

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5406

11 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AMS SA (PTY) LTD

AND

OTR-JASEBENZA (PTY) LTD AND NUNGU TYRES MPUMALANGA (PTY) LTD

CASE NUMBER: 2024FEB0029

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. The proposed transaction relates to the acquisition by AMS SA Proprietary Limited ("AMS") of the businesses of ORT-Jasebenza Proprietary Limited ("ORT-Jasebenza") and Nungu Tyres Mpumalanga Proprietary Limited ("Nungu") (collectively, the "Target Firms").
2. The acquiring firm is a South Africa firm, controlled by JR Beaumont NO1 Trust and the AMS SA Trust. AMS is majority owned by the AMS SA Trust which functions effectively as an Employee Share Ownership Programme ("ESOP") and its beneficiaries are all historically disadvantaged person ("HDPs").
3. AMS is active in the supply of different types of tyres and services that include breakdown services, on-site fitment services, and tyre filling.
4. The Target Firms are South African firms that are active in the supply of new and used opencast tyres, ancillary tyre services, and the supply of tyre and rim consumables and components.

Competition Analysis

5. The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the provision of Off The Road (OTR) tyres and

services in South Africa. OTR is the umbrella name for all the tyres that do not go on the highway. These include tractors, construction and mining vehicles and forklifts, agricultural tyres that are used on agricultural machinery which must operate under extreme conditions.

6. The Commission found that the merging parties will have a market share that is less than 20%. The competitors contacted by the Commission stated that the proposed transaction is unlikely to change the structure of the market. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market.

Public Interest Analysis

7. The merging parties have tendered conditions including participation of qualifying workers of the Target Firms in the AMS SA Trust and increased expenditure towards learnerships and skills developments and a commitment to employ some beneficiaries of those initiatives. These commitments are included in **Annexure A** hereto and the Commission considers same to render the merger justifiable on public interest grounds.

Conclusion

8. The Commission approves the proposed transaction subject to the conditions attached in **Annexure A** hereto.

ANNEXURE A**AMS SA (PTY) LTD****AND****OTR-JASEBENZA (PTY) LTD****NUNGU TYRES MPUMALANGA (PTY) LTD****CASE NUMBER: 2024FEB0029****CONDITIONS****1. DEFINITIONS**

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 **“Acquiring Firm”** means AMS SA (Pty) Ltd;
- 1.2 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.3 **“Approval Date”** means the date on which the Merger is approved by the Commission and as set out in the Commission’s clearance certificate (Notice CC 15);
- 1.4 **“Commission”** means the Competition Commission of South Africa;
- 1.5 **“Conditions”** means the merger conditions included in this Annexure A;
- 1.6 **“Days”** means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **“ESOP”** means the current Employee Share Ownership Programme, AMS SA Trust, holding 51% shareholding in the Acquiring Firm;
- 1.8 **“HDPs”** means historically disadvantaged persons as contemplated in section 3(2) of the Act;
- 1.9 **“Implementation Date”** means the date, occurring after the last condition precedent to the Merger is fulfilled or waived, as the case may be, on which the Merger is implemented in accordance with its terms;
- 1.10 **“Learnerships”** means any bursaries, learnerships or training opportunities, the beneficiaries of which shall be HDPs;

- 1.11 **"Merger"** means the proposed acquisition of the Target Firms by the Acquiring Firm as notified to the Commission under Case No. 2024FEB0029;
- 1.12 **"Merging Parties"** means the Acquiring Firm and the Target Firms;
- 1.13 **"Nungu"** means Nungu Tyres Mpumalanga (Pty) Ltd;
- 1.14 **"OTR"** means OTR-Jasebenza (Pty) Ltd;
- 1.15 **"South Africa"** means the Republic of South Africa;
- 1.16 **"Target Firms"** means OTR and Nungu;
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa;
- 1.18 **"Qualifying Workers"** means Workers employed by the Target Firms who meet the qualifying requirements (i.e. race and tenure) of the ESOP; and
- 1.19 **"Worker"** means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. SKILLS DEVELOPMENT

- 2.1. The Acquiring Firm commits to increasing its annual spend on Learnerships from approximately ZAR 1 470 169.00, for the financial year ended 28 February 2024, to ZAR 1 617 190 for the financial year ended 28 February 2025. In this regard, an additional 7 candidates will receive learnerships (i.e., from 27 to 34). The Acquiring Firm further commits to increasing its annual spend on Learnerships, by an additional 10% of the Learnership spend for the financial year ended 28 February 2025, for the 2026 and 2027 financial years, respectively.
- 2.2. The Acquiring Firm commits to employing at least 3 (three) HDP beneficiaries of the Learnerships.
- 2.3. The commitments referred to in paragraphs 2.1 and 2.2 above will be in place for 3 (three) years after the Implementation Date.

3. ESOP

- 3.1. Following a period of no more than 12 months after the Implementation Date, the Qualifying Workers will be included as beneficiaries of the ESOP.

4. MONITORING

- 4.1. Within 5 (five) days after the Implementation Date, the Merging Parties shall notify the Commission in writing of the Implementation Date.
- 4.2. The Merging Parties shall submit a report on each anniversary of the Implementation Date, setting its compliance with Clause 2 and 3 of the Conditions. This report shall be

accompanied by an affidavit, attested to by a director of the Merging Parties, confirming the accuracy of the report.

- 4.3. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

- 5.1. Should the Commission receive any complaint in relation to non-compliance with the above 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.

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 the Conditions must be submitted to the following e-mail addresses: 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