

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5368

4 October 2024

## COMPETITION COMMISSION

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

**BROOM GROUP AFRICA (PTY) LTD  
AND  
BROOM LOGISTICS AFRICA (PTY) LTD  
CASE NUMBER: 2024FEB0024**

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:

**Background**

1. On 13 February 2024, the Competition Commission ("Commission") received notice of an intermediate merger wherein Broom Group Africa (Pty) Ltd ("BGA") intends to acquire the issued share capital in Broom Logistics Africa (Pty) Ltd ("BLA").

**Parties and their Activities**

2. The primary acquiring firm is BGA, a company incorporated in South Africa. BGA is wholly owned by DAKO Invest (Pty) Ltd ("Dako"). Dako is owned and controlled by DAKO Holdings (Pty) Ltd ("Dako Holdings").

BGA is a newly incorporated investment company and has to date not received any income or incurred any expenses and has no assets. BGA was incorporated for the sole purpose of acting as an investment vehicle for transportation, logistics and related services rendered in South Africa.

3. BGA does not have any shareholding by historically disadvantaged persons ("HDPs").
4. The primary target firm is BLA, a company incorporated in South Africa. BLA is jointly controlled by Dako, Broom Investment SAS Colombia, and Sociedad de Inversiones y Logística Técnica S.A.

5. The business activities of the BLA Group can broadly be described as the provision of logistics.
6. BLA does not have any shareholding by HDPs.

### **Competition Assessment**

7. The Commission found that the merger does not result in any overlaps. Consequently, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

### **Public interest**

8. To address the public interest concerns, the parties tendered a commitment indicating that within 24 (twenty-four) months of the Implementation Date of the proposed transaction, either of the Merging Parties shall conclude a HDP Transaction and/or ESOP. This commitment is set out in the conditions to the approval of the merger attached as **Annexure A** hereto.
9. The Commission found that the proposed transaction does not raise any other public interest concerns.

### **Conclusion**

10. The Commission approves the proposed transaction with conditions set out in **Annexure A** hereto.

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**ANNEXURE A****CONDITIONS**

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**BROOM GROUP AFRICA (PTY) LTD  
AND  
BROOM LOGISTICS AFRICA (PTY) LTD  
CASE NUMBER: 2024MAR0024**

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**1. DEFINITIONS**

The following expressions shall bear the meaning assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely:

- 1.1. **“Acquiring Firm”** means Broom Group Africa (Pty) Ltd;
- 1.2. **“Approval Date”** means the date the Commission issues a Clearance Certificate;
- 1.3. **“Broom Group Africa (Pty) Ltd”** means a private company incorporated in accordance with the laws of South Africa with registered business address located at Brickfield Offices 2, 13 Alberto Drive, Devonbosch, Corner Bottelary Road and R304, Stellenbosch, Western Cape, 7605.
- 1.4. **“Broom Logistics Africa (Pty) Ltd”** means a private company incorporated in accordance with the laws of South Africa with registered business address located at Brickfield Offices 2, 13 Alberto Drive, Devonbosch, Corner Bottelary Road and R304, Stellenbosch, Western Cape, 7605.
- 1.5. **“Commission”** means the Competition Commission of South Africa;
- 1.6. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.7. **“Competition Act”** means the Competition Act No 89 of 1998, as amended;
- 1.8. **“Conditions”** means these conditions;
- 1.9. **“Day”** means any business day, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

- 1.10. **“ESOP”** means the establishment of an employee share ownership programme that will hold no less than 5% of the share capital in either of the Merging Parties within 24 (twenty-four) months from Implementation Date;
- 1.11. **“HDPs”** means historically disadvantaged persons, as contemplated in section 3(2) of the Act;
- 1.12. **“HDP Transaction”** means the introduction of an HDP shareholder/s as contemplated in section 3(2) of the Act, that will hold no less than 5% of the share capital in the Merging Parties within 24 (twenty-four) months from Implementation Date;
- 1.13. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.14. **“Merger”** means the acquisition of sole control over the Target Firm by the Acquiring Firm;
- 1.15. **“Merging Entity”** means collectively the Acquiring Firm and the Target Firm;
- 1.16. **“Merger Parties”** means the Acquiring Firm and the Target Firm;
- 1.17. **“Qualifying Employees”** means at least 80 employees at the Merging Parties;
- 1.18. **“Target Firm”** means the Broom Logistics Africa (Pty) Ltd;
- 1.19. **“Tribunal”** means the Competition Tribunal of South Africa; and
- 1.20. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

## **2. The promotion of a greater spread of ownership, in particular to increase the levels of ownership by HDPs and works in firms in the market**

- 2.1. Within 24 (twenty-four) months of the Implementation Date of the Proposed Transaction, either of the Merging Parties shall conclude the HDP Transaction and/or the ESOP.
- 2.2. The Merging Party that decides to conclude the ESOP, will comply with the principles set out in Annexure B below.
- 2.3. Should the Merging Parties prefer a combination of the ESOP and the HDP Transaction, the minimum combined value of the ESOP and HDP Transaction must be at least 5% of the issued share capital of the Merging Parties.

## **3. MONITORING**

- 3.1. The Merging Parties shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 3.2. Prior to the implementation of the HDP Transaction, the Merging Parties shall provide the Commission with details of the HDP Transaction in writing. These details shall set out:
- 3.2.1 the structure of the HDP Transaction;
  - 3.2.2 the identities of the HDP shareholder/s;
  - 3.2.3 evidence that the prospective participants to the HDP Transaction are HDPs.
  - 3.2.4 confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.
- 3.3. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval. The Commission will provide its written decision within 30 Days of written notification, or such other period as may be agreed in writing.
- 3.4. The Commission may request such additional information from the Merging Parties which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

#### **4. APPARENT BREACH**

- 4.1. An apparent breach by the Merging Parties 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.

#### **5. VARIATION**

- 5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. 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, amended and/or the time period for fulfilment to be extended as aforementioned.

#### **6. GENERAL**

- 6.1. All correspondences in relation to the Conditions must 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 the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

**Annexure B: ESOP Design Principles**

<i>Cost to Workers and participating HDPs</i>	<ul style="list-style-type: none"> <li>○ No cost to Workers: Qualifying Workers must not be required to pay to participate in the ESOP.</li> <li>○ Should the ESOP be funded through the notional vendor funding, the notional vendor funding will provide for a fixed trickle dividend in terms of which at least 35% of declared dividends will be paid to the beneficiaries with the remaining 65% used to service the vendor financed loan until such time as it is extinguished.</li> <li>○ Once any loan funding has been extinguished, 100% of the declared dividends due to the beneficiaries will be distributed to the beneficiaries.</li> <li>○ The Merging Parties must make provision and cover the reasonable costs for independent legal and financial experts to act on behalf of workers in ESOP establishment negotiations (the "Provision"). For the avoidance of doubt, the Provision shall be at no cost to workers and must not impact any dividend flows due to workers.</li> <li>○ Any disputes between the Merging Parties and any independent legal and financial experts as regards the reasonableness of fees / costs must be resolved by arbitration or any other mutually agreed dispute resolution mechanism.</li> </ul>
<i>Governance</i>	<ul style="list-style-type: none"> <li>○ Qualifying Workers will be represented on the board of trustees of the ESOP.</li> </ul>
<i>Duration</i>	<ul style="list-style-type: none"> <li>○ Perpetual / Evergreen</li> </ul>
<i>Participants</i>	<ul style="list-style-type: none"> <li>○ All Qualifying Workers at the Merged Entity</li> </ul>

<i>Participation Benefits</i>	<ul style="list-style-type: none"><li>○ All Qualifying Workers will be entitled to dividends</li><li>○ Beneficiaries will cease to participate for bad leaver events, resignations, retirement, medical incapacitation and boarding events, death and dismissals including any beneficiary that ceases to be employed by the Company or its subsidiaries or affiliates. Beneficiaries falling into any of the aforementioned categories shall have no claim against the ESOP for compensation.</li></ul>
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