

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 5665****13 December 2024****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****ARES HOLDINGS PROPRIETARY LIMITED****AND****TED BAKER SA PROPRIETARY LIMITED****CASE NUMBER: 2024APR0047**

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 25 April 2024, the Competition Commission (the "Commission") received a notice of an intermediate merger in terms of which Ares Holdings Proprietary Limited ("Ares") has been appointed as the licensee in relation to the Ted Baker brand in South Africa. As a consequence of the appointment, Ares has elected to acquire certain assets from Ted Baker SA Proprietary Limited ("Ted Baker") including seven (7) Ted Baker branded retail outlets and inventory. Ares will also take on fifty-seven (57) employees who are currently employed in Ted Baker SA's stores ("Proposed Transaction").
2. Post implementation of the Proposed Transaction, Ares will become the licensee entitled to distribute Ted Baker branded products in South Africa, and operate the Ted Baker branded retail outlets in South Africa.
3. Ares is wholly-owned by Artemis Holdings Proprietary Limited ("Artemis Holdings"), which is in turn controlled as to [CONFIDENTIAL] by Sana Partners. The other shareholders in Sana Partners are [CONFIDENTIAL].
4. Sana Partners is directly controlled by [CONFIDENTIAL].

5. Ares, Artemis Holdings and Sana Partners are collectively referred to as the Acquiring Group hereinafter. The Acquiring Group is not owned or controlled by historically disadvantaged persons (“HDPs”) as contemplated in section 3(2) of the Competition Act No. 89 of 1998.
6. The Acquiring Group is a South African brand management company and specialises in the footwear, apparel and accessories categories. The Acquiring Group operates a multi-channel network which includes over 2 500 wholesale stores, 50 owner-operated retail stores, and its own e-commerce platforms. The brands that are currently managed by Acquiring Group and which are relevant to the proposed transaction include: (i) Under Armour, (ii) Crocs and Hey Dude, (iii) Birkenstock and (iv) 2XU brands.
7. The primary target firm comprises, collectively, the licence to distribute and sell Ted Baker branded products in South Africa, and associated Ted Baker branded retail outlets and inventory, currently held by Ted Baker SA Proprietary Limited (“Ted Baker”). Ted Baker does not control any other firm.
8. Ted Baker is a wholly-owned and controlled subsidiary of Ted Baker Holdings Limited (“Ted Baker Holdings”), a company registered in the United Kingdom.
9. The Target Group does not have ownership by HDPs as contemplated in section 3(2) of the Act.
10. The Target Group is a retailer of international premium Ted Baker branded apparel, footwear, accessories (including headwear, bags and belts) and lifestyle products and is active in South Africa through the Target Firm.

Competition analysis

11. The Commission found that although the proposed transaction raises notional horizontal overlaps in the broadly defined markets for the retail of branded apparel and retail of branded footwear, the product offerings of the merging parties are significantly differentiated such that they cannot be considered close competitors. Further, if the parties’ activities in a broad market for athleisure and casual footwear and apparel is considered, the merged entity’s market share will be less than 5%.

12. Considering the above, the Commission concluded that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any of the affected market(s).

Public Interest

13. On employment, the Commission found that all employees of the Target Firm will be transferred to the Acquiring Group in terms of section 197 of the Labour Relations Act No. 66 of 1995 (as amended) as a result of the merger. The merging parties also provided an unequivocal statement that the merger will not result in any negative employment outcomes and have tendered a three-year moratorium against merger-specific retrenchments.
14. In respect of the effect of the transaction on section 12A(3)(e) of the Act, the Commission noted that neither the Acquiring Group nor the Target Firm has shareholding by HDPs. Consequently, the Commission requested the merging parties to make submissions on appropriate remedies. The merging parties tendered the conditions in **Annexure "A"**.

Conclusion

15. The Commission approves the proposed transaction with the conditions in **Annexure A**.

ANNEXURE A**CONFIDENTIAL****ARES HOLDINGS PROPRIETARY LIMITED****AND****TED BAKER SA PROPRIETARY LIMITED****CASE NUMBER: 2024APR0047**

CONDITIONS

1. DEFINITIONS

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

- 1.1 **"Acquiring Firm"** means Ares Holdings Proprietary Limited;
- 1.2 **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4 **"Competition Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.5 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
- 1.6 **"Conditions"** mean these conditions;
- 1.7 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

- 1.8 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.9 **"Labour Relations Act"** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.10 **"Merged Entity"** means the Target Firm subject to the control of the Acquiring Firm following the Implementation Date;
- 1.11 **"Merger"** means the proposed transaction between the Merger Parties notified to the Commission under case number: 2024Apr0047;
- 1.12 **"Merger Parties"** means the Acquiring Firm and the Target Firm;
- 1.13 **"Target Firm"** means the license, retail outlets, and certain other assets associated with the Ted Baker brand, which is being acquired from Ted Baker SA Proprietary Limited;
- 1.14 **"Ted Baker Employees"** means the 57 (fifty-seven) employees employed at the retail stores of the Target Firm as at the Approval Date; and
- 1.15 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. EMPLOYMENT

- 2.1 The Merger Parties shall ensure that the Ted Baker Employees are transferred to the Acquiring Firm in accordance with the provisions of section 197 of the Labour Relations Act.
- 2.2 The Merger Parties shall not retrench any employees as a result of the Merger for a period of 3 (three) years from the Implementation Date, including the period between the Approval Date and Implementation Date.
- 2.3 For the avoidance of doubt, this condition does not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor

performance; or (vii) any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

- 2.4 The Acquiring Firm undertakes that there will be no downward variation of wages and conditions of work in relation to the employees of the Merged Entity as a result of the Merger. For the avoidance of doubt, this undertaking applies equally to employees of the Acquiring Firm and the Ted Baker Employees.
- 2.5 The Acquiring Firm undertakes that the Ted Baker Employees will receive the same medical cover benefits as all permanent employees of the Acquiring Firm.
- 2.6 Within 3 (three) years of the Implementation Date, the Acquiring Firm shall assemble and appoint a team to manage the Ted Baker business in South Africa. This will include the creation of [CONFIDENTIAL] new permanent employment positions at the Merged Entity.

3. EXPANSION

- 3.1 Within a period of 3 (three) years of the Implementation Date, the Merged Entity shall:
- 3.1.1 establish at least [CONFIDENTIAL] new Ted Baker branded retail stores in South Africa. For the avoidance of doubt, such new retail stores will be in addition to the 7 (seven) retail stores acquired with the Target Firm as at the Approval Date; and
- 3.1.2 create at least [CONFIDENTIAL] new retail positions to service the new retail stores to be established in accordance with clause 0 above.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 4.2 Within 10 (ten) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees. As proof of compliance, the Merged Entity shall, within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit attested to by a senior official of the Acquiring Firm.

- 4.3 For a period of 3 (three) years, on each anniversary of the Implementation Date, the Merged Entity shall provide the Commission with a report in relation to the Merger Parties' compliance with clauses 0 and 0 of the Conditions. Such report shall be accompanied by an affidavit attested to by a senior official of the Acquiring Firm, confirming the Merger Parties' compliance with the Conditions.
- 4.4 The Commission may request such additional information from the Merger 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

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determine that there has been an apparent breach of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. VARIATION OF CONDITIONS

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

7. GENERAL

All correspondence concerning these Conditions must be submitted to the following email address: 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