

SOUTH AFRICA / JUDGMENT

DP World Logistics FZE v Imperial Logistics (LM070Sep21) [2022] ZACT 50 (24 February 2022)

[2022] ZACT 50

COURT

Competition Tribunal

CASE / FILE NUMBER

LM070Sep21

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TRIBUNAL APPROVES DUBAI PORTS WORLD'S ACQUISITION OF IMPERIAL LOGISTICS SUBJECT TO PUBLIC INTEREST CONDITIONS, INCLUDING WORKER OWNERSHIP

24 February 2022

The Tribunal has conditionally approved the merger wherein DP World Logistics FZE (“DP World”), ultimately owned by the Dubai government, intends to acquire the South African firm, Imperial Logistics Limited (“Imperial”). Following the implementation of the merger, DP World will solely control Imperial.

The transaction was found unlikely to substantially prevent or lessen competition in any market in South Africa and has been approved

subject to public interest-related conditions. These include the establishment of an employee share ownership program (“ESOP”)

through which employees in South Africa will have an effective 5% interest in Imperial Logistics South Africa Group (Pty) Ltd (“ILSA”),

a subsidiary of Imperial. Imperial will also increase its enterprise and supplier development expenditure in South Africa, its spend on corporate social responsibility initiatives and training and development of Black persons and procurement from Black persons.

Imperial has also committed to incur capital expenditure of no less than R2.1 billion in South Africa over four years, ending 30 June 2025.

In assessing the proposed merger, the Tribunal considered submissions by the merger parties, the Competition Commission (the “Commission”),

and the Minister of Trade, Industry and Competition. It considered public interest concerns arising from the merger and the remedies

proposed relating to a greater spread of ownership by workers and historically disadvantaged persons. The Tribunal also sought

clarification and enhancements on certain aspects of the proposed conditions before approving the transaction. The conditions are

summarised below:

Enterprise and supplier development and corporate social responsibility initiatives

- Imperial will increase its enterprise and supplier development expenditure in South Africa;
- It will increase its spend on corporate social responsibility initiatives by not less than 10% per annum over and above the current R16.5 million per annum;
- Imperial will spend an additional R15 million over three years on training and development of Black persons; and
- It will increase its annual procurement expenditure targets for Black-owned and Black women-owned businesses, qualifying small enterprises and exempted micro-enterprises.

Employee Share Ownership Program (ESOP)

- Within 24 months of the merger implementation date, the merged entity must establish an ESOP through which Imperial employees (excluding top and senior management) will benefit from an effective 5% interest in ILSA through an employee trust; and
- Among others: Imperial employees will not be required to pay to participate in the ESOP; the ESOP shareholding should not substitute the existing HDP shareholding in ILSA; before establishing the ESOP, the merged entity must provide the Commission with the principles which it proposes to apply in the ESOP, consult with the Commission on these and not implement the ESOP before obtaining the Commission's

written approval.

Employment

No employees may be retrenched as a result of the merger for a period of three years from the merger's implementation date.

Capital expenditure

Imperial shall incur no less than R2.1 billion of capital expenditure in its South African operations (during the period of four years expiring on 30 June 2025).

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Prepared on 10 October 2026 · Esheria