

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION****NO. 49****29 JANUARY 2021****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****NIMBLE CREDIT FUND 1 PROPRIETARY LIMITED****AND****PARTS OF EDCON LTD'S (IN BUSINESS RESCUE) LOAN BOOK AND ASSOCIATED  
INHOUSE ADMINISTRATION SERVICES, INCLUDING DEBT COLLECTION SERVICES,  
WHICH CONSIST OF CERTAIN ASSETS AND CERTAIN YET TO BE IDENTIFIED  
EMPLOYEES****CASE NUMBER: 2020AUG0070**

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:

1. On 19 August 2020, the Competition Commission (Commission) was notified of an intermediate merger whereby Nimble Credit Fund 1 Pty Limited (Nimble Credit) intends to acquire parts of Edcon Ltd's loan book and associated inhouse administration services, including debt collection services, which consist of certain assets and certain yet to be identified employees (Target Business). On completion of the proposed transaction, Nimble Credit will own and control the Target Business.
  2. The primary acquiring firm is Nimble Credit. Nimble Credit is owned and controlled by Nimble Group (Pty) Ltd (the Nimble Group). The primary target firm is the Target Business. The Target Business is owned by Edcon Ltd.
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3. The Nimble Group provides solutions to the credit industry in both the consumer and corporate markets. It focusses on four functional areas, namely: contingent debt collections (i.e. debt collection services); outsourcing in respect of the receivables function; debt purchasing, and fund management.
  4. The Target Business comprise of the Non-Performing Book, Written-Off Book, and the Current Foreign Portfolio.
  5. The Commission considered the activities of the merging parties and found that the proposed transaction presents a horizontal overlap in the market for debt collection services. Although there is a horizontal overlap, the Commission notes that the Target Business comprises of an internal debt collection service administered by Edcon (through Edcon Financial Services) which does not offer these services to third parties and therefore does not compete with the Nimble Group. Nevertheless, the Commission notes that the Target Business accounts for less than 1% of the market.
  6. In light of the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the above-mentioned market.
  7. In addition, the Commission notes that, pre-merger, there was a vertical relationship between the Nimble Group and Edcon. The Nimble Group provided debt collection services to Edcon. The Commission considered whether other debt collectors in the market that provided debt collection services to Edcon would be foreclosed. The Commission found that other debt collectors will still have a substantial part of the market to compete for.
  8. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.
  9. With respect to employment, the Department of Trade, Industry and Competition (DTIC) raised employment concerns and required the acquiring group to make commitments in this regard. At a minimum, the DTIC required the acquiring firm to commit that they will be no job losses as a consequence of the merger for a period of at least two year from the date of approval of the transaction by the Competition Authorities. The merging parties agreed to this commitment.
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Further, the merging parties have committed to offer employment to employees of Edcon's financial division that were dedicated to the Target Business.

10. The proposed transaction does not raise any other public interest issues.
11. The Commission therefore approves the proposed transaction subject to conditions attached as **Annexure A**.

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**Annexure A****Nimble Credit Fund 1 Proprietary Limited****and**

**Parts of Edcon Ltd's (in business rescue) loan book and associated inhouse administration services, including debt collection services, which consist of certain assets and certain yet to be identified employees**

**CC Case Number: 2020Aug0070**

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**Conditions****1. Definitions**

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

- 1.1 **"Affected Persons"** means, collectively, Edgars Consolidated Stores Limited, Edcon creditors, Edcon employees represented by the Employment Committee and the South African Commercial Catering and Allied Workers Union, as contemplated in section 128(1)(a) of the Companies Act;
- 1.2 **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate;
- 1.3 **"BRPs"** means the business rescue practitioners appointed by the Edcon board of directors;

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- 1.4 “**Business Rescue Plan**” means the Business Rescue Plan in relation to Edcon dated 8 June 2020, prepared in terms of section 150 of the Companies Act, and approved by the Affected Persons;
- 1.5 “**Commission**” means the Competition Commission of South Africa;
- 1.6 “**Companies Act**” means the Companies Act, No. 71 of 2008 (as amended);
- 1.7 “**Conditions**” means these conditions;
- 1.8 “**Days**” means any calendar day which is not a Saturday, Sunday or official public holiday in South Africa;
- 1.9 “**DTIC**” means the Department of Trade, Industry and Competition;
- 1.10 “**Edcon Employees**” means employees of Edcon in relation to its financial services division who are currently engaged in services ancillary to the management of the Sale Book Debts and who received notices of termination in terms of section 189 of the Labour Relations Act as a result of the implementation of the Business Rescue Plan;
- 1.11 “**Edcon**” means Edcon Limited;
- 1.12 “**Employment Committee**” means the committee constituted in terms of section 148 of the Companies Act for the business rescue proceedings to represent non-unionised members;
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- 1.13 **“Implementation Date”** means the date, occurring after the Approval Date, on which the last condition precedent to the Sale Agreement is fulfilled or waived, as the case may be;
- 1.14 **“Labour Relations Act”** means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.15 **“Merger”** means the acquisition by Nimble of the Target Firm.
- 1.16 **“Merging Parties”** mean Nimble and the Target Firm;
- 1.17 **“Nimble”** means Nimble Credit Fund 1 Proprietary Limited, and its controller, Nimble Group Proprietary Limited;
- 1.18 **“Sale Agreement”** means the Sale of Book Debts Agreement dated 4 August 2020;
- 1.19 **“Sale Book Debts”** means parts of Edcon’s loan book consisting of certain assets as more fully identified in the Sale Agreement;
- 1.20 **“Target Firm”** means the parts of Edcon’s loan book and associated in-house administration services, including debt collection services, which consist of certain assets and certain yet to be identified employees; and
- 1.21 **“Tribunal”** means the Competition Tribunal of South Africa.
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## 2. **RECORDAL**

- 2.1 On 19 August 2020, the Commission received notice of an intermediate merger whereby Nimble intends to acquire the Target Firm.
- 2.2 From a competition perspective, the Commission found that the Merger is unlikely to substantially prevent or lessen competition.
- 2.3 From a public interest perspective, the Commission notes that the Merger will ensure that at least 150 (one hundred and fifty) Edcon Employees are offered employment by Nimble. The DTIC proposed that Merging Parties make certain commitments regarding employment. The Merging Parties have agreed to these Merger Conditions.

## 3. **EMPLOYMENT**

- 3.1 Nimble shall, within 5 (five) Days of the Implementation Date, offer employment to at least 150 (one hundred and fifty) of the Edcon Employees. The terms of such offers of employment will be in accordance with Nimble's ordinary business practices and its standard terms and conditions of employment.
- 3.2 Nimble shall not retrench any employees for a period of 2 (two) years from the Implementation Date as a result of the Merger. This condition shall also apply to the period between the Approval Date and Implementation Date.
- 3.3 Retrenchments do not include (i) voluntary retrenchment and/or voluntary separations arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the
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Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the transaction; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

#### **4. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 4.1 The Merging Parties shall circulate a copy of the Conditions to all employees / and or their respective trade union representatives within five (5) Days of the Approval Date.
  - 4.2 As proof of compliance thereof, the Merging Parties shall within five (5) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
  - 4.3 The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
  - 4.4 The Merging Parties shall inform the Commission of the final number of Edcon Employees to whom it has made offers of employment within 20 (twenty) Days of the Implementation Date.
  - 4.5 The Merged Entity shall, for the duration of the conditions, submit an affidavit on each anniversary of the Implementation Date, confirming compliance with clause 3 of the Conditions. This affidavit must be deposited to by a senior official of the Nimble.
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4.6 Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.

**5. APPARENT BREACH**

An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

**6. VARIATION OF THE CONDITION**

The Merging Parties shall be entitled, upon good cause shown, to apply to the Commission for the waiver, relaxation, modification and/or substitution of one or more of the Conditions. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties may apply to the Tribunal, on good cause shown, for the Condition to be lifted, revised or amended.

**7. GENERAL**

All correspondence in relation to these Conditions shall be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).

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