
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 2528****23 September 2022****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****DPD LASER EXPRESS LOGISTICS (PTY) LTD****AND****FAST AND FURIOUS DISTRIBUTION (PTY) LTD****CASE NO: 2021JUL0064**

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 as set out below:

1. On 30 July 2021, the Competition Commission (Commission) received a notice of an intermediate merger wherein DPD Laser Express Logistics (Pty) Ltd (DPD Laser) intends to acquire 100% of the issued share capital of Fast and Furious Distribution (Pty) Ltd (Fast and Furious). Post-merger, Fast and Furious will be solely controlled by DPD Laser.

Activities of the merging parties

2. DPD Laser is a private company incorporated in South Africa. DPD Laser controls the following (dormant) entities, namely DPD Laser Express Logistics (Namibia) (Pty) Ltd, Dawn Wing Express Distribution (Pty) Ltd (Dawn Wing) and Time Freight Express Distribution (Pty) Ltd. DPD Laser is jointly controlled by GeoPost SA and the Laser Group (Pty) Ltd (Laser). DPD Laser is part of an international delivery services network. In South Africa, DPD Laser provides express and standard parcel delivery services to businesses and consumers within South Africa through its Dawn Wing business.

3. Fast and Furious is a private company incorporated in South Africa. Fast and Furious owns 100% of the shares in FNF Fleet (Pty) Ltd and Air Pup (Pty) Ltd. Fast and Furious provides domestic standard parcel delivery services to businesses and consumers operating in South Africa.

Competition Assessment

4. The Commission found that there is a horizontal relationship between the activities of the merging parties in that both DPD Laser and Fast and Furious are involved in the provision of parcel delivery services in South Africa.
5. In terms of market shares, the Commission found that post-merger, the merged entity will have an estimated market of less than 10%, with a minimal market share accretion. The Commission's assessment identified numerous competing firms in the market that will continue to constrain the merged entity post-merger such as DSV South Africa (Pty) Ltd, Value Logistics (Pty) Ltd, City Couriers Logistics (Pty) Ltd, Aramex, Fedex Corporation, RAM Hand-to-Hand Courier, Skynet Worldwide Express and The Courier Guy, amongst others. Further, none of the competitors and customers of the merging parties have raised any concern regarding the proposed merger. Accordingly, the Commission concluded that the proposed merger is unlikely to substantially prevent or lessen competition in the market for the provision of courier services in South Africa.

Public interest considerations

6. The Commission notes that the proposed merger is likely to raise employment concerns. The merging parties submit that in a worst-case scenario, a total of 67 permanent employees are likely to be retrenched. Both parties have branches across South Africa (in areas such as Cape Town, Johannesburg and Durban) and anticipate that the integration of their operations will result in certain positions being duplicated, hence the need for retrenchments. The potential duplications are identified in the areas of management, operation, call centre, warehouse, fleet, sales and marketing and administration. This process is likely to affect employees employed in various branches across all job
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categories. Further, concerns regarding the merger's impact on employment have been raised by the relevant trade unions and the Minister of Trade, Industry and Competition.

7. In order to ensure that the proposed transaction does not raise significant employment concerns post-merger, the Commission is of the view that it is necessary to impose conditions to alleviate any employment concerns that may arise as result of the proposed transaction. The merging parties have agreed to the conditions. Accordingly, the Commission imposed the conditions attached as **Annexure A** hereto.
8. Further, no other public interest issues arise as a result of the proposed transaction.

Conclusion

9. The Commission therefore approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.

ANNEXURE A
DPD LASER EXPRESS LOGISTICS (PTY) LTD
AND
FAST AND FURIOUS DISTRIBUTION (PTY) LTD
CASE NUMBER: 2021JUL0064

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —
- 1.1.1 **"Affected Employees"** means the 67 duplicated permanent employee roles at DPD Laser and Fast and Furious that will arise following the implementation of the Merger;
- 1.1.2 **"Alternative Positions"** means the 60 (sixty) available positions that will become available upon the expiry of the fixed-term contracts of temporary employees of the Merged Entity;
- 1.1.3 **"Approval Date"** means the date referred to on the Commission's merger Clearance Certificate;
- 1.1.4 **"Close Family member"** means the spouse, children, brother, sister, mother, father, sister's children and brother's children of the Affected Employee that may be dependent on the Affected Employee;
- 1.1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.6 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
- 1.1.7 **"Conditions"** means these conditions contained in this Annexure A, agreed to by the Merged Entity and the Commission;
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- 1.1.8 **“DPD Laser”** means DPD Laser Express Logistics (Pty) Ltd;
- 1.1.9 **“Days”** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.10 **“Fund”** means an allocation of money to the value of R 25 000 for the Affected Employees for purposes of skills development;
- 1.1.11 **“Fast and Furious”** means Fast and Furious Distribution (Pty) Ltd
- 1.1.12 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.13 **“LRA”** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.1.14 **“Merged Entity”** means the combined firm resulting from the Merger between DPD Laser and Fast and Furious;
- 1.1.15 **“Merger”** means the acquisition of control over Fast and Furious by DPD Laser;
- 1.1.16 **“Merging Parties”** means Fast and Furious and DPD Laser;
- 1.1.17 **“Moratorium”** means the period between the Approval Date and the Implementation Date and, thereafter, a period of 2 (two) years from the Implementation Date;
- 1.1.18 **“Rules”** mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;
- 1.1.19 **“SATAWU”** means the South African Transport and Allied Workers Union;
- 1.1.20 **South Africa** means the Republic of South Africa;
- 1.1.21 **“Temporary Employees”** means the 60 (sixty) employees currently employed by the Merging Parties on fixed-term contracts; and
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- 1.1.22 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. RECORDAL

- 2.1 On 30 July 2021, the Commission was notified of the Merger. Following its investigation of the Merger, the Commission is of the view that same is unlikely to substantially prevent or lessen competition in any market.
- 2.2 From a public interest perspective, the Merging Parties indicated that there could be a need for the involuntary retrenchment of the Affected Employees. Given concerns raised by the relevant trade unions and the Department of Trade, Industry and Competition, the Merging Parties and the Commission have agreed to the Conditions.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

3.1 EMPLOYMENT

- 3.1.1 Except for the Affected Employees and Temporary Employees, the Merged Entity shall not retrench any employees as a result of the Merger subject to paragraphs 3.1.2 and 3.1.3.
- 3.1.2 The Merged Entity shall not retrench any Affected Employees in South Africa as a result of the Merger during the Moratorium period.
- 3.1.3 The Merged Entity shall not retrench any Temporary Employees in South Africa as a result of the Merger, for a period of 6 (six) months following the Implementation Date.
- 3.1.4 For the sake of further 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; (vii) any decision not to renew or extend a contract of a contract worker..

3.1.5 Upon the expiry of the Moratorium period, the Merged Entity shall –

- 3.1.5.1 In the first instance offer voluntary severance packages to all Affected Employees. In the event that the Affected Employee does not accept a voluntary severance package, offer an Alternative Position in lieu of retrenchment in the form of transfers to an alternative role at the Merged Entity.
- 3.1.5.2 In the event that the Affected Employee accept the Alternative Position, ensure that the Affected Employee is transferred on a permanent basis with uninterrupted service and assume the terms and responsibilities of the new role.
- 3.1.5.3 In the event the Affected Employee elects not to redeployed, offer a skills development award of R 25 000 to each of the Affected Employees.
- 3.1.5.4 Establish the Fund to re-skill or re-train the Affected Employees. The Fund shall be applied in accordance with the principles and conditions set out in Annexure A1 of these Conditions.
- 3.1.5.5 Maintain a database of the names and contact details of all Affected Employees and, should any vacancies arise within the broader DPD Laser business, undertake to inform such employees of relevant vacancies through their last known contact details such an email and/or cellphone numbers, amongst others.

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 representatives, including but not limited to SATAWU 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 from a senior official of each 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 five (5) Days of its occurrence.
 - 4.4 The Merged Entity shall submit a list of the 60 (sixty) available positions within 10 (ten) Days of the expiry of the Moratorium period.
 - 4.5 The Merged Entity shall submit written confirmation of offering these positions to Affected Employees within 20 Days after the expiry of the Moratorium Period.
 - 4.6 The Merged Entity shall, for a period of 3 (three) years from the Implementation Date, submit a report on each anniversary of the Implementation Date, detailing its compliance with the Conditions.
 - 4.7 Each report submitted in terms of paragraph 4.6 shall be accompanied by an affidavit of a director of the Merged Entity confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.
 - 4.8 Any person who believes that the Merging Parties have failed to comply with the Conditions may approach the Commission with their complaint.
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5. APPARENT BREACH

- 5.1 An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

6. VARIATION OF THE CONDITION

- 6.1 The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

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

Annexure A1

1. The Chief Financial Officer or any appointed Finance or Human Resources Manager in the employment of DPD Laser (Fund Manager) shall be appointed to control and manage all financial and accounting aspects of the Fund.
 2. Each Affected Employee will be allocated a maximum of R25 000 for purposes of training or reskilling. For the sake of clarity, the Merged Entity cannot dedicate to the Affected Employee the type and form of reskilling training or programme that the Affected Employee requires.
 3. Any Affected Employee wishing to make use of the designated Fund shall apply to the Fund Manager within 12 (twelve) months from the date of his/her retrenchment, for the allocation of all or a portion of the fees payable for the training. The application shall be fully motivated and shall include details (on accredited document of the training facility in question) of the cost of the training programme, the material covered in the course and the certification or other accreditation conferred on participants upon successful completion of the training programme. DPD Laser will, upon request from any Affected Employee, assist or arrange for the assistance of any prospective applicant with the application process to the respective institution where the training programme is offered.
 4. Should an application for the training be successful, DPD Laser shall make payment of the fees in question directly to the training institution in question.
 5. DPD Laser shall not unreasonably refuse to disburse Fund to any Affected Employee who wishes to undertake any skills training or programme.
 6. DPD Laser shall continue to offer funding to the Affected Employees or their Close Family Member for a period of 3 (three) years from the Implementation Date or until the Fund is exhausted, whichever occurs sooner.
 7. If the funding is not taken up within 1 (one) year from the date of the retrenchment of the Affected Employee, it will be forfeited.
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8. In the event that the Affected Employee does not opt for training or reskilling, the Affected Employee can request that the Fund be utilized by a nominated Close Family member for the purposes of paying school fees and/or any other expense related to the education of the nominated Close Family member.
9. Clause 4 above will also apply in instances where the Affected Employee nominate a Close Family member as a beneficiary.
10. Any portion of the amount allocated to the Fund that remains unclaimed by the Affected Employees will be retained by DPD Laser.