

SOUTH AFRICA / JUDGMENT

Marga B.V v Dermalogica South Africa (Pty) Ltd (LM022May23) [2023] ZACT 69 (7 September 2023) [2023] ZACT 69

COURT

Competition Tribunal

BEFORE

S Goga, A Ndoni, F Tregenna

CASE / FILE NUMBER

LM022May23

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM022May23

In the matter between:

Marga B.V Primary

Acquiring Firm

and

Dermalogica South Africa (Pty) Ltd Primary

Target Firm

Panel : S Goga (Presiding Member)

: A Ndoni (Tribunal Member)

: F Tregenna (Tribunal Member)

Heard on : 07

September 2023

Order issued on : 07 September 2023

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Presiding Member Ms Sha'ista Goga

Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna

Date: 07 September 2023

Merger Clearance Certificate

You applied to the Competition Commission on 17 May 2023 for merger approval in accordance with Chapter 3 of the Competition Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal

approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to: no conditions the conditions listed on the attached sheet

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

This form is prescribed by the Minister of Trade and Industry in terms of section 27 (2) of the Competition Act 1998 (Act No. 89 of 1998).

ANNEXURE A MARGA B.V.

DERMALOGICA SOUTH AFRICA PROPRIETARY LIMITED

CASE NUMBER: LM022May23

CONDITIONS

1. DEFINITIONS

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

1.1.1 “Act” means the Competition Act No. 89 of 1998, as amended;

1.1.2 “Acquiring Firm” means Marga;

1.1.3 “Approval Date” means the date referred to on the Tribunal’s Merger Clearance Certificate;

1.1.4 “CAVI” means CAVI Brands Proprietary Limited;

1.1.5 “Conditions” means, collectively, the conditions referred to in this document;

1.1.6 “Days” means business days, being any day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;

1.1.7 “Dermalogica Entrepreneurial Ownership Programme” means a programme to be set up by Dermalogica SA which will be aimed at providing assistance to HDP women and Youth in growing their existing or setting up and owning their own standalone beauty salons. This will be achieved by providing such HDP women and Youth with assistance

such as, business training, access to entities who are able to provide start- up capital at preferential interest rates, consignment

stock and/or preferential payment terms on product purchases;

1.1.8 “Dermalogica Products” means the skincare products sold by Dermalogica SA in South Africa;

1.1.9 “Dermalogica SA” means Dermalogica South Africa Proprietary Limited;

1.1.10 “DISA” means the Dermal Institute of South Africa Proprietary Limited;

1.1.11 “HDPs” means historically disadvantaged persons within the meaning of the Act;

1.1.12 “Implementation Date” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;

1.1.13 “Marga” means Marga B.V;

1.1.14 “Marketing and Design Services” means any and all activities undertaken in relation to the promotion and sale of Dermalogica Products and the promotion of the Dermalogica brand;

1.1.15 “Merger” means the acquisition of joint control by Marga of Dermalogica SA notified under case no. 2023May0037 and LM022May23;

1.1.16 “Merger Parties” means Marga and CAVI;

1.1.17 “SMME” means small businesses and medium-sized businesses as described in the Act;

1.1.18 “Target Firm” means Dermalogica South Africa Proprietary Limited;

1.1.19 “Tribunal” means the Competition Tribunal of South Africa; and

1.1.20 “Youth” means HDPs between the ages of 18 and 34.

2 CONDITIONS

2.1 EDUCATION AND TRAINING

2.1.1. The Target Firm shall for a period of years following the Implementation Date provide education programs and training to tertiary students and qualified skincare therapists to the value of no less than per annum. At least 60% of the spend on education and training should be towards HDP women and the Youth.

2.1.2. The education and training initiatives include, but is not limited, to the following:

2.1.2.1. In person classroom training at specialist DISA training centers in Durban, Johannesburg and Cape Town;

2.1.2.2. On-site practical training at DISA's fully equipped skin centers;

2.1.2.3. Online training that offers students training in real time;

2.1.2.4. On-site training at salons for students and therapists to gain practical experience;

2.1.2.5. On-demand training which is pre-recorded and made available via a secure portal; and

2.1.2.6. Dermalogica Product training modules at South African Technicon's and private beauty colleges.

3. DERMALOGICA ENTREPRENEURIAL OWNERSHIP PROGRAMME ("DEOP")

3.1. Dermalogica SA shall, within [...] months of the Implementation Date, implement the DEOP. Dermalogica SA shall, at its sole discretion, determine the identity of the DEOP participants that will participate in the DEOP. Dermalogica SA shall allocate a minimum of to the DEOP and this amount shall be utilised entirely for the purpose of the DEOP. For the avoidance of doubt, Dermalogica SA shall bear any other costs involved in setting up, managing and operating the DEOP.

3.2. The duration of the DEOP shall be at least [...] years.

3.3. Prior to the implementation of the DEOP, Dermalogica SA shall provide the Commission with details of the DEOP in writing. These details will include, but not be limited to, the structure of the DEOP, the terms of the DEOP, the identities of the DEOP participants and evidence that these participants are HDPs. The DEOP may not be implemented without the Commission's approval.

4. SUPPLIER DEVELOPMENT

4.1. The Target Firm shall for a period of [...] years following the Implementation Date spend no less than [...] per annum on Marketing and Design Services procured from SMMEs and HDP owned or controlled businesses.

4.2. At least 60% of the Marketing and Design Services will be procured from SMMEs and HDP owned or controlled businesses which are owned and controlled by HDP women and the Youth.

5. MONITORING OF COMPLIANCE WITH CONDITIONS

5.1. The Acquiring Firm shall notify the Commission in writing of the Implementation Date, within 5 Days of the Implementation Date.

5.2. The Target Firm shall within 12 months of the Approval Date notify and provide the Commission with the details of the DEOP in writing. These details shall include the terms of the DEOP, the benefits of the DEOP, the identity of the beneficiaries and evidence that the beneficiaries are HDP women and Youth.

5.3. The Commission shall provide its approval of the DEOP within 30 Days of receipt of the notification referred to in clause 5.2 above.

5.4. The Target Firm shall within 40 Days of each anniversary of the Implementation Date provide a suitable and appropriately detailed annual report to the Commission regarding the Target Firm's compliance with the Conditions, including the progress made in achieving each of the targets set out in these Conditions during the relevant reporting period.

5.5. The report referred to in clause 5.4 above, shall be accompanied by an affidavit attested to by a senior official of the Target Firm attesting to the accuracy of the annual report and full compliance of the Conditions in the 12-month period to which report relates.

5.6. The Commission may request 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.

6. 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 the Conditions, the breach shall be dealt with in terms of Rule 37 of the Rule for the Conduct of Proceedings in the Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

7. VARIATION

The Commission and/or Merger Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions or any part thereof to be waived, relaxed, modified and /or substituted.

8. GENERAL

All correspondence in relation these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za.

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