

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

NO. 5809

31 January 2025

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****INTERNATIONAL CONTAINER TERMINAL SERVICES, INC  
AND  
DCT 2 SPV PROPRIETARY LIMITED****CASE NUMBER: 2024JUL0019**

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 and Parties**

1. On 16 July 2024, the Competition Commission ("Commission") received a notice of an intermediate merger in terms of which International Container Terminal Services Incorporated ("Acquiring Firm") intends to acquire control over DCT 2 SPV Proprietary Limited ("Target Firm"). The Target Firm was established as part of the proposed transaction for purposes of housing the Durban Container Terminal Pier 2 Business ("DCT Pier 2 Business").
2. The proposed transaction will result in Transnet SOC Limited ("Transnet") having 50% plus one share in the Target Firm while the Acquiring Firm will have 50% minus one share as well as operational and management control over the Target Firm in terms of section 12(2)(g) of the Competition Act 89 of 1998, as amended ("the Act").
3. The Acquiring Firm is International Container Terminal Services, Inc, a publicly listed company incorporated in accordance with the laws of the Philippines. The Acquiring Firm is listed on the Philippine Stock Exchange and the Over-the-Counter Markets Group in the United States of America. The shareholding of the Acquiring Firm is held as to 61.58% by Enrique K Razon Jr, 38.14% by the public and 0.29% by the directors and officers of the Acquiring Firm.
4. The Target Firm is DCT 2 SPV Proprietary Limited, a company incorporated in South Africa. The Target Firm is wholly owned and controlled by Transnet Port Terminals, a business unit of Transnet. Transnet is a state-owned company, which is solely owned and controlled by the

South African Government. Transnet controls Transnet International Holdings SOC Limited, which is solely owned and controlled by the South Africa Government.

5. The Target Firm does not control any firm but will own and control the DCT Pier 2 Business upon implementation of the proposed transaction. The Target Firm and the DCT Pier 2 Business are collectively referred to as the "Target Group."
6. The Target Group does not have ownership by HDPs as contemplated in section 3(2) of the Act.

### **Activities of the Parties**

7. The Acquiring Group is a global independent terminal operator involved in the acquisition, development, management and operations of container port terminals in various countries. The Acquiring Group does not offer any products or services in South Africa.
8. The Target Firm is a newly incorporated entity for purposes of the proposed transaction and, therefore, does not have any activities. The Target Firm will however house the DCT Pier 2 Business, a specialised maritime facility of the Durban Container Terminal with dedicated infrastructure and equipment for the handling of containerised cargo. The DCT Pier 2 Business also provides transshipment/re-shipment of containers, loading and off-loading of containers onto and from vessels, storage of containers, stacking and un-stacking of containers, receiving shipment, delivery and transfer of containers within and between the terminals.

### **Competition Assessment**

9. The Commission noted that the Acquiring Firm does not have business activities in South Africa and that the Target Firm is a new entity with no trading history, which was created to house the DCT Pier 2 Business. The Commission found that although the DCT Pier 2 Business and the Acquiring Firm are active in the broad market for the provision of container port terminal services, (including the provision of front-of-port terminal and back-of-port services), they do not operate in the same geographic market since the Acquiring Firm is not active in South Africa. The Commission also found that the proposed merger does not raise any vertical concerns.

### **Public Interest considerations**

10. The merging parties have tendered the employment conditions contained in "**Annexure A**".
11. In relation to section 12A(3)(e) of the Act, the Commission found that the conditions in "**Annexure A**" adequately countervail the adverse impact of the merger on the promotion of a greater spread of ownership by HDPs and workers.

12. The merging parties also submitted that the proposed merger will have a significant positive effect on the port industrial sector as well as the communities around the Port of Durban.
13. The Commission noted that the Acquiring Firm is anticipated to invest capital expenditure of over **[confidential]** on various operational imperatives including (i) equipment overhaul/refurbishment costs, (ii) new equipment purchases based and (iii) infrastructure maintenance capex costs in respect of DCT 2 SPV Business.
14. In addition to the above, the merging parties agreed to conditions relating to the procurement of goods and services from firms owned and controlled by black women as set out in “**Annexure A**”.
15. The Commission found that the conditions tendered by the merging parties in “**Annexure A**” adequately justify the merger on public interest grounds.
16. The Commission approves that the proposed transaction with conditions in “**Annexure A**”.

**ANNEXURE A****INTERNATIONAL CONTAINER TERMINAL SERVICES INC.****AND****DCT 2 SPV PROPRIETARY LIMITED****CASE NO: 2024JUL0019**

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**CONDITIONS**

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**1. DEFINITIONS**

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

1.1.1. **“Acquiring Firm”** means International Container Terminal Services Inc.;

1.1.2. **“Approval Date”** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);

1.1.3. **“B-BBEE”** means broad-based black economic empowerment as defined in the B-BBEE Act;

1.1.4. **“B-BBEE Act”** means the Broad-Based Black Economic Empowerment Act 53 of 2003 as amended and the Codes of Good Practice 2013, as amended;

1.1.5. **“B-BBEE Facilitator Status”** means the designation of Transnet, by the Minister of Trade, Industry and Competition as the B-BBEE Facilitator for the Proposed Transaction in terms of Paragraph 3.6 of Statement 100 of the Codes of Good Practice 2013;

- 1.1.6. “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.7. “**Commission Rules**” means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.8. “**Competition Act**” means the Competition Act, 89 of 1998, as amended;
- 1.1.9. “**Conditions**” means these conditions and a condition means any one the conditions;
- 1.1.10. “**Days**” means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.11. “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12. “**Labour Relations Act**” means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.13. “**Merger**” means the proposed transaction between the Merger Parties notified to the Commission under case number: 2024JUL0019;
- 1.1.14. “**Merger Parties**” means the Acquiring Firm and the Target Firm;
- 1.1.15. “**Moratorium Period**” means the period between the Approval Date and the Implementation Date and, thereafter, a period of 3 (three) years from the Implementation Date;
- 1.1.16. “**Relevant Employees**” means any employees of Transnet seconded to the Target Firm in terms of the Personnel Services Agreement;
- 1.1.17. “**Seconded Employees**” means any employees of Transnet seconded to the Target Firm in terms of the Personnel Services Agreement;

1.1.18. “**Target Firm**” means DCT 2 SPV Proprietary Limited, a newly incorporated entity, that will hold the Durban Container Terminal Pier 2 Business of Transnet;

1.1.19. “**Transnet**” means Transnet SOC Limited; and

1.1.20. “**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. Transnet shall not retrench any employees in South Africa as a result of the Merger during the Moratorium Period.

2.2. For the sake of clarity, retrenchments do 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.

2.3. Transnet undertakes that the terms of employment of any Seconded Employees will be no less favourable than if they were not seconded to the Target Firm.

2.4. The tenure of any Seconded Employees will not be affected by their secondment to the Target Firm.

2.5. For the avoidance of doubt, Transnet’s undertakings in paragraphs 2.1, 2.3 and 2.4 exclude any changes to the terms of employment of the Seconded Employees which affect Transnet’s employees generally and which are not related to the Merger, or which arise due to reasons unrelated to the Merger.

### **3. EMPLOYEE INCENTIVE SCHEME**

- 3.1. For so long as the Acquiring Firm has control of the Target Firm for purposes of the Competition Act, then as and when the Target Firm declares dividends to the Acquiring Firm and to Transnet, immediately before the declaration of any dividends, the Target Firm shall make payment of an amount which is equal to 10% (ten per cent) of the total amount that would otherwise be available for declaration as dividends, to Transnet for purposes of Transnet allocating that amount equitably amongst the Relevant Employees, pursuant to which Transnet shall allocate such amount equitably amongst the Relevant Employees, which amount shall be paid to them within a maximum period of 60 calendar days from the date of receipt of any such amount.

### **4. PROCUREMENT FROM LEVEL 1 B-BBEE FIRMS AND BLACK WOMEN-OWNED FIRMS**

- 4.1. For a period of 3 (three) years from the Implementation Date, the Merger Parties will procure that:
- 4.1.1. 40% (forty per cent) of the Target Firm's total expenditure on goods and services (excluding capital equipment not manufactured in South Africa and spares related to such capital equipment) is incurred in respect of businesses with a Level 1 B-BBEE contributor status level; and
- 4.1.2. 25% (twenty five per cent) of the Target Firm's expenditure on goods and services (excluding capital equipment not manufactured in South Africa and spares related to such capital equipment) is incurred in respect of business entities which have at least 30% black women ownership.

### **5. ATTAINMENT OF B-BBEE STATUS**

- 5.1. Within a period of 1 (one) year of Transnet being granted B-BBEE Facilitator Status, the Target Firm shall attain a Level 4 B-BBEE contributor status as

provided for in the codes of good practice for B-BBEE, issued in terms of the B-BBEE Act.

## **6. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 6.1. The Merging Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 6.2. Within 10 (ten) Days of the Implementation Date, Transnet shall circulate a non-confidential version of the Conditions to its employees. As proof of compliance, Transnet shall, within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit attested to by a senior official of Transnet.
- 6.3. For a period of 3 (three) years, on each anniversary of the Implementation Date, Transnet shall provide the Commission with a report confirming compliance with clauses 0, 3, 4 and 5 of the Conditions. Such a report shall be accompanied by an affidavit attested to by a senior official of Transnet, attesting to compliance with the Conditions.
- 6.4. Any employee of Transnet who believes that Transnet has not complied with or has acted in breach of these Conditions may approach the Commission.
- 6.5. 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.

## **7. APPARENT BREACH**

- 7.1. 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.

## **8. VARIATION OF CONDITIONS**

- 8.1. The Merger 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 Merger 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.

## **9. GENERAL**

- 9.1. All correspondence concerning these 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