties to the merger

On 7 October 2014 the Commission received a notice of an intermediate merger whereby Takealot Online (Pty) Ltd (Takealot) intends to acquire Kalahari.com (Kalahari), a division of MIH Internet Africa (Pty) Ltd (MIH).

Takealot is a company incorporated in accordance with the laws of the Republic of South Africa. Takealot is owned and controlled by Tiger Global, an international investment company. Kalahari is a business division of MIH which is in turn wholly owned and controlled by Naspers Limited (Limited).

The activities of the merging parties

The proposed merger raises a horizontal overlap with respect to the activities of the merging parties. Both Takealot and Kalahari are active in the online retailing of consumer goods and products. The proposed merger also raises a vertical relationship between the activities of Takealot and Kalahari because Takealot's subsidiary, Mr Delivery, provides services that can be considered to be inputs in the business activities of Kalahari.

Market definition

The Commission's investigation found that there is competition between Brick and Mortar (B&M) retailers and online retailers. B&M retailers such as Makro and Clicks indicated that they regard online retailers as direct competitors to the extent that they check their prices. Similarly, online retailers such as the merging parties consider pricing set by B&M retailers when setting their own

prices. There is also an increasing trend of local B&M extending their product offering online. Pricing analysis shows that on average the price difference between B&M retailers and online retailers is about 5% for most product categories. The Commission has also learned that majority of customers for online retailers compare prices between online retail stores and B&M.

Information received from market participants indicates that online retailers view other online retailers as their closest competitor. However, they also face a competitive constrain from B&M retailers. The Commission did not conclude on the parameters of relevant market but will assess the effects of the proposed transaction on the retail of fast moving consumer goods and services broadly.

Competition assessment

The Commission considered three (3) scenarios in estimating the post-merger market share of the merged entity. Firstly, the Commission considered the broader market for retail in consumer goods and services as informed by market participants and customer survey. The Commission finds that the post-merger market share of the merged entity will be approximately 1-5%. Secondly, the Commission considered online retailers and B&M retailers that have online presence. The Commission found that the post-merger market share of the merged entity will be approximately 30-40%. Lastly, the Commission considered a narrow market which only focuses on strictly online retailers which have similar product portfolio. The Commission found that the post-merger markets are of the merged entity will be approximately 70 - 90%. The Commission found that despite the high post-merger market share of the merged entity, there is a presence of competitive constraint from B&M retailers which were identified by the customers as alternatives. The Commission contacted about 802 customers to participate in the survey. The results confirmed that the merging parties are indeed the two most popular online retailers in South Africa. Roughly 9% of the customers identified Amazon as their most frequently used online retailer. Approximately 80% of the customers compare prices between online retailers and B&M stores before making a purchase. This indicates a high degree of substitutability between online stores and B&M stores. The Commission also finds that about 53% of the respondents would not switch from online shopping and about 47% indicated that they would switch should price increase by 5 – 10%. Taken as a whole, the Commission therefore found that the proposed merger is unlikely to lead to substantial lessening or prevention of competition.

Public interest assessment

The Commission found that the proposed merger will lead to about 290 retrenchments which will lead to public interest concerns. The Commission engaged the merging parties on how to ameliorate the effect of the proposed merger on employment. The merging parties made submissions on how to best alleviate the employment concerns raised by the proposed merger. Firstly, the merging parties revised the number of employees likely to be retrenched from 290 to 200 employees. Furthermore, the merging parties have offered to assist affected employees in various forms. Lastly, the merging parties have undertaken to establish a training fund which will contribute a maximum of R30 000 per each employee. Please refer to '**Annexures A and A1**' for the full conditions. The Commission is of the view that these remedies are sufficient to alleviate employment concerns raised by the proposed merger. There are no other public interest concerns raised by the proposed merger.

Conclusion

The Commission found that the proposed merger is unlikely to lead to substantial lessening or prevention of competition as there are alternatives available in the market. The Commission further found that it is unlikely that the proposed merger will lead to the merged entity having the ability to act unilaterally due to constraint from the B&M retailers. However, the Commission found that the proposed merger will raise public interest concerns as 200 employees are likely to be retrenched. The merging parties have undertaken to offer various forms of assistance to the affected employees. The Commission considered these undertakings by the merging parties and was of the view that they are sufficient to address the employment concerns raised by the proposed merger.

The Commission further found that there are no other public interest issues that are likely to arise.

The Commission therefore approved the proposed merger with conditions in terms of section 14 (1) (b) (ii) of the Competition Act no.89 of 1998, as amended.

ANNEXURE A**TAKEALOT ONLINE (PTY) LTD
AND
KALAHARI.COM, A DIVISION OF MIH INTERNET AFRICA (PTY) LTD
CASE NUMBER: 2014SEP0469**

CONDITIONS**1. Definitions**

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

- 1.1. **"Affected Employee"** means any Employee that is not offered employment by the Naspers Group or retained as an employee by Takealot within four (4) months after the Implementation Date, and is accordingly retrenched by Takealot following the implementation of this Merger and as a result of this Merger;
- 1.2. **"Commission"** means the Competition Commission of South Africa;
- 1.3. **"Conditions"** means these conditions;
- 1.4. **"Employee/s"** means those employees employed by Kalahari and Takealot at the time of the implementation of this merger;
- 1.5. **"Implementation Date"** means the date, occurring after the Merger Approval Date, on which this Merger is implemented by the Merging Parties, which date shall be deemed to be the Effective Date contemplated in the Sale of Business Agreement entered into between MIH, MIH Holdings Proprietary Limited and Takealot dated 3 October 2014;
- 1.7. **"Kalahari"** means Kalahari.com a division of MIH;

- 1.8. **"LRA Process"** means the process undertaken by Takealot in respect of the Employees under section 189 of the Labour Relations Act, 66 of 1995;
- 1.9. **"Merger"** means the proposed acquisition of control by Takealot over the business of Kalahari;
- 1.10. **"Merger Approval Date"** means the date on which this merger is approved by the Commission and as contained in the merger clearance certificate (CC15);
- 1.11. **"Merged Entity"** means the combined business of Kalahari and Takealot as a result of this Merger;
- 1.12. **"Merging Parties"** means Kalahari and Takealot collectively;
- 1.13. **"MIH"** means MIH Internet Africa Proprietary Limited, a firm in the Naspers Group;
- 1.14. **"Naspers Group"** means Naspers Limited and its subsidiaries in South Africa;
- 1.15. **"Takealot"** means Takealot Online Proprietary Limited;
- 1.16. **"Training Fund"** means an amount of up to a maximum of R 4 million (Four million rand) established by MIH aimed at the re-training and re-skilling of Affected Employees; and
- 1.17. **"Training Fund Period"** means a period not exceeding one (1) year from the Implementation Date.

2. Recordal

- 2.1. From a public interest point of view, the Commission found that all employees of Kalahari will be transferred to Takealot in terms of section 197 of the Labour Relations Act 1995, as amended, upon implementation of this Merger. The Merging Parties indicate that they have yet to determine the exact structure of the Merged Entity's business as well as engage in a comprehensive audit of the Kalahari employees, as these processes cannot lawfully be undertaken prior to the Implementation Date.

- 2.2. As such the Merging Parties cannot currently provide certainty as to the precise number and identity of the employees who are potentially facing retrenchment upon implementation of this Merger. In particular, the Merging Parties have made no decisions in relation to retrenchments. However, the Merging Parties have undertaken on a “worst case scenario” basis that no more than 200 employees will be retrenched as a result of this Merger.
- 2.3. In an effort to minimise the potential negative impact this Merger may have on employment, the Commission hereby imposes these Conditions, to which the Merging Parties have agreed in advance, the details of which are set out below.

3. Condition

- 3.1. The Merging Parties shall ensure that no more than 200 retrenchments occur as a result of this Merger.
- 3.2. For the sake of clarity, dismissals 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, 1995, as amended, (iv) resignation or retirements in the normal course, and (v) retrenchments lawfully effected for operational requirements unrelated to the Merger.
- 3.3. The Merging Parties shall offer various support measures to assist the Affected Employees in coming to terms with their retrenchment. This support and shall include but not be limited to:
- 3.3.1. providing reasonable career counselling to any Affected Employee, pre and post retrenchment for the period of 12 months following the Merger Approval Date;
- 3.3.2. providing reasonable individual assistance and support in dealing with administrative issues that may arise as a result of retrenchment such as pension

fund processing, tax as well as UIF contributions and payments) for the period of 12 months following the Merger Approval Date;

- 3.3.3. provided that an Affected Employee has given his or her consent to receive such notice, the Merging Parties shall for a period of 12 months following the Merger Approval date, notify the Affected Employee, of any suitable vacancy that may arise in the merged firm's business; 3.3.4 for a period of four (4) months after the Merger Approval Date, MIH shall take all reasonable steps to identify reasonable alternative employment opportunities within the Naspers Group for the Affected Employees, including the advertisement of the Affected Employees' CV's on internal websites and intranets (subject to the consent of Affected Employees to do so). In addition, MIH shall ensure that the Naspers Group Talent VP is provided with the CV's of all Affected Employees and reasonably attempts to secure such Affected Employees' employment within the Naspers Group; and
- 3.3.4. set up the Training Fund to be used for purposes of funding the training and up-skilling of the Affected Employees. The Training Fund shall be applied in accordance with the principles and conditions set out in Annexure 1A hereto.

4. Monitoring of compliance with this Condition

- 4.1. The Merging Parties shall notify the Commission of the Implementation Date within 5 days of its occurrence.
- 4.2. The Merging Parties shall circulate a copy of these Conditions to Employees as soon as practicable after the Merger Approval Date, but in any event by no later than 16 January 2015.
- 4.3. As proof of compliance hereof, the Merging Parties shall provide an affidavit by a senior official of MIH attesting to the circulation of the Conditions and provide a copy of the notice that was circulated to the Affected Employees. Such affidavit must be submitted to the Commission by no later than the end of the first month following the Merger Approval Date.
- 4.4. For a period of five (5) months after the Merger Approval Date, as proof of compliance

with the MIH obligations set out in paragraph **Error! Reference source not found.** above, the Merging Parties shall provide a compliance report comprehensively setting out all reasonable steps taken to identify reasonable alternative employment opportunities within the Naspers Group for the Affected Employees, confirming the advertisement of the Affected Employees' CV's on internal websites and intranets as well as confirmation that the Naspers Group Talent VP was provided with the CV's of all Affected Employees and that reasonable attempts to secure Affected Employees' employment within the Naspers Group were taken. This report shall also set out the outcome of the above steps and be accompanied by documentary proof.

- 4.5. All correspondence in relation to these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

5. Variation of the Condition

- 5.1. These Conditions shall be effective for the applicable periods indicated herein.
- 5.2. The Merging Parties may at any time, on good cause shown, approach the Commission for the conditions to be revised or amended.

ANNEXURE 1 A

- 1.1. A Finance Manager in the employ of MIH or another company in the Naspers Group shall be appointed to control and manage all financial and accounting aspects of the Training Fund, and shall be responsible to collate all accounts that identify the Affected Employees, the cost incurred in respect of each Affected Employee, any additional unallocated expenditure incurred and the total amount spent by the Training Fund.
- 1.2. Within 10 business days from the expiry of the Training Fund Period, the Finance Manager shall cause a compliance report to be delivered to the Commission reflecting amongst others:
- 1.2.1. The full names and personal details of the Affected Employees including their contact details;

- 1.2.2. A clear indication of all the Training Fund's accounts, the amount expended by the Training Fund in respect of each Affected Employee, any additional unallocated expenditure incurred and the total amount spent by the Training Fund;
- 1.2.3. The final accounts of the Training Fund.
- 1.3. The compliance report envisaged in paragraph 1.2 above shall include all documentary evidence of the income and expenditure of the Training Fund, the amount spent per Affected Employee, documentary proof of the type of training provided to the Affected Employee (for which purpose an invoice issued by the institution providing the training shall suffice), the institution providing such training, its duration and the status (i.e. whether it is completed, or ongoing and if ongoing when it will be completed) of such training on the expiry of the Training Fund Period.
- 1.4. A Human Resources ("HR") Manager in the employ of MIH or another company in the Naspers Group shall be appointed to manage the implementation of the Training Fund for all Affected Employees, to appoint third party vendors to undertake services for and on behalf of the Training Fund as set out in paragraph 3.3.5 above and approve requests for training and other skills improvement. This function may be outsourced.
- 1.5. Upon expiry of the Training Fund Period, the HR Manager and/or the appointed service provider envisaged in paragraph 1.4 above shall submit a compliance report to the Commission in respect of the application of the Training Fund to Affected Employees, any training and skills provided as well as the employment opportunities and/or status of the Affected Employees. This report may be consolidated with the Financial Manager's report envisaged in paragraph 5.2 above.
- 1.6. Each Affected Employee shall be allocated a maximum of R30,000 for the purposes of training and/or re-skilling , subject to the overall limit of R 4 million (Four million rand) for the Training Fund.
- 1.7. No portion of the Training Fund shall be paid directly to any of the Affected Employees.
- 1.8. Any Affected Employee wishing to make use of the Training Fund shall apply to the HR Manager, within 6 months from the Merger Approval Date, for the allocation of all or a portion of the fees payable for training.
- 1.9. The HR Manager shall, upon request from any Affected Employee, assist or procure assistance for the Affected Employee applicant with the compilation of any application

letter and/or form for an allocation from the Training Fund, the standard of the letter and/or forms of which shall not be unduly cumbersome.

- 1.10. Should an application for training be successful, the Finance Manager in the employ of MIH or another company in the Naspers Group shall cause the payment of the fees (granted to the Affected Employee) directly to the applicable training institution upon presentation of an invoice of such training institution.
- 1.11. MIH shall continue to offer funding from the Training Fund to the Affected Employees for a period of 1 year from the Implementation Date.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.