

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1827

4 March 2022

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**JAS WORLDWIDE OMNI-CHANNEL, LLC
AND
TIGERS LIMITED****CASE NUMBER: 2021MAR0001**

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 abovementioned firms subject to conditions set out below:

1. On 01 March 2021, the Competition Commission (Commission) was notified of an intermediate merger wherein JAS Worldwide Omni-Channel, LLC (JAS) intends to acquire the entire issued share capital of Tigers Limited (Tigers). On completion of the proposed transaction, JAS will own and have sole control of Tigers.

Parties to the transaction

2. The primary acquiring firm is JAS, a company incorporated in accordance with the laws of the state of Georgia, United States of America (USA). JAS is controlled by JAS Worldwide Inc (JAS Worldwide).
 3. The primary target firm is Tigers Limited (Tigers), a company incorporated in accordance with the laws of Hong Kong.
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4. JAS Worldwide is a global freight forwarder and logistics provider operating worldwide in over 80 countries. It offers freight forwarding services, customs brokerage, and warehousing services.
 5. Tigers provides freight forwarding, customs brokerage and contract logistics services. It has branches and logistics hubs in Asia Pacific (Australia, Greater China, India, Malaysia, Myanmar), North America (USA and Canada), Europe (Germany, Netherlands, and the United Kingdom), as well as South Africa.

Competition analysis

6. The Commission considered the activities of the merging parties and found that the proposed transaction presents a horizontal overlap in the market for the provision of freight forwarding and clearing services.
7. The Commission found that the merging parties are small players in the market, and as such, it is unlikely that the proposed transaction will substantially prevent or lessen competition. This was confirmed by competitors and customers of the merging parties. None of the competitors and customers contacted by the Commission raised concerns with the proposed transaction.
8. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Public interest

9. The merging parties submit that the transaction notified is an international transaction and JAS has not made any integration plans at this stage which would impact employment in South Africa. Notwithstanding the above, the merging parties submit that they are amenable to a condition that places a moratorium on merger-related retrenchments for a period of 2 (two) years.
 10. The Commission received concerns of job security from employee representatives of Tigers. The Commission indicated that the merging parties have tendered a condition imposing a
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moratorium of 2 (two) years on merger-related retrenchments. The employees have not raised any further concerns with the proposed transaction.

11. The proposed transaction does not raise any other public interest issues.

Conclusion

12. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

13. From a public interest perspective, the Commission notes that JAS has not made any integration plans at this stage which would impact employment in South Africa. Notwithstanding the above, the merging parties have tendered a condition that places a moratorium on merger-related retrenchments for a period of 2 (two) years. The Commission accepts the merging parties proposed condition.

14. As such, the Commission recommends that the proposed transaction be approved subject to conditions attached as **Annexure A**.

ANNEXURE A**JAS WORLDWIDE OMNI-CHANNEL, LLC****AND****TIGERS LIMITED****CASE NO: 2021MAR0001**

DEFINITIONS

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

- 1.1. **“Acquiring Firm”** means JAS Worldwide Omni-Channel, LLC;
 - 1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
 - 1.3. **“Approval Date”** means the date referred to in the Commission’s merger clearance certificate (Form CC15) in respect of the Merger;
 - 1.4. **“Commission”** means the Competition Commission of South Africa;
 - 1.5. **“Commission Rules”** mean the Rules for the Conduct of Proceedings in the Commission;
 - 1.6. **“Conditions”** means these conditions;
 - 1.7. **“Days”** mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.8. **“Implementation Date”** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
 - 1.9. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
 - 1.10. **“Merger”** means the acquisition of control by the Acquiring Firm of the Target Firm, which constitutes an intermediate merger for purposes of the Act;
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- 1.11. **“Merged Entity”** means the entity that will result from the Merger between the Merging Parties;
- 1.12. **“Moratorium”** means the period between the Approval Date and the Implementation Date and, thereafter, a period of 2 (two) years from the Implementation Date;
- 1.13. **“Merging Parties”** mean the Acquiring Firm and Target Firm;
- 1.14. **“South Africa”** means the Republic of South Africa;
- 1.15. **“Target Firm”** means Tigers Limited;
- 1.16. **“Tribunal”** means the Competition Tribunal of South Africa; and
- 1.17. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

2. RECORDAL

- 2.1. On 1 March 2021, the Merging Parties notified the Merger to the Commission.
- 2.2. The Commission found that the Merging Parties were not able to provide a definitive statement that the Merger would not result in any Merger-related retrenchments in South Africa. However, the Acquiring Firm tendered the Conditions to address any potential concerns in this regard.

3. CONDITION TO THE APPROVAL OF THE MERGER: EMPLOYMENT

- 3.1. The Merging Parties shall not retrench any employees in South Africa as a result of the Merger, during the Moratorium period.
 - 3.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the
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Merger; (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 CONDITION

- 4.1. The Merging Parties shall circulate a copy of the Conditions to all their employees in South Africa and their relevant trade unions or employee representatives within 5 (five) Days of the Approval Date.
 - 4.2. As proof of compliance thereof, the Managing Director of the Acquiring Firm's South African subsidiary, JAS Forwarding SA Proprietary Limited, and the Managing Director of the Target Firm's South African subsidiary, Lochhead White and Womersley Proprietary Limited, shall each within 10 (ten) Days of circulating the Conditions, submit affidavits attesting to the circulation of the Conditions to the Merging Parties' employees in South Africa and provide a copy of the notice that was sent to the employees, respectively.
 - 4.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
 - 4.4. The Merged Entity shall, on the first and second anniversary of the Implementation Date submit a report confirming compliance with Condition 3.1. Any report contemplated herein must include amongst others details regarding retrenchments undertaken in accordance with clause 3.2 of the Conditions.
 - 4.5. Each report submitted in accordance with paragraph 4.4 shall be accompanied by an affidavit of the Managing Director of the Acquiring Firm's South African subsidiary, JAS Forwarding, confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
 - 4.6. The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
 - 4.7. Any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may
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approach the Commission.

5. APPARENT BREACH

- 5.1. Any complaint received by the Commission alleging a breach of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read with Rule 37 of the Tribunal Rules.

6. VARIATION

- 6.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

7. GENERAL

- 7.1. All correspondence in relation to these Conditions shall be sent to mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

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