

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 2263

8 July 2022

## COMPETITION COMMISSION

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

PLENNEGY (PTY) LTD AND THE HILDESHEIM TRUST

AND

TRITON EXPRESS (PTY) LTD

CASE NUMBER: 2021SEP0011

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 07 September 2021, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Plennegy (Pty) Ltd ("Plennegy") and the Hildesheim Trust ("Hildesheim Trust") intend to acquire controlling shares in Triton Express (Pty) Ltd ("Triton"). Plennegy and the Hildesheim Trust form part of the Plennegy Group. The Plennegy Group (through the Hildesheim Trust) currently has shares in Triton.
2. The proposed transaction involves the steps outlined below.

**The initial transaction**

3. This involves the Plennegy Group (Plennegy and the Hildesheim Trust) increasing its pre-merger shareholding in Triton. The acquisition by Plennegy Group of shares in Triton will result in the Plennegy Group acquiring *de facto* control over Triton.

### The Call option

4. In addition to the Initial Transaction, the Plennegy Group will also acquire additional shares in Triton through 3 (three) Call Options and this will effectively increase the shareholdings of Plennegy Group.
  5. The merging parties indicate that upon the implementation of the First Call Option, the Plennegy Group's control over Triton will change from *de facto* control to *de jure* sole control. The merging parties also indicate that following the Second Call Option and the Third Call Option, the Plennegy Group's control over Triton will exceed the percentage threshold for the exercise of certain material decisions as contemplated in the Shareholders Agreement. Notwithstanding this, the merging parties are of the view that since the Plennegy Group will already exercise *de jure* control over Triton following the exercise of the First Call Option, the exercise of the Second and Third Call Options will not result in notifiable changes in control. In this regard, the parties request the Commission's approval for Plennegy Group's acquisition of sole or *de jure* control over Triton.
  6. The Competition Tribunal ("Tribunal") in **Brookfield Asset Management Inc and Oaktree Capital Group LLC merger** accepted that if a transaction occurs within 24 months following the approval of the first transaction the merging parties do not need to notify the Commission again.
  7. Given that the merging parties intend to acquire sole control in 24 months' time. The Commission and the merging parties agreed on the following conditions:
    - 7.1. "Should the Plennegy Group acquire sole control over the Target Firm within 24 months of the Implementation Date, the Plennegy Group shall inform the
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Commission of its acquisition within 20 (twenty) business days of establishing sole control.

7.2. Should the Plennegy Group not establish sole control over the Target Firm within 24 months of the Implementation Date, the Plennegy Group shall notify the acquisition of sole control as a separate merger in terms of section 13A of the Competition Act, to the extent that the thresholds for an intermediate or large merger are met.”

8. This condition is in line with the Tribunal case precedent. The conditions are attached as **Annexure A** hereto.

#### **Parties to the Transaction**

9. The first primary acquiring firm is Plennegy, a firm incorporated in accordance with the company laws of South Africa.

10. The second primary acquiring firm is the Hildesheim Trust.

11. Plennegy and the Hildesheim Trust and the firms they directly or indirectly control and the firms directly or indirectly controlling them, shall be referred to as the “Plennegy Group”.

12. The Plennegy Group is involved in research and production of vegetable seeds, printing services, aviation charter services for passengers, investing in unlisted trading companies, and commercial and residential property.

13. The primary target firm is Triton Express (Pty) Ltd (“Triton”), a firm incorporated in accordance with the company laws of South Africa.

14. Triton and all the firms it directly or indirectly controls shall be referred to as the "Target Group".
15. The Target Group is involved in the provision of road freight transport services. It is also engaged in cross border and air freight logistics services.

**Relationship between the activities of the merging parties**

16. The Commission considered the activities of the merging parties and found that the proposed transaction does not give rise to any horizontal overlap as the Plennegy Group does not provide services that are substitutable with road freight services, cross border and air freight logistics services provided by the Target Group.
17. In addition, the proposed transaction does not raise any vertical overlap as merging parties are not active at different levels of the same value chain. However, the Commission found that the merging parties do from time to time provide the following services to each other, albeit on an *ad hoc* basis:
  18. The Plennegy Group supplies the Target Group with aviation charter services; and
  19. The Target Group supplies the Plennegy Group with courier services.
20. Considering the above, the Commission assessed the possible foreclosure concerns that may result if the merging parties were to foreclose competitors of the Plennegy Group access to courier services. The Commission also assessed the possible foreclosure concerns that may result if the merging parties were to foreclose competitors of the Target Group access to aviation charter services.

**Assessment of possible input foreclosure relating to the provision of courier services**

21. The Commission is of the view that the proposed transaction is unlikely to result in significant input foreclosure concerns as the Target Group is a small player in the provision of courier services with a market share of less than 5%. In this market, the Target Group faces competition from several players.
22. Considering the above, the Commission is of the view that the proposed merger is unlikely to result in input foreclosure concerns relating to the provision of courier services.

**Assessment of input foreclosure relating to the provision of aviation charter services**

23. The Commission is of the view that the proposed transaction is unlikely to result in input foreclosure concerns relating to the provision of aviation charter services as the Plennegy Group is a small player with a market share of less than 5%.

**Customer foreclosure**

24. The Target Group currently procures courier services and aviation charter services only from the Plennegy Group. Therefore, there are no upstream rivals to be foreclosed.
25. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

## Public interest

### *Effect of employment*

26. The merging parties provided an unequivocal statement that the proposed transaction will not have a negative effect on employment. The Commission contacted the employee representatives of the merging parties, and no concerns were raised.
27. The Commission is therefore of the view that the merger is unlikely to result in significant employment concerns.
28. The transaction raises no other public interest concerns.

## Conclusion and recommendations

29. The Commission therefore approves the proposed merger with conditions. The conditions are attached as **Annexure A** hereto.

**ANNEXURE A**  
**PLENNEGY (PTY) LTD AND THE HILDESHEIM TRUST**  
**AND**  
**TRITON EXPRESS (PTY) LTD**

**CASE NUMBER: 2021SEP0011**

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**DEFINITIONS**

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

- 1.1 “**Acquiring Firms**” means Plennegy (Pty) Ltd and the Hildesheim Trust, or either of them as the case may be;
- 1.2 “**Approval Date**” means the date referred to in the Commission’s decision;
- 1.3 “**Business Day**” means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.4 “**Call Options**” means the First Call Option, the Second Call Option and the Third Call Option;
- 1.5 “**Commission**” means the Competition Commission of South Africa;
- 1.6 “**Competition Act**” means the Competition Act 89 of 1998 (as amended);
- 1.7 “**Conditions**” means these conditions;
- 1.8 “**EAC Trust**” means the trustees for the time being of the E A Corbishley Family Trust, No IT656/1996/PMB;
- 1.9 “**Erlindi Trust**” means the trustees for the time being of the Erlindi Trust, No IT297/1996/PMB;
- 1.10 “**First Call Option**” means the indivisible options granted by:

- 1.10.1 the EAC Trust to the Acquiring Firms to acquire shares in the Target Firm; and
- 1.10.2 the Erlindi Trust to the Acquiring Firms to acquire shares in the Target Firm;
- 1.11 **“Hildesheim Trust”** means the Hildesheim Trust;
- 1.12 **“Implementation Date”** means the date on which the Initial Transaction is implemented in accordance with the Sale of Shares Agreement;
- 1.13 **“Initial Transaction”** involves an acquisition by the Acquiring Firms of shares in the Target Firm from the EAC Trust and shares in the Target Firm from the Erlindi Trust;
- 1.14 **“Merging Parties”** means the Acquiring Firms and the Target Firm;
- 1.15 **“Plennegy”** means Plennegy (Pty) Ltd;
- 1.16 **“Plennegy Group”** means Plennegy and the Hildesheim Trust and the firms they directly or indirectly control and the firms directly or indirectly controlling them;
- 1.17 **“Proposed Transaction”** means the Initial Transaction and the Call Options;
- 1.18 **“Sale of Shares Agreement”** means the sale agreement concluded between the trustees for the time being of the Erlindi Trust, the trustees for the time being of the EAC Trust, Plennegy and the Trustees for the time being of the Hildesheim Trust;
- 1.19 **“Second Call Option”** means the indivisible options granted by:
  - 1.19.1 the EAC Trust to Plennegy to acquire shares in the Target Firm; and
  - 1.19.2 the Erlindi Trust to Plennegy to acquire shares in the Target Firm;
- 1.20 **“Target Firm”** means Triton Express (Pty) Ltd;
- 1.21 **“Third Call Options”** means the indivisible options granted by:
  - 1.21.1 the EAC Trust to the Hildesheim Trust to acquire shares in Triton Express Group; and
  - 1.21.2 the Erlindi Trust to the Hildesheim Trust to acquire shares in Triton Express Group;

- 1.22 “**Tribunal**” means the Competition Tribunal of South Africa; and
- 1.23 “**Triton Express Group**” means Triton Express Group (Pty) Ltd, a shareholder of the Target Firm.

## 2. RECORDAL

- 2.1. On 07 September 2021, the Commission received notice of an intermediate merger in terms of which the Plennegy Group intends to acquire control (ultimately, in the form of sole control) over the Target Firm. The proposed acquisition of sole control will be implemented through the Initial Transaction and Call Options.
- 2.2. The Plennegy Group (through the Hildesheim Trust) currently controls shares in the Target Firm.
- 2.3. The completion of the Initial Transaction will result in the Plennegy Group’s shareholding in the Target Firm increasing.
- 2.4. In addition to the Initial Transaction, the Plennegy Group also has three call options to acquire additional shares in the Target Firm. The exercise of these options will increase the Plennegy Group’s shareholding in the Target Firm.
- 2.5. The Commission accepts that following the exercise of the First Call Option, the Plennegy Group will acquire sole control of the Target Firm.
- 2.6. In the circumstances, recognising that the market/s in which the Merging Parties are active in South Africa may change between the Plennegy Group establishing joint control over the Target Firm and then subsequently establishing sole control over the Target Firm, the Commission and the Merging Parties agreed on the Conditions in clause **Error! Reference source not found.** below.

### **3. CONDITIONS**

- 3.1. Should the Plennegy Group acquire sole control over the Target Firm within 24 months of the Implementation Date, the Plennegy Group shall inform the Commission of its acquisition within 20 (twenty) business days of establishing sole control.
- 3.2. Should the Plennegy Group not establish sole control over the Target Firm within 24 months of the Implementation Date, the Plennegy Group shall notify the acquisition of sole control as a separate merger in terms of section 13A of the Competition Act, to the extent that the thresholds for an intermediate or large merger are met.

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

- 4.1. The Merging Parties shall notify the Commission of the Implementation Date within 5 (five) business days of its occurrence.
- 4.2. The Plennegy Group shall inform the Commission of the acquisition referred to in 3.1 by submitting an affidavit deposed to by the Chief Executive Officer accompanied by the relevant securities transfer forms for the acquisition of the sole control.
- 4.3. Where applicable, the Plennegy Group shall notify the Commission of the merger envisaged under 3.2 in the prescribed manner in terms of the Competition Act.

### **5. BREACH**

- 5.1. If the Commission receives any complaint concerning non-compliance with the Conditions or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach 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 concerning 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](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto: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