

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2529

23 September 2022

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****DEUTSCHE POST AG****AND****J.F. HILLEBRAND GROUP AG****CASE NUMBER: 2021SEP0009**

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 06 September 2021, the Competition Commission ("Commission") received a notice of an intermediate merger whereby Deutsche Post AG ("DP AG") through its wholly owned subsidiary Deutsche Post Beteiligungen Holding GmbH ("DP BH"), intends to acquire J.F. Hillebrand Group AG ("Hillebrand AG"). Post-merger, DP AG will control the Hillebrand AG.
 2. The primary acquiring firm is DP BH, a company incorporated in accordance with the laws of Germany. DP AG is a public company listed on the Frankfurt Stock Exchange and as such it is not controlled by any single shareholder. DP AG controls several firms including DHL Supply Chain (South Africa) (Pty) Ltd ("DHL Supply Chain") and DHL Global Forwarding SA (Pty) Ltd ("DHL Global Forwarding"). DP BH, DP AG and all the firms it controls directly or indirectly are collectively referred to as the "Acquiring Group" and/or the "Acquiring Group".
 3. The primary target firm is Hillebrand AG, a company incorporated in accordance with the company laws of Belgium. Hillebrand AG is controlled by COBEPA S.A. Hillebrand AG
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controls the following firms in South Africa, (i) Braid Logistics Africa (Pty) Ltd (“Braid Logistics”), (ii) JF Hillebrand South Africa (Pty) Ltd (“JF Hillebrand South Africa”), (iii) JFH Capital (Pty) Ltd and (iv) Trans Ocean Liquid Technologies (Pty) Ltd. Hillebrand AG and all the firms they control, shall be referred to as the “Target Group”.

4. The Acquiring Group is a global logistics company that conducts its business through the following three segments in South Africa: (i) Express services, which entails the urgent transportation of documents and goods from door to door; (ii) Contract logistics, that includes warehousing and transport as well as value-added services such as service logistics and packaging solutions for strategic industrial sectors; and (iii) Freight forwarding services, which entails brokering transport services for goods between customers and freight carried using ocean, land and air transportation.
5. The Target Group is an international logistics group that provides various services of the freight forwarding industry, including airfreight, ocean freight, inland transport, warehousing, inventory management and the manufacturing and sales of flexitanks and insulation liners for ISO containers.

Relationship between the parties/ products (horizontal / vertical)

6. The Commission assessed the activities of the merging parties and found that the proposed transaction gives rise to a horizontal overlap as the merging parties are active in the provision of freight forwarding services in particular (i) ocean, (ii) land and (iii) air freight forwarding services in South Africa. The Commission did not conclude on the relevant market. However, the Commission assessed the horizontal overlap in the following markets:
 - 6.1. The broad market for freight forwarding services;
 - 6.2. The narrow market for air freight forwarding services;
 - 6.3. The narrow market for land freight forwarding services; and
 - 6.4. The narrow market for sea freight forwarding services.

Assessment of horizontal overlap in the broad market for freight forwarding services

7. The Commission found that the merged entity will have a low market share in the market for freight forwarding services, with minimal accretion. The merged entity will continue to be
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constrained post-merger by alternative freight forwarding services such as Imperial Logistics Limited, Khuehne and Nagel, DB Schenker, Barloworld Limited and Value Logistics Limited. The Commission also notes that the market is fragmented with more than 900 players.

Assessment of the narrow markets

8. The Commission is not aware of publicly available data that could be used for calculating market shares relating to (i) air, (ii) land and (iii) sea freight forwarding services. In addition, the competitors of the merging parties did not provide information on the narrow markets. Thus, the Commission relied on the market share submissions by the merging parties and submissions from customers in determining the concentration levels in the affected narrow markets.

Assessment of air freight forwarding services

9. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in air freight forwarding services as the merging parties will have a low combined post-merger market share between 1% to 10% in the market for air freight forwarding service with several competitive alternatives in the market.

Assessment of the land freight forwarding services

10. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in land freight forwarding services as the merging parties will have a low combined post-merger market share (below 5%) in the market for land freight forwarding services with several competitive alternatives in the market.

Assessment of the sea freight forwarding services

11. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in sea freight forwarding services as the merging parties will have a low combined post-merger market share at below 5%. In addition, the customers of the merging parties who mainly uses ocean freight forwarding services have highlighted that there are a number of alternatives outside of the merging parties such as Nagel, Outsource Outsourced Industrial Logistics (Pty) Ltd, Inter-Sped (Gauteng) (Pty) Ltd, Bollore, Kuehne & Nagel, DSV and Megafreight Services (Pty) Ltd as alternatives.
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12. 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

Employment

13. The Commission found that the Acquiring Group engaged in pre-merger retrenchments (“Pre-merger Retrenchments”) and that they also anticipate post-merger retrenchments (“Post-merger Retrenchments”).

14. In terms of Pre-merger Retrenchments, the Commission did not find any evidence suggesting that the pre-merger retrenchments were triggered by the proposed merger. Instead, the pre-merger retrenchments appear to be triggered by a loss of several key contracts.

15. With respect to Post-merger Retrenchments, the Commission also found that these are likely linked to the loss of a particular client. As such, the Commission is of the view that it is likely that the Post-merger Retrenchments are operational in nature given the impact of Covid 19 on declining volumes of the customers of the Acquiring Group and consequently of the volumes of the Acquiring Group.

16. However, given that the Acquiring Group engaged in operational retrenchments pre-merger and anticipate further operational retrenchments, the merging parties have agreed to a condition to offer re-employment opportunities to suitably qualified employees, should opportunities arise within the Merged Entity in a 24-month period following the merger. In the 24-month period, preference will be given to the (i) retrenched employees, (ii) employees who have taken voluntary separation packages and (iii) those who will be likely to be retrenched post-merger. These conditions are attached as **Annexure A** hereto.

17. The proposed transaction does not raise any other public interest concerns.

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

ANNEXURE A
DEUTSCHE POST AG

AND

J.F. HILLEBRAND GROUP AG

CASE NUMBER: 2021SEP0009

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning:

- 1.1. **“Acquiring Firm”** means Deutsche Post AG, including its South African operations carried through, *inter alia*, the Relevant South African Subsidiaries;
 - 1.2. **“Approval Date”** means the date referred to in the Competition Commission's clearance certificate (Form CC 15);
 - 1.3. **“Commission”** means the Competition Commission of South Africa;
 - 1.4. **“Competition Act”** means the Competition Act 89 of 1998, as amended;
 - 1.5. **“Competition Tribunal”** means the Competition Tribunal of South Africa;
 - 1.6. **“Conditions”** means these conditions;
 - 1.7. **“Day”** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.8. **“Employee”** has the same meaning as in the LRA;
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- 1.9. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10. **“LRA”** means the Labour Relations Act 66 of 1995, as amended;
- 1.11. **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.12. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.13. **“Relevant South African Subsidiaries”** means DHL Global Forwarding and DHL Supply Chain;
- 1.14. **“Retrenched Employees”** means the total of employees that have been retrenched for operational reasons by the Relevant South African Subsidiaries in South Africa, with the retrenchment process of such employees having commenced during the course of the 2020 calendar year;
- 1.15. **“Voluntary Separation Package Employees”** means the employees who concluded voluntarily separation packages with the Relevant South African Subsidiaries, during the period between December 2020 and January 2021;
- 1.16. **“Employees Likely To Be Retrenched”** means a total of employees that may be retrenched for operational reasons; and
- 1.17. **“Target Firm”** means J.F. Hillebrand Group AG, including its South African operations.

2. RECORDAL

- 2.1. On 06 September 2021, the Commission received notification of the Merger.
- 2.2. The Commission found that the Relevant South African Subsidiaries initiated non-merger specific pre-merger retrenchments and may possibly implement post-merger retrenchments of the Employees Likely to be Retrenched based on the decline in the sales volumes as well as a loss of key contracts stemming from June 2020. As a consequence, that led to Retrenched Employees and Voluntary Separation Package Employees opting for voluntary
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separate packages.

- 2.3. Given that the Relevant South African Subsidiaries engaged in pre-merger retrenchments the Commission requested that the Merging Parties institute as a commitment/condition of the Merger that, when suitable employment opportunities become available, the Relevant South African Subsidiaries will make offers of employment to suitably qualified Retrenched Employees, Voluntary Separation Package Employees and Employees Likely To Be Retrenched.
- 2.4. In light of the above and following engagements between the Merging Parties and the Commission, the Merging Parties agreed to a commitment to offer the Conditions set out in clause **Error! Reference source not found.** below.

3. CONDITIONS

- 3.1. Should a vacancy arise at the Relevant South African Subsidiaries for a period of 2 (two) years from the Approval Date, the Relevant South African Subsidiary shall use its commercially reasonable endeavours to inform the Retrenched Employees and the Voluntary Separation Package Employees of the vacancy using the contact details on its records for the Retrenched employees.
- 3.2. In the event that the Employees Likely to Be Retrenched have been retrenched by the Implementation Date, the provisions of paragraph **Error! Reference source not found.** shall apply to such employees *mutatis mutandis*.
- 3.3. For the duration of the period referred to a paragraph **Error! Reference source not found.** above, and where a Retrenched Employee applies for a vacant position in South Africa and the Relevant South African Subsidiary is reasonably satisfied that the Retrenched Employee is suitable for that position, the Relevant South African Subsidiary shall give preference to such Retrenched Employee and Voluntary Separation Package Employees in the recruitment process.
- 3.4. The provisions of paragraph 2.3 shall apply *mutatis mutandis* in the event that the Employees Likely To Be Retrenched have been retrenched by the Implementation Date.
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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 in South Africa within 5 (five) Days of the Approval Date.
- 4.2. As proof of compliance with clause **Error! Reference source not found.**, each of the Merging Parties shall, within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit from a director employed by each of the Merging Parties attesting to the circulation of the Conditions and attach copies of said notices.
- 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 submit to the Commission a list of Retrenched Employees and Voluntary Separation Package Employees within 10 (ten) Days of the Approval Date.
- 4.5. In the event that the Employees Likely to Be Retrenched have been retrenched by the Implementation Date, the Merging Parties shall submit to the Commission a list of the Employees Likely to Be Retrenched within 10 (ten) Days of the Implementation Date.
- 4.6. As proof of compliance with clauses **Error! Reference source not found.** to **Error! Reference source not found.**, on the anniversary of the Approval Date, each of the Merging Parties shall submit an affidavit from a director employed by the relevant Merging Party, attesting to compliance with the Conditions.

5. APPARENT BREACH

- 5.1. In the event that the Commission receives a complaint in relation to non-compliance with the Conditions or discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
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6. VARIATION

- 6.1. Either or both of the Merging Parties may at any time, on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute in relation to the variation of the Conditions arise, the Merging Parties shall apply to the Competition Tribunal, on good cause shown, for the Conditions to be waived, relaxed, modified and/or substituted.

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