

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: IM141Dec19

In the request for consideration:

JSE Limited **First Applicant**

Link Market Services South Africa Proprietary Limited **Second Applicant**

And

The Competition Commission of South Africa **First Respondent**

Computershare South Africa Proprietary Limited **Second Respondent**

In re intermediate merger between:

JSE Limited **Primary Acquiring Firm**

And

Link Market Services South Africa Proprietary Limited **Primary Target Firm**

And

Computershare South Africa Proprietary Limited **Intervenor**

Panel: Y Carrim (Presiding Member)
AW Wessels (Tribunal Panel Member)
T Vilakazi (Tribunal Panel Member)

Heard on: 18, 19, 22, 23, 24 June, 23, 24, 29, 30, 31 July, 3 and
21 August 2020

Decided on: 2 September 2020

ORDER

Further to the request for consideration in terms of section 16(1)(a) of the Competition Act, No. 89 of 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the Primary Acquiring Firm and the Primary Target Firm be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and

2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Ms Yasmin Carrim
Presiding Member

2 September 2020

Date

Concurring: Mr Andreas W Wessels and Dr Thando Vilakazi

THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: IM141Dec19

In the request for consideration:JSE Limited **First Applicant**Link Market Services South Africa Proprietary
Limited **Second Applicant**

And

The Competition Commission of South Africa **First Respondent**Computershare South Africa Proprietary Limited **Second Respondent*****In re intermediate merger between:***JSE Limited **Primary Acquiring Firm**

And

Link Market Services South Africa Proprietary
Limited **Primary Target Firm**

And

Computershare South Africa Proprietary Limited **Intervenor**

CONDITIONS

1. DEFINITIONS

1.1 In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —

1.1.1 **“Acquiring Firm”** means JSE Limited, a public company incorporated under the laws of the Republic of South Africa, with its principal business address at One Exchange Square, 2 Gwen Lane, Sandton, Gauteng;

1.1.2 **“Approval Date”** means the day on which the Notice CT 10 Merger Clearance Certificate is issued by the Tribunal;

- 1.1.3 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.4 “**Competition Act**” means the Competition Act 89 of 1998 as amended;
- 1.1.5 “**Conditions**” mean the conditions set out herein;
- 1.1.6 “**Control**” means control as contemplated in Section 12(2) of the Competition Act;
- 1.1.7 “**Days**” mean any business day being a day which is not a Saturday, Sunday or an official public holiday in the Republic of South Africa;
- 1.1.8 “**FMA**” means the Financial Markets Act, 19 of 2012, as amended;
- 1.1.9 “**FSCA**” means the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act 9 of 2017, as amended;
- 1.1.10 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.1.11 “**Issuer**” means an issuer as defined in Section 1 of the FMA, or a potential issuer of securities to be listed on an exchange of the Acquiring Firm;
- 1.1.12 “**Licensed Functions**” mean the licensed functions performed by the Acquiring Firm pursuant to its equities exchange licence granted under section 9 of the FMA and pursuant to its obligations to fulfil these functions in terms of section 10(2) of the FMA;
- 1.1.13 “**Merger Parties**” mean the Acquiring Firm and the Target Firm and their respective subsidiaries or firms otherwise under their Control;
- 1.1.14 “**Merger**” means the acquisition of Control by the Acquiring firm over the business of the Target Firm;

- 1.1.15 "**Postbox**" means a shareholder electronic communications system;
- 1.1.16 "**Regulatory Functions**" mean the regulatory functions performed by the Acquiring Firm in terms of its equities exchange licence granted under section 9 of the FMA, and pursuant to its obligations as set out in section 10 of the FMA;
- 1.1.17 "**Sponsor**" means an entity appointed by an Issuer to assist in relation to applications for listings and the provision of ongoing advice and support regarding an Issuer's activities on a licenced exchange and compliance with the relevant listing requirements;
- 1.1.18 "**Strate**" means Strate Proprietary Limited, a private company incorporated under the laws of the Republic of South Africa, with its principal business address at the MARC, Tower 1, 129 Rivonia Road, Sandown, Sandton, Gauteng;
- 1.1.19 "**Target Firm**" means Link Market Services South Africa Proprietary Limited and its wholly-owned subsidiary Link Investor Services Proprietary Limited, private companies incorporated under the laws of the Republic of South Africa, with their principal business address at 19 Ameshoff Street, Rennie House 13th Floor, Braamfontein, Gauteng; 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. CONDITIONS TO THE APPROVAL OF THE MERGER

Bundling / Tying

- 2.1 The Acquiring Firm shall not engage in any bundling and/or tying of products and/or services related to its Licensed Functions with any of the services offered by the Target Firm, including incentive strategies that would require, influence or induce firms making use, or wishing to make use, of the Licensed Functions offered by the Acquiring Firm to also make use of all or any of the services offered by the Target Firm.

Interactions with Issuers and Sponsors

- 2.2 The Acquiring Firm shall not in the performance of any of its Regulatory Functions, require, market, promote or otherwise incentivise Issuers and/or Sponsors to make use of the products and/or services of the Target Firm. To this end, the Acquiring Firm shall -

2.2.1 issue a written communication to prospective Issuers as soon as it first becomes aware of the prospective Issuer and prior to such Issuer listing on any exchange operated by the Acquiring Firm; and

2.2.2 issue a written communication to all current Issuers listed on any exchange operated by the Acquiring Firm;

stating that: (i) the Acquiring Firm shall not be permitted to require, market, promote or otherwise incentivise Issuers and/or Sponsors to make use of the products and/or services of the Target Firm in the performance of any of its Regulatory Functions; and (ii) should the Acquiring Firm do so, such conduct should immediately be reported to the FSCA and the Commission; and shall provide a copy of the Conditions with such communication.

Selection of service providers

- 2.3 The Acquiring Firm shall not in any way use any of its Regulatory Functions to:
- 2.3.1 favour Issuers and/or Sponsors in respect of any listings, approvals, requirements, reporting, rulings or any other decision-making on the basis of such Issuers and/or Sponsors making use of, or that they are required to make use of, the services provided by the Target Firm; or
 - 2.3.2 otherwise influence, require or induce Issuers and/or Sponsors in respect of their selection of service provider for the provision of any services provided by the Target Firm.

Information sharing

- 2.4 The Acquiring Firm shall:
- 2.4.1 ensure that no information relating to Issuers, prospective Issuers and/or Sponsors, or the transactions, corporate actions or other activities of such Issuers and/or Sponsors, obtained in the course of the performance of any of its Regulatory Functions, are either directly or indirectly available or made available to the Target Firm; and
 - 2.4.2 implement and/or maintain reasonably necessary procedures and/or protocols to ensure that no information obtained by the Acquiring Firm in the performance of any of its Regulatory Functions is available to the Target Firm.

Publication of transfer secretaries' contact details

- 2.5 The Acquiring Firm shall publish on its website and in the *JSE Quarterly* (and any successor publication) the name and contact details of any provider of transfer secretarial services at the request of such provider, and

shall state that, in so doing, the Acquiring Firm is complying with the Conditions.

- 2.6 The wording of the publication on the website and in the *JSE Quarterly* must be submitted to the Commission for its approval prior to publication.
- 2.7 The Acquiring Firm must update the contact details at the request of a provider of transfer secretarial services.

Postboxes

- 2.8 The Acquiring Firm shall, on request, provide its Postbox services to any provider of transfer secretarial services, provided that the Acquiring Firm shall do so on terms no less favourable than those on which it provides such Postbox services to the Target Firm.

Strate

- 2.9 The Acquiring Firm shall not use its shareholding in Strate to direct or otherwise influence the manner in which Strate fulfils its regulatory functions, and to this end shall not –
- 2.9.1 appoint or require to be appointed any of its employees, officers or representatives to the Strate Regulatory and Supervisory Committee or any similar or successive Committee;
- 2.9.2 involve itself in any way in the activities of the Supervision Division of Strate; and
- 2.9.3 appoint or require to be appointed any of its employees, officers or representatives to a Participant Market Failure Committee, an Urgent Issues Committee or any similar committee of the Strate Board that is established in respect of a central securities depository participant that is authorised by Strate.
- 2.10 Should an employee, officer or representative of the Acquiring Firm be invited to attend any meeting of the Strate Regulatory and Supervisory Committee in his or her capacity as an industry expert, the Acquiring Firm

shall ensure that such person excuses himself of herself from the meeting if any matter related to Strate's regulatory functions is discussed.

3. DURATION AND MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 These conditions shall remain in force for as long as the Acquiring Firm, or its successor in title is in Control of the Target Firm.
- 3.2 The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 3.3 Within 20 (twenty) Days of the Implementation Date, the Acquiring Firm shall publish the Conditions on its website in order to promote awareness of the Conditions. The Conditions shall remain available on the aforementioned website for as long as the Acquiring Firm, or its successor in title is in Control of the Target Firm.
- 3.4 Within 20 (twenty) Days of the Implementation Date, the Acquiring Firm shall confirm to the Commission in writing that it has published the Conditions on its website.
- 3.5 Within 20 (twenty) Days of the Implementation Date, the Acquiring Firm shall in terms of clause 2.5 of the Conditions publish on its website the name and contact details of any provider of transfer secretarial services at the request of such provider. This information must remain on the Acquiring Firm's website for the duration of the Conditions, unless a provider of transfer secretarial services requests that the information be removed.
- 3.6 Within 40 (forty) Days of the Implementation Date, the Acquiring Firm shall provide the Commission with a report setting out the procedures or protocols it has put in place in order to comply with clause 2.4 of the Conditions.
- 3.7 The Acquiring Firm shall for the duration of these Conditions submit an affidavit on each anniversary of the Implementation Date, confirming compliance with the Conditions. This affidavit shall be deposed to by the relevant director of the Acquiring Firm and contain sufficient details to

satisfy the Commission of substantial compliance by the Acquiring Firm with the Conditions.

- 3.8 The Merger Parties must provide the Commission with any additional information reasonably necessary for the Commission to assess the Merger Parties' compliance with the Conditions from time to time.
- 3.9 Any apparent breach of the Conditions by the Merger Parties shall be dealt with in terms of Rule 37 of the Tribunal Rules, read together with Rule 39 of the Commission Rules.
- 3.10 All correspondence in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

4. VARIATION

- 4.1 Either or both of the Merger Parties may at any time, on good cause shown, apply with or without the Commission's consent to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted, provided that "good cause" shall not include any circumstances giving rise to the request for variation which are reasonably capable of being mitigated in another manner, or which could reasonably have been foreseen at the Approval Date of these Conditions. The Commission shall not be precluded from opposing such application.
- 4.2 The Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted. The Merger Parties will not be precluded from opposing such application.