



COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO004Apr25

In the matter between:

The Competition Commission

Applicant

And

RAPS Stores (Pty) Ltd;
K2016335487 (SA) Pty Ltd;
De Hallen Liquor (Pty) Ltd

First Respondent
Second Respondent
Third Respondent

Panel:	T Vilakazi (Presiding Member) A Ndoni (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	12 May 2025
Decided on:	13 May 2025

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and RAPS Stores (Pty) Ltd; K2016335487 (SA) Pty Ltd; De Hallen Liquor (Pty) Ltd, annexed hereto.

Signed by: Thando Vilakazi
Signed at: 2025-05-13 12:06:28 +02:00
Reason: Witnessing Thando Vilakazi


Presiding Member
Prof. Thando Vilakazi

13 May 2025
Date

Concurring: Ms Andiswa Ndoni and Adv. Geoff Budlender SC

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CC Case No: 2024NOV0073

CT Case No:

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

RAPS STORES PROPRIETARY LIMITED

First Respondent

K2016335487 (SOUTH AFRICA) PROPRIETARY
LIMITED

Second Respondent

DE HALLEN LIQUOR PROPRIETARY LIMITED

Third Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D, READ WITH SECTION
58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998 AS AMENDED, RELATING
TO ALLEGED CONTRAVENTIONS OF SECTION 4(1)(b), SECTION 13A(1) AND
SECTION 13A(3) OF THE COMPETITION ACT



1. PREAMBLE

- 1.1 The Competition Commission ("**Commission**") and Raps Stores Proprietary Limited and K2016335487 (South Africa) Proprietary Limited and De Hallen Liquor Proprietary Limited hereby agree that an application be made to the Competition Tribunal ("**Tribunal**") for the confirmation of this settlement agreement as a consent order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act, on the terms set out below.

2. DEFINITIONS AND INTERPRETATION

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

2.1.1 "**Agreement**" means this agreement duly signed and concluded between the Commission and Raps Stores Proprietary Limited and K2016335487 (South Africa) Proprietary Limited and De Hallen Liquor Proprietary Limited, that will be referred to the Tribunal for confirmation as a consent order;

2.1.2 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

2.1.3 "**Competition Act**" means the Competition Act 89 of 1998, as amended;

2.1.4 "**Commissioner**" means the Competition Commissioner of South Africa, appointed in terms of section 22 of the Competition Act;

- 2.1.5 "**Confirmation Date**" means the date upon which the Tribunal confirms this Agreement as a consent order in terms of section 49D, read with section 58(1)(b) of the Competition Act;
- 2.1.6 "**Days**" means any business day being a day which is not a Saturday, Sunday or an official holiday in South Africa;
- 2.1.7 "**Parties**" means the Commission and the Respondents collectively;
- 2.1.8 "**Respondents**" means the first and second Respondents being Raps Stores Proprietary Limited ("Raps"), and K2016335487 (South Africa) Proprietary Limited and De Hallen Liquor Proprietary Limited.
- 2.1.9 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;

3. RECORDAL

- 3.1 This consent agreement relates to the transaction discussed below namely management agreement (Management Agreement) entered into between Raps Stores Proprietary Limited ("**Raps**") and the SPAR Steiltes, De Hallen KWIKSPAR and De Hallen TOPS retail stores (the "**Target Businesses**"). The agreement was implemented, without the required regulatory approval on 1 November 2024.

4. BACKGROUND

- 4.1 In 2021 and 2022, K2016335487 (South Africa) Proprietary Limited and De Hallen Liquor Proprietary Limited ("**the Sellers**") purchased the SPAR Steiltes, De Hallen KWIKSPAR and De Hallen TOPS retail stores (the "**Target Businesses**").

4.2 The Sellers had been struggling to operate the Target Businesses at suitable levels of profitability and decided to sell the Target Businesses. Raps was identified as a preferred purchaser of the Target Businesses and the acquisition process commenced.

4.3 The Sellers, conscious of the poor financial performance of the Target Businesses which would result in liquidation and retrenchment of all of its employees, outsourced the management of the Target Businesses to Raps through a management agreement ("**Management Agreement**") while the Sellers and Raps (collectively referred to as the "**Respondents**") finalised the implementation of the sale agreement and met all the suspensive conditions ("**Sale Agreement**").

4.4 The purpose of the Management Agreement was to assist the Target Businesses with reducing the decline in their performance, so as to safeguard the value of the Target Businesses, until such time as the merger was approved by the Commission.

4.5 In terms of the Management Agreement, all management services rendered by Raps shall be in the sole and absolute discretion of Raps and shall include, but not be limited to:

4.5.1. order and receiving of stock;

4.5.2. merchandising,

4.5.3. staff and finances;

4.5.4. selling and collecting of payment at the tills;

4.5.5. daily banking; and

all and any other services which, in the opinion of Raps, may be reasonably required by Raps to manage the businesses of the Sellers.

4.6 The Respondents instructed an attorney to draw up the Management Agreement but were not advised that the Management Agreement could give rise to a potential breach of the Competition Act. This is evidenced by the following statements in the Management Agreement:

4.6.1. In the introductory paragraphs, specifically clause 1.2 and 1.3, where it is stated that *"The envisaged Sale Agreement is subject to statutory and regulatory requirements"* and *"The parties have agreed that pending the compliance with the regulatory and statutory requirements to give effect to the sale agreement, that RAPS STORES will manage, on behalf of the KENNET GROUP, the businesses of the KENNET GROUP which forms part of the subject of the sale agreement"*; and

4.6.2. In sub-clause 8.1.3. *"where it is stated that "the execution of this [Management] Agreement and the performance of its obligations hereunder does not and shall not:*

8.1.3.1 contravene any law or regulation to which that Party is subject;"

4.7 The Management Agreement became effective on 1 November 2024.

4.8 It was only when the Respondents commenced the preparation of the merger notification as contemplated in the Sale Agreement and briefed specialist competition lawyers that they were advised the implementation of the Management Agreement could have breached the Competition Act. As soon as they were so advised, the Respondents voluntarily approached the Commission to bring the Management Agreement to the Commission's attention.

5. THE COMMISSION'S FINDING

- 5.1 The transaction was filed with the Commission, post implementation, on 28 January 2025. The duration of the contravention is therefore a period of 3 months, (from 1 November 2024 to 30 January 2025, when the prior implementation was reported to the Commission), which period does not exceed two years.
- 5.2 The Commission has perused the Management Agreement and agrees with the Respondents that there was indeed an implementation of a merger prior to notification. This is borne by the fact that the Management Agreement gives RAPS Stores effective control over the entire operations of the Target Businesses from purchasing to selling of merchandise. Furthermore, this control appears to be unfettered in any material manner by the presence of the Sellers as owners of Target Businesses.
- 5.3 The Respondents have demonstrated willingness to expeditiously conclude a settlement with the Commission. Further, the Respondents in their interaction with the Commission have exhibited transparency and have provided all the agreements entered into including giving full historical background leading up to the transaction.
- 5.4 The Respondents have not previously been found to have contravened the Competition Act.

6. ADMISSION

The Respondents admit that they entered into a merger transaction without notifying the Commission and implemented the merger without the approval of the Commission in terms of section 14(1)(b), or the Tribunal in terms of section

16(2) or the Competition Appeal Court in terms of section 17, as required by section 13 A of the Competition Act, and as such are in contravention of the Competition Act.

7. AGREEMENT REGARDING FUTURE CONDUCT

7.1 The Respondents agree to:

7.1.1 Not to undertake in any contravention of the Competition Act;

7.1.2 Develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Competition Act;

7.1.3 To submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Settlement Agreement as an order by the Tribunal.

7.2 Notification is to be provided to the Commission per email at mergerconditions@compcom.co.za.

8. ADMINISTRATIVE PENALTY

8.1 In terms of section 58(1)(a)(iii) of the Competition Act read with sections 59(1)(a), 59(2) and (3) of the Competition Act, Respondents agree to pay an administrative penalty in the amount of R350,625.00 (Three Hundred and Fifty Thousand Six Hundred and Twenty Five Rand).

8.2 The above amount does not exceed 10% of the respondents' respective annual turnover for the 2024 financial year.

8.3 The administrative penalty shall be paid within 30 Days from the date of confirmation of this Agreement by the Tribunal.

8.4 The administrative penalty will be paid into the Commission's bank account.

8.5 The Commission's banking details are as follows:

Bank: ABSA Bank

Name of Account: The Competition Commission Fees Account

Branch Name: Pretoria

Branch Code: 323345

Account Number: 4050778576

8.6 The Commission will pay the administrative penalty amount into the National Revenue Fund in compliance with section 59(4) of the Competition Act.

9. FULL AND FINAL SETTLEMENT

This Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and the Respondents relating to the failure to notify the transaction in terms of which Raps and K2016335487 (South Africa) Proprietary Limited and De Hallen Liquor Proprietary Limited entered into the Management Agreement and implemented the agreement without receiving the prior approval of the Competition Authorities.

Dated and signed at Mbombela on the 18th day of March 2025.

For the Respondents:

Signature: 

Name: John Vivian Willcocks

Capacity: Executive Chairman

Dated and signed at Pretoria on the 28th day of March 2025.

For the Commission:

Signature: 

Name: Doris Tshepe

Capacity: Commissioner