

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 70/LM/Aug11

In the large merger between:

ACTOM (PTY) LTD

PRIMARY ACQUIRING FIRM

And

SAVCIO HOLDINGS (PTY) LTD

PRIMARY TARGET FIRM

Panel : Y Carrim (Presiding Member)
A Wessels (Tribunal Member)
T Madima (Tribunal Member)

Heard on : 07 February 2012

Order issued on : 13 February 2012

ORDER

The large merger between Actom (Pty) Ltd and Savcio Holdings (Pty) Ltd is approved in terms of section 16(2)(b) of the Competition Act, 1998 (Act no. 89 of 1998, as amended) subject to the conditions that appear below.

A merger Clearance Certificate for the conditional approval of this merger is issued in terms of Competition Tribunal Rule 35(5)(a).

Merger approval conditions: Case No.: 70/LM/Aug11

A. Cross-directorships

1. All common directors between Acton Repair Services (Pty) Ltd and Actom (Pty) Ltd ("Actom") have been removed and there shall not be any common directors between these two entities in future.
2. Condition 1 applies for as long as Actom has control over Savcio Holdings (Pty) Ltd ("Savcio"). Should Actom relinquish control over Savcio, it must inform the Commission in writing and provide a signed copy of the sale agreement.

Monitoring

3. The merged entity must, on an annual basis, submit to the Competition Commission ("Commission") an affidavit from a senior official of the merged entity confirming compliance with condition 1 above. The first affidavit must be submitted on the 1st of April 2013.

B. Supply of commutators

4. It is recorded that Actom and Transnet Rail Engineering ("TRE") have an existing contract, contract number 4600004820 dated 16 May 2011, for the supply of commutators.
5. Actom will continue to supply TRE from the date of the Tribunal's order with its full range of commutators, on the same terms as agreed in the existing contract between Actom and TRE and at prices that are no

higher than those in effect as at the date of conditional approval of the merger (subject to the price adjustment formula in the contract) or as determined by applying the price adjustment formula contained in contract 4600004820 to the base prices recorded in the tenders submitted by Actom in respect of tender TRE11-NAT-08H-0001 and tender TRE10-NAT-08H-0010.

6. The commutators will be of the same quality as are presently supplied to TRE and in the same available volumes.
7. To enhance transparency of TRE's demand of commutators given that it is cyclic in nature and fluctuates, TRE may, if it so desires, provide the merged entity with a six month view of its commutator demand with a rolling three month demand forecast.
8. The above conditions relating to commutators will apply for a period of five years from the date of the Tribunal's order.

Monitoring

9. The Commission may at any time after the merger, on ten business days written notice, require the merged entity to furnish to it the following reports in writing.
 - 9.1. A report/s signed by a responsible person, indicating, for such period as the Commission may specify, the sales volumes of commutators, the classes of commutators and the prices at which such commutators have been supplied to:

9.1.1. Businesses within the merged entity and any of its subsidiaries or associated entities;

9.1.2. Any other commutator customer pursuant to these conditions.

9.2. A certificate from an independent auditor confirming the correctness of, or qualifying (as the case may be), information provided by the merged entity for any particular financial year.

C. Supply of copper wire products

10. The merged entity will continue to supply the open market from the date of the Tribunal's order with the full range of copper wire products currently supplied by Savcio through its divisions Wilec and Transwire, on the same terms as those divisions presently supply the market, and at prices that are no higher than current adjusted annually by PPI but subject to a full recovery (pass-through) of copper costs on a monthly basis (adjusted upwards or downwards).
11. The products will be of the same quality as are presently supplied and in the same available volumes.
12. The above conditions relating to copper wire products will apply for a period of two years from the date of the Tribunal's order.

Monitoring

13. The merged entity must inform its existing customers of copper wire products of the provisions in these conditions within one month of the date of the Tribunal's order. To this end the merged entity must, within one month of the date of the Tribunal's order, provide an affidavit by a senior official attesting to this and a copy of the notice sent to customers. For the purposes hereof existing customers means active customers that have made purchases within the preceding 12 months from any of the merging parties' firms or their divisions.
14. In the event that the Commission receives a complaint from a customer regarding non-compliance by the merged entity with these conditions or otherwise determines that there has been an apparent breach by the merged entity of such conditions that shall be dealt with in terms of Rule 39 of the *Rules for the Conduct of Proceedings in the Competition Commission*.

D. Correspondence

15. The merged entity must send all correspondence with the Commission in relation to any of these conditions to the following Commission email address: mergerconditions@compcom.co.za.

E. Right to approach the Tribunal to revise conditions

16. Either the merged entity or the Commission may, for so long as any of the above merger conditions remain in force, approach the Tribunal to

revise that condition on the basis that changes in market, economic or regulatory conditions justify such revision.

A handwritten signature in black ink, appearing to read 'Y Carrim', with a large, stylized loop at the end.

Presiding Member
Y Carrim

Concurring: A Wessels and T Madima