DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 4743 19 April 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

REMA TIP TOP HOLDINGS(PTY) LTD AND UBUSISIWE UKUPHILA (PTY) LTD

CASE NUMBER: 2023AUG0038

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- 1. On 21 August 2023, the Competition Commission ("Commission") received a notice of an intermediate merger whereby Rema Tip Top Holding South Africa (Pty) Ltd intends to acquire [CONFIDENTIAL]% Ubusisiwe Ukuphipila (Pty) Ltd ("Ubusisiwe"). Upon implementation of the proposed transaction, RTT will have joint control over Ubusisiwe. The balance of the shareholding in Ubusisiwe will be held by Patrick Martin Investment Trust [CONFIDENTIAL]%.
- 2. The primary acquiring firm is RTT. RTT is 100% controlled by Rema Tip Top AG ("Rema AG"). Rema AG is in turn 100% controlled by Stahlgruber Otto Gruber AG ("Stahlgruber AG"). Stahlgruber AG is not controlled by any firm and its shares are widely held.
- 3. The merging parties submit that the Acquiring Group does not have any shareholders who are HDPs.
- 4. The Acquiring Group operates (i) as a Rema Tip Top branded tyre workshop used for fitting, balancing and lifting tyres; (ii) supplier of valves as part of their automotive product offering; (iii) manufacturer of tyre repair systems and (iv) manufacturer of tyre maintenance systems in South Africa. The Acquiring Group also manufactures Dunlop branded conveyor belts in South Africa and China. However, the conveyor belts manufactured by the Acquiring Group in South African and China are not distributed into the South African

market. The conveyor belts manufactured by the Acquiring Group are exported to international markets. This is because of a Sub-License Agreement concluded between the Target Group and the Acquiring Group, which restricts the Acquiring Group from distributing and supplying Dunlop branded conveyor belts in South Africa, Swaziland, Lesotho and Botswana.

- 5. The primary target firm is Ubusisiwe. Ubusisiwe is jointly controlled by Patrick Martin Investment Trust [CONFIDENTIAL]% and Makarios Family Trust [CONFIDENTIAL]%. [CONFIDENTIAL]%
- 6. Ubusisiwe jointly controls Mbense Sosibo Investments Holdings (Pty) Ltd ("Mbense") [CONFIDENTIAL]%. The other joint controllers of Mbense are Mlungisi [CONFIDENTIAL]%, Mbuso and Makhosazana [CONFIDENTIAL]%.
- 7. Mbense controls Dunlop Belting Products (Pty) Ltd ("Dunlop Belting Products"). Dunlop Belting Products controls 8 firms which are: (i) DBP Services (Pty) Ltd ("DBP Services"); (ii) DBP Northern Cape (Pty) Ltd; (iii) MP Squared Property Group (Pty) Ltd; (iv) SA Hose and Belting KZN (Pty) Ltd ("SA Hose and Belting KZN"); (v) DBP Goldroc (Pty) Ltd; (vi) DBP Management Services (Pty) Ltd; (vii) DBP Mpumalanga (Pty) Ltd and (viii) DBP Northwest (Pty) Ltd.
- 8. Ubusisiwe and Mbense shall be referred to as the "Target Group".
- Ubusisiwe does not have shareholders who are HDPs. However, the merging parties indicate that Mbense, the only operational subsidiary of Ubusisiwe has [CONFIDENTIAL]% held by HDPs through Mlungisi [CONFIDENTIAL]%, Mbuso [CONFIDENTIAL]% and Makhosazana [CONFIDENTIAL]%.
- 10. Through Mbense, the Target Group is active in the (i) manufacturing and distribution of conveyer belts used by mines; (ii) manufacturing of industrial hoses; and (iii) maintenance and servicing of conveyor belts.

Relationship between the parties/ products (horizontal / vertical)

11. The Commission found that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public Interest

12. The Commission and the merging parties have agreed to job creation commitments for the benefit of HDPs at the Acquiring Group and/or the Target Group.

Conclusion

13. The Commission therefore approves the proposed merger subject to the conditions attached hereto as **Annexure A**.

ANNEXURE A

REMA TIP TOP HOLDING SOUTH AFRICA (PTY) LTD

AND

UBUSISIWE UKUPHIPILA (PTY) LTD

CASE NUMBER: 2023AUG0038

CONDITIONS

1. **DEFINITIONS**

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- 1.1. "Acquiring Firm" means Rema Tip Top Holding South Africa (Pty) Ltd;
- **1.2.** "Approval Date" means the date upon which the Commission approves the Merger;
- **1.3.** "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4. "Competition Act" means the Competition Act, No. 89 of 1998 (as amended);
- **1.5.** "Conditions" means these conditions;
- **1.6.** "Days" mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- **1.7. "HDP"** means a historically disadvantaged person as contemplated in section 3(2) of the Competition Act;
- **1.8.** "Implementation Date" means the date on which the Merger is implemented in accordance with the commercial arrangements between the Merging Parties;
- 1.9. "Mbense" means Mbense Sosibo Investments Holdings (Pty) Ltd;
- **1.10.** "Merged Entity" means the Target Firm subject to the control of the Acquiring Firm following implementation of the Merger;

- 1.11. "Merger" means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.12. "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.13. "Target Firm" means Ubusisiwe Ukuphipila (Pty) Ltd; and
- **1.14.** "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

CONDITIONS TO THE APPROVAL OF THE MERGER

2. CREATION OF DIRECT HDP EMPLOYMENT

- **2.1.** The merging parties through the Acquiring Firm and/or Mbense and/or its subsidiaries shall create a minimum of 180 permanent jobs for HDPs within a period of 18 months from the date of Implementation. The merging parties shall:
 - 2.1.1. Create 100 jobs for HDPs in the Acquiring Firm and/or Mbense and/or its subsidiaries within 12 months from Implementation Date.
 - 2.1.2. Create 80 jobs for HDPs in the Acquiring Firm and/or Mbense and/or its subsidiaries within 18 months from Implementation Date.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. Within 10 (ten) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- **3.2.** Within 5 (five) Days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 3.3. Within 5 (five) Days of the first and second anniversary of the Implementation Date, the Merged Entity shall submit a compliance report detailing the number of jobs created; the respective designations and demographics of the newly appointed employees in the Acquiring Firm and/or Mbense and/or its subsidiaries. The report shall be accompanied by affidavits from a director of the Acquiring Firm and/or Mbense and/or its subsidiaries confirming the accuracy of the information contained in the report.

3.4. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. BREACH OF CONDITIONS

4.1. In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been an apparent breach of the Conditions, the matter will be dealt with in terms of Rule 39 of the Rules of the Conduct of Proceedings in the Commission.

5. VARIATION

5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the conditions to be waived, relaxed, modified and/or substituted.

6. GENERAL

All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

APEX CONSOLIDATION ENTITY LIMITED

AND

EFFICIENT GROUP PROPRIETARY LIMITED

CASE NUMBER: 2023APR0020

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- 1. On 18 April 2023, the Competition Commission ("Commission") received notice of an intermediate merger in terms of which Apex Consolidation Entity Limited ("ACEL") intends to acquire Efficient Group (Pty) Ltd ("Efficient Group"). Following the implementation of the proposed transaction, Efficient Group will be controlled by ACEL. Some assets and subsidiaries of Efficient Group will not be part of the transaction, and these will be channelled into a newly incorporated vehicle, Efficient Group 2 Proprietary Limited ("Remaining Group"). The Remaining Group's shares will be distributed to the current shareholders of Efficient Group, proportional to their existing shareholding in Efficient Group.
- 2. The primary acquiring firm, ACEL, is a company incorporated in accordance with the laws of England and Wales. ACEL is 100% owned by Apex Structured Intermediate Holdings Limited. Apex Structured Intermediate Holdings Limited is directly controlled by Apex Structured Holdings Limited. Apex Structured Holdings Limited is wholly owned by Apex Group Ltd. Apex Group Ltd is ultimately controlled by Genstar GP ("Genstar") which is ultimately controlled by Genstar Capital, a San Francisco based private equity firm.
- 3. The primary target firm is a company incorporated in accordance with the laws of South Africa. Efficient Group is not controlled by any firm. Efficient Group wholly owns Boutique Collective

Investments (RF) Proprietary Limited ("BCI"), Boutique Investment Partners Proprietary Limited ("BIP"), Instit Proprietary Limited ("Instit") and Skyblue Fund Managers Proprietary Limited ("Skyblue"). Efficient Group is a diversified financial services provider, which focuses on asset management services.

Competition analysis

- 4. The Commission considered the activities of the merging parties and found that the proposed transaction does not raise a horizontal overlap since Apex Group provides fund administration services and Efficient Group provides asset management services. The Commission received concerns from certain customers of the merging parties however these concerns were adequately addressed by the merging parties.
- 5. The Commission also found that there is a vertical overlap in the activities of the merging parties as Apex Fund Services provides portfolio administration services to BCI. The Commission however found that the proposed merger is not likely to result in foreclosure post-merger given the merging parties' market shares in the respective markets.
- 6. Taken as a whole, the Commission found that the merged entity will continue to face competition from various market participants identified in each of the markets above. The Commission therefore concludes that it is unlikely that the proposed merger will lead to a substantial prevention or lessening of competition in any market.

Public Interest

Employment

7. The merging parties have provided an unequivocal undertaking that the merger will not negatively impact employment. This was confirmed by the Commission's interactions with the employee representatives of the merging parties. Accordingly, the Commission concluded that the merger does not raise employment concerns.

Promotion of a greater spread of ownership

- 8. ACEL does not have any HDP ownership, nor worker participation, whereas Efficient Group is 24% HDP owned. Therefore, the Commission was concerned that the proposed transaction does not result in a greater spread of ownership by HDPs or workers, as required by section 12A(3)(e) of the Competition Act. The Commission invited the merging parties to make submissions on conditions which can address the public interest envisaged in section 12A(3)(e).
- 9. In addressing this concern, the Commission and the merging parties agreed to the following conditions:
 - 9.1. ACEL will implement an HDP transaction which will result in an HDP shareholder acquiring5% of the issued shares in the target firm;
 - 9.2. Within a period of 1 (one) year from the Approval Date, ACEL will increase the black South African senior management at Efficient Group to 60%, from 50%;
 - 9.3. Increase targeted spend on enterprise and supplier development to 3%, from 0% per annum.
 - Increase targeted spend on skills development of black employees to R300 000 from R31
 975 per annum; and
 - 9.5. Increase targeted spend on socio-economic development initiatives to 1% from 0% per annum.
- 10. There are no other public interest concerns arising.

Conclusion

11. The Commission approves the proposed transaction subjected to the attached conditions.

ANNEXURE A

APEX CONSOLIDATION ENTITY LIMITED

AND

EFFICIENT GROUP PROPRIETARY LIMITED

CASE NUMBER: 2023APR0020

Definitions

In this document, the expressions used below will have the appropriate meaning assigned to them and the following and related expressions will bear the following meaning:

- 1.1 "ACEL" means Apex Consolidation Entity Limited;
- 1.2 "Approval Date" means the date on which the Merger is approved by the Commission in terms of the Competition Act;
- 1.3 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4 "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.5 "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.6 "Conditions" means the conditions in this Annexure A;
- 1.7 "Days" means any day that is not a Saturday, Sunday or public holiday in South Africa;
- "Efficient Group" means Efficient Group Proprietary Limited, including Boutique Collective Investments (RF) Proprietary Limited; Boutique Investment Partners Proprietary Limited; Instit Proprietary Limited; and Skyblue Fund Managers Proprietary Limited;
- 1.9 "Employee" means any employee of the Merging Parties (as contemplated under the Labour Relations Act) in South Africa;

- 1.10 "Historically Disadvantage Persons or HDP" means historically disadvantaged persons as contemplated in section 3(2) of the Competition Act;
- 1.11 "HDP Transaction" means ACEL's commitment to sell not less than 5% of the issued share capital of Efficient Group on market-related terms, to one or more HDP shareholders;
- 1.12 "Implementation Date" means the closing date on which the Merger is completed by the Merging Parties in terms of Clause 6 of the Share Purchase Agreement submitted as Annexure B1 to the Merger notification submitted to the Commission;
- 1.13 "Labour Relations Act" means the Labour Relations Act, No. 66 of 1995;
- 1.14 "Merger" means the acquisition by ACEL of Efficient Group as notified to the Commission under Commission case number 2023APR0020:
- 1.15 "Merging Parties" means collectively ACEL and Efficient Group;
- 1.16 "NPAT" means net profit after tax;
- 1.17 "South Africa" means the Republic of South Africa;
- 1.18 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.19 "Tribunal Rules" mean the Rules for the Conduct of Proceedings in the Tribunal.

2. HDP TRANSACTION

- 2.1 ACEL shall, within 24 months (twenty four) of the Implementation Date, implement the HDP Transaction. ACEL shall, at its sole discretion, determine the identity of the HDP shareholder(s) that will participate in the HDP Transaction.
- 2.2 Prior to the implementation of the HDP Transaction, ACEL shall provide the Commission with details of the HDP Transaction in writing. These details will include, but not be limited to, the structure of the HDP Transaction, the terms of the HDP Transaction, the identities of the HDP shareholder(s) and evidence that these shareholder(s) are HDPs.

3. MANAGEMENT OF EFFICIENT GROUP

- 3.1 As at the Approval Date, Historically Disadvantaged Persons represent:
- 3.1.1 50% of the senior management of Efficient Group; and
- 3.1.2 Approximately 56% of the junior and middle management of Efficient Group.
- 3.2 Within a period of 1 (one) year after the Approval Date, ACEL undertakes to increase the percentage in Clause 3.1.1 to 60%.
- 3.3 Measured over a period of 3 (three) years from the Implementation Date, ACEL undertakes to procure that Efficient Group will maintain the percentage in Clause 3.1.2. Should the opportunity arise for Efficient Group to increase this percentage, preference will be given to suitably qualified Historically Disadvantaged Person candidates.
- 4. ENTERPRISE AND SUPPLIER DEVELOPMENT, CORPORATE SOCIAL RESPONSIBILITY, SKILLS DEVELOPMENT AND PREFERENTIAL PROCUREMENT
- 4.1 ACEL undertakes to procure that Efficient Group shall over a period of 3 (three) years after the Implementation Date:
- 4.1.1 increase its targeted spend on enterprise and supplier development from the current 0% per annum to 3% (which would have equated to R2 807 000 based on Efficient Group's South African NPAT in the 2022 financial year); and
- 4.1.2 spend an additional ZAR 300,000 on skills development of Black Employees over and above the current ZAR 31,975 to the extent that these Employees wish to take up relevant opportunities. In the event that an insufficient number of Employees take up these skills development opportunities during any given financial year, Efficient Group shall use the funds to offer bursaries to HDP, South African students in the following financial year.
- 4.1.3 increase its targeted spend on socio-economic development spend initiatives from the current 0% per annum to 1% (which would have equated to R936 000 based on Efficient Group's South African NPAT in the 2022 financial year).

4.2 ACEL undertakes to procure that Efficient Group shall maintain its total measured procurement spend from SMME and/or businesses owned by Historically Disadvantaged Persons of 79% measured over a period of 3 (three) years from the Implementation Date and, where possible, to increase such spend. This is provided that goods and services which Efficient Group requires to be procured are available on reasonable commercial terms.

5. MONITORING

- 5.1 The Merging Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 5.2 The Merging Parties shall inform the Commission in writing of the implementation date of the HDP Transaction within 5 (five) Days of its occurrence.
- 5.3 The Merging Parties shall, within 30 (thirty) Days of the first anniversary of the Implementation Date and for a period of 3 (three) years thereafter submit to the Commission a written report detailing compliance with these Conditions. The compliance report shall be accompanied by an affidavit from a senior official attesting to the correctness of the report.
- 5.4 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with these Conditions.

6. VARIATION OF CONDITIONS

The Merging Parties may at any time, and on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merging Parties' application to the Commission, the Merged Entity may apply to the Tribunal, on good cause shown, for appropriate relief.

7. APPARENT BREACH

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging

Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

8. **GENERAL**

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SHEARWATER SPV PROPRIETARY LIMITED AND

INTERFLEX HOLDINGS PROPRIETARY LIMITED AND DINALEDI CONCEPTS PROPRIETARY LIMITED

CASE NUMBER: 2023APR0032

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 26 April 2023 the Competition Commission ("Commission") received notification of an intermediate merger wherein Shearwater SPV Proprietary Limited ("Shearwater") proposes to acquire sole control over Interflex Holdings Proprietary Limited ("Interflex") and Dinaledi Concepts Proprietary Limited ("Dinaledi") ("Proposed Transaction").
- 2. The primary acquiring firm is Shearwater SPV Proprietary Limited ("Shearwater"), a company registered in South Africa. Shearwater is, in turn, ultimately controlled by the [CONFIDENTIAL] Trust whose trustees are not historically disadvantaged persons ("HDPs") as contemplated in the Competition Act No 89 of 1998 (as amended) (the "Act"). The [CONFIDENTIAL] Trust has no HDP beneficiaries. Shearwater, all the firms controlling it and all the firms controlled by those firms, will be referred to as the "Acquiring Group".
- 3. Shearwater is a special purpose vehicle ("SPV") that was established to facilitate the proposed merger and thus does not conduct any activities. The Acquiring Group's activities are to hold investments in various sectors such as agriculture, residential property development, industrial property, hospitality property (e.g., holiday lodges and camps), sport fishing, retail, telecommunications, and manufacturing.
- 4. The Acquiring Group does not have any shareholding by HDPs or 'workers' as

- contemplated in the Act.
- 5. The primary target firms are Interflex Holdings Proprietary Limited ("Interflex") and Dinaledi Concepts Proprietary Limited ("Dinaledi"). Both Interflex and Dinaledi are entities registered in South Africa.
- 6. Interflex is not controlled by any single shareholder and its largest shareholder is Cofersa SA Holdings Proprietary Limited (Cofersa) as to 42%. Interflex has 42% ownership by HDPs (via Cofersa) as contemplated by the Act. Interflex has no ownership by workers.
- 7. Dinaledi is solely controlled by **[CONFIDENTIAL]** as to **[CONFIDENTIAL]**%. **[CONFIDENTIAL]** is an HDP as contemplated by the Act. The remaining **[CONFIDENTIAL]**% non-controlling shareholding in Dinaledi is held by Interflex. Dinaledi has 76.80% ownership by HDPs. Dinaledi has no ownership by workers.
- 8. The Commission understands that Interflex and its subsidiaries supply conveyor belts to customers such as mining houses, who typically require supplies such as Interflex to have black ownership credentials.
- 9. Interflex and Dinaledi will collectively be referred to as the "Target Firms".
- 10. The Target Firms import and distribute light duty, heavy duty, and steel cord conveyor belts to the mining industry (mines and mining equipment distributors).
- 11. The Commission found that the merger does not result in any horizontal or vertical overlaps.
- 12. Regarding public interest, the Commission found that the transaction results in a substantial dilution in the greater spread of ownership by HDPs post-merger.
- 13. To address this dilution, the parties committed to create a fund to be managed by an HDP owned general partner (the "Fund") which will acquire a [CONFIDENTIAL]% interest in Shearwater post-merger and hold such interest for at least [CONFIDENTIAL] years. The Fund would invest in firms with HDP ownership of at least [CONFIDENTIAL]% for a period of at least [CONFIDENTIAL] years post the implementation of the merger. Shearwater will provide the Fund with at least R[CONFIDENTIAL] to enable the Fund to fulfil its mandate. The Commission did not consider the Fund to be sufficiently responsive to section 12A(3)(e) of the Act as the beneficial ownership arising therefrom, flows to persons who are not HDPs. Accordingly, the Fund has not been included in the conditions attached as Annexure A hereto.

- 14. However, the Commission found that in the circumstances, the additional commitments tendered by the parties including the 5% ESOP for the benefit of workers of the Target Firms, skills development spend and the lack of negative employment effects, sufficiently addresses the public interest.
- 15. The Commission approves the merger subject to the conditions included in **Annexure A** hereto, which the parties have agreed to.

ANNEXURE A

SHEARWATER SPV PROPRIETARY LIMITED

AND

INTERFLEX HOLDINGS PROPRIETARY LIMITED

AND

DINALEDI CONCEPTS PROPRIETARY LIMITED

CASE NUMBER: 2023APR0032

1. DEFINITIONS

In this document, the expressions used below will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "Acquiring Group" means means the Acquiring Firm and all firms it controls, all firms controlling the Acquiring Firm, and all firms controlled by those firms;
- 1.2 "Acquiring Firm" means Shearwater SPV;
- 1.3 "Approval Date" means the date referred to on the Commission's merger clearance certificate (Form CC15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.4 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5 "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.6 "Commission Rules" mean the Rules for the Conduct of Proceedings in the Commission;
- 1.7 **"Conditions**" means the conditions set out herein;
- "Days" mean any calendar day which is not a Saturday, a Sunday, or an official public holiday in South Africa. A public holiday shall also include such days as may be declared by the President of South Africa in terms of the Public Holidays Act 36 of 1994;

- 1.9 "Dinaledi" means Dinaledi Concepts Proprietary Limited:
- 1.10 "ESOP Establishment Period" means 36 months from the Implementation Date;
- 1.11 **"HDP"** means a historically disadvantaged person as contemplated in the Competition Act;
- 1.12 "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.13 "Interflex" means Interflex Holdings Proprietary Limited;
- 1.14 "Merger" means the acquisition by Shearwater SPV of Interflex and Dinaledi as notified to the Commission under Case No:2023APR0032;
- "Merging Parties" means collectively the Acquiring Firm and the Target Firms, and"Merging Party" means any one of them, as the case may be;
- 1.16 "Merged Entity" means Interflex and Dinaledi as controlled by Shearwater SPV following implementation of the Merger;
- 1.17 "Shearwater SPV" means Shearwater SPV Proprietary Limited;
- 1.18 "South Africa" means the Republic of South Africa;
- 1.19 "Targets Firms" means Interflex and Dinaledi;
- 1.20 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.21 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.22 "Qualifying Workers" means Workers that have been in the employ of Interflex and Dinaledi for at least a period of 2 years as at the Implementation Date; and
- 1.23 "Worker" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

CONDITIONS

2. SKILLS TRANSFER

2.1 To promote skills transfer to HDPs –

- 2.1.1 Shearwater will spend approximately R530 000 per year for 8 years (aggregate R4,24 million) post the implementation Date on training opportunities for all employees at each of Dinaledi and Interflex; and
- 2.1.2 Within 1 year post the Implementation Date, Shearwater will appoint Ms Shivashne Raghubar (or any other HDP female) to the board of directors of Interflex.

3. EMPLOYEE SHARE OWNERSHIP PLAN

- 3.1 By the end of the ESOP Establishment Period, Interflex shall establish the ESOP for the benefit of all Qualifying Workers. The ESOP shall hold 5% of the issued shares in Interflex as at the Implementation Date, in accordance with the design principles set out in Annexure B.
- 3.2 For the avoidance of doubt, Qualifying Employees will not be required to pay any monies to participate in the ESOP and the consideration required to purchase shareholding in the Merged Entity shall be advanced to the ESOP by the Merged Entity and in the form of a loan, and
- 3.3 as an ordinary shareholder, the ESOP, like all the other ordinary shareholders of Interflex, will be entitled to receive dividends in respect of its ordinary shares in the Interflex once Interflex is able to declare ordinary dividends to its ordinary shareholders.

4. MONITORING

- 4.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 4.2 The Acquiring Group shall submit a compliance report detailing its compliance with clause 2 and clause 3 of the Conditions, within 60 (sixty) days of each anniversary of the Implementation Date. The report shall be accompanied by an affidavit from a director of the Acquiring Firm confirming the accuracy of the information contained in the report.
- 4.3 The report referred to in clause 4.2 shall include but not be limited to details and supporting documents regarding –
- 4.3.1 Compliance with the requirements set out in clause 2.
- 4.3.2 Within 10 (ten) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees, their employee

representatives and trade unions. As proof of compliance herewith, Interflex shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.

- 4.3.3 The Merged Entity shall submit a compliance report (including a trust deed for the registration of the ESOP) within 5 (five) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of Interflex confirming the accuracy of the information contained in the report.
- 4.4 The Commission may request such additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. 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 by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. VARIATION OF CONDITIONS

The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

7. GENERAL

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B - CONFIDENTIAL

Design Principle	Applicable Criteria
Structure	 Will be a unitised structure whereby a trust will be established, and Qualifying Workers will receive units
Cost to Workers and participating HDPs	 The ESOP will be funded through notional vendor funding. The notional vendor funding will provide for a fixed trickle dividend in terms of which at least 35% of declared dividends will be paid to the beneficiaries with the remaining 65% used to service the vendor financed loan until such time as it is extinguished. Once the loan has been extinguished, 100% of the declared dividends due to the ESOP (after liabilities have been paid) will be distributed to the beneficiaries. The liabilities refer to costs (administration costs, rental, fees of third party service providers such as auditors) and taxes.
Governance	 The ESOP will be constituted by a Trust, which will have 3 trustees, one nominated by Interflex, one nominated by Workers and one independent trustee
Duration	The ESOP will endure until terminated by the Trustees
Participants	 All Workers in the employ of Interflex and Dinaledi for a period of at least 2 years as at the date of implementation of the merger.
Participation Benefits	 Qualifying Workers will be entitled to dividends.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

KA AN DEVELOPMENT CO LIMITED

AND

EASTERN PLATINUM LIMITED

CASE NUMBER: 2023AUG0007

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 04 August 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby Ka An Development Co. Limited ("Ka An Development") intends on acquiring 49.1% of the shares in Eastern Platinum Limited ("EPL"). Upon implementation of the proposed transaction, Ka An Development will have sole control over EPL.
- The primary acquiring firm is Ka An Development, a company incorporated in accordance
 with the laws of Canada. Ka An Development is [CONFIDENTIAL]% controlled by
 [CONFIDENTIAL]. The merging parties submit that [CONFIDENTIAL] does not have any
 shareholding interests in South Africa other than [CONFIDENTIAL].
- 3. Ka An Development controls Crocodile Mining Development Limited, a firm incorporated in accordance with the laws of Canada. In South Africa, Ka An Development does not control any other firm. However, the parties indicate that Ka An Development holds a noncontrolling shareholding of 32.7% in EPL, the primary target firm in the instant transaction.

- 4. Ka An Development does not have any shareholding held by historically disadvantaged persons ("HDPs")
- 5. Ka An Development and all firms it controls shall be referred to as the "Acquiring Group".
- 6. The Acquiring Group, through Ka An Development is an investment holding entity with investments in firms that are active in the mining sector.
- 7. The primary target firm is EPL, a public company incorporated in accordance with the laws of the Republic of South Africa. EPL is dually listed on the Toronto Exchange and the Johannesburg Stock Exchange (JSE) and as such it is not controlled by any shareholder.
- 8. EPL controls 15 firms in South Africa. Fourteen of those firms are not operational. Of relevance to the proposed merger is the 100% shareholding held by EPL in Barplats Mines (Pty) Ltd ("Barplats Mines"), which is envisaged to become fully operational post-merger. For purposes of the proposed transaction, EPL and all firms it controls shall be referred to as the "Target Group".
- 9. The parties indicate that the Target Group is currently not operational and has not been operational since 2013 as it was placed under care and maintenance due to [CONFIDENTIAL]. However, prior to the Target Group being placed under care and maintenance, it was active in the mining of platinum group metals ("PGMs"). In addition, through Barplats Mines, the Target Group produces chrome as a by-product, as well as small amounts of copper and gold (also as by-products of the mining of PGMs), from the Barplats Zandfontein tailings dam.

Competition Assessment

10. The Commission found that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public Interest

11. The only public interest issue arising was section 12A(3)(e) of the Competition Act, no 89 of 1998 (as amended), since neither the Acquiring Group nor the Target Group have any ownership by HDPs.

12. To address this public interest factor, the merging parties have agreed to establish an employee share ownership program ("ESOP"), which will hold at least 5% of Barplats Mines (a subsidiary of the Target Firm). The ESOP will be established within 6 months from Barplats Mines attaining certain run of mine tonnages, for a period of six consecutive months.

Conclusion

13. The Commission therefore approves the proposed merger subject to the conditions attached hereto as **Annexure A**.

ANNEXURE A

KA AN DEVELOPMENT CO LIMITED

AND

EASTERN PLATINUM LIMITED

CASE NUMBER: 2023AUG0007

CONDITIONS

1. DEFINITIONS

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- **1.1.** "Acquiring Firm" means Ka An Development Co Limited;
- 1.2. "Approval Date" means the date upon which the Commission approves the Merger;
- **1.3. "Barplats Mines"** means Barplats Mines (Pty) Ltd, a 100% owned subsidiary of the Target Firm.
- **1.4.** "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5. "Competition Act" means the Competition Act, No. 89 of 1998 (as amended);
- 1.6. "Conditions" means these conditions;
- **1.7.** "Days" mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- **1.8.** "DTIC" means the Department: Trade, Industry and Competition;
- 1.9. "ESOP" means an employee share ownership program to be implemented within the ESOP Establishment Period within Barplats Mines through an employee trust or other similar vehicle which will acquire a shareholding of 5% in the Target Firm;

- 1.10. "ESOP Establishment Period" means 6 months (subject to any delays at the Masters Office and / or any other relevant regulatory authority) from the date on which Steady State is reached:
- **1.11. "HDP"** means a historically disadvantaged person as contemplated in section 3(2) of the Competition Act;
- 1.12. "Labour Relations Act" means the Labour Relations Act, 66 of 1995 (as amended);
- **1.13.** "Merged Entity" means the Target Firm subject to the control of the Acquiring Firm following implementation of the Merger;
- **1.14.** "Merger" means the acquisition of control by the Acquiring Firm over the Target Firm;
- **1.15.** "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.16. "Steady State" means a state in which Barplats Mines has for a consecutive period of six months achieved production of [CONFIDENTIAL] run of mine tons per month in relation to their mining operations.
- 1.17. "Target Firm" means Eastern Platinum Limited;
- **1.18.** "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.19. "Qualifying Workers" means Workers employed for a minimum of 1 year within Barplats Mines; and
- 1.20. "Worker" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

CONDITIONS TO THE APPROVAL OF THE MERGER

2. ESTABLISHMENT OF THE ESOP

2.1. By the end of the ESOP Establishment Period, the merging parties shall establish the ESOP for the benefit of Qualifying Workers. The ESOP shall hold 5% of the issued shares in Barplats Mines as at the ESOP Establishment Period, in accordance with the design principles set out in **Annexure B**.

3. DURATION

3.1. The obligations imposed on the Merging Parties in these Conditions will apply from the Approval Date to 3 years after the ESOP Establishment Period.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. Within 10 (ten) Days of the Approval Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- **4.2.** The Merged Entity shall submit a compliance report detailing the output of ore in tons in relation to the mining operations of Barplats Mines on the anniversary of the Approval Date. The report shall be accompanied by an affidavit from a director of the Target Firm confirming the accuracy of the information contained in the report.
- 4.3. Within 5 (five) Days of the commencement of the ESOP Establishment Period, the Target Firm shall provide the total number of South African employees at Barplats Mines as well as the number of employees classified as HDPs at Barplats Mines. This shall be accompanied by an affidavit from a director of the Target Firm confirming the accuracy of the information contained in the report.
- 4.4. The Merged Entity shall submit a compliance report (including a trust deed or the like, if a different but similar, vehicle is used –for the registration of the ESOP) within 5 (five) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of the Target Firm confirming the accuracy of the information contained in the report.
- **4.5.** The Merged Entity shall submit a compliance report on the anniversary of the Approval Date for a period of 3 years commencing from the Date of the ESOP Establishment Period. This compliance report shall be accompanied by an affidavit from a director of the Barplats Mines confirming the accuracy of the information contained in the report.
- **4.6.** The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. BREACH OF CONDITIONS

5.1. In the event that the Commission receives any complaint in relation to non-compliance with the Conditions, or otherwise determines that there has been an apparent breach of the Conditions, the matter will be dealt with in terms of Rule 39 of the Rules of the Conduct of Proceedings in the Commission.

6. VARIATION

6.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the conditions to be waived, relaxed, modified and/or substituted.

7. GENERAL

All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

Annexure B

Design Principle	Applicable Criteria
Structure	 Unitised employee share ownership trust to be registered.
	 Special purpose ring-fenced private company (SPV) inter-posed between ESOP and Barplats Mines for governance, commercial and tax efficiency reasons. The SPV will be a simple holding company with the sole objective of holding shares in Barplats Mines – it will not be an operating company.
Cost to Workers	 Workers not required to pay to participate in the ESOP.
Governance	 The board of trustees must be balanced, and workers must be represented on the board, e.g., 1 trustee appointed by Merged Entity; 1 appointed by Qualifying Workers and 1 independent trustee.
	The independent trustee will be recommended and appointed based on suitable qualifying criteria, by the trustees appointed by the Merged Entity and the Qualifying Workers, provided that the Target Firm will be entitled to appoint an interim independent trustee for the purpose of the trust formation and the transaction who shall vacate office once the Merged Entity and Qualifying Workers have appointed their trustees.
Duration	 ESOP is evergreen to cater for changing workforce.
Participants	 Trust deed to provide for the creation of units linked to 5% shareholding held by Trust in Barplats Mines via SPV.
	 Eligibility criteria: permanent employees with a minimum 12 months service period.
	 Maternity leave will have no adverse impact on qualifying criteria.
Participation Benefits	 Value of the trust's or the SPV's 5% interest in Barplats Mines will be determined with reference to issued shares and valuation as at the date on which Steady State has been reached.
	 Method of funding the trust or the SPV's 5% interest in the Barplats Mines to be vendor financed by the Merged Entity subject to commercial and tax efficiencies at the time.
	Vendor financing will be interest-free.
	 Dividend policy will be adopted to provide for a "trickle" dividend (in the ratio of 35:65) to be paid to the ESOP prior to the repayment of the vendor

financing (i.e., at least 35% of any dividends declared by the Target Firm will flow to
beneficiaries and at most 65% will be utilised to
service the vendor financing). This will ensure economic benefit to Workers sooner

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

BCP VI NEPTUNE BIDCO HOLDINGS LIMITED

AND

NETWORK INTERNATIONAL HOLDINGS PLC

CASE NUMBER: 2023AUG0011

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

The Transaction

- On 7 August 2023, the Competition Commission ("Commission") received notice of an intermediate merger wherein BCP VI Neptune Bidco Holdings Limited ("BidCo") intends to acquire Network International Holdings Plc ("Network"). Upon implementation of the proposed transaction, BidCo will exercise sole control over Network.
- 2. The primary acquiring firm is BidCo, a company incorporated in England and Wales. Bidco is indirectly controlled by BCP VI Neptune Holdings L.P ("BCP VI Neptune"). BCP VI Neptune is directly controlled by Brookfield Capital Partners VI GP LLC ("Brookfield Capital"), a general partner to BCP VI Neptune Holdings LP and to private equity funds managed and/or advised by affiliates of Brookfield Asset Management Ltd. BidCo is ultimately controlled by Brookfield Corporation ("Brookfield").
- Brookfield is a public company listed on the New York and Toronto Stock Exchange
 and is not controlled by any single firm or individual. In South Africa, Brookfield
 indirectly controls firms, none of which have activities that overlap with those of the
 Target Firm.

- 4. Brookfield and all firms it directly or indirectly controls are henceforth referred to as the "Acquiring Group".
- 5. The Merger Parties submit that neither Brookfield nor Brookfield's South African subsidiaries have any direct shareholding held by historically disadvantaged persons ("HDPs").
- 6. In South Africa, the Acquiring Group (i) manufactures and distributes chassis and suspension components; (ii) develops, manufactures, and sells flange ball, towbar systems, bike carrier solutions, and related wiring kits for towing and carrying solutions; and (iii) develops, constructs, operates and maintains solar panels.
- 7. The primary target firm is Network, a public company incorporated under the laws of England and Wales.
- 8. Network is a public company listed on the London Stock Exchange. Its shares are widely held, and no individual firm controls Network.
- 9. In South Africa, Network indirectly controls six firms (collectively the "Target Firms").
- Network, through its South African subsidiaries, provides payments solutions to merchants and financial institutions, including acquiring and processing services and a range of value-added services.
- 11. The Commission considered the activities of the merging parties and found that the proposed transaction does not raise any horizontal or vertical overlaps in South Africa as Network provides payment solutions to merchants and financial institutions and the Acquiring Group does not provide any payment solutions in South Africa.
- 12. As such, the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

Employment

13. The merging parties have not provided an unequivocal statement that the merger will not result in retrenchments and the Acquiring Group could not confirm the effect of the merger on employment until such time that the Acquiring Group has done a review of the Target Group's business operations. The merging parties agreed to a moratorium on merger-specific retrenchments of 36 months. This will however exclude highly skilled employees. The condition is attached hereto as "Annexure A".

The promotion of a greater spread of ownership, in particular to increase the levels of ownership by HDPs and workers in firms in the market

- 14. Neither of the merging parties have any shareholding held by HDPs. The Commission thus requested the merging parties to provide conditions that promote a greater spread of ownership as envisaged by section 12A(3)(e) of the Act.
- 15. To promote a greater spread of ownership, the merging parties proposed to establish an Employee Share Ownership Plan ("ESOP") of at least 5% shareholding for the benefit of workers. The parties proposed that the ESOP will be implemented within 5 years post the implementation of the merger. However, the Commission's counterproposal is that the ESOP must be established within a period of 3 years and must be subject to specific design principles set out in "Annexure B".
- 16. In addition, the merging parties agreed to spend 10% of the Target Group's South African operations' net profit after tax (NPAT) each year for 5 years post the implementation date, on initiatives that support SMEs and HDP-owned firms and HDP youths to participate in or expand within markets.
- 17. The conditions are attached hereto as "Annexure A".
- 18. The proposed merger does not raise any other public interest concerns.

Conclusion

19. The Commission approves the proposed transaction with conditions attached hereto as "**Annexure A**".

ANNEXURE A

CONDITIONS

BCP VI NEPTUNE BIDCO HOLDINGS LIMITED AND

NETWORK INTERNATIONAL HOLDINGS PLC CASE NUMBER: 2023AUG0011

1. **DEFINITIONS**

The following expressions shall bear the meaning assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely:

- 1.1. "Acquiring Firm" means BCP VI Neptune Bidco Holdings Limited;
- 1.2. "Approval Date" means the date the Commission issues a Clearance Certificate;
- 1.3. "Commission" means the Competition Commission of South Africa;
- 1.4. "Commission Rules" means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.5. "Competition Act" means the Competition Act No 89 of 1998, as amended;
- 1.6. "Conditions" means these conditions;
- 1.7. "Day" means any business day, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.8. "ESOP" means an employee share ownership program to be implemented within the ESOP Establishment Period within [CONFIDENTIAL] which will hold a shareholding of 5% in the [CONFIDENTIAL];
- 1.9. "ESOP Establishment Period" means 36 months from the Implementation Date;
- 1.10. "HDPs" means historically disadvantaged persons, as contemplated in section 3(2) of the Act;

- 1.11. "Highly Skilled Employees" means employees of the Target Group at grade levels P S¹ in the case of Network International Payment Services Proprietary Limited, and at grade levels L1 L4² in the case of Payfast Proprietary Limited, and does not include any semi-skilled or unskilled workers;
- 1.12. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.13. "Merger" means the acquisition of sole control over the Target Firm by the Acquiring Firm;
- 1.14. "Merging Entity" / "Merged Entity" means collectively the Acquiring Firm and the Target Firm;
- 1.15. "Merger Parties" means the Acquiring Firm and the Target Firm;
- 1.16. "NPAT" means Net Profit After Tax;
- 1.17. "SME" means small, and medium sized entity;
- 1.18. "South Africa" means the Republic of South Africa;
- 1.19. "Target Firm" means Network International Holdings Plc;
- 1.20. "**Target Group**" means all firm directly and indirectly controlled by the Target Firm in South Africa:
- 1.21. "Tribunal" means the Competition Tribunal of South Africa; and
- 1.22. "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal.
- 1.23. "Qualifying Workers" means Workers employed at [CONFIDENTIAL]; and
- 1.24. "Workers" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1 In total over a period of 5 (five) years, commencing at the start of the Merged Entity's financial year following the Implementation Date, the Merged Entity shall, in the

¹ Grades levels P – S refer to Managers, AVP, Vice President and Senior Vice President, respectively.

Grades levels L1 – L4 refer to Executive Leader, Subdivision managers, Department Manager and Country Manager and Supervisor specialist, respectively.

aggregate, spend an amount equal to no less than the sum of 10% of the NPAT of the Target Group's South African entities for each of the relevant 5 (five) years, on establishing and/or continuing to support one or more of the following initiatives:

- 2.1.1. Enterprise and supplier development, in particular with regard to the promotion of the ability of SMEs and firms controlled or owned by HDPs to effectively enter into, participate in or expand within markets in South Africa.
- 2.1.2. Development of the experience, skills and knowledge of young HDP males and females, including through the provision of bursaries, learnerships and industry relevant training.

3. ESTABLISHMENT OF AN ESOP

3.1. The merging parties shall, during the ESOP Establishment Period, establish the ESOP for the benefit of Qualifying Workers. The ESOP shall be in accordance with the design principles attached hereto as **Annexure B**.

4. EMPLOYMENT

- 4.1. The Merger Parties shall not retrench any employee as a result of the merger.
- 4.2. The above condition shall not apply to executive and Highly Skilled Employees and shall apply for a period of 36 months from Implementation Date and includes the period between the Approval Date and the Implementation Date.
- 4.3. For the sake of clarity, merger-specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; or (vii) any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

5. MONITORING

5.1. For the duration of these conditions, the Target Group shall within 5 (five) Days of releasing the audited financial statements of its South African entities, provide the Commission with the NPAT of its South African operations.

- 5.2. Within 10 (ten) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 5.3. The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 5.4. The Merged Entity shall submit an affidavit to the Commission within 1 (one) month after each anniversary of the Implementation Date attesting to its compliance with undertakings set out in clause 2, clause 3 and clause 4 above.
- 5.5. The Commission may request such additional information from the Acquiring Firm which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

6. APPARENT BREACH

6.1. An apparent breach by the Acquiring Firm of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

7. VARIATION

7.1. The Acquiring Firm may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Acquiring Firm shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, amended and/or the time period for fulfilment to be extended as aforementioned.

8. GENERAL

8.1. All correspondences in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B

Design Principle	Applicable Criteria
Structure	 Will be a unitised structure whereby a trust will be established, and Qualifying Workers will receive units
Cost to Workers and participating HDPs	 Participation in the ESOP will be at no cost to Workers. Should the ESOP be funded through notional vendor funding, there must be provision for a fixed trickle dividend in terms of which at least 35% of declared dividends will be paid to the Workers with the remaining 65% used to service the vendor financed loan until such time as it is extinguished. Once the loan has been extinguished, 100% of the declared dividends due to the ESOP (after liabilities have been paid) will be distributed to Workers. The liabilities refer to costs (administration costs, rental, fees of third-party service providers such as auditors) and taxes.
Governance	 ESOP – Workers will be represented on the board of trustees of the ESOP.
Duration	ESOP will be evergreen
Participants	 ESOP – All Workers with at least 2 years or more experience at the Acquiring Group or Target Business
Participation Benefits	 ESOP – Qualifying Workers will be entitled to dividends

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SPUR GROUP (PTY) LTD

AND

NADOSTAX (PTY) LTD

CASE NUMBER: 2023AUG0045

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

The Transaction

- On 29 August 2023, Spur Group (Pty) Ltd ("Spur") notified an intermediate merger in terms of which Spur intends to acquire selected assets pertaining to the restaurant, franchise as well as the bakery businesses (collectively, "the Target Businesses") from Nadostax (Pty) Ltd ("Nadostax").
- 2. The primary acquiring firm is Spur, a private company incorporated in accordance with the laws of the Republic of South Africa. Spur controls numerous firms in South Africa. Spur is controlled by Spur Corporation Limited ("Spur Corporation"), a public company incorporated in the Republic of South Africa. Spur Corporation is not controlled by any other firm. Spur, the firms controlling it as well as the firms controlled by it will be referred to as "the Spur Group".
- 3. The Spur Group has a shareholding by historically disadvantaged persons ("HDPs") of 39.70%.
- 4. The Spur Group operates Casual Dining Restaurants ("CDRs"), predominately, on a franchise basis. Spur Group's CDR brands include 'Spur Steak Ranches', 'Panarottis Pizza Pasta', 'John Dory's Fish Grill and Sushi', 'RocoMamas', 'The Hussar Grill', 'Casa Bella' and 'Nikos'.

- 5. The primary target firm is Nadostax in respect of the following assets:
 - 5.1. the restaurant franchising business consisting of the contractual rights as franchisor under various franchise agreements with various franchisees, and associated intellectual property including trademarks, in respect of the "Doppio Zero", "Piza e Vino" and "Modern Tailors" restaurant brands ("Franchise Business");
 - 5.2. selected restaurants currently operated under the "Doppio Zero", "Piza e Vino" and "Modern Tailor" brands (collectively, the "Restaurant Business"); and
 - 5.3. the central kitchen/bakery business, which supplies baked goods (pastries, bread and similar products) to the group franchised restaurants as well as other corporate clients ("Bakery Business") (collectively, "the Target Businesses").
- 6. The Target Businesses operate in the CDR market under the 'Doppio Zero', 'Piza e Vino' and 'Modern Tailors'.
- 7. Nadostax does not have any shareholding by HDPs and consequently the Target Businesses do not have any ownership by HDPs.

Competition Assessment

8. The Commission's investigation of the proposed transaction found that there is a horizontal relationship between the activities of the merging parties as they both franchise as well as own and operate CDRs. However, the Commission found that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.

Public Interest considerations

- 9. The Honourable Minister of Trade, Industry and Competition ("Minister"), participated in this merger raising public interest concerns.
- 10. In order to promote the public interest, the merging parties have agreed to commitments to increase employment, HDP suppliers, and HDP participation in the CDR market.

- 11. The Commission found that the commitments tendered by the merging parties render the merger justifiable on substantial public interest grounds.
- 12. The Commission therefore approves the proposed transaction subject to the conditions attached hereto as **Annexure A**.

ANNEXURE A

SPUR GROUP (PTY) LTD

&

NADOSTAX (PTY) LTD

CASE NUMBER: 2023AUG0045

CONDITIONS

1. DEFINITIONS

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "Acquiring Group" means Spur Group (Pty) Ltd, its controller Spur Corporation (Pty) Ltd and all the firms that it controls;
- 1.2 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.3 **"Approval Date**" means the date on which the Proposed Transaction is approved in terms of the Act;
- 1.4 "CDR" means a full service sit down casual dining restaurant;
- 1.5 "Commission" means the Competition Commission of South Africa;
- 1.6 "Conditions" means the merger conditions included in this Annexure A;
- 1.7 "Days" means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.8 "HDP" means historically disadvantaged person as contemplated by the Act;
- 1.9 "HDP Supplier" means a supplier that is at least 51% HDP owned;
- 1.10 "Implementation Date" means the date on which the merger is implemented by the Merging Parties;
- 1.11 "Merger" means the proposed acquisition by the Acquiring Group of the Target Businesses as notified to the Commission under Case No. 2023AUG0045;
- 1.12 "**Merged Entity**" means the combination of the Acquiring Group and the Target Businesses;

- 1.13 "Merging Parties" means the Acquiring Group and the Target Businesses;
- 1.14 "Restaurant Business" means the 12-non-franchised restaurants operated under the "Doppio Zero", "Piza e Vino" and "Modern Tailor" brands;
- 1.15 "Seller" means Nadostax (Pty) Ltd;
- 1.16 "South Africa" means the Republic of South Africa;
- 1.17 "Target Businesses" means the restaurant franchising business operated by the Seller consisting of the contractual rights as franchisor under various franchise agreements with various franchisees, and associated intellectual property including trademarks, in respect of the "Doppio Zero", "Piza e Vino" and "Modern Tailors" restaurant brands ("franchising business"); the Restaurant Business; and The central kitchen/bakery business which supplies baked goods (pastries, bread and similar products) to the group franchised restaurants as well as other corporate clients ("bakery business");
- 1.18 "Tribunal" means the Competition Tribunal of South Africa; and
- 1.19 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal.

2. ENTERPRISE AND SUPPLIER DEVELOPMENT

- 2.1. The Acquiring Group shall spend an aggregate amount of R4.5 million (four million and five hundred thousand rands) towards enterprise and supplier development over a period of 3 (three) years from the Implementation Date.
- 2.2. For the avoidance of doubt, in fulfilment of the obligation in clause 2.1. above, the Acquiring Group shall spend R1.5 million (one million and five hundred thousand rands) per annum for a period of 3 (three) years starting from the year of the Implementation Date.

3. SKILLS DEVELOPMENT

3.1. The Acquiring Group shall spend an aggregate amount of R15 million (fifteen million) rands towards skills development over a period of 3 (three) years from the Implementation Date. This skills development expenditure shall benefit HDPs

- and lead to qualifications which are recognised by the National Qualification Framework.
- 3.2. For avoidance of doubt, in fulfilment of the obligation in 3.1. above, the Acquiring Group will spend R5 million (five million) rands per annum for a period of 3 (three) years starting from the year of the Implementation Date.

4. PROCUREMENT FROM HDP SUPPLIERS

- 4.1. The Acquiring Group shall source alternative suppliers in respect of ribs and chips who are HDPs within a period of 3 (three) years from the Implementation Date, subject to the availability of HDP suppliers to service the Merged Entity on reasonable commercial terms and in accordance with the Acquiring Group's requirements.
- 4.2. Additionally, during the first two years post the Implementation Date, the Acquiring Group shall seek alternative options for suppliers of meat. The chosen alternative meat suppliers will be HDP suppliers are able to supply products on reasonable commercial terms.
- 4.3. In addition to the above, the Acquiring Group shall, within a period of 5 (five) years from the Implementation Date increase its current number of HDP suppliers as follows:
 - 4.3.1. Source additional HDP suppliers in the chicken category which are able to supply products on reasonable commercial terms.
 - 4.3.2. Source additional HDP suppliers for its soft serve category which are able to supply products on reasonable commercial terms.
 - 4.3.3. Source additional HDP suppliers in the retail sauce product category which are able to supply products on reasonable commercial terms.
- 4.4. In addition to and without derogating from the obligation in 4.3. above, the Acquiring Group shall annually, for a period of 5 (five) years from the Implementation Date, put out at least one category to tender with the intent of appointing at least one HDP supplier in that category, provided that the supplier is able to supply products on reasonable commercial terms. Where an HDP supplier is not available or is unable to supply products on reasonable commercial terms, the Acquiring Group will endeavour to appoint at least one

- supplier who has majority HDP shareholding subject to such supplier being able to supply products on reasonable commercial terms.
- 4.5. For clarity, where in this clause 4, reference is made to alternative or additional HDP suppliers, this shall not be interpreted to mean that HDP suppliers must be the sole suppliers in that particular category.
- 4.6. This, clause 4, is subject to the Acquiring Group's objective criteria, internal requirements and standards.

5. HDP PARTICIPATION

- 5.1. The Merged Entity commits that at the expiry of 3 years post the Implementation Date, the Merged Entity shall ensure that at least between 27% and 30% of its franchised restaurants, will have at least a 25% shareholding by HDPs;
- 5.2. Without derogating from the Merged Entity's obligation in clause 5.1 above., to achieve the commitment set out in clause 5.1 above, the Merged Entity will, amongst others:
 - 5.2.1. prioritise new restaurant franchises that include HDP shareholders; and
 - 5.2.2. implementing the divestiture contemplated in clause 6 below.
- 5.3. Where a new franchised CDR format restaurant is opened with no HDP shareholding or is a non-franchised store, the Merged Entity commits that such new CDR format restaurant opened within 3 years of the Implementation Date, shall have at least the following HDP staff compliment
 - 5.3.1. 1 HDP store / restaurant operator;
 - 5.3.2. 4 HDP shift managers; and
 - 5.3.3. at least 30 front of house and back of house staff (including the store operator and shift managers).

6. DIVESTITURE OF THE MAJORITY OF THE RESTAURANT BUSINESS

6.1. Without derogating from the merged entity's obligation in clause 5.1 above, where commercially and strategically feasible to do so, the Merged Entity

- commits to divest the majority of the Restaurant Business within 3 years of the Implementation Date.
- 6.2. Any divestiture of the Restaurant Business shall prioritise purchasers that have HDP shareholders.

7. MONITORING

- 7.1. Within 10 (ten) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees and their employee representative(s). As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 7.2. Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 7.3. The Merged Entity shall submit a compliance report annually for a period of 5 years outlining its compliance with Clause 2 6 above. The report shall be accompanied by an affidavit from a director of the Acquiring Group confirming the accuracy of the information contained in the report,
- 7.4. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

8. APPARENT BREACH

8.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

9. VARIATION

9.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties

shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

10. GENERAL

10.1. All correspondence concerning the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

APEX CONSOLIDATION ENTITY LIMITED AND

IP MANAGEMENT COMPANY (RF) PROPRIETARY LIMITED

CASE NUMBER: 2023DEC0006

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

On 05 December 2023, the Competition Commission (the "Commission") received a
notice of an intermediate merger whereby, Apex Consolidation Entity Limited ("ACEL")
intends to acquire 100% of the issued shareholding in IP Management Company (RF)
Proprietary Limited ("IPMC"). Post implementation of the proposed transaction, ACEL
will exercise sole control over IPMC.

Parties

- 2. The primary acquiring firm, ACEL, is a company incorporated in accordance with the laws of England and Wales. ACEL is wholly-owned by Apex Structured Intermediate Holdings Limited, a wholly-owned subsidiary of Apex Structured Holdings Limited, which in turn is wholly-owned by Apex Group Ltd. The ultimate parent of Apex Group Ltd is Genstar GP.
- 3. Apex Group Ltd controls numerous other firms in South Africa, including Apex Fund Services South Africa Limited ("Apex Fund Services SA") and Apex Group Fund Managers Proprietary Limited, amongst others. In South Africa, ACEL wholly controls Efficient Group Propriety Limited ("Efficient"), which in turn wholly owns Boutique Investment Partners Proprietary Limited and Boutique Collective Investments Ltd, amongst others.

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- 4. ACEL, its subsidiaries and its controllers are collectively referred to as the "Apex Group".
- 5. ACEL does not have any direct shareholding by historically disadvantaged persons ("HDPs"), whilst its subsidiary, Apex Fund Services SA is held 10% by HDPs.
- 6. The primary target firm, IPMC, is not controlled by any person or firm. The current shareholders in IPMC are MitonOptimal Holdings Proprietary Limited (21.4%), Brett Paton (8.09%), Flagship Asset Management Proprietary Limited (21.4%) and MiPlan Proprietary Limited (49%).
- 7. IPMC does not control any firm.
- 8. IPMC does not have any shareholding by HDPs.

Activities

- 9. Globally, the Apex Group is a financial services provider that provides a range of solutions to asset managers, private clients and family offices. In South Africa, the Apex Group has two lines of business, namely asset management and fund administration.
- 10. IPMC acts as a manager of Collective Investment Schemes ("CISs"). IPMC's CISs administration includes offerings relating to co-branded portfolios and foreign-investment scheme representation. IPMC's investment product offering includes various Rand denominated funds across various sectors as well as tax-free savings accounts and representation of foreign-denominated funds.

Areas of overlap

11. The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the market for the provision of asset management services in South Africa. Within this market, there are several other asset management firms that provide similar products/services as the merging parties. Given the presence of viable alternatives services providers, the Commission of the view that the proposed transaction is unlikely to significantly alter the structure of the market for the provision of asset management services.

- 12. In addition, the proposed transaction results in a vertical overlap as the Apex Group (through Apex Fund Services SA) provides fund administration services to IPMC. The Commission found that the proposed transaction is unlikely to raise foreclosure concerns.
- 13. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

14. In order to promote a greater spread of ownership, the merging parties have committed that ACEL will implement an HDP transaction which will result in an HDP shareholder(s) acquiring 5% of the issued shares in IPMC within 24 (twenty-four) months of the implementation of the proposed transaction.

Conclusion

15. The Commission approves the proposed transaction subject to conditions attached as **Annexure A.**

ANNEXURE A

APEX CONSOLIDATION ENTITY LIMITED

AND

IP MANAGEMENT COMPANY (RF) PROPRIETARY LIMITED

CASE NUMBER: 2023DEC0006

1. **DEFINITIONS**

In this document, the expressions used below will have the appropriate meaning assigned to them and the following and related expressions will bear the following meaning:

- 1.1 "ACEL" means Apex Consolidation Entity Limited;
- 1.2 **"Approval Date**" means the date on which the Merger is approved by the Commission in terms of the Competition Act;
- 1.3 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4 "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.5 "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.6 "Conditions" means the conditions in this Annexure A;
- 1.7 "Days" means any day that is not a Saturday, Sunday or public holiday in South Africa;
- "HDPs" means historically disadvantaged persons as contemplated in section 3(2) of the Competition Act;
- 1.9 **"HDP Transaction"** means ACEL's commitment to sell not less than 5% of the issued share capital of IPMC on market-related terms to one or more HDP shareholders;
- 1.10 "Implementation Date" means the closing date on which the Merger is completed by the Merging Parties in terms of Clause 9 of the Sale and Purchase Agreement submitted as Annexure B to the Merger notification submitted to the Commission;
- 1.11 "IPMC" means IP Management Company (RF) Proprietary Limited;

- 1.12 "Merger" means the acquisition by ACEL of IPMC as notified to the Commission under Commission case number 2023DEC0006;
- 1.13 "Merging Parties" means collectively ACEL and IPMC;
- 1.14 "South Africa" means the Republic of South Africa;
- 1.15 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.16 "Tribunal Rules" mean the Rules for the Conduct of Proceedings in the Tribunal.

2. HDP TRANSACTION

2.1 ACEL shall, within 24 (twenty-four) months of the Implementation Date, implement the HDP Transaction. ACEL shall, at its sole discretion, determine the identity of the HDP shareholder(s) that will participate in the HDP Transaction.

3. MONITORING

- 3.1 The Merging Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 Prior to the implementation of the HDP Transaction, ACEL shall provide the Commission with details of the HDP Transaction in writing. These details will include, but not be limited to, the structure of the HDP Transaction, the terms of the HDP Transaction, the identities of the HDP shareholder(s) and evidence that these shareholder(s) are HDPs. Within 30 Days of receiving details of the HDP Transaction, the Commission will indicate to ACEL whether it approves the HDP Transaction. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's approval, which approval may not be unreasonably withheld.
- The Merging Parties shall inform the Commission in writing of the Implementation

 Date of the HDP Transaction within 5 (five) Days of its occurrence.
- 3.4 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with these Conditions.

4. VARIATION OF CONDITIONS

4.1 The Merging Parties may at any time, and on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merging Parties' application to the

Commission, the Merging Parties may apply to the Tribunal, on good cause shown, for appropriate relief.

5. APPARENT BREACH

5.1 Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

6. GENERAL

6.1 All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING: ECHO EDGE PROPRIETARY LIMITED

AND

THE IMMOVABLE PROPERTY AND RENTAL ENTERPRISE KNOWN AS 'KIMBERLEY JUNCTION'

CASE NUMBER: 2023DEC0010

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background on merging parties

- 1. The primary acquiring firm is Echo Edge Proprietary Limited ("Echo Edge"), a company jointly controlled by two family-owned trusts. Echo Edge, its controllers and all firms controlled by them are collectively referred to as the "Acquiring Group". The Acquiring Group invests in commercial real estate in South Africa. Of relevance to the proposed transaction are the 2 (two) retail properties located in Kimberley, Northern Cape, called Kimberley Shoprite and Shoprite Centre, Kimberley.
- 2. The primary target firm is the immovable property and rental enterprise known as "Kimberley Junction" ("Target Property"). The Target Property is currently owned by Lodestone Investments Proprietary Limited. The Target Property is located at 30 34 Currey and York Streets, City Centre, Kimberley, Northern Cape and comprises a retail shopping centre with a gross lettable area of approximately 5 633 m2.
- 3. Echo Edge intends to purchase the Target Property from Lodestone as a going concern.

Competition Analysis

4. The proposed transaction results in a horizontal overlap in retail property in Kimberley. However, the Commission found that the properties of the Acquiring Group and the Target Property are not in the same market and as such do not constrain each other. The Target Property is classified as a neighbourhood centre. Shoprite Centre, Kimberley and Kimberley Shoprite are classified as CBD/Town centres which are mainly occupied by the Shoprite supermarket.

5. The Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market.

Public interest analysis

- 6. The Acquiring Group undertakes that it shall, within 12 months after the Implementation Date and for 60 months, procure 100% of the day-to-day cleaning services and security services required by the Target Property from HDPs, or HDP owned firms. The conditions to this effect are attached in **Annexure A** of this report.
- 7. The Commission approves the proposed transaction subject to the conditions attached as **Annexure A** hereto.

ANNEXURE A

ECHO EDGE PROPRIETARY LIMITED

AND

THE IMMOVEABLE PROPERTY AND RENTAL ENTERPRISE KNOWN AS 'KIMBERLEY JUNCTION'

CASE NUMBER: 2023DEC0010

CONDITIONS

1 **DEFINITIONS**

- 1.1 The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning:
- 1.1.1 "Acquiring Firm" means Echo Edge Proprietary Limited;
- 1.1.2 "Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
- 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 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.1.6 **"Conditions"** means these conditions, and "Condition" means, as the context requires, any one of them;
- 1.1.7 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.8 "HDPs" means a Historically Disadvantaged Person(s) as contemplated contemplated by the Competition Act No. 89 of 1998 (as amended);
- 1.1.9 "HDP-owned" means owned as to, at least, 50% plus 1 share by HDP(s);
- 1.1.10 "Implementation Date" means the date, occurring after the Approval Date, on

which the Merger is implemented;

- 1.1.11 **"Kimberley Junction"** means the retail shopping centre located at 30 34 Currey and York Streets, City Centre, Kimberley, Northern Cape province, South Africa;
- 1.1.12 "Merged Entity" means the Target Property subject to control of the Acquiring Firm following the Implementation Date;
- 1.1.13 **"Merger"** means the acquisition by the Acquiring Firm of the immoveable property and the letting enterprise known as the Kimberley Junction as a going concern;
- 1.1.14 "Reporting Period" means a period of 60 months after the Implementation Date, or until such time as the Acquiring Firm is no longer the owner of the Target Property, whichever is shorter;
- 1.1.15 "South Africa" means the Republic of South Africa; and
- 1.1.16 "**Target Property**" means Kimberley Junction.

2 PROCUREMENT CONDITION

- 2.1 The Acquiring Firm undertakes that it shall, within 12 months after the Implementation Date and for the Reporting Period, contract HDPs, or HDP owned firms to provide all of the day-to-day cleaning services and security services required by the Target Property.
- 2.2 Compliance with the condition in 2.1 will be measured on an annual basis upon the anniversary of the Implementation Date, for the duration of the Reporting Period.

3 MONITORING OF COMPLIANCE

- The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2 The Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 5 years (five years), provide to the Commission a report detailing its compliance with the Condition. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report.
- 3.3 The Commission may request additional information from the Merged Entity, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Condition.

3.4 Any person, including any employee (and any employees of the Acquiring Firm), who believes that the Merged Entity has not complied with or has acted in breach of the Conditions may approach the Commission.

4 APPARENT BREACH

4.1 Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

5 VARIATION

5.1 The Merger Parties and/or the Commission may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, amended or relaxed. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6 **GENERAL**

All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

4U PROPRIETARY LIMITED

AND

HICELL HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: 2023DEC0024

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Introduction to the merging parties

- The primary acquiring firm is 4U Proprietary Limited ("4U"), a South African firm. The shareholders
 of 4U are Chatz & 4U Holdings Proprietary Limited and C Square Private Equity Fund.
- 4U mainly sells and distributes cellular handsets and accessories, as well as prepaid starter packs, cellular airtime contracts, vouchers, prepaid airtime and mobile data directly to customers as an independent service provider in various 'Vodacom 4U' franchise arrangements and/or 'Chatz Connect' dealership arrangements.
- 3. The primary target firm is Hicell Holdings Proprietary Limited ("Hicell Holdings"), a South African firm. The shareholdings of Hicell Holdings are Kofam Proprietary Limited ("Kofam") (55%), Benoba Trust (25%), and Ayanda Investments Proprietary Limited ("Ayanda Investments") (20%).
- 4. Hicell Holdings controls HiCell V-Shops Proprietary Limited ("HiCell V-Shops") (100%) and Ayanda Cellular Proprietary Limited ("Ayanda") as to 60% (the remaining 40% is held by Ayanda Investments). Mbau Cellular Proprietary Limited ("Mbau") is wholly owned by Ayanda Investments. RVR Cellular Proprietary Limited ("RVR") is controlled by Kofam as to 60% (the remaining 40% is held by MJ Kotzé. Universal Pulse Trading 213 Proprietary Limited ("Universal") is controlled by Kofam as to 60% and Benoba Trust as to 25%. HiCell Holdings, HiCell V-Shops, Ayanda, Mbau, RVR and Universal are herein collectively referred to as the "Target Firms" and singularly as "Target Firm".

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5. The Target Firms also sell and distribute cellular handsets and accessories, as well as prepaid starter packs, cellular airtime contracts, vouchers, airtime and mobile data directly to customers as an independent service provider and in terms of various 'Vodacom 4U' franchise arrangements and/or 'Chatz Connect' dealership arrangements.

Competition analysis

- 6. In the national market of cellular and mobile products and services market, the Competition Commission ("Commission") found that the merging parties will have a market share that is less than 2%. The Commission is of the view that the merging parties have a relatively small market share. In addition, the merging parties will continue to be face competition from other rivals such MTN South Africa, Cell C South Africa, PEP Cell and Telkom South Africa retail stores.
- 7. The Commission also considered local market overlaps in cities where the merging parties' stores overlap, being, Pretoria, Rustenburg, and Potchefstroom. The Commission considered the numbers stores of the merging parties and their competitors have in these areas. In these local markets, the Commission found that the merging parties will continue to face competition from other rivals such MTN South Africa, Cell C South Africa, PEP Cell and Telkom South Africa
- 8. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

Public interest

- 9. The Commission is of the view that the proposed transaction is unlikely to have a negative effect on employment.
- 10. The promote the public interest, the parties have agreed that post-merger, in the event that any of the Target Firms' stores are sold, at least 50% of such stores will be on-sold to HDP's within 36 (thirty-six) months.
- 11. The proposed transaction does not raise any other public interest concerns.

Conclusion

- 12. The proposed transaction is unlikely to substantially prevent or lessen competition in any market.
- 13. The transaction is approved with the public interest conditions attached in **Annexure A**.

ANNEXURE A

4U PROPRIETARY LIMITED

AND

HICELL HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: 2023DEC0024

CONDITIONS

1. **DEFINITIONS**

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "Acquiring Firm" means 4U Proprietary Limited;
- 1.2 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.3 "Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
- 1.4 "Commission" means the Competition Commission of South Africa;
- 1.5 "Conditions" means the merger conditions included in this Annexure A;
- 1.6 "Days" means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **"HDPs"** means historically disadvantaged persons as contemplated in section 3(2) of the Act;
- "Implementation Date" means the date, occurring after the last condition precedent to the Merger is fulfilled or waived, as the case may be, on which the Merger is implemented in accordance with its terms;
- "Merger" means the proposed acquisition of the Target Firm by the Acquiring Firm as notified to the Commission under Case No. 2023DEC0024;
- 1.10 "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.11 "South Africa" means the Republic of South Africa;
- 1.12 "Stores" means the 21 'Vodacom 4U' and/or 'Chatz Connect' franchisees / dealerships owned by the Target Firm;

- 1.13 "Target Firm" means Hicell Holdings Proprietary Limited; and
- 1.14 "Tribunal" means the Competition Tribunal of South Africa;

2. HDP OWNERSHIP

2.1. In the event that the Acquiring Firm sells the Stores, within 36-months (thirty-six) of the Implementation Date, the Acquiring Firm shall sell no less than 50% of the Stores to businesses controlled by HDPs or individuals that are HDP's as contemplated in Act.

3. MONITORING

- 3.1. Within 5 (five) days after the Implementation Date, the Merging Parties shall notify the Commission in writing of the Implementation Date.
- 3.2. By no later than 36-months (thirty-six) months of the Implementation Date, the Merging Parties shall submit a compliance report to the Commission confirming that the HDP transactions referred to in Clause 2.1 above has been implemented:
- 3.3. Prior to the sale of the Stores, the Acquiring Firm will provide the Commission with details of each of the sales in writing. These details shall set out:
 - 3.3.1. the structure of the sale:
 - 3.3.2. the identities of the HDP shareholder/s;
 - 3.3.3. evidence that the prospective participants to the sale are HDPs; and
 - 3.3.4. confirmation of whether the sale of the Stores constitutes a merger for the purposes of the Act.
- 3.4. For the avoidance of doubt, the sale of the Stores may not be implemented without the Commission's written approval, which, if details are in compliance with the conditions in clause 3.2 and 3.3 will be approved by the Commission within 30 Days of written notification, or such other period as may be agreed in writing.
- 3.5. The Commission may not withhold its approval unless it is clear that the Acquiring Firm will not be able to comply with the condition as stipulated in 2.1 above.
- 3.6. The Merging Parties shall submit a report on each anniversary of the Implementation Date, setting out its compliance with Clause 2 of the Conditions. This report shall be accompanied by an affidavit, attested to by a director of the Acquiring Firm, confirming the accuracy of the report.
- 3.7. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. APPARENT BREACH

4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. GENERAL

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and minstry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

POSEIDON PROPERTY INVESTMENTS (PTY) LTD AND SILVER LAKES CROSSING SHOPPING CENTRE (PTY) LTD

CASE NUMBER: 2023DEC0047

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

- On 19 December 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby Poseidon Property Investments (Pty) Ltd ("Poseidon") intends to acquire 100% of the shares in Silver Lakes Crossing Shopping Centre (Pty) Ltd ("Silver Lakes"). Upon implementation of the proposed transaction, Poseidon will exercise sole control over Silver Lakes.
- 2. The primary acquiring firm is Poseidon, a private company duly incorporated in terms of the laws of South Africa. Poseidon is a wholly owned subsidiary of the [CONFIDENTIAL]. Poseidon does not control any firms. The [CONFIDENTIAL] directly and indirectly control numerous firms. Poseidon and all the firms directly and indirectly controlling it are collectively referred to as the "Acquiring Group".
- 3. Neither Poseidon nor its controllers have any shareholding by historically disadvantaged persons ("HDPs") as contemplated in the Competition Act No.89 of 1998, as amended (the "Act").
- 4. The Acquiring Group operates as a real estate company specialising in shopping centre leasing, management, sales, and retail tenant representation and has shopping centres located in the Gauteng and Western Cape Provinces. Furthermore, the Acquiring Group owns office properties.
- The primary target firm is Silver Lakes, a private company duly incorporated in terms of the laws
 of South Africa. The shares in Silver Lakes are held by [CONFIDENTIAL]. Silver Lakes does
 not control any other firms.

- 6. Silver Lakes does not have any HDP shareholders.
- 7. Silver Lakes owns a convenience retail shopping centre in the East of Pretoria, namely, the Silver Oaks Crossing Shopping Centre ("Silver Oaks or Target Property") situated at the Cnr of Von Backstrom Boulevard & Solomon Mahlangu Drive, Willow Acres, Pretoria. Silver Oaks comprises of office and retail spaces, two motor dealerships, and a fast-food drive-through on a stand-alone plot all forming part of one rental enterprise. Silver Lakes also owns a few vacant stands which are adjacent to the Silver Oaks shopping centre.
- 8. Of relevance to the proposed transaction are the merging parties' interests in retail shopping centres and B-grade offices.

Competition Assessment

9. The Commission found that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in the markets for the provision of rentable retail space in community centres and the provision of rentable grade-B office space.

Public Interest considerations

- 10. The proposed transaction will not negatively impact any public interest considerations as envisaged in section 12A3(a) (e) of the Act.
- 11. In addition, the Acquiring Group has committed to procuring cleaning and security services from HDP-owned firms for a period of 36 months upon implementation of the proposed transaction. Thus, this commitment has been attached hereto as **Annexure A**.
- 12. The Commission therefore conditionally approves the proposed transaction.

ANNEXURE A

POSEIDON PROPERTY INVESTMENTS PROPRIETARY LIMITED

AND SILVER LAKES CROSSING SHOPPING CENTRE (PTY) LTD

CASE NUMBER: 2023DEC0047

1 **DEFINITIONS**

1.1	cognate expressions bear a corresponding meaning -
1.1.1	"Acquiring Firm" means Poseidon Property Investments Proprietary Limited;
1.1.2	"Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
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	"Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
1.1.5	"Competition Act" means the Competition Act, No. 89 of 1998, as amended;
1.1.6	"Conditions" collectively the conditions referred to in this document;
1.1.7	"Days" means business days other than a Saturday, a Sunday or an official public holiday in South Africa;
1.1.8	"HDPs" means a Historically Disadvantaged Person/s as defined in section 3(2) of the Competition Act;
1.1.9	"Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
1.1.10	"Merged Entity" means the Target Firm subject to control of the Acquiring Firm following the Implementation Date;
1.1.11	"Merging Parties" means collectively the Acquiring Firm and the Target Firm;

- 1.1.12 "Merger" means the acquisition by the Acquiring Firm of 100% of the entire issued share capital of the Target Firm;
- 1.1.13 "South Africa" means the Republic of South Africa;
- 1.1.14 "Target Firm" means Silver Lakes Crossing Shopping Centre Proprietary Limited;
- 1.1.15 **"Target Property"** means the Silver Oaks Crossing Shopping Centre in Willow Acres, Pretoria;
- 1.1.16 "**Tribunal**" means the Competition Tribunal of South Africa.

2 **CONDITION**

2.1 HDP PROCUREMENT

2.1.1 The Acquiring Firm will use HDP owned or controlled suppliers for a period of 36 months from the Implementation Date to provide cleaning and security services at the Target Property.

3 MONITORING OF COMPLIANCE WITH THE CONDITION

- 3.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2 The Merged Entity shall, annually on the anniversary of the Implementation Date, provide the Commission with a report identifying the HDP suppliers appointed at the Target Property to provide cleaning and security services, and their respective performance.
- 3.3 The report referred to in clause 3.2 above, shall be accompanied by an affidavit attested to by a senior official of the Acquiring Firm attesting to the accuracy of the annual report and full compliance of the Conditions in the 12-month period to which the report relates.
- 3.4 The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4 APPARENT BREACH

4.1 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.

5 VARIATION

5.1 The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

6 **GENERAL**

6.1 All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ALFECO HOLDINGS (PTY) LTD AND PRO ROOF INDUSTRIAL PARK (PTY) LTD

CASE NUMBER: 2023OCT0061

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

 On 26 October 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Alfeco Holdings (Pty) Ltd ("Alfeco") intends to acquire 100% of the entire issued share capital of Pro Roof Industrial Park (Pty) Ltd ("Pro Roof").

Parties and their Activities

- 2. The primary acquiring firm is Alfeco. Alfeco is owned and controlled by the Ahuja Family Trust (70%) and Mr Sachin (30%). Alfeco owns 78.53% of Veer Steel Mills (Pty) Ltd ("Veer Steel Mills").
- 3. The Commission notes that 70% of the shares in Alfeco are held by historically disadvantaged persons ("HDPs"), with black women holding 35% of the shares.
- 4. The primary target firm is Pro Roof. Pro Roof is wholly owned and controlled by Coin Wise Trading 42 (Pty) Ltd ("Coin Wise"). Pro Roof wholly owns and controls SA Steel Mills (Pty) Ltd ("SA Steel Mills").
- 5. 100% of the shares in Pro Roof are held by HDPs, with black women holding 38.08% of the shares.

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- 6. Alfeco is active in the manufacture and sale of steel, aluminium, copper, copper alloys and other related products. Alfeco also operates in the energy sector.
- 7. Veer Steel Mills, a subsidiary of Alfeco is a manufacturer and supplier of long steel products. It manufactures a variety of light section steel products, designed in accordance with customer specifications to satisfy various small construction and fabrication needs. Products range from light bars, ultra-light angles, light channels to window sections. Veer Steel Mills also manufactures ultra-light and light long steel products as well as converting scrap metal into numerous types of steel sections.
- 8. Pro Roof is an investment holding company which owns SA Steel Mills. SA Steel Mills is a manufacturer and supplier of long steel products, that are sold to the structural and construction sectors. The product range comprises heavy sections, angle iron, channels, structural beams and columns, IPE sections, reinforcing rebars, billets, and blooms.

Competition Assessment

9. The Commission found that there is a horizontal overlap between the merger parties' regards long steel products. However, the Commission found that the merged entity will not have substantial market shares and consequently, the merger is unlikely to result in a substantial lessening and prevention of competition in any relevant market.

Public interest

- 10. To advance the public interest the merging parties agreed to establish an ESOP, as set out in the conditions attached as **Annexure A** hereto.
- 11. The proposed transaction does not raise any other public interest concerns.

Conclusion

12. The Commission approves the proposed transaction subjected to the attached conditions.

ANNEXURE A

CONDITIONS

ALFECO HOLDINGS (PTY) LTD

AND

PRO ROOF (PTY) LTD

CASE NUMBER: 2023OCT0061

1. **DEFINITIONS**

The following expressions shall bear the meaning assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely:

- 1.1. "Acquired Firm" means SA Steel Mills (Pty) Ltd, registration number 2006/001351/07, a limited liability private company duly incorporated in South Africa, and the wholly owned subsidiary of the Target Firm;
- 1.2. "Acquiring Firm" means Alfeco Holdings (Pty) Ltd;
- 1.3. "Approval Date" means the date the Commission issues a Clearance Certificate;
- 1.4. "Commission" means the Competition Commission of South Africa;
- 1.5. "Commission Rules" means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.6. "Competition Act" means the Competition Act No 89 of 1998, as amended;
- 1.7. "Conditions" means these conditions;
- 1.8. "Day" means any business day, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.9. "ESOP" means an employee share ownership program to be implemented within the ESOP Establishment Period, which will hold a shareholding of 10% in the Acquired Firm;
- 1.10. "ESOP Establishment Period" means 36 months from the Implementation Date;
- 1.11. "HDPs" means historically disadvantaged persons, as contemplated in section 3(2) of the Act:

- 1.12. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merged Entity;
- 1.13. "**Merger**" means the acquisition of sole control over the Target Firm by the Acquiring Firm;
- 1.14. "Merged Entity" means collectively the Acquiring Firm and the Target Firm;
- 1.15. "Target Firm" means Pro Roof (Pty) Ltd;
- 1.16. **"SA Steel Mills"** means SA Steel Mills (Pty) Ltd which is wholly owned by the Target Firm in South Africa:
- 1.17. "Tribunal" means the Competition Tribunal of South Africa;
- 1.18. "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal.
- 1.19. "Qualifying Workers" means all Workers employed at the Acquired Firm; and
- 1.20. "Workers" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESTABLISHMENT OF AN ESOP

- 2.1. The Acquired Firm shall, during the ESOP Establishment Period, establish the ESOP for the benefit of the Qualifying Workers.
- 2.2. The ESOP will hold 10% of the issued shares in the Acquired Firm. The ESOP shall be in accordance with the design principles attached hereto as **Annexure B**.

3. MONITORING

- 3.1. The Merged Entity shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 3.2. The Merged Entity shall submit an affidavit to the Commission within 1 (one) month after each anniversary of the Implementation Date attesting to its compliance with undertakings set out in clause 2 above.

3.3. The Commission may request such additional information from the Merged Entity which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

4. APPARENT BREACH

4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. GENERAL

6.1. All correspondences in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B

Design Principle	Applicable Criteria
Structure	 Will be a unitised structure whereby a trust will be established, and Qualifying Workers will receive units.
Cost to Workers and participating HDPs	 No cost to workers: Workers must not be required to pay to participate in the ESOP.
	The ESOP may be funded through national vendor funding. The notional vendor funding will provide for a fixed trickle dividend in terms of which at least 35% of declared dividends will be paid to the beneficiaries with the remaining 65% used to service the vendor financed loan until such time as it is extinguished.
	 Once the loan has been extinguished, 100% of the declared dividends due will be distributed to the beneficiaries.
	The Merging Parties must make provision and cover the reasonable costs for independent legal and financial experts to act on behalf of workers in ESOP establishment negotiations (the "Provision"). For the avoidance of doubt, the Provision shall be at no cost to workers and must not impact any dividend flows due to workers.
	 Any disputes between the Merging Parties and any independent legal and financial experts as regards the reasonableness of fees / costs must be resolved by arbitration or any other mutually agreed dispute resolution mechanism.
Governance	 Workers will be represented on the board of trustees of the ESOP.
Duration	Perpetual / Evergreen.
Participants	 All Workers with minimum requirement of 2 years tenure although no qualifying criteria is preferred or more experience at the Acquiring Group or Target Business.
Participation Benefits	 All Qualifying Workers will be entitled to dividends. Beneficiaries (i.e. Qualifying Workers) will cease to participate for bad leaver events: resignations and dismissals.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MACK AND SCHULE AG AND MERIDIAN HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: 2023OCT0063

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- 1. On 22 October 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby, Mack and Schule AG ("Mack and Schuhle") intends to acquire a [CONFIDENTIAL] shareholding in Meridian Holdings Proprietary Limited ("Meridian Holdings"). Upon the implementation of the proposed transaction, Mack and Schuhle will have joint control over Meridian Holdings as envisaged in section 12(2)(g) of the Competition Act, together with other shareholders.
- 2. As part of the proposed transaction, Mack and Schuhle will transfer its in will transfer its [CONFIDENTIAL] non-controlling minority shareholding in Craft Liquor Merchants Proprietary Limited ("CLM") into Meridian Holdings. This is because the acquisition of share in Meridian Holding by Mack and Schuhle is an asset for share transaction. Postmerger CLM will be controlled by Meridian Holdings, whose controlling shareholding in CLM will increase from 44.8%, to approximately 70%. The Commission considers that the merger constitutes an indivisible transaction.
- 3. The primary acquiring firm is Mack and Schuhle, a company incorporated in accordance with the laws of Germany. Mack and Schuhle is controlled by [CONFIDENTIAL]. The merging parties submit that Mack and Schuhle does not have any shareholding held by historically disadvantaged persons ("HDPs") or workers.

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- 4. Mack and Schuhle is only active in South Africa through its **[CONFIDENTIAL]** minority non-controlling shareholding in CLM. CLM is involved in the marketing and wholesaling of alcoholic beverages including sparkling wine.
- 5. The primary target firm is Meridian Holdings, a company incorporated in accordance with the laws of South Africa. Meridian has various subsidiaries in South Africa. For purposes of the proposed transaction, Meridian and all its subsidiaries shall be referred to as the "Target Group".
- The merging parties submit that the Meridian Holdings does not have shareholdings held by HDPs. However, the following subsidiaries of Meridian Holdings have shareholding held by HDPs, namely: Born Free Investments281 (Pty) Ltd ([CONFIDENTIAL]); and Managed People Solutions Proprietary Limited ([CONFIDENTIAL]).
- 7. The Target Group is active in the marketing and wholesaling of wine in South Africa. It also provides marketing, logistics, supply chain and debtor collection services. Whereas Meridian Wine Services provides IT, accounting, and administrative management services. Whilst Managed People Solutions provides Human Resources, Recruitment, and merchandising services.
- 8. The Commission considered the activities of Mack and Schuhle and Meridian Holdings and found that there is no overlap between their activities as Mack and Shule does not have any controlling interest in any firm that is active in South Africa. The Commission also considered the activities of CLM and Meridian Holdings since post- CLM will be controlled by Meridian Holdings and found that their activities overlap in respect of the marketing and wholesale of sparkling wine in South Africa.
- The Commission found that the merged entity would have an estimated combined market share of [CONFIDENTIAL] in the national market for the marketing and wholesale of sparkling wine in South Africa. These market shares are based on the units of sparkling wine sold.
- 10. With respect to vertical relationship, the Commission notes that the services procured Mack and Schuhle from Meridian Holdings are widely available from numerous service providers in South Africa. The Commission concluded that the above vertical relationship is unlikely to raise any competition concerns and therefore the Commission did not assess the above further.

- 11. Taken as a whole, the proposed merger is unlikely to substantially prevent or lessen competition in any market.
- 12. The Commission found that the transaction will not have a negative effect on employment.
- 13. The Commission found that the proposed transaction does not promote greater spread of ownership, in particular to increase the levels of ownership by HDPs and workers in firms in the market. In this regard, the merging parties agreed to engage with the Meridian Foundation regarding an alternative form of ownership within Meridian Holdings within 12 months of the approval date. The merging parties have also tendered other public interest remedies to promote the expansion of HDP firms to enter into international markets in Africa, Germany, and United States of America.
- 14. Taken as a whole the Commission is of the view that the transaction is justifiable on substantial public interest grounds.
- 15. The Commission therefore approves the proposed merger subject to the conditions contained in **Annexure A.**

ANNEXURE A

MACK AND SCHUHLE AG

AND

MERIDIAN HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: 2023OCT0063

CONDITIONS

1 DEFINITIONS

- 1.1 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings, namely:
- 1.1.1 "Act" means the Competition Act No. 89 of 1998 (as amended);
- 1.1.2 "Acquiring Firm" means Mack and Schuhle AG, referred to as "Mack and Schuhle":
- 1.1.3 **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC 15);
- 1.1.4 "Commission" means the Competition Commission of South Africa;
- 1.1.5 "Commission Rules" means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.1.6 **"Conditions"** means these conditions:
- 1.1.7 **"Days"** mean business days in South Africa;
- 1.1.8 "HDPs" mean historically disadvantaged persons, as contemplated in section3(2) of the Act;
- 1.1.9 "HDP Transaction" means the option to be given by the Target Group to the Meridian Foundation to exchange at value its shares held in subsidiaries within the Target Group for issued share capital in Meridian Holdings within 12 (twelve) months from Approval Date;
- 1.1.10 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.1.11 "Managed People Solutions" means Managed People Solutions Proprietary Limited: 1.1.12 "Mack and Schuhle" means Mack and Schuhle AG; 1.1.13 "Merger" means the acquisition of joint control of the Target Group by the Acquiring Firm, which constitutes an intermediate merger; 1.1.14 "Merging Parties" means Mack and Schuhle and Meridian Holdings; 1.1.15 "Meridian Foundation" means Meridian Foundation NPC, a non-profit company with HDP students as is beneficiaries. 1.1.16 "Meridian Holdings" means Meridian Holdings Proprietary Limited; 1.1.17 "Proposed Transaction" means the acquisition of a [CONFIDENTIAL] shareholding in Meridian Holdings by Mack and Schuhle; 1.1.18 "Target Group" means Meridian Holdings Proprietary Limited which will be referred to as "Meridian Holdings" and its subsidiaries; and 1.1.19 "Tribunal" means the Competition Tribunal of South Africa.

2 CONDITIONS FOR THE APPROVAL OF THE MERGER

The ability of small and medium businesses or firms controlled or owned by historically disadvantaged persons to effectively enter into, participate in or expand within the market

- 2.1 Within 12 months of the Approval Date, the Target Group shall identify at least two HDP controlled firms that are active in the alcohol beverage industry. The Target Group will enter into a distribution and marketing agreement with each of the identified HDP firms in terms of which, amongst others, the Target Group will market and distribute each HDP firms' alcoholic beverages in South African and international markets.
- 2.2 The Target Group commits to providing the distribution services contemplated in clause 2.1 at no cost to the identified HDP firms for the first three years of being contracted by the Target Group.

HDP ownership

In order to further promote HDP ownership within the Target Group, the Merging Parties upon approval of the Merger, commit to:

- 2.3 immediately write-off the **[CONFIDENTIAL]** loan provided to the Meridian Foundation with effect from the Implementation Date.
- 2.4 within a period of 12 (twelve) months from Approval Date, engage with the Meridian Foundation regarding the HDP Transaction.
- 2.5 Should the Meridian Foundation elect to exercise its option and enter into the HDP Transaction, the Target Group shall within a period of 12 (twelve) months from the Approval Date of the Proposed Transaction implement the HDP Transaction.
- 2.6 The Target Group shall prior to implementing the HDP Transaction, inform the Commission of the percentage shareholding that will be issued to the Meridian Foundation in Meridian Holdings as a result of the HDP Transaction.

3 MONITORING COMPLIANCE WITH THE CONDITIONS

- The merging parties shall inform the Commission in writing of the Implementation

 Date within 5 (five) Days of it becoming effective.
- 3.2 Within 30 days of the Approval Date of the transaction, the Target Group must provide the Commission with written confirmation that the Target Group wrote-off the [CONFIDENTIAL] loan provided to the Meridian Foundation.
- 3.3 Should the Meridian Foundation elect to exercise the option as per the HDP Transaction, then the Target Group must provide the Commission with the details pertaining to the HDP Transaction prior to entering into the HDP Transaction. This information will include the percentage of shareholding that would be exchanged, the shareholder agreements and other documents setting out the rights and shareholding rights of the Meridian Foundation.
- 3.4 Should the Meridian Foundation elect not to exercise its option and not pursue the HDP Transaction, the Commission should be informed immediately of such election and the reasons for the decision by the Meridian Foundation.

- 3.5 The Target Group shall within 5 (five) days of concluding an agreement with a HDP firm as envisaged in paragraph 2.1, provide the Commission with the names and details of the HDP firm, together with the confirmation that the entity is owned/controlled by HDPs. These details shall include, but not be limited to, the identities of prospective HDPs, evidence that prospective participants are HDPs and the draft marketing and distribution agreements that would be entered into between the parties.
- The Target Group shall submit a report on each anniversary of the Approval Date for the duration of the Conditions (as applicable), setting out its compliance with the Conditions set out in clauses 2.1 to 2.4 above. This report shall be accompanied by an affidavit, attested to by a director of the Target Group, confirming the accuracy of the report. Such report shall include, amongst others:
- Details of the agreement entered into between the HDP firms and the Target Group;
- 3.6.2 Details of the distribution and marketing support provided by the Target Group to the HDP firms;
- 3.6.3 Compliance with the requirements and commitments set out in clause 2.1 to 4;
- 3.6.4 Proof that the HDP firms products have/are being marketed to the Target Group's customers;
- 3.6.5 The total volume(s) of beverages sold of the HDP firms annually that were marketed by the Target Group in both the local and international markets;
- The total volume(s) of the beverages sold by the merging parties in local and international markets annually for three years;
- 3.6.7 Proof that the Target Group has assisted the HDP / SMME firms with expanding into international and national markets;

4 APPARENT BREACH

4.1 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 by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5 VARIATION OF THE CONDITION

The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6 GENERAL

6.1 All correspondence in relation to these conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

KLINGER (PTY) LTD AND

INTERNATIONAL THERMAL & ACOUSTICS (PTY) LTD

CASE NUMBER: 2023SEP0010

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

1. On 08 September 2023, the Competition Commission (the "Commission") received notice of an intermediate merger whereby Klinger (Pty) Ltd ("Klinger"), intends to acquire the entire issued share capital of International Thermal & Acoustics (Pty) Ltd ("International Thermal & Acoustics"). Post implementation of the proposed transaction, International Thermal & Acoustics will be merged into Klinger and will be operated as a division of Klinger. Accordingly, Klinger will exercise sole control over International Thermal & Acoustics.

Parties

- 2. The primary acquiring firm, Klinger, is a company incorporated in South Africa. Klinger is controlled by Klinger Holding GMBH ("Klinger Holding"), a company incorporated in Austria. Klinger Holding is owned by HKL Holding Stiftung, a trust registered in Liechtenstein. Apart from Klinger, Klinger Holding does not directly control any other firm in South Africa. Klinger directly controls Klinger Mzansi (Pty) Ltd.
- 3. Klinger does not have any shareholding by historically disadvantaged persons ("HDPs").

- 4. The primary target firm, International Thermal & Acoustics, is company incorporated in South Africa. International Thermal & Acoustics is jointly controlled by Mr LW Phelps (50%) and Mr MS Phelps (50%). International Thermal & Acoustics does not control any firm in South Africa.
- 5. International Thermal & Acoustics does not have any shareholding by HDPs.

Activities

- 6. Klinger manufactures and supplies fluid sealing and control products and services to a wide variety of industrial customers located in South Africa and internationally. The range of products supplied by Klinger include gaskets, compressed fibre sheeting, valves, gland packing, engineering plastics and also provides general mechanical engineering services (on a fee basis). Klinger operates various production facilities located in Johannesburg, Wadeville, Cape Town and Durban.
- 7. International Thermal & Acoustics designs and supplies cryogenic thermal insulation as well as acoustic insulation. International Thermal & Acoustics operates through 3 branches located in Johannesburg, Cape Town and Durban.

Competition analysis

- 8. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap as Klinger does not provide any services in competition with International Thermal & Acoustics. In addition, the proposed transaction does not result in a vertical overlap.
- 9. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected markets.

Public interest

Employment

10. There are no employment concerns arising.

Effect on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons (HDPs) and workers in the market

11. Neither Klinger nor International Thermal & Acoustics have shareholding by HDPs. In order to address the greater spread of ownership requirements, Klinger will establish a franchise business model whereby HDPs will be given the opportunity to open retail outlets and trade under the name Klinger Direct. The beneficiaries of the model will be HDPs who will wholly own and control the operations at the retail outlets of their respective businesses. Klinger will roll out at least [CONFIDENTIAL] new outlets located throughout South Africa in the next 3 years.

Conclusion

12. The Commission approves the proposed transaction subject to conditions in **Annexure A**.

ANNEXURE A

KLINGER (PTY) LTD

AND

INTERNATIONAL THERMAL & ACOUSTICS (PTY) LTD

CASE NUMBER: 2023SEP0010

CONDITIONS

1 **DEFINITIONS**

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- 1.1. "Acquiring Firm" means Klinger (Pty) Ltd;
- 1.2. "Approval Date" means the date on which the Commission issues a Clearance Certificate in terms of the Competition Act;
- 1.3. "Commission" means the Competition Commission of South Africa;
- 1.4. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission issued in terms of section 21 of the Competition Act;
- 1.5. "Competition Act" means the Competition Act No. 89 of 1998, as amended;
- 1.6. "Conditions" means these conditions contained in this Annexure A;
- 1.7. "Days" means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
- "HDPs" means historically disadvantaged persons as defined in section 3(2) of the Competition Act;
- 1.9. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;

- 1.10. "IP" means the intellectual property rights owned by the Acquiring Firm or its nominees including but not limited to certain trademarks, trade names, services marks, logotypes, commercial symbols, copyrights and patents applicable to the Klinger product range and services;
- 1.11. "Klinger" means the Acquiring Firm;
- 1.12. "Klinger Direct Business Model" means a franchise-based business model to be implemented by the Acquiring Firm whereby HDPs will be given the opportunity to trade under the name Klinger Direct, be permitted to sell Klinger products and use the IP rights owned by the Acquiring Firm. This will comprise of at least [CONFIDENTIAL] HDP-owned outlets located in the Territories acquiring the exclusive right to own and operate a Klinger franchise store in a dedicated and exclusive geographic area with a dedicated number of existing customers;
- 1.13. **"Merger"** means the acquisition of the entire issued share capital of the Target Firm by the Acquiring Firm;
- 1.14. "Merger Parties" means the Acquiring Firm and the Target Firm;
- 1.15. "South Africa" means the Republic of South Africa;
- 1.16. "Target Firm" means International Thermal & Acoustics (Pty) Ltd;
- 1.17. "Territories" means the Gauteng, Free State, North West, Northern Cape, Western Cape, Eastern Cape, KwaZulu-Natal, Mpumalanga and Limpopo provinces;
- 1.18. "Tribunal" means the Competition Tribunal of South Africa; and
- 1.19. "Tribunal Rules" means Rules for the Conduct of Proceedings in the Tribunal.

2 CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1. Within 3 (three) years of the Implementation Date, the Acquiring Firm shall implement the Klinger Direct Business Model.
- 2.2. The Merged Entity shall not charge HDPs any royalty fees or any other fees in the implementation of the Klinger Direct Model.
- 2.3. For the avoidance of doubt, the Acquiring Firm's implementation of the Klinger Direct Business Model shall entail the Acquiring Firm providing to each HDP, the following support, at no cost:
 - 2.3.1. Branding and marketing
 - 2.3.2. Technical support
 - 2.3.3. Training
 - 2.3.4. Admin (invoicing)
 - 2.3.5. Advice.
- 2.4. Prior to implementing the Klinger Direct Business Model, the Acquiring Firm will provide the Commission with details of Klinger Direct Business HDPs beneficiaries in writing. These details shall include, but not be limited to, the number of the prospective HDP beneficiaries, the identities of prospective HDPs beneficiaries, evidence that the prospective beneficiaries are HDPs, details of the outlets and Territories in which the Klinger Direct Business Model will be operated.
- 2.5. Within 60 (sixty) Days of receipt of the details of the Klinger Direct Business Model, the Commission shall provide its written approval or any comments or queries regarding the Klinger Direct Business Model.
- 2.6. For avoidance of doubt, the Klinger Direct Business Model shall not be implemented without the prior written approval of the Commission.

3 MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.

- 3.2. The Acquiring Firm shall, for a period of 3 (three) years, on the anniversary of the Implementation Date, provide the Commission with an affidavit attesting to its compliance with clause 2.
- 3.3. The Commission may request such additional information from the Acquiring Firm, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4 APPARENT BREACH

4.1. An apparent breach by the Acquiring Firm of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

5 VARIATION

5.1. The Acquiring Firm may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Acquiring Firm shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, amended and/or the time period for fulfilment to be extended as aforementioned.

6 **GENERAL**

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

THE LION MATCH COMPANY (PTY) LTD

AND

SYLKO (PTY) LTD AND VALIDUS MEDICAL (PTY) LTD

CASE NUMBER: 2023SEP0012

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms, subject to conditions set out below:

The Transaction

1. On 11 September 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby the Lion Match Company (Pty) Ltd ("Lion Match") intends to acquire 100% of the issued share capital in each of Sylko (Pty) Ltd ("Sylko") and Validus Medical (Pty) Ltd ("Validus") (collectively referred to as the "Target Firms"). Following completion of the proposed transaction, Lion Match will exercise sole control over the Target Firms as envisaged by section 12(2) of the Competition Act No. 89 of 1998, as amended ("Act").

The parties and their activities

2. The primary acquiring firm is Lion Match, a private limited liability company incorporated under the laws of South Africa. Lion Match is wholly owned and controlled by Fasic Investment Corporation Limited ("Fasic"). Fasic is an unlisted public company which is not controlled by any entity or person. Lion Match and all the firms directly and indirectly

controlling it will hereinafter collectively be referred to as the "Acquiring Group". The Commission notes that the Acquiring Group has 100% HDP shareholding pre-merger.

- 3. The Acquiring Group is involved in the manufacture and sale of a variety of goods (primarily consumer goods). Relevant to the proposed transaction are the personal care (e.g. wet wipes) supplied by the Acquiring Group.
- 4. The Target Firms are Sylko and Validus which are private companies incorporated in South Africa. Both the Target Firms are controlled by Twinsaver Holdings Proprietary Limited ("Twinsaver"). The Target Firms do not control any firms. The Commission notes that the Target Firms have 27.03% HDP shareholding pre-merger.
- 5. Sylko manufactures disposable household and leisure products such as aluminium foil and containers, food wraps, paper tableware and baking accessories. Validus manufactures, imports and distributes disposable adult care and related products in the following categories: adult care (consisting of a full range offering of diapers, pull-ups, pads and underpads etc), wet wipes, and patient care.

Competition assessment

- 6. The Commission considered the activities of the merging parties and found that there is no horizontal overlap between the activities of the Acquiring Group and Sylko. However, there is a horizontal overlap between the activities of the Acquiring Group and Validus in relation to the market for the supply of personal care and, in particular wet wipes in South Africa.
- 7. However, the Commission found that the merger is unlikely to substantially lessen or prevent competition in any relevant.

Public Interest

Effect of the merger on employment

8. The Commission found that the merger will result in 62 Validus employees being required to relocate to the Acquiring Group's operations in Cape Town as Validus's Gauteng operations are not financially viable. The merging parties proposed to cover the relocation

costs of any Validus employees and to redeploy up to 5 Validus employees at Twinsaver's Gauteng operations. Those Validus employees that refused to relocate would likely be retrenched post-merger. This effect on employment was of concern to the relevant trade unions, namely AMCU and SACTWU.

- 9. The Commission engaged with the merging parties in order to mitigate the number of Validus employees that may be retrenched due to their refusal to relocate to the Acquiring Group's Cape Town operations or not being redeployed to Twinsaver's operations (the "Affected Employees"). The merging parties have agreed to increase the relocation assistance to be provided to employees that opt to relocate to the Acquiring Group's Cape Town operations post-merger and increasing the number of redeployments in lieu of relocation post-merger; and giving first preference to the Affected Employees for any post-merger vacancies within the Merged Entity. The Commission considers that these commitments adequately mitigate any employment concerns. These commitments are set out as conditions to this merger approval, in Annexure A hereto.
- The proposed transaction does not raise any other public interest concerns.
 Conclusion
- 11. The Commission therefore approves the proposed transaction subject to conditions attached in "Annexure A".

ANNEXURE A

THE LION MATCH COMPANY (PTY) LTD

AND

TWINSAVER HOLDINGS (PTY) LTD

AND

SYLKO (PTY) LTD AND VALIDUS MEDICAL (PTY) LTD

CASE NUMBER: 2023SEP0012

CONDITIONS

1. **DEFINITIONS**

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -
 - 1.1.1. "Acquiring Firm" means The Lion Match Company (Pty) Ltd;
 - 1.1.2. "Affected Employees" means the Employees of Validus that may potentially be retrenched due to their inability and/or unwillingness to relocate and/or be redeployed;
 - 1.1.3. "Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
 - 1.1.4. "BCEA" means the Basic Conditions of Employment Act, 1997;
 - 1.1.5. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.6. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission issued in terms of section 21 of the Competition Act;

- 1.1.7. "Competition Act" means the Competition Act 89 of 1998, as amended;
- 1.1.8. "Conditions" means these conditions, and "Condition" means, as the context requires, any one of them;
- 1.1.9. "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.10. "Employees" means any permanent employee (as contemplated under the Labour Relations Act, No. 66 of 1995) of Validus in South Africa, but excluding top and senior management;
- 1.1.11. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12. "LRA" means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.1.13. **"Merged Entity"** means the Target Firm subject to control of the Acquiring Firm following the Implementation Date;
- 1.1.14. "Merging Parties" means the Acquiring Firm and the Target Firms;
- 1.1.15. "Merger" means the acquisition of 100% of the issued share capital in Sylko and Validus by Lion Match;
- 1.1.16. "Relocation Costs" means the reasonable costs that the Merging Parties are willing to cover for the relocation of Validus' Relocating Employees, their families and their belongings, from Vereeniging to Cape Town.
- 1.1.17. "Relocating Employees" means the Employees of Validus that will be relocated from Validus plant in Vereeniging to the Lion Match plant in Epping, Cape Town;
- 1.1.18. "Salary Increment" means the intended increase of the salaries of Validus Relocating Employees' who earn a salary lower than the BCEA threshold of R20 093 per month determined on a cost to company basis which salary increase will be implemented by the Merged Entities following these employees' relocation to Cape Town;
- 1.1.19. "Sylko" means Sylko (Pty) Ltd, one of the Target Firms;

- 1.1.20. "South Africa" means the Republic of South Africa;
- 1.1.21. "Target Firms" means Sylko and Validus;
- 1.1.22. "Tribunal" means the Competition Tribunal of South Africa;
- 1.1.23. "Tribunal Rules" means Rules for the Conduct of Proceedings in the Tribunal;
- 1.1.24. "**Twinsaver Group**" means the controlling group of the Target Firms before the Merger; and
- 1.1.25. "Validus" means Validus Medical (Pty) Ltd, one of the Target Firms.

2. CONDITIONS

2.1. RELOCATION OF THE EMPLOYEES OF VALIDUS

- 2.1.1. The Merging Parties shall provide support to each of the Relocating Employees of Validus by covering the entire Relocation Costs.
- 2.1.2. The Merging Parties shall increase the salaries of the Relocating Employees of Validus who earn a salary below the BCEA threshold of R20 093 per month determined on a cost to company basis by the Salary Increment.
- 2.1.3. The Merging Parties will also provide reasonable temporary accommodation for up to 1 month to Relocating Employees of Validus and will assist these employees with reasonable time off to look for accommodation and schools.

2.2. NUMBER OF AFFECTED EMPLOYEES

2.2.1. The number of Affected Employees is expected to be 32 and the Merging Parties shall use their reasonable endeavours to ensure that this number does not increase. However, it is recognised that this number may increase if any of the Validus Employees who have indicated that they will relocate to Epping decide not to relocate despite his/her initial indication.

2.3. REDEPLOYMENT OF THE EMPLOYEES OF VALIDUS

- 2.3.1. Of the Affected Employees that are unable to relocate to Cape Town:
 - 2.3.1.1. the Acquiring Firm shall redeploy at least 10 Employees into the Acquiring Firm within the Gauteng Province in line with the Acquiring Firm's employment terms and conditions, which shall not be less favourable than their current employment terms and conditions; and
 - 2.3.1.2. Twinsaver Group shall redeploy at least 10 Employees into the Twinsaver Group within the Gauteng Province on employment terms and conditions which are not less favourable than their current employment terms and conditions.

2.4. REEMPLOYMENT OF AFFECTED EMPLOYEES

- 2.4.1. Each Affected Employee shall receive a retrenchment package based on 2 weeks remuneration per completed year of service.
- 2.4.2. For a period of 24 (twenty-four) months after the Implementation Date, the Merged Entity shall give first preference to the Affected Employees for any vacancies within the Merged Entity, provided that the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies and, at all times, subject to the Merged Entity's employment equity plan and transformation requirements.
- 2.4.3. The Merged Entity shall maintain a database of the names and contact details of all the Validus Affected Employees and, should any vacancies arise within the Merged Entity, undertake to communicate available vacancies to the Validus Affected Employees through their last known contact details such as email and/or cell phone numbers, amongst others, for a period of 24 (twenty-four) months after the Approval Date.
- 2.4.4. Each Affected Employee applying for a vacancy must do so in accordance with the time frame specified in the advertisement or communication applicable to the vacancy. The Merged Entity's usual recruitment and appointment procedures and requirements, including undergoing an interview process, will apply to applications made by

Affected Employees. If an Affected Employee applying for a vacancy is still unemployed at the time of applying and is equally as suitably qualified and experienced for a position as another candidate, that Affected Employee will be appointed in preference to other candidates. A successful Affected Employee will be employed in accordance with the terms and conditions in place for the relevant position at the time.

2.5. EMPLOYMENT

- 2.5.1. For a period of 36 months after the Implementation Date the Merged Entity shall not retrench any employees other than the Affected Employees because of the Merger.
- 2.5.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (v) any decision not to renew or extend a fixed term contract of a contract worker or Employee taken in the ordinary course of business.

3. MONITORING OF COMPLIANCE

- 3.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 15 (fifteen) Days of it becoming effective.
- 3.2. The Merging Parties shall circulate a copy of the Conditions to their employees in South Africa, the Affected Employees and/or their respective representatives within 15 (fifteen) Days of the Approval Date.
- 3.3. As proof of compliance thereof, the Merging Parties shall within 15 (fifteen) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.

- 3.4. The Merged Entity shall submit an affidavit to the Commission within 15 (fifteen) Days after the anniversary of the Implementation Date and for a period of 2 (two) years, to the Commission, confirming compliance with clause 2 of the Conditions and an affidavit within 15 (fifteen) Days after the anniversary of the Implementation Date confirming compliance with clause 4 of the Conditions. These affidavits must be deposed to by a senior official of the Merged Entity.
- 3.5. The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Condition.
- 3.6. Any person, including any Employee (and any employees of the Acquiring Firm), who believes that the Merging Parties have not complied with or have acted in breach of the Condition may approach the Commission.

4. APPARENT BREACH

4.1. 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 by the Merger Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Merger Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. GENERAL

6.1. All correspondence in relation to the Condition must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ATNAHS PHARMA UK LIMITED AND

CERTAIN PHARMACEUTICAL PRODUCT ASSETS AND RELATED RIGHTS OF SANOFI S.A.

CASE NUMBER: 2023SEP0015

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

- 1. On 13 September 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby Atnahs Pharma UK Limited ("Pharmanovia") intends to acquire sole control of certain pharmaceutical product assets and related rights currently held by Sanofi S.A. ("Sanofi"). Upon implementation of the proposed transaction, Pharmanovia will have sole control of, including, amongst others, trademarks, registrations, marketing authorisations, know-how, supply and distribution agreements and inventory currently held by Sanofi (the "Target").
- 2. For completeness, the Target does not comprise any firms controlled by Sanofi in South Africa.

The parties and their activities

- 3. The primary acquiring firm is Pharmanovia, a private limited company incorporated in accordance with the laws of England and Wales. Pharmanovia is indirectly wholly owned and solely controlled by Triton Investment Fund V. Pharmanovia does not directly or indirectly control any firms in South Africa. Pharmanovia, all the firms it controls, all the firms controlling Pharmanovia, and all the firms controlled by those, will be referred to as the "Acquiring Group".
- 4. Of relevance to this merger assessment is the Acquiring Group's anxiety medication which falls under Anatomical Therapeutic Classification ("ATC") level 3 category N5C with the active pharmaceutical ingredient ("API") diazepam marketed under the trade name Valium®.

- 5. The Target comprises certain pharmaceutical product assets currently held by Sanofi and concerning pharmaceutical products based on the clobazam, phenobarbital, prochlorperazine, and cyamemazine API's. In South Africa, the Target's ATC3 category N5C product is Urbanol®. The Target does not include any employees.
- 6. The Target is controlled by Sanofi, a company incorporated in accordance with the laws of France. Sanofi has no ownership by HDPs.

Competition Assessment

- The Commission found that the merger results in a horizontal overlap regarding the supply of products under ATC3 category N5C (anxiety medication). As such, the Commission assessed this market.
- 8. The Commission concluded that the merger is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest considerations

- 9. The Commission found that the merger raises concerns as regards the promotion of a greater spread of ownership. To address this, the parties tendered remedies that may facilitate the participation of HDP owned firms in the distribution of the Target's product.
- 10. The merger does not raise any other public interest issues that require further intervention.
- 11. For the above reasons, the Commission approves the proposed transaction subject to the conditions attached in **Annexure A** hereto.

ANNEXURE A

ATNAHS PHARMA UK LIMITED / CERTAIN PHARMACEUTICAL PRODUCT ASSETS AND

RELATED RIGHTS CURRENTLY HELD BY SANOFI S.A.

CC CASE NUMBER: 2023SEP0015

1. **DEFINITIONS**

The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meaning: -

- 1.1 "Acquiring Firm" or "Pharmanovia" means Atnahs Pharma UK Limited;
- 1.2 "Approval Date" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
- 1.3 "Business Day" means any calendar day which is not a Saturday, a Sunday, or an official public holiday in South Africa;
- 1.4 "Commission" means the Competition Commission of South Africa;
- 1.5 "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission.
- 1.6 "Competition Act" means the Competition Act, No. 89 of 1998 (as amended);
- 1.7 **"Conditions**" means these conditions, and "Condition" means, as the context requires, any one of them;
- 1.8 "HDPs" means historically disadvantaged persons as contemplated by the Competition Act No. 89 of 1998 (as amended);
- 1.9 "Implementation Date" means the date, occurring after the Approval Date, on which the Acquiring Firm acquires control of the Target;
- 1.10 "Merger" means the acquisition of control by the Acquiring Firm of the Target;
- 1.11 "Sanofi" means Sanofi S.A.;
- 1.12 "**Target**" means certain pharmaceutical product assets and related rights currently held by Sanofi which the Acquiring Firm has agreed to acquire;
- 1.13 "**Tribunal**" means the Competition Tribunal of South Africa.

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Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001 Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za Publications: Tel: (012) 748 6053, 748 6061, 748 6065



Vol. 706

19

April April

2024

No. 50528

PART **3** OF **5**

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2. **CONDITIONS**

- While the appointment of an appropriate distribution partner remains within the sole discretion of the Acquiring Firm, the Acquiring Firm commits that in the identification of a suitable distribution partner for Urbanol® post the Implementation Date, the Acquiring Firm shall consider HDP-owned firms. For completeness, [CONFIDENTIAL].
- 2.2 Notwithstanding the foregoing, the Acquiring Firm commits that the distribution agreement to be concluded with the distribution partner for Urbanol® shall include a clause requiring the distribution partner to consider subcontracting services to HDP-owned firms.

3. MONITORING OF COMPLIANCE WITH THE CONDITION

- 3.1 The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Business Days of it becoming effective.
- 3.2 The Acquiring Firm shall inform the Commission of its appointment of a distribution partner for Urbanol® in South Africa within 10 (ten) Business Days of the appointment and shall submit a report confirming compliance with clauses 2.1 and 2.2 of the Condition at the same time.

4. BREACH

4.1 Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

5. VARIATION

5.1 The Merger Parties and/or the Commission may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, amended, or relaxed. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. **GENERAL**

All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AUSTRALIANSUPER PTY LTD AND

VANTAGE DATA CENTRES EUROPE S.A.R.L CASE NUMBER: 2023SEP0016

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 13 September 2023, the Competition Commission (Commission) received notice of an intermediate merger where AustralianSuper Pty Ltd (Trustee) as trustee of AustralianSuper intends to acquire a minority interest in Vantage Data Centres Europe S.a.r.l. (Vantage EMEA).
- AustralianSuper is a superannuation and pension fund incorporated in Australia.
 AustralianSuper offers services relating to superannuation, investment, retirement and insurance to its members. AustralianSuper has investments in Australia and other countries globally. AustralianSuper does not have any business activities, assets or employees in South Africa.
- 3. Vantage EMEA is a firm incorporated in Luxembourg and it is ultimately and jointly controlled by Public Sector Pension Investment Board (PSP) and DigitalBridge Group Inc. (DigitalBridge). Vantage EMEA owns and manages a portfolio of data centre campuses across a number of countries including South Africa. The key business activities of Vantage EMEA comprises the supply of colocation data centre services which includes providing space, power supply, cooling and security services to customers. In South Africa, Vantage EMEA is currently developing campuses.

- 4. The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition.
- 5. To address the positive obligation to promote a greater spread of ownership, the parties tendered substantial commitments to procure from HDP-owned firms, skills development and employment commitments. These commitments are equally weighty and countervailing remedies that are responsive to specific public interest grounds under section 12A (3). The Commission considers that the commitments tendered render the merger justifiable on substantial public interest grounds.
- 6. The Commission approves the merger subject to the conditions set out in **Annexure A.**

ANNEXURE A

AUSTRALIANSUPER PTY LTD AS TRUSTEE OF AUSTRALIANSUPER

AND

VANTAGE DATA CENTRES EUROPE S.a.r.I

CASE NUMBER: 2023SEP0016

CONDITIONS

1 **DEFINITIONS**

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- 1.1 "Acquiring Firm" means AustralianSuper Pty Ltd as trustee for AustralianSuper;
- 1.2 **"Approval Date"** means the date on which the Commission issues a Clearance Certificate in terms of the Competition Act;
- 1.3 "Commission" means the Competition Commission of South Africa;
- 1.4 "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission issued in terms of section 21 of the Competition Act;
- 1.5 "Competition Act" means the Competition Act No. 89 of 1998, as amended;
- 1.6 "Conditions" means these conditions;
- "Days" means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.8 **"HDPs"** means historically disadvantaged persons as contemplated in section 3(2) of the Competition Act;

- 1.9 **"Implementation Date"** means the day on which the Merger is implemented by the Merger Parties;
- 1.10 **"Merger"** means the acquisition of an indirect minority controlling interest in the Target Firm by the Acquiring Firm;
- 1.11 "Merger Parties" means collectively the Acquiring Firm and Target Firm;
- 1.12 "South Africa" means the Republic of South Africa;
- 1.13 "Target Firm" means Vantage Data Centres Europe S.a.r.l;
- 1.14 "Target Firm Group" means Vantage Data Centres Europe S.a.r.l and its subsidiaries, including Vantage Data Centres South Africa S.a.r.l; and
- 1.15 "Tribunal" means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

Preferential Procurement

2.1 Within 5 (five) years from the Implementation Date, the Target Firm Group commits to procure an aggregate of at least R600 million (six hundred million) in construction, expansion and maintenance services from majority HDP owned firms.

Employment

- 2.2 The Target Firm Group undertakes to employ at least 20 (twenty) additional employees within its South African operations within 24-months of the Implementation Date. The majority of the additional employees shall be prioritised as follows:
- 2.2.1 female HDPs who will benefit from the Target Firm Group's Skills Development and Education initiatives in South Africa as set out in clause 2.4.2 below;
- 2.2.2 in the absence of female HDP candidates applying or being suitably qualified for relevant roles at the Target Firm Group in South Africa, any HDPs, who

will benefit from the Target Firm Group's South African Skills Development and Education initiatives described in clause 2.4 below; or

- 2.2.3 as a last resort, and only in the exceptional circumstance of where there is an absence of HDP candidates applying or being suitably qualified for immediately necessary and business critical roles at the Target Firm Group in South Africa, any other suitably qualified employees.
- 2.3 In addition, the Target Firm Group shall ensure that, for a period of 5 (five) years of the Implementation Date, it will maintain at least a 60% level of HDP employees within its South African operations.

Skill Development and Education

- In addition to its existing course training and skills development for its employees, the Target Firm Group undertakes to spend a minimum of R1 million (one million Rand) per annum, for a period of 5 (five) years from the Implementation Date, towards:
- 2.4.1 training and skills development programmes for its South African employees. Such programmes shall include internal or external training and skills development programmes; and
- 2.4.2 specifically for female HDPs who are not current employees of the Target Firm Group in South Africa, the provision of tertiary education scholarships to enrol at accredited South African tertiary institutions and associated internships roles.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Merger Parties shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 3.2 Vantage Data Centres South Africa S.a.r.I, the South African subsidiary of the Target Firm Group shall be responsible for compliance and monitoring the Target Firm Group's compliance with the Conditions. Within 60 (sixty) Days of the anniversary of the Implementation Date, for the duration of the Conditions (as applicable), Vantage Data Centres South Africa S.a.r.I shall submit a report setting out its compliance with the Conditions. Such report shall be accompanied by an affidavit, attested to by a director of the Vantage Data Centres South Africa S.a.r.I confirming the accuracy of the report.

3.3 The Commission may request such additional information from the Merger Parties which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

4. APPARENT BREACH

4.1 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 by the Merger Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION

The Merger Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. **GENERAL**

6.1 All correspondence in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

TPG INC AND CLEAN TOPCO LIMITED

CASE NUMBER: 2023SEP0017

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- 1. On 13 September 2023, the Competition Commission (the "Commission") received a notice of an intermediate merger wherein TPG Inc. ("TPG") wishes to acquire 100% of the issued share capital in Clean TopCo Limited ("Target Firm") ("Proposed Transaction").
- The primary acquiring firm TPG, a public company registered in the State of Delaware, in the United States of America. TPG is listed on the NASDAQ stock market. TPG is controlled by three non-historically disadvantaged ("HDPs") individuals namely, [CONFIDENTIAL].
- 3. TPG, all the companies controlled by TPG, and all the entities controlled by TPG will be referred to as the "Acquiring Group".
- 4. The Acquiring Group is an asset management firm. TPG controls various entities in South Africa that are broadly involved in the supply of medical devices and animal health technology, the provision of software services, pharmaceutical products, retail sales of digital goods, and marketing and television media production.
- 5. The Acquiring Group does not have any of its shareholding held by historically disadvantaged persons ("HDPs") as contemplated in the Act. The Acquiring Group has no ownership by workers.
- 6. The primary target firm is Clean TopCo Limited. The Target Firm is controlled by investment funds, investment vehicles and/or accounts managed by KKR & Co. Inc.

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- ("KKR"). KKR is an American global investment company listed on the New York stock exchange.
- 7. In South Africa, the Target Firm indirectly controls A-Gas (South Africa) Proprietary Limited ("A-Gas South Africa"). A-Gas South Africa is involved in the supply and distribution of specialty gases. The products supplied by A-Gas South Africa are fluorinated gases, including hydrochlorofluorocarbons, hydrofluorocarbons and hydrofluoroolefins which are used in refrigeration, fire protection and halons and industrial environments.
- 8. The Target Firm does not have any shareholding held by HDPs or workers.
- 9. The Commission found that the merger does not result in a substantial lessening or prevention of competition in any relevant market.
- 10. To promote a greater spread of ownership the merging parties have agreed to establish an ESOP within 24 months of the merger implementation date. The ESOP will hold 5% of the issued shares in A-Gas South Africa.
- 11. The Commission approves the proposed transaction subject to the conditions in **Annexure**A hereto.

ANNEXURE A

TPG INC. AND CLEAN TOPCO LIMITED

CASE NUMBER: 2023SEP0017

CONDITIONS

1. **DEFINITIONS**

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "Acquiring Firm" means TPG Inc.;
- 1.2 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.3 "A-Gas South Africa" means A-Gas (South Africa) Proprietary Limited;
- 1.4 "Commission" means the Competition Commission of South Africa;
- 1.5 "Conditions" means the merger conditions included in this Annexure A;
- 1.6 "**Days**" means any day that is not a Saturday, Sunday, or public holiday in South Africa:
- 1.7 "ESOP" means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.8 "ESOP Establishment Period" means 24 (twenty four) months from the Implementation Date;
- 1.9 "HDPs" means historically disadvantaged persons as defined in section 3(2) of the Act;
- 1.10 "**Implementation Date**" means the date on which the merger is implemented by the Merging Parties;

- 1.11 "Merger" means the proposed acquisition of joint control of the Target Firm by the Acquiring Firm as notified to the Commission under Case No. 2023SEP0017;
- 1.12 "Merged Entity" means the combination of the Acquiring Firm and the Target Firm;
- 1.13 "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.14 "South Africa" means the Republic of South Africa;
- 1.15 "Target Firm" means A-Gas Group Limited and its subsidiaries;
- 1.16 "**Tribunal**" means the Competition Tribunal of South Africa;
- 1.17 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.18 "Qualifying Workers" means Workers employed by A Gas South Africa, with employment tenure of 2 (two) years or more; and
- 1.19 "Worker" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESTABLISHMENT OF THE ESOP

2.1. By the end of the ESOP Establishment Period, the Acquiring Firm shall establish the ESOP for the benefit of Qualifying Workers. The ESOP shall hold 5% of the issued shares in A-Gas South Africa as at the date that the ESOP is established, in accordance with the design principles set out in Annexure B.

3. MONITORING

- 3.1. Within 10 (ten) Days of the Implementation Date, the Target Firm shall circulate a non-confidential version of the Conditions to its employees in South Africa, their employee representatives and trade unions (if applicable). As proof of compliance herewith, the Target Firm shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 3.2. Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 3.3. The Merged Entity shall submit a compliance report (including a trust deed for the registration of the ESOP) within 5 (five) Days after the establishment of the ESOP.

The report shall be accompanied by an affidavit from a director of A-Gas South Africa confirming the accuracy of the information contained in the report,

3.4. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. APPARENT BREACH

4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. GENERAL

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B

Design Principle	Applicable Criteria
Structure	 Will be a unitised structure whereby a trust will be established, and Qualifying Workers will receive units.
Cost to Workers and Participating HDPs	 The ESOP will be funded by A-Gas South Africa. The notional vendor funding will provide for a fixed trickle dividend in terms of which at least 35% of declared dividends will be paid to the beneficiaries with the remaining 65% used to service the vendor financed loan until such time as it is extinguished. Once the loan has been extinguished, 100% of the declared dividends due to the ESOP (after liabilities have been paid) will be distributed to the beneficiaries. The liabilities refer to costs (administration and operational costs, rental, fees of third party service providers, such as auditors) and taxes in respect of the ESOP. The Merging Parties must make provision and cover the reasonable costs for independent legal and financial experts to act on behalf of workers in ESOP establishment negotiations (the "Provision"). For the avoidance of doubt, the Provision shall be at no cost to workers and must not impact any dividend flows due to workers.
	 Any disputes between the Merging Parties and any independent legal and financial experts as regards the reasonableness of fees / costs must be resolved by arbitration or any other mutually agreed dispute resolution mechanism
Governance	 ESOP – Qualifying Workers will be represented on the board of trustees of the ESOP.
Duration	 ESOP - Will endure until terminated by an affirmative majority vote of the Trustees or the ESOP ceases to hold any shares in A-Gas South Africa.
Qualifying Workers	 ESOP – All Workers who are permanent employees with 2 years or more tenure at A-Gas South Africa
	Maternity leave will have no adverse impact on qualifying criteria.
Participation Benefits	 ESOP – Qualifying Workers will be entitled to payments from the ESOP funded by dividends received by the ESOP from A-Gas South Africa.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SAINT-GOBAIN CONSTRUCTION PRODUCTS SOUTH AFRICA (PTY) LTD AND

TECHNICAL FINISHES SOUTH AFRICA (PTY) LTD

CASE NUMBER: 2023SEP0027

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

- On 19 September 2023, the Competition Commission ("Commission") received notice
 of an intermediate merger whereby Saint-Gobain Construction Products (Pty) Ltd
 ("SGCP") intends to acquire 100% of the issued shares in Technical Finishes SA (Pty)
 Ltd ("TFSA").
- 2. The primary acquiring firm is SGCP, a company incorporated in accordance with the laws of the Republic of South Africa. SGCP is ultimately owned and controlled by Compagnie De Saint-Cobain ("Saint-Gobain"), a firm incorporated in France. Saint-Gobain is not controlled by any individual shareholder. SGCP and all the firms directly or indirectly controlling it, and all the firms that it controls will be referred to as the "Acquiring Group".
- According to its latest Broad-Based Black Economic Empowerment ("B-BBEE")
 verification certificate dated 20 September 2023 and expiring on 19 September 2024,
 historically disadvantaged persons (HDPs) have an ownership of [CONFIDENTIAL] in the
 Acquiring Group.
- 4. The Acquiring Group is active in the construction sector and operates through four (4) business sectors, *inter alia*, construction products and building materials and distributions.
- 5. The primary target firm is Technical Finishes South Africa (Pty) Ltd ("TFSA"), a South

African company. TFSA wholly owns Technical Finishes (Pty) Ltd ("Technical Finishes"). TFSA has no HDP ownership.

6. TFSA is a manufacturer of specialist materials used in heavy-duty and light-duty industrial, commercial, and residential flooring. TFSA is also active in the provision of non-flooring construction chemicals.

Competition Assessment

7. The Commission found that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in any relevant market.

Public interest considerations

- 8. In order to address the public interest concerns arising from the merger, promote the public interest, the merging parties have agreed to commitments to capex spending, a 3 year moratorium on merger related retrenchments, skills development and enterprise & supplier development commitments and HDP procurement remedy.
- 9. The merger does not raise any other concerns.
- 10. Commission therefore approves the proposed transaction subject to the conditions attached as **Annexure A** hereto.

ANNEXURE A

SAINT-GOBAIN CONSTRUCTION PRODUCTS SOUTH AFRICA (PTY) LTD AND TECHNICAL FINISHES SA (PTY) LTD

CASE NUMBER: 2023Sep0027

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 "Acquiring Firm" means Saint-Gobain Construction Products South Africa (Pty)
 Ltd;
- 1.1.2 "Acquiring Group" means SGCP, all direct and indirect controllers thereof and all firms so directly and indirectly controlled;
- 1.1.3 "Approval Date" means the date referred to on the Commission's merger clearance certificate (Form CC15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.1.4 "SGCP" means Saint-Gobain Construction Products South Africa (Pty) Ltd, the Acquiring Firm;
- 1.1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.6 "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.7 "Competition Act" means the Competition Act, 89 of 1998, as amended;

- 1.1.8 **"Conditions"** means these conditions;
- 1.1.9 "Contractor Care Programme" means a programme that trains contractors, including HDP contractors, on a range of practical construction techniques and products;
- 1.1.10 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.11 "HDP" means a historically disadvantaged person as contemplated by the Competition Act;
- 1.1.12 "HDP-owned" means majority owned, at least as to 50% plus 1 share by HDP(s);
- 1.1.13 "Implementation Date" means the date occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;
- 1.1.14 "Labour Relations Act" means the Labour Relations Act 66 of 1995;
- 1.1.15 **"Merged Entity"** means TFSA subject to the control of the Acquiring Firm following the Implementation Date;
- 1.1.16 "**Merger**" means the proposed acquisition by the Acquiring Firm of the Target Firm;
- 1.1.17 "Merging Parties" means the Acquiring Group and the Target Firm;
- 1.1.18 "Moratorium Period" means a period of 3 (three) years from the Implementation Date and includes the period between the Approval Date and the Implementation Date;
- 1.1.19 **"SMME"** means small, micro and medium enterprise;
- 1.1.20 **"South Africa"** means the Republic of South Africa;
- 1.1.21 "Target Firm" means Technical Finishes SA (Pty) Ltd;
- 1.1.22 "TFSA" means Technical Finishes SA (Pty) Ltd, the Target Firm; and
- 1.1.23 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. CAPITAL EXPENDITURE

2.1 The Acquiring Firm commits to a capital expenditure of no less than **[CONFIDENTIAL]** million over a period of 4 (four) years from the Implementation Date.

3. SKILLS DEVELOPMENT AND TRAINING

- 3.1 The Acquiring Firm commits to spend **[CONFIDENTIAL]** more than its 2023 combined spend on skills development and enterprise and supplier development, over a 3 (three) year period.
- This additional **[CONFIDENTIAL]** over 3 (three) years will be spent on initiatives which support the entry and growth of HDP-owned SMMEs, including by expanding the Acquiring Firm's Contractor Care Programme to include training of HDPs on heavy duty flooring (i.e., the skills possessed by the Target Firm).

4. MORATORIUM ON MERGER-RELATED RETRENCHMENTS

- 4.1 Subject to the provisions of clause 4.2 below, the Merged Entity shall not retrench any permanent employees in South Africa as a result of the Merger ("Merger related retrenchments") during the Moratorium Period.
- The undertaking provided in paragraph 4.1 above means that no retrenchments will result in South Africa as a consequence of the implementation of the Merger. For the sake of clarity, Merger related retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements (for the purposes of the Labour Relations Act) unrelated to the Merger (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

5. HDP PROCUREMENT

5.1 The Acquiring Firm commits to increasing the Merged Entity's procurement spend from HDP suppliers by an aggregate amount of **[CONFIDENTIAL]** over a period of 3 years from the Implementation Date.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- The Acquiring Firm shall inform the Commission in writing of the Implementation

 Date within 5 (five) Days of the Implementation Date.
- The Acquiring Firm shall circulate a non-confidential copy of the Conditions to the employees (and trade unions/employee representatives) of the Merging Parties within 10 (ten) Days of the Approval Date. As proof of compliance herewith, the Acquiring Firm shall within 10 (ten) Days of so circulating the Conditions, notify the Commission of compliance herewith and provide evidence of such circulation.
- The Acquiring Firm shall notify the Commission of its total procurement spend on HDP suppliers in the 2023 calendar year by 1 April 2024, in the form of an affidavit attested to by a senior official of the Acquiring Firm.
- The Acquiring Firm shall, within 30 (thirty) Days of the anniversary of the Implementation Date, for 5 (five) years commencing after the Implementation Date, provide to the Commission a report detailing its progress regarding its compliance with the Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Acquiring Firm, confirming the report's accuracy.

7. APPARENT BREACH

7.1 In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, Rule 39 of the Commission Rules will apply.

8. VARIATION OF THE CONDITIONS

8.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

GENERAL

9.1 All correspondence concerning the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

BENAV PROPERTIES PROPRIETARY LIMITED AND THE BOUGAINVILLE SHOPPING CENTRE

THE BOOGAINVILLE SHOLL ING CENTRE

CASE NUMBER: 2023SEP0028

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms, subject to conditions set out below:

1. On 19 September 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Benav Properties (Pty) Ltd ("Benav") intends to acquire the immoveable property and the letting enterprise known as the Bougainville Shopping Centre ("Bougainville") and Portion 165 Farm 319 Daspoort (cumulatively referred to as the "Target Property"), as a going concern.

The parties and their activities

- 2. The primary acquiring firm is Benav, a company incorporated in accordance with the laws of South Africa. Benav is controlled in by Rino Properties Proprietary Limited ("Rino Properties"). Benav controls a number of firms in South Africa. Benav and all the firms directly and indirectly controlled by it, will hereinafter be referred to as the "Acquiring Group". The Acquiring Group is a property investment group with a portfolio of properties situated throughout South Africa.
- 3. The primary target firm is the retail property letting enterprise known as the Bougainville Shopping Centre ("Bougainville") located at 638 Redelinghuys Street, Daspoort, Pretoria, and Portion 165 Farm 319 Daspoort ("Target Property"). The Target Property is wholly owned by Interurban Willowbridge (RF) (Pty) Ltd, a company incorporated in accordance with the laws of South Africa.

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Competition assessment

4. The Commission considered the activities of the merging parties and found that the proposed transaction results in a product overlap in the market for the provision of rentable retail space. However, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public Interest

- 5. To address public interest concerns, the parties have tendered commitments to procure cleaning and maintenance services from HDPs or HDP owned firms post-merger. These commitment are included in the conditions attached as **Annexure A** hereto.
- 6. The proposed transaction does not raise any other public interest concerns.

Conclusion

7. The Commission therefore approves the proposed transaction with conditions attached in "Annexure A".

ANNEXURE A

BENAV PROPERTIES PROPRIETARY LIMITED AND

THE BOUGAINVILLE SHOPPING CENTRE

CASE NUMBER: 2023SEP0028

CONDITIONS

1. **DEFINITIONS**

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -
 - 1.1.1. "Acquiring Firm" means Benav Properties (Pty) Ltd;
 - 1.1.2. "Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15):
 - 1.1.3. "Benav" means Benav Properties (Pty) Ltd;
 - 1.1.4. "Bougainville" means The Bougainville Shopping Centre;
 - 1.1.5. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.6. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
 - 1.1.7. "Competition Act" means the Competition Act 89 of 1998, as amended;

- 1.1.8. **"Conditions"** means these conditions, and "Condition" means, as the context requires, any one of them;
- 1.1.9. "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.10. "HDPs" means a Historically Disadvantaged Person/s as contemplated in section 3(2) of the Competition Act;
- 1.1.11. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12. **"Merged Entities"** means the Target Firm subject to control of the Acquiring Firm following the Implementation Date;
- 1.1.13. "Merging Parties" means the Acquiring Firm and the Target Firms;
- 1.1.14. "Merger" means the acquisition of immoveable property and the letting enterprise known as the Bougainville by Benav, as a going concern;
- 1.1.15. "**Reporting Period**" means a period of 60 months after the Implementation Date, or until such time as the Acquiring Firm is no longer the owner of Bougainville, whichever is shorter;
- 1.1.16. "South Africa" means the Republic of South Africa;
- 1.1.17. "Target Firm" means The Bougainville Shopping Centre.

CONDITIONS

2. PROCUREMENT FROM HDP OWNED SERVICE PROVIDERS

- 2.1. The Acquiring Firm shall for the Reporting Period procure:
 - 2.1.1. 100% by value of the day-to-day cleaning services required by Bougainville from an HDP, and/or HDP owned firms; and
 - 2.1.2. 50% by value of the annual general maintenance services required at Bougainville from an HDP, and/or HDP owned firms.

3. MONITORING OF COMPLIANCE

3.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.

CONFIDENTIAL

- 3.2. The Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 5 years (five years), provide to the Commission a report detailing its compliance with the Condition. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report.
- 3.3. The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Condition.
- 3.4. Any person, including any Employee (and any employees of the Acquiring Firm), who believes that the Merging Parties have not complied with or have acted in breach of the Condition may approach the Commission.

4. APPARENT BREACH

4.1. In the event that the Commission discovers that there has been an apparent breach of the Condition, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

5. VARIATION

5.1. The Merged Entity may at any time, and on good cause shown, apply to the Commission for the Condition to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal, on good cause shown, for appropriate relief.

6. GENERAL

6.1. All correspondence in relation to the Condition must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

WHP INVESTMENTS, LLC

AND

TM25 HOLDING B.V. & G-STAR RAW C.V.

CASE NUMBER: 2023SEP0036

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

The Transaction

1. On 26 September 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby WHP Investments, LLC ("WHP") intends to simultaneously acquire ordinary shares in TM25 Holding B.V. ("TM25"), the entity that owns the intellectual property (IP) rights of G-Star RAW C.V. ("G-Star") and operational assets of G-Star. Following completion of the proposed transaction, WHP will exercise sole control over TM25 and joint control over G-Star as envisaged by section 12(2) of the Competition Act No. 89 of 1998, as amended ("Act").

The parties and their activities

2. The primary acquiring firm is WHP, a company duly incorporated under the laws of the USA. WHP is controlled by the funds managed and controlled by Oaktree Capital Group, LLC (together with its affiliated investment funds and other entities ("Oaktree")). WHP and all the firms directly and indirectly controlling it, will hereinafter collectively be referred to as the "Acquiring Group". The Acquiring Group is a global entity that acquires, manages and licenses global consumer brands. The Acquiring Group, through WHP, owns brands such as Anne Klein, Bonobos, Joseph Abboud, Joe's Jeans, Isaac Mizrahi, William Rast, Lotto, Toys"R"Us, Babies"R"Us and the Express Brand. WHP also operates WHP+, a digital e-commerce platform for brands, and WHP Solutions, a sourcing agency based in Asia.

- 3. The primary target firm comprises of (i) TM25 (an entity that owns the intellectual property (IP) rights of G-Star) and (ii) G-Star. G-Star is duly registered under the laws of the Netherlands. G-Star is controlled by Stichting Bluebox Beheer ("Stichting"), a foundation incorporated under the laws of the Netherlands. In South Africa, Saville Holding B.V. directly controls G-Star RAW South Africa (Pty) Ltd ("G-Star SA"). TM25 and G-Star including their subsidiaries will henceforth be collectively referred to as "Target Firm". The Target Firm is a denim-led apparel company focused on the design, manufacturing and distribution of clothing, footwear and accessories, based in the Netherlands. In South Africa, G-Star only operates 4 (four) outlet stores. Some of the G-Star items are sold through select stores such as Fabiani, Markham, TAPE and XS Denim, as well as direct-to-consumer e-commerce platforms.
- 4. The Commission found that the merger is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public Interest

- 5. To address public interest concerns, the parties tendered remedies that promote the ability of historically disadvantaged persons (HDPs) to participate in and/or expand in markets. In the circumstances, the Commission found that the commitments tendered are substantial and render the merger justifiable on substantial public interest grounds.
- 6. The proposed transaction does not raise any other public interest concerns.

Conclusion

7. The Commission therefore approves the proposed transaction subject to the conditions attached in "Annexure A" hereto.

ANNEXURE A

WHP INVESTMENTS, LLC AND TM25 HOLDING B.V. & G-STAR RAW C.V.

CASE NUMBER: 2023SEP0036

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CONDITIONS

1. **DEFINITIONS**

- 1.1. The following expressions bear the meaning assigned to them below and cognate expressions bear corresponding meanings:
 - 1.1.1. "Acquiring Firm" means WHP Investments LLC;
 - 1.1.2. "Approval Date" means the date referred to on the Commission's merger clearance certificate (Form CC15), being the date on which the Merger is approved in terms of the Competition Act;
 - 1.1.3. "Certified Tailor Programme" means a programme that consists of tailors, who will be involved in the altering and repairing of G-Star apparel for customers;
 - 1.1.4. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.5. "Commission Rules" means the Rules for the Conduct of Proceedings in the Competition Commission;
 - 1.1.6. "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
 - 1.1.7. "Conditions" means the conditions specified in this document;
 - 1.1.8. "Days" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa. A public holiday shall also include

- such days as maybe declared by the President of South Africa in terms of the Public Holidays Act 36 of 1994;
- 1.1.9. "Employees" means all the Employees of the Merging Parties, as defined in the LRA, employed as such on the Implementation Date;
- 1.1.10. **"Evergreen Period"** means the period in which the tailors will form part of the Certified Tailor Programme;
- 1.1.11. "G-Star" means, G-Star RAW C.V.;
- 1.1.12. "G-Star SA" means G-Star Raw South Africa (Pty) Ltd;
- 1.1.13. "HDP" means a historically disadvantaged person as defined in section 3(2) of the Competition Act;
- 1.1.14. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.15. "LRA" means the Labour Relations Act 66 of 1995, as amended;
- 1.1.16. "Merger" means the proposed acquisition by the Acquiring Firm of sole control of TM25 and joint control of G-Star;
- 1.1.17. "Merging Parties" means collectively the Acquiring Firm and the Target Firm;
- 1.1.18. "SMEs" means small and medium businesses, as defined in section 1(1) of the Competition Act;
- 1.1.19. "Target Firm" means G-Star Raw C.V.;
- 1.1.20. "TM25" means TM25 Holding B.V.;
- 1.1.21. "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.22. "WHP" means WHP Investments, LLC.

2. CONDITIONS

2.1. Capital Investment

- 2.1.1. G-Star SA undertakes to incur capital expenditure of at least R 3,900,000 to open a new retail store (approximately 250m²) in South Africa within 12 months of the Implementation Date, contingent upon and subject to prevailing market conditions and dynamics, to ensure continued growth of its South African business.
- 2.1.2. G-Star SA will appoint at least 6 (six) employees, the majority of whom shall be HDPs to operate and manage the store contemplated at paragraph 2.1.1 above.

2.2. Certified Tailor Programme

- 2.2.1. G-Star SA aims to support and develop HDP-owned SMEs that provide tailoring services through its Certified Tailor Programme. During the most recent financial year, G-Star SA spent a certain amount on its Certified Tailor Programme, which included 3 (three) Certified Tailors since the Programme started in 2022.
- 2.2.2. G-Star SA will expand its Certified Tailor Programme with HDP tailor shop owners by at least 2 (two) tailors per year for 4 (four) years from the Implementation Date. This will result in a total of 11 (eleven) tailors at the end of the conditions period. The tailors will form part of the Certified Tailor Programme for an Evergreen Period. G-Star SA will organise, at its own cost, the training of the tailors to acquire the knowhow and skills to work with denim.

2.3. Additional Qualifications Sponsorship

2.3.1. G-Star SA will spend an aggregate R 1,2 million over a period of for 4 (four) years to provide its retail store and corporate office staff with opportunities to gain qualifications for advancement within the organisation or externally.

2.4. Outsourcing of HR Functions

2.4.1. G-Star SA will maintain and where commercially feasible, increase the scope of its outsourcing of its human resources functions to a 100% HDP Firm for a period of 3 (three) years from the Implementation Date.

3. MONITORING

3.1. The Merging Parties shall inform the Commission in writing of the

- Implementation Date within 5 (five) Days of it becoming effective.
- 3.2. The Merging Parties shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 3 (three), provide to the Commission a report detailing its compliance with the Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Merging Parties, confirming the accuracy of the report.
- 3.3. The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Conditions.
- 3.4. Any person, including any Employee (and any employees of the Acquiring Firm), who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.

4. APPARENT BREACH

4.1. In the event that the Commission discovers that there has been an apparent breach of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

5. VARIATION

5.1. The Merging Parties may at any time, and on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merging Parties' application to the Commission, the Merging Parties may apply to the Tribunal, on good cause shown, for appropriate relief.

6. GENERAL

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

NIKKEL TRADING 392 (PTY) LTD

AND

BRIKOR LTD

CASE NUMBER: 2023MAY0038

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

- On 18 May 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Nikkel Trading 392 (Pty) Ltd ("NT392"), intends to acquire up to 80% of the issued share capital of Brikor Ltd ("Brikor"). Post-merger, Brikor will be controlled by NT392.
- 2. The primary acquiring firm, NT392, is duly incorporated in accordance with the laws of the Republic of South Africa. NT392 is a holding company for the Mining Division of Que Dee Trading 83 (Pty) Ltd, trading as the Schalk Burger (SA) Group of Companies ("SB(SA)"). SB(SA) is controlled by the Burger Familie Trust, as to 100% shares. NT392 controls several firms within South Africa. NT392 does not have direct shareholding by historically disadvantaged persons ("HDPs").
- 3. NT392 has several operational subsidiaries, including ARM Andalusite, Tokata Resources, Tokata Coal and Tokata Metals. NT392 holds 60% of the shares in Tokata Coal and Tokata Metals. Siyabonga Holdings, an HDP firm, holds the remaining 40% in each of Tokata Coal and Tokata Metals. Siyabonga Holdings, in turn, has 63% of its shares held by the Black Employee Trust, whose beneficiaries are the black employees of SB(SA), with NT392 holding the remaining 37%.

- 4. NT392 also operates an andalusite mine, ARM Andalusite, in which it holds 47.5% of the shares and 3 other HDP shareholders collectively hold 27.5%. These are African Rainbow Capital ("ARC") (20%), Kwena Mining (5%), and Siyabonga Holdings (2.5%).
- 5. The primary target firm, Brikor, is duly incorporated in accordance with the laws of the Republic of South Africa. Brikor is listed on the Johannesburg Stock Exchange and thus no single shareholder or individual directly or indirectly controls Brikor. However, for the sake of completeness, each of the shareholders that own at least 15% of Brikor's shares are NT392 (the Acquiring Firm), as to 34.2% and EC Mering, as to 15.39%.
- 6. Brikor does not have any direct HDP shareholding. Brikor however controls several subsidiaries, some of whom have direct HDP shareholders.

Description of the transaction

7. In terms of the proposed transaction, the Acquiring Group intends to acquire up to approximately 80% of the entire issued share capital in Brikor. Currently, the Acquiring Group owns 34.2% of Brikor and it intends to acquire a further 33.6% by virtue of the proposed merger which will result in the Acquiring Group owning up to 68% shares in Brikor.

Activities of the merging parties

- 8. NT392 owns and operates an andalusite mine known as ARM Andalusite in Limpopo. NT392 is further active in contract coal mining, renting out plant hire and equipment, coal trading, and surveying.
- 9. The Target Firm Brikor manufactures and supplies building and construction materials for low-cost housing, residential, commercial, industrial, civil engineering and infrastructure projects and undertakes limited mining activities. Brikor mines its own clay as a key input into its brick-making process. As part of these mining activities, Brikor also mines limited quantities of coal for its own use in the brick-making process and as a secondary mining output to its core brick-making business.

Overlapping markets

10. The Commission considered the activities of the merging parties and found that there is currently no horizontal overlap between the merging parties as they do not offer products or services that can be considered interchangeable. The Commission notes that although both mine thermal coal, the Acquiring Group, through Tokata Coal and Tokata Metals, currently only provides contract mining to third-party thermal collieries as it no longer owns a colliery itself. The merging parties submit that the Acquiring Group managed to mine [CONFIDENTIAL] ktpa of thermal coal from their coal reserves in

2022, but that these reserves have since been depleted. The Acquiring Group further trades some of the coal which they mined from their own reserves as well as from third parties, into the export market.

11. On the other hand, the Target Firm primarily mines clay for its brick-making operations. As coal deposits occur alongside clay in the Target Firm's clay mines, the Target Firm processes the coal and supplies coal into the domestic residual market on an ad-hoc basis. The Target Firm supplied [CONFIDENTIAL] ktpa into the domestic residual market during the 2022 financial year. Post-merger, the merging parties intend that the Target Firm will expand its coal mining operations to supply to the domestic residual market and into the export market.

Vertical overlaps

- 12. The proposed transaction raises a notional vertical overlap in that the Acquiring Group is involved in the upstream market of contract mining and the Target Firm has coal reserves which it currently mines in-house. The vertical overlap is thus notional in the sense that the Target Firm does not use third party upstream contractors.
- 13. Further, the Acquiring Group trades thermal coal into the export market whereas the Target Firm has coal deposits. This vertical overlap is notional because the Target Firm only sells small tonnages of the thermal coal on an ad-hoc basis into the residual domestic market and has never exported its coal.

Competitive assessment

- 14. The Commission considered the notional vertical overlaps set out above and found that these are unlikely to raise vertical concerns.
- 15. Firstly, apart from its coal reserves, which have been depleted, the Acquiring Group offers its upstream contract mining services to only 2 third-party collieries. One of these two customers submits that the Acquiring Group is contracted for a minority of its requirements and that there are sufficient alternative thermal coal contract miners in the market. The Commission is further of the view that the Acquiring Group may shift its mining services capacity formerly attached to its own reserves to the Target Firm.
- 16. The merging parties also submit that the Acquiring Group has sufficient capacity and resources to service both Brikor and the above two existing clients and will procure

additional mining equipment and infrastructure to service the operational requirements of Brikor.

- 17. Further, the Commission found that during the preceding financial year, the Acquiring Group traded only [CONFIDENTIAL] ktpa into the export market whereas the Target Firm sold [CONFIDENTIAL] ktpa to the domestic residual market. These figures indicate that the merged entity will account for less than [CONFIDENTIAL]% in both the export and domestic residual markets. Even if the Target Firm ramps up thermal coal production capacity up to [CONFIDENTIAL] mtpa, as it intends to do within a period of 2 years after implementation date of the proposed transaction, the merged entity will still account for less than [CONFIDENTIAL]% of the export market (if they consider selling all the coal to the export market) or [CONFIDENTIAL]% of the domestic residual market, if they consider selling all of this coal to the domestic residual market.
- 18. Overall, the Commission finds that input foreclosure is unlikely to arise.
- 19. Regarding customer foreclosure, the Commission found that the Target Firm does not utilise the services of contract miners. Therefore, the proposed transaction is unlikely to raise customer foreclosure concerns.
- 20. Given the above, the Commission is of the view that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition within any relevant market.

Public interest

Effect on employment

- 21. The merging parties submit that the proposed transaction will not have any adverse effects on employment as it will not result in job losses but will create employment due to the planned expansion of the Target Firm's activities. The planned expansion of Brikor's mining operations is expected to create [CONFIDENTIAL] permanent positions and a further [CONFIDENTIAL] contract positions after the implementation date of the proposed transaction. Preference will be given to local communities for the recruitment of these employees.
- 22. The Commission notes the positive public interest benefit from the merger due to planned expansions and increased employment. The parties have agreed to make commitments on job creation conditions to the approval of the merger.

Effect on a particular sector or region

23. The merging parties submit that the proposed transaction will enable expanded and improved implementation of both Brikor and its mining subsidiaries' Social and Labour Plans ("SLPs"). Further, post implementation of the proposed transaction, the merger parties plan to invest a further R[CONFIDENTIAL] million into the Grootfontein Mine within 12 months of the implementation date of the proposed transaction. The current SLP participants and beneficiaries as well as local communities and businesses are expected to benefit from the planned further capital investments. The merging parties have also agreed to make these capital expansion plans, conditions to the approval of the merger.

Effect on small business (B-BBEE)

- 24. The merging parties submit that capital investment will create demand for various support services including equipment, transport, rental of support mining vehicles (water tankers, TLBs, graders, staff transport, etc.), housing, subsistence, training, etc. All these benefits will accrue to the local communities. Other benefits include support to local suppliers of ancillary products and services relating to the following 2 (two) initiatives:
 - 24.1. *Auxiliary ownership scheme:* whereby community members will be identified to benefit in a rent-to-own project for the equipment and infrastructure that is required for the expansion of the Target Firm's operations.
 - 24.2. *Vehicle ownership scheme*: It is envisaged that 4 vehicles will be allocated to supervisors/foremen as dedicated transport to and from work. Ownership of these vehicles will be transferred to the beneficiaries after 3 (three) years.
- 25. The merging parties have also agreed to the above initiatives on SMMEs being made conditions to the approval of the merger.
 - Promotion of a greater spread of ownership by historically disadvantaged persons (HDPs) and workers section 12A(3)(e) of the Competition Act No. 89 of 1998 (as amended) (the "Act")
- 26. NT392 does not have any direct shareholding by HDPs. However, NT392 owns and controls companies that have other HDP shareholders. Similarly, Brikor does not have

any direct shareholdings by HDP shareholders, but it also controls subsidiaries that have HDP shareholders.

- 27. The merging parties submit that NT392's acquisition of Brikor will result in direct, tangible benefits to HDP shareholders as, pursuant to the merger, Brikor intends to transfer a Mining Right it holds in the Grootfontein Mine into a subsidiary, Kopanela, which is 30% HDP owned. Concurrently, Brikor will make a capex injection of R[CONFIDENTIAL] million into the Grootfontein Mine. The merging parties offered the commitments below as conditions to the approval of the merger:
 - 27.1. <u>Injection of capital expenditure</u>: The Acquiring Group's planned capex injection of up to R[CONFIDENTIAL] million within 12 months after the implementation date of the proposed transaction, will transform Brikor mining assets from producing [CONFIDENTIAL] ktpm to [CONFIDENTIAL] ktpm run of mine to turn the coal mining operations of Brikor into profit.
 - 27.2. <u>Employment creation</u>: As Brikor faces consistent losses due to poor financial results, this could lead to retrenchments if the merger is not approved. However, the committed investments will transform Brikor operations to protect existing employees as well as create [CONFIDENTIAL] permanent and [CONFIDENTIAL] contract employment within the first 12 months after the implementation date of the proposed transaction.
 - 27.3. <u>Supplier development:</u> Within 24 months after the implementation date of the proposed transaction, Brikor will identify members of the local community, through consultation with the Trustees for the time being of the Kopanela Trust, to benefit in a rent-to-own project in respect of back-hoe loaders, graders and water bowsers to be used on site of the mining operations of the Merging Parties. Brikor will also introduce a vehicle ownership scheme for its supervisors/foremen employees of Brikor.
 - 27.4. <u>NT392</u> will facilitate the transfer of Grootfontein's Mining Rights to Kopanela and concurrently inject R[CONFIDENTIAL] million in its mining operations over a 12 months' period. R[CONFIDENTIAL] million will be for machinery acquisition, R[CONFIDENTIAL] million will be for the commissioning and deployment of new beneficiation plant and R[CONFIDENTIAL] million will be for working capital requirements.
- 28. The proposed transaction does not raise any other public interest concerns.

Conclusion

29. Considering the aforesaid, the Commission approves the merger with the Conditions in **Annexure A.**

ANNEXURE A

NIKKEL TRADING 392 PROPRIETARY LIMITED

AND

BRIKOR LIMITED

CASE NUMBER: 2023MAY0038

CONDITIONS

1 **DEFINITIONS**

The following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

- 1.1 "Acquiring Entity" means Nikkel Trading 392 Proprietary Limited including all its subsidiaries;
- 1.2 **"Approval Date"** means the date referred to on the Commission's merger Clearance Certificate (Form CC15);
- 1.3 "Auxiliary Machinery Ownership Scheme" means the scheme that will be implemented by the Acquiring Entity in clause 2.3.1;
- 1.4 "Breakeven Point" means the point at which cost and income are equal and there is neither profit nor loss;
- "CapEx" means the funds utilised to acquire, upgrade and maintain physical assets as referred to in clause 2.1.2.1 and 2.1.2.2, and totalling R[CONFIDENTIAL];
- "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.7 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission:
- 1.8 "Competition Act" means the Competition Act 89 of 1998, as amended;
- "Conditions" means these conditions contained in this Annexure A, agreed to by the Merging Parties and the Commission;
- "Days" mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12 "LRA" means the Labour Relations Act 66 of 1995, as amended;

- 1.13 "Member of local community" means any member of the local community of Duduza, which is the area hosting the community which serves Brikor mining and its brick making operations;
- 1.14 **"Merger"** means the acquisition of control by the Acquiring Entity over the Target Entity;
- 1.15 "Merging Parties" means both the Acquiring Entity and the Target Entity;
- 1.16 "OpEx" means the operating expenses, including required working capital incurred through normal business operations as referred to in clause 2.1.2.3, and budgeted at R[CONFIDENTIAL];
- 1.17 "Target Entity" means Brikor Limited including all its subsidiaries;
- 1.18 "Tribunal" means the Competition Tribunal of South Africa;
- 1.19 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal;
 and
- 1.20 **"Vehicle Ownership Scheme"** means the scheme that will be implemented by the Acquiring Entity in clause 2.3.2.

2 CONDITIONS TO THE MERGER

2.1 **Investment**

- 2.1.1 The Acquiring Entity commits to an investment of R[CONFIDENTIAL] ([CONFIDENTIAL]) ("Aggregate Amount") within 12 months following the Implementation Date. The Aggregate Amount will be used post-merger for new machinery, a new beneficiation plant and monthly working capital.
- 2.1.2 In particular, it is anticipated that the Aggregate Amount will be broken down as follows
 - 2.1.2.1 approximate CapEx of R[CONFIDENTIAL] will be used for the acquisition and maintenance of mining machinery within 12 (twelve) months following the Implementation Date;
 - 2.1.2.2 approximate CapEx of R**[CONFIDENTIAL]** will be used to commission and deploy a new beneficiation plant within 12 (twelve) months following the Implementation Date; and
 - 2.1.2.3 approximate OpEx of R[CONFIDENTIAL] will be used for working capital until the Breakeven Point is reached. The approximate OpEx referred to in this clause 2.1.2.3 is the estimated and budgeted amount that is subject to

fluctuation (higher or lower) based on the business operations following the Implementation Date.

2.1.3 The Acquiring Entity shall be entitled to vary the allocation of the CapEx between the investment categories set out in clauses 2.1.2.1 to 2.1.2.2 above where the demands or needs of the business so require, provided that the aggregate amount of the CapEx is achieved.

2.2 Employment

Within 12 (twelve) months of Implementation Date, the Merging Parties will create employment of approximately **[CONFIDENTIAL]** permanent positions and approximately **[CONFIDENTIAL]** contract positions. Preference for these positions will be given to the local Duduza community.

2.3 Supplier Development

The Acquiring Entity undertakes to implement (2) two initiatives post-merger namely the Auxiliary Machinery Ownership Scheme and Vehicle Ownership Scheme within 24 (twenty-four) months of the Implementation Date, explained as follows:

2.3.1 Auxiliary Machinery Ownership Scheme

- 2.3.1.1 In terms of the Auxiliary Machinery Ownership Scheme, Members of the local community will be identified, through consultation with the Trustees for the time being of the Kopanela Trust, to benefit in a rent-to-own project in respect of back-hoe loaders, graders and water bowsers to be used on site of the mining operations of the Merging Parties.
- 2.3.1.2 The Acquiring Entity will finance, maintain and operate the machinery on behalf of the relevant community members, who will rent the machinery to the Merging Parties' mining operations.
- 2.3.1.3 The Acquiring Entity will implement a skills development program to educate participants in the skills to run a small business. The small business development program will focus on relevant topics of the skills development program including, amongst others, cash flow management, equipment maintenance, budgeting and investment.

2.3.2 Vehicle Ownership Scheme

- 2.3.2.1 In terms of the Vehicle Ownership Scheme, 4 (four) vehicles will be allocated to supervisors/foremen at the Target Entity's mining operations as dedicated transport to and from work.
- 2.3.2.2 The ownership of these vehicles will be transferred to the beneficiaries after 3 (three) years after which the next 4 (four) supervisors/foremen beneficiaries will be allocated vehicles.
- 2.3.2.3 During the initial 3 (three) years, the Acquiring Entity will maintain the vehicles; however, the condition and value of the vehicle will be the responsibility of the allocated driver who will take ownership and receive the benefit after 3 (three) years.

2.4 Transfer of Grootfontein Mining Right to Kopanela Mining

- 2.4.1 The Acquiring Entity commits to, within 12 (twelve) months of the Implementation Date, take all reasonable actions to facilitate the submission of an application for the transfer of the Grootfontein Mining Right from the Target Entity to its subsidiary, Kopanela Mining (Pty) Ltd, pursuant to Section 11 of the Minerals and Petroleum Resources Development Act, No. 28 of 2002.
- 2.4.2 It is recorded between the Merging Parties that the Target Entity holds a beneficial ownership interest of 70% in Kopanela Mining (Pty) Ltd, with the remaining 30% being owned by a B-BBEE ownership structure; and that the transfer of the Grootfontein Mining Right to Kopanela Mining (Pty) Ltd was a condition of the granting of the said Mining Right to Brikor in July 2021.
- 2.4.3 Without derogating from the generality of clause 2.4.1 above, the Acquiring Entity commits to vote all of its shareholding in the Target Entity in favour of a shareholders' resolution to grant such financial assistance to its subsidiary (Kopanela Mining (Pty) Ltd) as may be required to facilitate a compliant Section 11 application as envisaged in clause 2.4.1.

3 MONITORING COMPLIANCE WITH THE CONDITIONS

- 3.1 The Merging Parties shall inform the Commission of the Implementation Date within five (5) days of its occurrence.
- The Merging Parties shall, within ninety (30) days of each anniversary of the Implementation Date for a period of 2 (two) years, submit an affidavit confirming compliance with the Conditions and provide a suitable and appropriately detailed annual update to the Commission regarding its compliance with the provisions of the Conditions.
- The Commission may request additional information from the Merging Parties which is relevant and necessary for the monitoring of compliance with these Conditions.

4 APPARENT BREACH

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5 VARIATION

The Merging Parties may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merging Parties' application to the Commission, the Merging Parties may apply to the Tribunal for appropriate relief.

6 **GENERAL**

All reporting documents referred to in these Conditions and all correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

FIRSTMILE PROPERTIES JHB HOUSING 2 (PTY) LTD AND

BUSINESS VENTURE INVESTMENTS NO 1387 (RF) (PTY) LTD; SHANIKE INVESTMENTS NO 87 (RF) (PTY) LTD; SHANIKE INVESTMENTS NO 84 (RF) (PTY) LTD; TORTELLO INVESTMENTS 142 (RF) (PTY) LTD; URBAINE TRIOMPH PROPERTIES (PTY) LTD; URBAN LAND PROPERTIES (PTY) LTD; 1 BEACON ROAD (PTY) LTD; SITUATION EAST (PTY) LTD; AND VJD HOLDINGS (PTY) LTD

CASE NUMBER 2023MAY0047

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

On 26 May 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Firstmile Properties JHB Housing 2 Proprietary Limited ("Firstmile") intends to acquire 100% of the issued shares in 9 property companies owned by Divercity Urban Property Group Proprietary Limited and Circlevest Securitisation (RF) Proprietary Limited. The property companies being acquired are: Business Venture Investments no 1387 (RF) (Pty) Ltd ("BVI"); Shanike Investments no 87 (RF) (Pty) Ltd ("Shanike 87"); Shanike Investments no 84 (RF) (Pty) Ltd ("Shanike 84"); Tortello Investments 142 (RF) (Pty) Ltd ("Tortello"); Urbaine Triomph Properties (Pty) Ltd ("Urbiane"); Urban Land Properties (Pty) Ltd ("Urban"); 1 Beacon Road (Pty) Ltd ("Beacon"); Situation East (Pty) Ltd ("Situation"); and VJD Holdings (Pty) Ltd ("VJD") (collectively referred to as "the target firms"). Following the implementation of the

- merger, Firstmile will hold 100% of the shares and claims in the target firms and will exercise sole control over the target firms.
- 2. The primary acquiring firm is Firstmile Properties JHB Housing 2 Proprietary Limited ("Firstmile Properties"), a company incorporated in terms of the laws of the Republic of South Africa. Firstmile Properties is wholly owned and controlled by Lonsa Group, a company incorporated in Mauritius. Lonsa Group controls various companies. Firstmile wholly owns and controls 8 companies in South Africa.
- 3. Lonsa Group its subsidiaries and all the firms directly and indirectly controlling it, will hereinafter be collectively referred to as the "Lonsa Group" or the "Acquiring Group".
- 4. Lonsa Group does not have shareholdings by Historically Disadvantaged Persons ("HDPs").
- 5. The primary target firms are: Business Venture Investments no 1387 (RF) (Pty) Ltd ("BVI"); Shanike Investments no 87 (RF) (Pty) Ltd ("Shanike 87"); Shanike Investments no 84 (RF) (Pty) Ltd ("Shanike 84"); Tortello Investments 142 (RF) (Pty) Ltd ("Tortello"); Urbaine Triomph Properties (Pty) Ltd ("Urbiane"); Urban Land Properties (Pty) Ltd ("Urban"); 1 Beacon Road (Pty) Ltd ("Beacon"); Situation East (Pty) Ltd ("Situation"); and VJD Holdings (Pty) Ltd ("VJD") (collectively referred to as "the target firms")
- 6. The target firms are controlled by Divercity Urban Property Group Proprietary Limited and Circlevest Securitisation (RF) Proprietary Limited. The target firms do not control any entities and they do not have any HDP shareholdings.

The parties' activities

7. Firstmile Properties is a property investment and development company with a shareholding in several residential and commercial buildings across South Africa and Zimbabwe. In South Africa, Firstmile Properties is a provider of rentable accommodation. Firstmile Properties owns various properties in Johannesburg located in different areas including Johannesburg Central Business District ("Johannesburg CBD").

8. The target firms are properties companies that own rentable residential properties comprising of 9 residential apartment blocks with attached retail properties (with individual GLAs of less than 1 200m²) located in Johannesburg CBD.

Competition assessment

- 9. The Commission considered the activities of the merging parties and found that the proposed transaction results in horizontal overlaps because the acquiring group and the target firms both provide rentable residential property. Further, the activities of the merging parties do not result in any vertical overlaps.
- 10. The merger parties estimates that the Johannesburg CBD market has a total of 100 000 residential units. The merger parties will have an overall market share of approximately [CONFIDENTIAL], market share accretion of [CONFIDENTIAL]. The merger parties submit that the market comprises of a significant number of market participants including City Property known as Octodec, Indluplace Properties Limited, Jozi Housing, Africrest Properties, AFHCO Holdings (Pty) Ltd and numerous others.
- Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected market.

Public interest issues

Employment

12. There are no employment concerns arising.

Promotion of greater spread of ownership

- 13. The merger parties submit that both the acquiring group and the target firms do not have HDP shareholdings.
- 14. In order to promote a greater spread of ownership, the merging parties committed to implement an HDP Transaction, within **[CONFIDENTIAL]** of the implementation date.

The acquiring firm will introduce HDP shareholder/s who will hold a total of **[CONFIDENTIAL]** of the shares in the acquiring firm. The merger parties have agreed to the conditions attached to and marked as **Annexure A**.

- 15. In addition, the proposed transaction does not raise any other public interest concerns.
- 16. The Commission approves the proposed merger subject to the attached conditions.

ANNEXURE A

FIRSTMILE PROPERTIES JHB HOUSING 2 PROPRIETARY LIMITED

AND

BUSINESS VENTURE INVESTMENTS NO 1387 (RF) PROPRIETARY LIMITED
SHANIKE INVESTMENTS NO 87 (RF) PROPRIETARY LIMITED
SHANIKE INVESTMENTS NO 84 (RF) PROPRIETARY LIMITED
TORTELLO INVESTMENTS 142 (RF) PROPRIETARY LIMITED
URBAINE TRIOMPH PROPERTIES PROPRIETARY LIMITED
URBAN LAND PROPERTIES PROPRIETARY LIMITED
1 BEACON ROAD PROPRIETARY LIMITED
SITUATION EAST PROPRIETARY LIMITED
VJD HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: 2023MAY0047

CONDITIONS

1. **DEFINITIONS**

- In this document, the expressions used below will have the appropriate meaning assigned to them and the following expressions will bear the following meaning:
 - 1.1. "Acquiring Firm" means Firstmile Properties JHB Housing 2 Proprietary Limited;
 - 1.2. "Approval Date" means the date on which the Merger is approved by the Commission in terms of the Competition Act as referred to on the Commission's Merger Clearance Certificate (Form CC 15);
 - 1.3. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

- 1.4. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.5. "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.6. "Conditions" means the conditions in this Annexure A;
- 1.7. "Days" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.8. "HDP" means historically disadvantaged persons, as contemplated in section 3(2) of the Competition Act;
- 1.9. "HDP Transaction" means the Acquiring Group's commitment to transfer a shareholding of no less than [CONFIDENTIAL] in the Acquiring Firm to one or more HDPs;
- 1.10. **"Implementation Date"** means the date on which the Merger is implemented by the Merging Parties;
- 1.11. "Merger" means the acquisition of control by the Acquiring Firm over the Target Firms;
- 1.12. "Merging Parties" means collectively the Acquiring Firm and the Target Firms;
- 1.13. "Target Firms" means Business Venture Investments no 1387 (RF) Proprietary Limited, Shanike Investments no 87 (RF) Proprietary Limited, Shanike Investments no 84 (RF) Proprietary Limited, Tortello Investments 142 (RF) Proprietary Limited, Urbaine Triomph Properties Proprietary Limited, Urban Land Properties Proprietary Limited, 1 Beacon Road Proprietary Limited, Situation East Proprietary Limited, and VJD Holdings Proprietary Limited as more fully described in the Schedules to Form CC4(1);

- 1.14. "**Transfer Date**" means the date on which the last of the Primary Target Firms are transferred to the Acquiring Firm; and
- 1.15. "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. HDP TRANSACTION

- 2.1. The Acquiring Firm shall, within [CONFIDENTIAL] of the Implementation Date, implement the HDP Transaction. In this regard, the Acquiring Firm will, in its sole discretion, determine the identities of the prospective HDP shareholders that will participate in the HDP Transaction as well as the proportion of shares that will be allotted to each such prospective HDP shareholder.
- 2.2. Prior to the implementation of the HDP Transaction, the Acquiring Firm will provide the Commission with details of the HDP Transaction in writing. These details shall include, but not be limited to, the structure of the HDP Transaction, identities of prospective HDPs, evidence that the prospective participants to the HDP Transaction are HDPs, the proportion of shareholding in the Acquiring Firm that each prospective HDP shareholder will receive and confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Competition Act.
- 2.3. Within (sixty) 60 Days of receipt of the details of the HDP Transaction, the Commission shall provide its written approval, or any comments or queries to the HDP Transaction, in writing.
- 2.4. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval.
- 2.5. For the avoidance of further doubt, to the extent that the HDP Transaction approved by the Commission in writing also constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP Transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.

3. MONITORING

- 3.1. The Acquiring Firms shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of its occurrence.
- 3.2. The Acquiring Firm shall, within 10 Days of the date of implementation of the HDP Transaction, submit an affidavit confirming compliance with the Conditions.
- 3.3. The Acquiring Firm shall, on each anniversary of the Approval Date for a period of 36 months, submit a report confirming compliance with these conditions.
- 3.4. Each report submitted in terms of paragraph 3.3 shall be accompanied by an affidavit by a director of the Acquiring Firm confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 3.5. The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
- 3.6. The Commission may request such additional information from the Merging Parties which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

4. APPARENT BREACH

4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. GENERAL

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ISOWALL GROUP (PTY) LTD AND AUTOMA MULTI STYRENE LTD (IN BUSINESS RESCUE)

CASE NUMBER: 2023MAY0058

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

- 1. On 4 July 2023, the Competition Commission ("the Commission") received notice of a small merger whereby, Isowall Group (Pty) Ltd ("Isowall") intends to acquire 100% of the issued share capital of Automa Multi Styrene (Pty) Ltd ("Automa").
- 2. The primary acquiring firm is Isowall, a private company incorporated in South Africa. Growth Capital Partners (Pty) Ltd ("GCP") holds 60% of the total issued share capital in Isowall. The remaining 40% of the shares in Isowall is held by VDT Investments (Pty) Ltd ("VDT"). In addition to Isowall, GCP (directly or indirectly) control various entities in South Africa.
- 3. Isowall wholly controls Isopanel Manufacturing (Pty) Ltd, Isowall Manufacturing (Pty) Ltd and Isoprojects (Pty) Ltd ("Isoprojects). Isowall and all its subsidiaries will from hereon be collectively referred to as the "Isowall Group". The overall focus of the Isowall Group is the manufacturing and installation of Isowall sandwich panels, as well as the manufacturing of expanded polystyrene ("EPS") and expanded polypropylene ("EPP") products.
- 4. The primary target firm is Automa (in Business Rescue) ("Automa"), a privately-owned South African company. Automa is wholly controlled by T Ferguson Family Investment Holdings (Pty) Ltd (in Business Rescue) ("TFFI"). Automa and TFFI are currently in business rescue, which commenced on 5 November 2021. TFFI trades as Dynamic Artistic Solutions ("DAS"). On 09 November 2021, Mr Barry John Du Toit was appointed as the Business Rescue Practitioner (BRP) for both Automa and TFFI. Automa holds 49% of the shares in AMS Packaging

Solutions (Pty) Ltd, a dormant firm. Automa is a manufacturer and supplier of closed cell foam products and insulation boards in EPS, Neopor®, EPP, Piocelan and Polyphen® fire resistant insulation foam. Automa is the exclusive licensed manufacturer and supplier of polyphen in South Africa.

Competition assessment

- 5. The Commission's investigation of the proposed transaction found that there is a horizontal relationship between the activities of the merging parties in that both Isowall and Automa are involved in the markets for the manufacturing and supply of EPS and EPP products. In addition, the proposed transaction has a vertical dimension as Automa (the Target Firm) is active in the upstream market for the manufacture and supply of polyphen products whilst Isowall (the Acquirer) is active in the downstream market for the manufacture and supply of insulated panels, which are manufactured using polyphen.
- 6. The Commission is of the view that the proposed merger is unlikely to raise significant competition concerns and it is unlikely that the merged entity will gain a strong position in the markets for the manufacturing and supply of EPS and EPP products. The Commission found that there are firms that provide similar products/services as those provided by the merging parties.
- 7. With respect to the vertical relationship between Isowall and Automa, the Commission finds that the merged entity is likely to have the ability and incentives to engage in input foreclosure regarding the polyphen products post-merger. The Commission found that should the merged entity elect to pursue the various input foreclosure strategies available to it post-merger, it will not be constrained by any third party given that there is no other alternative supplier of the polyphen products in South Africa that customers of Automa could viably turn to, post-merger. To address the input foreclosure concerns, the Commission has imposed conditions to ensure that the merging parties continue to supply the polyphen products to existing and future customers as long as Automa/the merged entity remains the exclusive manufacturer and supplier of the polyphen products in South Africa. The merging parties have agreed to this condition.

Public Interest considerations

8. In assessing the likely impact of the proposed transaction on employment, the Commission engaged the employee representatives to obtain their views. The employees of the merging parties are represented by the National Union of Metalworkers of South Africa ("NUMSA") and employee representatives within the companies. NUMSA and the employee representatives

- confirmed that the information submitted by the merging parties and did not raise any employment concerns about the proposed transaction.
- 9. The Commission however found evidence suggesting that the proposed transaction may result in some duplications. The merging parties did not provide an unequivocal statement on the merger's impact on employment such that the Commission found it necessary to approve the proposed transaction subject to an employment condition placing a moratorium on merger-specific retrenchments for a period of 2 (two) years. The merging parties have also agreed to this condition.
- 10. In addition, there are no other public interest concerns that are likely to result from the proposed transaction.

Conclusion

11. The Commission therefore approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.

ANNEXURE A - CONDITIONS

ISOWALL GROUP (PTY) LTD

AND

AUTOMA MULTI STYRENE (PTY) LTD

CASE NO:2023MAY0058

1. **DEFINITIONS**

In this document, the expressions used below will have the appropriate meaning assigned to them and the following and related expressions will bear the following meaning:

- 1.1 **"Approval Date"** means the date referred to on the Commission's Merger clearance certificate:
- 1.2 "Automa" means Automa Multi Styrene (Pty) Ltd;
- "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4 "Competition Act" means the Competition Act, 89 of 1998, as amended;
- 1.5 "Conditions" means the Merger conditions included in this Annexure A;
- "Days" means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.7 "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.8 "Isowall" means Isowall Group (Pty) Ltd;
- 1.9 "LRA" means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.10 **Merger**" means the proposed acquisition of Automa by Isowall as notified to the Commission under Case No. 2023MAY0058;
- 1.11 "Merged Entity" means the combined firm resulting from the Merger between Isowall and Automa;
- 1.12 "Merging Parties" means Isowall and Automa;

- 1.13 "Polyphen Customers" means all the existing customers of Automa in respect of the Polyphen products as at the Approval Date;
- 1.14 "Rules" means the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal:
- 1.15 "South Africa" means the Republic of South Africa; and
- 1.16 **"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

- 2.1 For as long as Automa remains the licensed manufacturer and holder of the exclusive license agreement with Polyphen International Pty Ltd, a company registered in Australia, as an exclusive manufacturer and supplier of polyphen in South Africa, the Merged Entity undertakes (subject to the terms and conditions of the license agreement) that:
 - 2.1.1 Automa will continue to honour the Polyphen Customers' contracts or supply agreements, on the terms and conditions as they exist upon the Implementation Date of the Merger. Insofar as the non-contracted Polyphen Customers are concerned, Automa will continue to supply polyphen on reasonable commercial terms, subject to the availability of raw material and/or exchange rate fluctuations.
 - 2.1.2 Automa will continue to manufacture and supply polyphen to Polyphen Customers on terms and conditions that are no less favourable than those conditions that existed between Automa and its Polyphen Customers prior to the Merger, subject to same being on reasonable commercial terms.
 - 2.1.3 Automa will not unduly discriminate between the net price, terms and/or conditions charged to different Polyphen Customers. More specifically
 - 2.1.3.1 Automa will continue to supply polyphen of the same quality (subject to the availability of raw material) to the Polyphen Customers, on commercially reasonable and non-discriminatory terms (provided that the Polyphen Customers comply with all applicable requirements and contractual terms and conditions).

3. **EMPLOYMENT**

- The Merged Entity shall not retrench any employees in South Africa as a result of the Merger, for a period of 2 (two) years following the Approval Date.
- 3.2 For the sake of clarity, merger-specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 The Merging Parties shall inform the Commission of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 4.2 The Merged Entity shall submit a report to the Commission as and when requested by the Commission, setting out its compliance with clause 2.1 of the Conditions. This report shall be accompanied by an affidavit, attested to by a director or other suitable person of the Merged Entity in South Africa confirming the accuracy of the report.
- 4.3 The Conditions in clauses 2.1 above shall also apply between the Approval Date and the Implementation Date.
- 4.4 The Merged Entity shall provide a copy of the relevant Conditions to all the Polyphen Customers.
- 4.5 The Merged Entity will circulate a copy of the relevant Conditions to their employees, the trade union and employee representatives within five (5) Days of the Approval Date.
- As proof of compliance with paragraph 3 above, the Merged Entity must, within five (5) Days of circulating the relevant Conditions as required in paragraph 4.5, submit an affidavit by the Human Resources Manager authorised by, and on behalf of the Merged Entity attesting to the circulation of the Conditions and provide written evidence of such circulation.

- 4.7 The Merging Parties shall submit an affidavit on an annual basis to the Commission within three months after the anniversary of the Implementation Date attesting to the compliance with paragraph 3 above for a period of 2 (two) years.
- 4.8 Any person who believes that the Merger Parties have failed to comply with the Conditions may approach the Commission with their complaint.
- 4.9 The Commission may request any additional information from the Merger Parties which the Commission may require from time to time.

5. VARIATION OF CONDITIONS

5.1 The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

6. APPARENT BREACH

6.1 If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

7. GENERAL

7.1 All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MAIN STREET 1986 PROPRIETARY LIMITED

AND

JACANA CAPITAL PROPRIETARY LIMITED

CASE NUMBER: 2023NOV0004

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 02 November 2023, the Competition Commission ("the Commission") was notified of an intermediate merger in terms of which Main Street 1986 Proprietary Limited ("MS 1986") intends to acquire [CONFIDENTIAL] shares in Jacana Capital Proprietary Limited ("Jacana Capital"). [CONFIDENTIAL]
- The primary acquiring firm is MS 1986, a company incorporated accordance with the laws of South Africa. MS 1986 is jointly controlled by Medu Holdings Proprietary Limited ("Medu Holdings") [CONFIDENTIAL] and the Peregrine Trust [CONFIDENTIAL]. MS 1986 does not control any other firm.
- 3. Medu Holdings is a private company registered in accordance with the laws of South Africa. [CONFIDENTIAL] Medu Holdings directly and indirectly controls several firms.

4. [CONFIDENTIAL]

 The Peregrine Trust does not have any shareholding held by HDPs. Medu Holdings is held [CONFIDENTIAL] by HDPs. Thus, MS 1986 has an HDP shareholding of [CONFIDENTIAL] held through Medu Holdings.

- 6. Main Street 1986 is a newly established company that will hold the investment in the Target Group. The Peregrine Trust is a trust and therefore does not conduct any business activities. Medu Holdings is a private equity manager of a number of funds as well as an investment holding company. Medu Holdings' subsidiaries conduct various activities and on the basis that Medu Holdings already controls the Target Group, the Commission does not consider these activities to be relevant for purposes of the proposed transaction.
- 7. The primary target firm is Jacana Capital, a private company registered in accordance with the laws of South Africa. Jacana Capital is ultimately controlled by Medu Holdings. Jacana Capital directly and/or indirectly controls several firms. Jacana Capital and all the firms directly and indirectly controlled by it will collectively be referred to as "the Target Group".
- 8. The Target Group is indirectly controlled by Medu Holdings and [CONFIDENTIAL].
- 9. The Target Group has various investments which all provide short-term insurance brokerage services.
- 10. The Commission considered the activities of the merging parties and found that the proposed merger is unlikely to substantial prevent or lessen competition in any market.

Public Interest

Employment

11. The Commission is of the view that the proposed transaction is unlikely to raise any employment concerns.

The promotion of a greater spread of ownership

12. When determining the merger's impact on this public interest ground, the Commission had regard to the HDP ownership credentials of Medu Holdings. However, since Medu Holdings is involved in private equity activities, the Commission considered it relevant to also consider the HDP ownership profile of Medu Holdings' investors and investee firms.

- 13. Given the rationale of the merger, the Commission considers that the conditions tendered by the parties promote a greater spread of ownership as contemplated by the Act.
- 14. The Commission approves the proposed transaction subject to the conditions attached as **Annexure A** hereto.

ANNEXURE A

MAIN STREET 1986 PROPRIETARY LIMITED

AND

JACANA CAPITAL PROPRIETARY LIMITED

CASE NUMBER: 2023NOV0004

CONDITIONS

1. **DEFINITIONS**

In this document, the expressions used below will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "Acquiring Group" means all the firms controlled by Medu Holdings (Pty) Ltd;
- 1.2 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.3 "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.4 "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.5 "Conditions" means these Merger conditions set out in this Annexure A;
- 1.6 "Days" means any calendar day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.7 **"HDP"** means a historically disadvantaged person as contemplated in the Competition Act;

- "Implementation Date" means the date, occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;
- 1.9 "Merged Firm" means the Target Firm subject to control of MS 1986;
- 1.10 "Merger" means the acquisition by MS1986 of the Target Firm;
- 1.11 "Merging Parties" means MS 1986 and the Target Firm;
- 1.12 "MS 1986" means Main Street 1986 Proprietary Limited; and
- 1.13 "Target Firm" means Jacana Capital Proprietary Limited.

2. PROMOTION OF HDP OWNERSHIP IN INVESTEE FIRMS

- 2.1 The Acquiring Group commits that, where feasible, it will for a period of 3 years from the Implementation Date ensure that:
- 2.1.1 Where feasible, MS 1986 will target that any firms in which MS 1986 invests in, will maintain and/or increase their level of ownership by HDPs.

3. MONITORING

- 3.1 Within 5 (five) days after the Implementation Date, the Merging Parties shall notify the Commission in writing of the Implementation Date.
- 3.2 On each anniversary of the Implementation Date for a period 3 (three) years, the Acquiring Group shall provide the Commission with a report outlining the Acquiring Group's full compliance with clause 2 of these Conditions.
- 3.3 The report referred to in clause 3.2 above shall be accompanied by an affidavit attested to by a senior officer within the Acquiring Group confirming the accuracy of the annual report and full compliance with these Conditions in the 12 months to which the report relates.
- 3.4 The Commission may at any time request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Conditions.

3.5 Any person who believes that the Merging Parties have failed to comply with these Conditions may approach the Commission with their complaint. If the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, the matter shall be dealt with in terms of clause Error! Reference source not found. below.

4. VARIATION OF CONDITIONS

The Merging Parties may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived or relaxed, including any resultant modification or substitution thereof.

5. APPARENT BREACH

If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules.

6. GENERAL

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

GREIF INTERNATIONAL HOLDING B.V AND **IMPACT TOPCO HOLDINGS S.A.S**

CASE NUMBER: 2023NOV0044

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

1. On 27 November 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Greif International Holding B.V ("Greif International") intends to acquire Impact Topco Holdings S.A.S ("Impact Topco"). Following the implementation of the merger, Greif International will exercise sole control over the Impact Topco.

Parties and their Activities

- 2. The primary acquiring firm is Greif International, a company registered in accordance with the laws of Netherlands. Greif International is controlled by Grief, Inc. Grief International controls Greif South Africa (Pty) Ltd ("Greif SA"), a private company incorporated in accordance with the laws of South Africa.
- 3. Greif International is active in the supply of industrial packaging products. It produces a variety of products including, small plastic containers, steel, plastic and fibre drums, intermediate bulk containers, reconditioned containers, small plastics, containerboard, uncoated recycled paperboard, coated recycled paperboard, tubes and cores as well as a diverse range of speciality products. Relevant to the proposed transaction is the small plastic containers, broadly called rigid plastic packaging.
- 4. The primary target firm is Impact Topco, a company incorporated under the laws of France. Impact Topco is controlled by SK Impact Group S.á.r.l. In South Africa, Impact Topco controls IPACKCHEM (Pty) Ltd ("IPACKCHEM SA").

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5. The IPACKCHEM Group of companies is involved in the supply of rigid plastic and packaging solutions for different chemicals in liquid form. The company is a manufacturer of blow-moulded packaging solutions serving a broad range of end-markets, which includes crop protection, speciality chemicals and fuels, animal health, and laboratory products among others. In South Africa, IPACKCHEM SA sells rigid plastic packaging with a capacity below 30 litres.

Competition Assessment

- 6. The merging parties submitted that they do not have reliable estimated market shares of the market, but relied on The Future of the Global Packaging Sector report, which pronounced that the sector was valued at R22.5 billion in 2020. The Commission found that merged entity will hold a less than 1% market share in the market of rigid plastic packaging.
- 7. Further, the merged entity will continue to face competition from PolyOak Packaging, Nampak MegaPak, Blow Mould Technology and Karob Plastic and the others. The Commission contacted various stakeholders and none of them raised concerns with the proposed merger.
- 8. As such, the Commission is of the view that the proposed transaction is unlikely to substantially prevent competition in any market in South Africa.

Public interest

- To address the Commission's public interest concerns, the parties tendered a number of commitments including (amongst other) skills development, HDP board representation and procurement from HDP suppliers. These commitments are set out in the conditions set out in Annexure A hereto.
- The proposed transaction does not raise any other public interest concerns.

Conclusion

11. The Commission approves the merger subject to the conditions set out in **Annexure A** hereto.

ANNEXURE A

GREIF INTERNATIONAL B.V

AND

IMPACT TOPCO HOLDINGS S.A.S

CASE NUMBER: 2023NOV0044

1. **DEFINITIONS**

The following expressions shall bear the meaning assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely:

- 1.1. "Acquiring Firm" means Greif International B.V.;
- 1.2. "Approval Date" means the date the Commission issues a Clearance Certificate;
- 1.3. "Commission" means the Competition Commission of South Africa;
- 1.4. "Commission Rules" means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.5. "Competition Act" means the Competition Act No 89 of 1998, as amended;
- 1.6. "Conditions" means these conditions;
- 1.7. "Day" means any business day, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.8. "Funding Amount" means an amount of R 3 million (three million rand) to be set aside by the Merging Parties to be disbursed to HDLs under the HDP Funding Initiative over the Funding Period, in accordance with the Conditions;
- 1.9. "Funding Period" means a period of up to 5 (five) years;
- 1.10. "Greif International" means Greif International B.V., a Dutch company, whose registered office is located at Van Heuven Goedhartlaan 9A, 5e etage 1181LE Amstelveen, the Netherlands, registered with the Trade and Companies Registry under registration number 33065401;
- 1.11. "Greif South Africa" means Greif South Africa (Pty) Ltd, a private company incorporated in accordance with the laws of South Africa with registered business address at 19 Martin

- Boulevard, Vanderbijlpark, Sedibeng, Gauteng, 1900 under registration number 1937/009637/07;
- 1.12. "HDPs" means historically disadvantaged persons, as contemplated in section 3(2) of the Competition Act;
- 1.13. **"HDP Education Initiative**" means the education initiative to be established by the Merging Parties as per these Conditions;
- 1.14. "HDPE" means high density poly ethylene;
- 1.15. **"HDLs**" means learners enrolling in or who are already enrolled in primary, secondary or tertiary education and who fall within the definition of HDPs;
- 1.16. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.17. "iPackchem South Africa" means iPackchem (Pty) Ltd a company incorporated in accordance with the laws of South Africa with its registered business address at Cosmo Business Park, 8 Milano Crescent, Malibongwe Drive, Johannesburg, Gauteng under registration number 2014/159875/07;
- 1.18. "Merger" means the acquisition of sole control over the Target Firm by the Acquiring Firm;
- 1.19. "Merging Entity" means collectively the Acquiring Firm and the Target Firm;
- 1.20. "Merger Parties" means the Acquiring Firm and the Target Firm;
- 1.21. "Platts Price Index" means the price benchmark services for the plastics industry, commonly used by parties in the market for the supply of plastic packaging which provides verifiable and transparent market information;
- 1.22. "Target Firm" means Impact Topco Holdings S.A.S;
- 1.23. "Target Group" means all firms directly and indirectly controlled by the Target Firm in South Africa;
- 1.24. "Tribunal" means the Competition Tribunal of South Africa; and
- 1.25. "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal; and
- 1.26. "YES Program" means the Youth Employment Service Program established by the Department of Trade, Industry and Competition in terms of Government Gazette No. 41866 of 2018.

2. EMPLOYMENT

- 2.1. There shall, following the Approval Date, be no merger specific retrenchments arising from the Merger.
- 2.2. For the sake of clarity, merger-specific retrenchments do not include: (i) voluntary separation arrangements and/or voluntary retrenchments; (ii) voluntary early retirement; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including (but not limited to) terminations as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract or a fixed-term third party contract employee or contract with a third party.

3. SKILLS DEVELOPMENT

- 3.1. The Merging Parties commit to an increase in the number of candidates and expenditure in respect of the YES Program which the Merging Parties already implement for their employees. In this regard, the Acquiring Firm commits to increase the number of candidates employed by iPackchem South Africa in terms of the YES Program by an additional 15 candidates (i.e., from 8 to 23 candidates).
- 3.2. The commitment referred to in paragraphs 3.1 above will be in place for 3 (three) years after the Implementation Date.
- 3.3. The additional spend value (over the three-year period) that the Acquiring Firm will commit to for purposes of expanding iPackchem South Africa's YES Program is set out below:
 - 3.3.1 Salaries: R2 250 000 (i.e., 15 graduates multiplied by R50 000 for three years); and
 - 3.3.2 Training and membership: R993 600 (i.e., 23 graduates multiplied by R14 400 for three years).
- 3.4. Thus, the Acquiring Firm commits to an aggregate spend value of R3 243 600 in respect of the above commitments.

4. HDP BOARD REPRESENTATION

4.1. The Merging Parties commit to appointing a black female non-executive director to the iPackchem South Africa board of directors within 1 (one) year after the Implementation Date.

5. LOCAL PROCUREMENT

- 5.1. iPackchem South Africa commits to maintaining the current procurement of HDPE from local suppliers, being an amount of approximately R44 000 000 annually. In addition, the Merging Parties commit to increasing procurement of HDPE locally by no less than 15% (representing an increase of around R6 600 000 in local HDPE procurement) over a 3 (three) year period from the Implementation Date.
- 5.2. The commitment in paragraph 5.1 above is conditional on the Merging Parties being able to source HDPE locally on terms which are no less favourable than the import parity price based on the Platts Price Index, making a reasonable allowance for transport, clearing and freight forwarding costs.

6. ENTERPRISE DEVELOPMENT

- 6.1. The Merging Parties commit to identifying an HDP controlled hygiene/cleaning company within 1 (one) year after the Implementation Date and, for 3 (three) years after the Implementation Date, support such identified company by donating at least R125 000 worth of plastic containers to their business annually (or to an alternative HDP controlled business should the identified cleaning company not require such plastic containers).
- 6.2. To further assist the identified cleaning company, the Merging Parties agree to purchase their services on a 'cash on delivery' basis to assist with cash flow.
- 6.3. The Merging Parties shall contract the services of the HDP controlled hygiene/cleaning company to provide services at either of the Merging Parties' premises for at least 3 (three) years.

7. EDUCATION INITIATIVE

- 7.1. Within 6 (six) months of the Implementation Date, the Merging Parties shall establish the HDP Education Initiative.
- 7.2. For the avoidance of doubt, if, at the end of the Funding Period, the Funding Amount has not been disbursed in full, any amounts remaining in the HDP Education Initiative shall be disbursed to HDLs in accordance with the Conditions.
- 7.3. To this end, through the HDP Education Initiative, the Merging Parties shall:
 - 7.3.1 provide funding for HDLs who enrol in or are currently enrolled and studying at a primary, secondary or higher education institution registered with the Department or Basic Education or the Department of Higher Education & Training, as the case may be;

- 7.3.2 use its best endeavours to provide funding for HDLs who plan to or are studying in fields allied to the Merging Parties activities; and
- 7.3.3 disburse the Funding Amount towards registration and tuition fees, student accommodation, study materials, a food and personal care allowance, and where applicable, transport allowance

8. MONITORING

- 8.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 8.2. The Acquiring Firm shall submit an affidavit to the Commission within 1 (one) month after each anniversary of the Implementation Date attesting to its compliance with undertakings set out in clause 2 above.
- 8.3. The Commission may request such additional information from the Acquiring Firm which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

9. APPARENT BREACH

9.1. An apparent breach by the Acquiring Firm of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

10. VARIATION

10.1. The Acquiring Firm may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Acquiring Firm shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, amended and/or the time period for fulfilment to be extended as aforementioned.

11. GENERAL

11.1. All correspondences in relation to the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

PUMA ENERGY SOUTH ASIA B.V

AND

MBHE AFRICA POWER (PTY) LTD

CASE NUMBER: 2023OCT0006

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

- On 04 October 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby Puma Energy South Asia Holdings B. V ("Puma South Asia") intends on acquiring 49.65% of MBHE African Power (Pty) Ltd ("African Power").
 Upon implementation of the proposed transaction, Puma South Asia and MBHE Group (Pty) Ltd ("MBHE Group") will jointly control African Power.
- 2. The primary acquiring firm is Puma South Asia, a company duly incorporated in the Netherlands. Puma South Asia is ultimately controlled by Puma Energy Holdings Pte Ltd ("Puma Holdings"). Puma Holdings and all the firms it controls shall be referred to as the "Acquiring Group".
- 3. None of the Acquiring Group firms that directly or indirectly control Puma South Asia have any ownership by HDPs.
- 4. The Acquiring Group is a supplier of refined petroleum products as a wholesaler and retailer. Its operations comprise sales to commercial, aviation and retail customers (the latter through its retail fuel sites).

- 5. The primary target firm is African Power, a private company duly incorporated in the Republic of South Africa. African Power has a wholly owned subsidiary, namely MBHE O AND M (Pty) Ltd ("MBHE O&M"). African Power also has subsidiaries in other African countries. African Power and all its subsidiaries shall be referred to as the "Target Group".
- 6. The Target Group does not have any shareholders who are HDPs.
- 7. The Target Group through African Power and MBHE O&M is a solar photovoltaic solution service provider to commercial customers within various sectors and sites including retail centres, manufacturers, production facilities, hospitals, heavy industry, and the mines. It is an end-to-end service provider that designs, procures, supplies, installs, operates, monitors and maintains on and off-grid solar photovoltaic systems (i.e., solar power generation systems).

Competition Assessment

8. The Commission found the proposed transaction does not give rise to any overlaps.

Accordingly, the Commission concludes that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public interest considerations

- 9. The Honourable Minister of Trade, Industry and Competition ("Minister"), participated in this merger raising public interest concerns.
- 10. The Commission found that the parties need to promote a greater spread of ownership. To do so, the merging parties have agreed to implement at least 10% indirect or direct HDP transaction in the target firm within 36 months from the implementation date of the proposed merger.
- 11. The proposed merger does not raise any public interest concerns.
- 12. The Commission therefore approves the proposed merger subject to the conditions attached hereto as **Annexure A**.

ANNEXURE A

PUMA ENERGY SOUTH ASIA HOLDINGS B.V.

AND

MBHE AFRICAN POWER (PTY) LTD

CASE NUMBER: 2023OCT0006

CONDITIONS

1. DEFINITIONS

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- 1.1. Acquiring Firm" means Puma Energy South Asia Holdings B.V.;
- 1.2. "Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
- 1.3. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4. "Commission's Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.5. "Competition Act" means the Competition Act 89 of 1998, as amended;
- 1.6. "Conditions" means these conditions;
- 1.7. **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.8. **Establishment Period**" means 36 months from the Implementation Date;
- 1.9. "HDPs" means a historically disadvantaged person/s as contemplated in section 3(2) of the Competition Act;
- 1.10. **"HDP Transaction"** means a transaction which, if implemented, will result in indirect or direct ownership by HDPs in the Merged Entity of at least 10% shareholding;

- 1.11. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12. **"Merged Entity"** means the Target Firm, subject to the control of the Acquiring Firm, following the Implementation Date;
- 1.13. "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.14. "Merger" means the acquisition of control of the Target Firm by the Acquiring Firm;
- 1.15. "Puma South Africa" means Puma Energy South Africa (Pty) Ltd;
- 1.16. "South Africa" means the Republic of South Africa;
- 1.17. "Target Firm" means MBHE African Power (Pty) Ltd; and
- 1.18. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

CONDITIONS

2. RECORDAL

2.1. The Acquiring Firm records that, as at the date of these Conditions, it wishes to comply with these Conditions by entering into a HDP Transaction with Puma South Africa by the end of the Establishment Period.

3. HDP TRANSACTION

3.1. By the end of the Establishment Period, the Merging Parties shall have implemented a HDP Transaction.

4. MONITORING OF COMPLIANCE

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of implementation.
- 4.2. The Merged Entity shall within 5 (five) Days of identifying the relevant HDP in respect of the HDP Transaction inform and provide such relevant information to the Commission as is required in order to satisfy itself that the identified HDP complies with the Conditions insofar as it relates to the HDP Transaction. This information shall include the following:
 - 4.2.1. Details of the proposed HDP Transaction;

- 4.2.2. Sufficient details of the HDPs, as would reasonably be required, to allow the Commission to satisfy itself that firm is a HDP in terms of the Competition Act; and
- 4.2.3. The HDP ownership level in the Merged Entity.
- 4.3. Within 30 (thirty) Days of receipt of the details of the HDP Transaction in 4.2, the Commission shall review and provide the Merger Parties' representatives with any comments or queries in relation to the HDP Transaction, in writing.
- 4.4. For the avoidance of doubt, the HDP Transaction in 4.2 may not be implemented prior to the Commission's written approval, which approval shall not be unreasonably withheld or delayed.
- 4.5. For the avoidance of further doubt, to the extent that the HDP Transaction in 2.1. also constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP Transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.
- 4.6. Any person who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.

5. BREACH OF CONDITIONS

5.1. 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 Condition, this shall be dealt with in terms of Rule 39 of the Commission's Rules.

6. VARIATION

6.1. The Merged Entity may at any time, and on good cause shown, apply to the Commission in terms of the Commission Rules for the Condition to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal, on good cause shown, for appropriate relief.

7. GENERAL

7.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

TCG HOLDCO C/O ADENIA CAPITAL (V) LP AND THE COURIER GUY (PTY) LTD

CASE NUMBER: 2023OCT0021

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

1. On 09 October 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby TCG HoldCo, wholly controlled by Adenia Capital V LP ("AC V"), will acquire the entire shareholding of The Courier Guy (Pty) Ltd ("TCG"). Upon the implementation of the proposed transaction, TCG HoldCo, and in turn AC V, will have sole control of TCG.

Parties

- 2. The primary acquiring firm is TCG HoldCo, a special purpose vehicle to be established for the purposes of the proposed transaction. TCG HoldCo is wholly owned and controlled by AC V. AC V is a limited partnership private equity fund established under the laws of Mauritius.
- 3. TCG HoldCo has no shareholding by historically disadvantaged persons ("HDPs").
- 4. The primary target firm is TCG, a private company incorporated in accordance with the laws of South Africa. TCG is controlled by [CONFIDNETIAL].
- 5. TCG has no shareholding by HDPs.

Activities

Acquiring Group

6. The Acquiring Group operates various private equity funds with investments in various sectors including technology media and telecoms; hospitality; manufacturing; business services; textile; agribusiness; healthcare; distribution; retail; renewable energies, and telecoms sectors across the African continent. There are no current investments in any other Courier, Express and Parcel Services ("CEP") business in South Africa (or elsewhere).

Target Firm

7. TCG is a South African based business-to-business ("B2B"), business-to-customer ("B2C") and customer-to-customer ("C2C") CEP business. TCG provides the following last-mile services (i) same day courier services, (ii) next day courier services and (iii) other services such as a Courier Butler platform as well as international freight services, whereby documents are collected in South Africa and sent to international destinations. TCG provides its courier service through an owner-driver model in terms of which it outsources the last-mile delivery to subcontractors who own and operate their own vehicles (with TCG branding) ("Owner-Drivers or "subcontractors").

Competition Assessment

8. The Commission considered the activities of the Acquiring Group and target firm and found that the merging parties do not provide products or services which are considered substitutable or interchangeable. The Acquiring Group does not conduct any business activities in CEP services or activities related thereto. There is no existing vertical relationship between the merging parties in South Africa because the merging parties do not supply any products or services to each other. The Commission is therefore of the view that the proposed transaction is unlikely to result in the substantial prevention or lessening of competition in the affected markets.

Public interest

9. To address public interest concerns, the parties have tendered employment commitments and the expansion and enhancement of the target firms' owner driver scheme. These commitments render the merger justifiable on substantial public interest grounds.

Conclusion

 The Commission approves the proposed transaction subject to conditions set out in Annexure A.

TCG HOLDCO

AND

THE COURIER GUY PROPRIETARY LIMITED

CASE NUMBER: 2023OCT0021

CONDITIONS

1. **DEFINITIONS**

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

- 1.1 "Acquiring Firm" means TCG HoldCo;
- 1.2 **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4 **"Competition Rules"** means the Rules for the Conduct of Proceedings in the Commission:
- 1.5 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
- 1.6 **"Conditions"** mean these conditions:
- 1.7 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.8 **"HDP"** means a historically disadvantaged person as defined in section 3(2) of the Competition Act;

- 1.9 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10 "Independent Contractors Agreement" means the subcontracting agreement regulating the contractual relationship between TCG and its appointed Owner-Drivers;
- 1.11 **"Merged Entity"** means the Target Firm subject to the control of the Acquiring Firm following the Implementation Date;
- 1.12 "Merger" means the proposed acquisition by TCG HoldCo of 100% (one hundred percent) of the issued share capital of the Target Firm;
- 1.13 "Merger Parties" means the Acquiring Firm and the Target Firm;
- 1.14 "Owner-Driver" means an independent subcontractor, appointed by the Target Firm in terms of its owner-driver model, to whom the Target Firm outsources the last-mile delivery component of its courier services within a designated area;
- 1.15 "Target Firm" means The Courier Guy Proprietary Limited;
- 1.16 "TCG" means The Courier Guy Proprietary Limited; and
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. Appointment of Owner-Drivers

2.1 The Merged Entity shall appoint a total of **[CONFIDENTIAL]** new Owner-Drivers, of which 95% (ninety five percent) shall comprise of HDPs, within a period of 4 (four) years of the Implementation Date. The Merged Entity shall appoint at least **[CONFIDENTIAL]** new Owner-Drivers per year for the first 2 (two) years after the

Implementation Date, and at least **[CONFIDENTIAL]** new Owner-Drivers per year for the second 2 (two) years after the Implementation Date.

3. Investment capital

3.1 Within 4 (four) years of the Implementation Date, the Acquiring Firm shall contribute and/or procure the contribution of investment capital to the Target Firm in the amount of **[CONFIDENTIAL]**.

4. Employment

4.1 Within 4 (four) years of the Implementation Date, the Merged Entity shall create **[CONFIDENTIAL]** new permanent employment positions at the Target Firm, the majority of which shall be filled by HDPs.

5. Independent Contractors Agreement

5.1 The Merged Entity shall, within 9 (nine) months of the Implementation Date, ensure that the terms of all Independent Contractors Agreements are amended to reflect the following principles and terms:

[CONFIDENTIAL]

5.2 For the avoidance of doubt, this clause 5 applies to extant Independent Contractors Agreements as at the Implementation Date, and Independent Contractors Agreements concluded after the Implementation Date.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- The Merged Entity shall, within 30 (thirty) Days of the Implementation Date, notify all Owner-Drivers of the contents of clause 5 of these Conditions.
- 6.3 The Merged Entity shall, within 40 (forty) Days of the Implementation Date, provide the Commission with an affidavit attested to by a senior official of the Merged

Entity, confirming compliance with the notification obligations in clause 6.2 of these Conditions.

- 6.4 The Merged Entity shall, within 30 (thirty) Days of the period set out in clause 5.1 of these Conditions, provide the Commission with a report detailing its compliance with clause 5 of these Conditions, including all information reasonably required by the Commission to monitor compliance with clause 5 of these Conditions.
- The Merged Entity shall, for a period of 4 (four) years, within 30 (thirty) Days of the anniversary of the Implementation Date, provide the Commission with a report detailing its compliance with clauses 2, 3 and 4 of these Conditions, including all information reasonably required by the Commission to monitor compliance with clauses 2, 3 and 4 of these Conditions.
- The Commission may request such 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.

7. 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 these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

8. VARIATION OF CONDITIONS

The Merger Parties may, at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

9. **GENERAL**

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

QBS TECHNOLOGY GROUP LTD AND MAXTEC CONVERGENCE (PTY) LTD

CASE NUMBER: 2023OCT0026

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

 The proposed transaction involves the acquisition of sole control in Maxtec Convergence Proprietary Limited ("Maxtec") by QBS Technology Group Africa Proprietary Limited ("QBS Technology Africa").

Parties

- 2. The primary acquiring firm is QBS, a company incorporated in accordance with the company laws of England and Wales, through a newly incorporated special purpose vehicle, namely QBS Technology Africa a private company incorporated in accordance with the company laws of South Africa. Globally, the acquiring firm is active in the information and communication industry, wholesale of computers, computer peripherals equipment technology company providing a platform for software companies and channel resellers to increase efficiency and growth. However, the acquiring firm is not active in South Africa.
- 3. The primary target firm is Maxtec, a private company incorporated in accordance with the company laws of South Africa. Maxtec is active in the information technology market specialises in the provision of storage and networking solutions.

Effect on competition

4. The Commission considered the activities of the merging parties and found that they overlap in the provision of information technology globally. However, the acquiring firm is not active

- in South Africa. In addition, the target firm is a relatively small player in the information technology market in South Africa with a market share of less than 5%.
- 5. Therefore, the proposed transaction is unlikely to substantially lessen or prevent competition in any market.

Effect on employment

The Commission is of the view that the proposed transaction is unlikely to result in a
negative effect on employees as the acquiring is an international firm that does not have
employees in South Africa. As such, it is unlikely that the proposed transaction will result in
redundancies.

Public interest

- 7. To address the merger's reduction of the level of shareholding held by historically disadvantaged persons ("HDPs") in the target firm, the merging parties have committed to concluding an HDP transaction. The HDP transaction will result in at least 51% of the shareholding in the target firm being held by HDPs.
- 8. The proposed transaction does not raise any other concerns.
- 9. The proposed transaction is approved subject to the conditions attached as **Annexure A** hereto.

ANNEXURE A

QBS TECHNOLOGY GROUP LIMITED

AND

MAXTEC CONVERGENCE PROPRIETARY LIMITED

CASE NO: 2023OCT0026

CONDITIONS

1. **DEFINITIONS**

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -
 - 1.1.1. "Acquiring Firm" means QBS Technology Group Limited;
 - 1.1.2. "Approval Date" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
 - 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. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission.
 - 1.1.5. "Competition Act" means the Competition Act 89 of 1998, as amended;
 - 1.1.6. **"Conditions"** means these conditions, and "Condition" means, as the context requires, any one of them;
 - 1.1.7. "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.1.8. "HDPs" means historically disadvantaged persons as contemplated by the Competition Act No. 89 of 1998 (as amended);

- 1.1.9. "HDP Transaction" means the acquisition by HDP shareholders of 30% of the issued share capital of QBS 2 (which will own 100% of the Target Firm) and the acquisition by HDP shareholders of a further 30% of QBS 1 (which will own 70% of QBS2), all of which will amount to an effective 51% of the shareholding of the Target Firm by HDP shareholders measured using the Flow-Through;
- 1.1.10. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.11. "Merger" means the acquisition of sole control of the Target Firm by the Acquiring Firm;
- 1.1.12. "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.1.13. "Maxtec" means Maxtec Convergence Proprietary Limited,
- 1.1.14. "QBS Africa" means QBS Technology Group Africa Proprietary Limited;
- 1.1.15. "QBS 1" means QBS Technology Group Africa 1 Proprietary Limited;
- 1.1.16. "QBS 2" means QBS Technology Group Africa 2 Proprietary Limited;
- 1.1.17. "South Africa" means the Republic of South Africa;
- 1.1.18. "Target Firm" means Maxtec Convergence Proprietary Limited;
- 1.1.19. "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.20. "**Tribunal Rules**" means the Rules for the Conduct of Proceedings in the Tribunal.

CONDITIONS

2. HDP Transaction

- 2.1. With effect from the Implementation Date, QBS Africa will implement an HDP Transaction to introduce HDP shareholding into Maxtec.
- 2.2. The conclusion of the HDP transaction will ensure a minimum of 51% of the effective shareholding of the Target Firm will be held by HDP shareholders.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2. Prior to the implementation of the HDP Transaction, the Acquiring Firm will provide the Commission with details of the HDP Transaction in writing. These details shall set out:
 - 3.2.1. the structure of the HDP Transaction;
 - 3.2.2. the identities of the HDP shareholder/s;
 - 3.2.3. evidence that the prospective participants to the HDP Transaction are HDPs.
 - 3.2.4. the proportion of shareholding in the Acquiring firm that each prospective HDP shareholder(s) will receive; and
 - 3.2.5. confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.
- 3.3. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval. The Commission will provide its written decision within 30 Days of written notification, or such other period as may be agreed in writing.
- 3.4. The Acquiring Firm shall, on the first anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 2.
- 3.5. The report submitted in terms of paragraphs 3.3 shall be accompanied by an affidavit deposed to by a senior official of the Acquiring Firm, confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 3.6. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. APPARENT BREACH

4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Merger Parties and/or the Commission may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, amended or relaxed. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. **GENERAL**

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

VANTIVA S.A.

AND

HOME NETWORKS DIVISION OF COMMSCOPE HOLDINGS COMPANY, INC.'S CASE NUMBER: 2023OCT0039

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 18 October 2023, the Competition Commission received notice of an intermediate merger wherein Vantiva S.A. ("Vantiva") intends to acquire the Home Networks Division of CommScope Holdings Company, Inc.'s ("Target Business") from CommScope Holdings Company In ("CommScope"). Post-merger, Vantiva will exercise sole control of the Target Business.
- The primary acquiring firm is Vantiva, a firm incorporated in accordance with the laws of France. Vantiva is a publicly traded company listed on EURONEXT (Paris) and as such it is not controlled by any individual firm.
- 3. Vantiva does not, directly or indirectly, control any firms in South Africa.
- 4. Vantiva does not have any shareholding held by any historically disadvantaged persons ("HDPs").
- Vantiva manufactures and distributes digital media solutions. In South Africa,
 Vantiva does not have any operations. It does not have assets or derive any revenue in South Africa.
- The primary target firm is the Target Business. The Target Business is controlled by CommScope, a public firm incorporated in accordance with the laws of the United States of America and is listed on the Nasdaq Stock Market.

- 7. In South Africa, the Target Business comprises of ARRIS South Africa Proprietary Limited ("ARRIS SA") The merging parties submit that the Target Business does not have any shareholding held by HDPs.
- 8. The Target Business, through ARRIS SA, is active in the distribution of set-top boxes (i.e., television decoders) in South Africa.

Competition assessment

9. The proposed transaction is unlikely to substantially prevent or lessen competition in any market as Vantiva is not active in South Africa.

Public interest

- 10. To address public interest, the merging parties proposed conditions that facilitate the participation of firms owned by HDPs in the relevant value chains.
- The Commission approves the proposed transaction with conditions. See Annexure
 A.

ANNEXURE A VANTIVA S.A.

AND

COMMSCOPE HOLDING COMPANY, INC.'S HOME NETWORKS DIVISION CASE NUMBER: 2023OCT0039

CONDITIONS

1 **DEFINITIONS**

- 1.1 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings, namely:
- 1.1.1 "Act" means the Competition Act No. 89 of 1998 (as amended);
- 1.1.2 "Acquiring Firm" means Vantiva S.A.;
- 1.1.3 **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC 15);
- 1.1.4 "ARRIS South Africa" means Arris South Africa Proprietary Limited;
- 1.1.5 "Commission" means the Competition Commission of South Africa;
- 1.1.6 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.1.7 **"Conditions"** means these conditions;
- 1.1.8 "Customer Contract" means the master development and supply agreement entered into between, *inter alia*, [CONFIDENTIAL];
- 1.1.9 **[CONFIDENTIAL]**;
- 1.1.10 "Days" mean business days in South Africa;
- 1.1.11 [CONFIDENTIAL],
- 1.1.12 "HDPs" means historically disadvantaged persons, as contemplated in section 3(2) of the Act, and "HDP Owned" and "HDP Ownership" will have the corresponding meaning;

- 1.1.13 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.14 "Logistics Arrangement" means the commercial relationship in place between [CONFIDENTIAL]
- 1.1.15 "Manufacturing and Supply Agreement" means the manufacturing and supply agreement entered into between [CONFIDENTIAL]
- 1.1.16 "Merger" means the acquisition of control of the Home Networks Division of CommScope Inc. by the Acquiring Firm, which constitutes an intermediate merger;
- 1.1.17 "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.1.18 "Target Firm" means the Home Networks Division of CommScope Inc.;
- 1.1.19 "Tribunal" means the Competition Tribunal of South Africa.

2 CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1 In order to further enhance participation by HDPs in the South African supply chain:
- 2.1.1 In the event that the Manufacturing and Supply Agreement is terminated in accordance with its terms and the Customer Contract remains in force, ARRIS South Africa will target to appoint a South African manufacturing partner which is HDP Owned to supply ARRIS South Africa with the same or similar services contemplated under the Manufacturing and Supply Agreement. The appointment will be made in ARRIS South Africa's sole discretion.
- 2.1.2 Within 1 (one) year of the Implementation Date, ARRIS South Africa, consistent with the terms of the Manufacturing and Supply Agreement, will engage with *[CONFIDENTIAL]* with a view to *[CONFIDENTIAL]* identifying more opportunities within *[CONFIDENTIAL]* value chain to source products and/or services, that are currently sourced within South Africa, from HDP suppliers, insofar as such products and/or services are required under the Manufacturing and Supply Agreement.
- 2.1.3 Within 1 (one) year of the Implementation Date, ARRIS South Africa will engage with its current logistics service provider, **[CONFIDENTIAL**] with a

view to agreeing with **[CONFIDENTIAL]** that it will improve its HDP Ownership within 2 (two) years of the Implementation Date.

- 2.1.4 In the event that **[CONNFIDENTIAL]** is unable to improve its HDP Ownership within 2 (two) years of the Implementation Date or the Logistics Arrangement is terminated, ARRIS South Africa will appoint a South African logistics partner that is HDP Owned to supply ARRIS South Africa with the same or similar services contemplated under the Logistics Arrangement. The appointment will be made in ARRIS South Africa's sole discretion.
- 2.1.5 Within 1 (one) year of the Implementation Date, ARRIS South Africa will (consistent with the terms of the Manufacturing and Supply Agreement, the Customer Contract, the Logistics Arrangement, and any other related contracts in place with ARRIS South Africa) identify and appoint a South African warehousing partner or similar logistics partner that is HDP Owned to supply ARRIS South Africa with local warehousing services.

3 MONITORING COMPLIANCE WITH THE CONDITIONS

- 3.1 ARRIS South Africa shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- Following the Implementation Date, ARRIS South Africa will submit a compliance report within 15 Days of the end of every quarter to the Commission in respect of compliance with clauses 2.1.2, 2.1.3, and 2.1.5 above. The compliance report will need to set out the steps taken by ARRIS South Africa to give effect to clauses 2.1.2, 2.1.3 and 2.1.5. If any agreements/addenda (if applicable) have been executed in respect of the arrangements contemplated under these clauses, then such agreements/addenda are to be submitted as part of the compliance report. The compliance report shall be accompanied by an affidavit, attested to by a director of ARRIS South Africa, confirming the accuracy of the compliance report. In line with the provisions of clauses 2.1.2, 2.1.3, and 2.1.5 above, this compliance obligation will terminate on the 2 (second) anniversary date of the Implementation Date.

In the event of termination of the Manufacturing and Supply Agreement or the Logistics Arrangement, ARRIS South Africa will inform the Commission of such termination within 20 (twenty) Days of such termination date and will submit a compliance report to the Commission within 60 Days of such termination date detailing the steps undertaken by ARRIS South Africa to comply with clause 2.1.1 or 2.1.4 above, as applicable. This compliance report shall be accompanied by an affidavit, attested to by a director of ARRIS South Africa, confirming the accuracy of the compliance report.

4 APPARENT BREACH

4.1 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 by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5 VARIATION OF THE CONDITION

The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6 **GENERAL**

6.1 All correspondence in relation to these conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

RED DISA INVESTMENTS PROPRIETARY LIMITED

AND

WESTERN PROVINCE PROFESSIONAL RUGBY PROPRIETARY LIMITED CASE NUMBER: 2023OCT0060

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

On 26 October 2023, the Competition Commission ("Commission") received notice
of an intermediate merger wherein Red Disa Investments Proprietary Limited ("RDI")
intends to acquire 71.5% of the total issued share capital of Western Province
Professional Rugby Proprietary Limited ("WPPR"). Upon implementation of the
proposed merger, RDI will exercise sole control of WPPR.

Parties and activities

- 2. The primary acquiring firm is RDI and is jointly controlled by (i) Ardagh Glass Packaging Group Africa Proprietary Limited ("Ardagh") with 50% shareholding; and Fynbos Ekwiteit Proprietary Limited ("Fynbos") with 50% shareholding. RDI is a special-purpose vehicle created for the purpose of the proposed transaction and does not have any activities.
- Ardagh is 88.35% controlled by Ardagh Packaging Holdings Africa Proprietary Limited ("Ardagh Holdings"). Ardagh Holdings is ultimately controlled by Ardagh Group S.A.
- 4. The merging parties submit that Ardagh has shareholding by historically disadvantaged persons ('HDPs").

- 5. Ardagh is active in the manufacturing and sale of packaging, in particular glass packaging products (such as beverage bottles and glass jars), and metal packaging. In South Africa, Ardagh SA manufactures and sells glass packaging products.
- Fynbos is controlled by Limietberg Beleggings (RF) (Pty) Ltd which is jointly controlled by Kalander Kapitaal (Pty) Ltd ("Kalendar") and Fynbos Kapitaal (Pty) Ltd (Fynbos Kapitaal). The parties indicate that Fynbos does not have any HDP shareholding.
- 7. Fynbos does not control any firms.
- 8. Fynboos is an investment holding company with investments in the financial sector.
- 9. RDI, all firms directly and indirectly controlled by Ardagh Group S.A, Kalender and Fynbos Kapitaal are herein forth collectively referred to as the "Acquiring Group".
- 10. The primary target firm is WPPR, a firm incorporated in accordance with the laws of South Africa. WPPR is currently wholly owned by Western Province Rugby Football Union ("WPRFU"), a voluntary rugby union formed under the jurisdiction of the South African Rugby Union ("SARU") which is controlled by the clubs that make up its membership.
- 11. WPPR does not directly or indirectly control any firm. The parties indicate that WPPR does not have any shareholding held by HDPs.
- 12. WPPR is active in the management of professional rugby, and specifically, promotes and manages the DHL Western Province and Stormers rugby teams. In addition, WPPR is active in the hosting of professional rugby games.

Competition analysis

13. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

14. To address the risk of post-merger retrenchments, the parties have agreed to a moratorium of 24 months on any merger related retrenchments. The parties have also agreed that the WPPR will continue to adhere to the settlement agreement

concluded between it and one the Sport Employees Unite trade union, at the Commission for Conciliation, Mediation and Arbitration.

15. The proposed transaction does not raise other public interest issues.

Conclusion

16. The merging parties approve the proposed transaction subject to conditions. See **Annexure A.**

ANNEXURE A RED DISA INVESTMENTS (PTY) LTD

AND

WESTERN PROVINCE PROFESSIONAL RUGBY (PTY) LTD CASE NUMBER: 2023OCT0060

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. "Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
 - 1.1.3. **"CCMA"** means the Commission for Conciliation, Mediation and Arbitration;
 - 1.1.4. "CCMA Settlement" means the CCMA settlement agreement concluded between SEU and WP Rugby on 13 November 2023;
 - 1.1.5. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
 - 1.1.6. "Conditions" means the conditions set out herein;
 - 1.1.7. "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.1.8. "Employee" means any employee (as contemplated by the LRA) of WPPR as at the Implementation Date;
 - 1.1.9. **"Implementation Date"** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

- 1.1.10. **"Job Evaluation Committee**" means the committee to be established in terms of the CCMA Settlement;
- 1.1.11. "LRA" means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.12. "Merged Entity" means WPPR under the control of RDI post-Merger;
- 1.1.13. "Merger" means the global acquisition by the RDI of control over WPPR;
- 1.1.14. "Merging Parties" means RDI and WPPR;
- 1.1.15. "Moratorium Period" means the period of 2 (two) years following the Implementation Date as well as the period between the Approval Date and the Implementation Date;
- 1.1.16. "RDI" means Red Disa Investments (Pty) Ltd;
- 1.1.17. "**SEU**" means Sport Employees Unite, a registered Trade Union registered in terms of the LRA under registration number LR2/6/2/2766;
- 1.1.18. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act;
- 1.1.19. "WPPR" means Western Province Professional Rugby (Pty) Ltd;
- 1.1.20. "WPRFU" means the Western Province Rugby Football Union; and
- 1.1.21. "WP Rugby Group" means WPPR and WPRFU, acting together.

2. EMPLOYMENT

- 2.1. The Merged Entity shall not effect any involuntary retrenchments as a result of the Merger during the Moratorium Period.
- 2.2. For the sake of clarity, involuntary retrenchments as a result of the Merger for purposes of these Conditions will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not

limited to, dismissals as a result of misconduct or poor performance.

3. CCMA SETTLEMENT

- 3.1. In terms of the CCMA Settlement the parties thereto agreed that a "job evaluation" must be conducted for the employees of WPPR, and that a Job Evaluation Committee must be established on or before 30 March 2024, as set out in Annexure B.
- 3.2. The Merged Entity acknowledges that WPPR remains bound by the terms of the CCMA Settlement following the Implementation Date.
- 3.3. The Merged Entity undertakes to ensure that WPPR complies with the terms of the CCMA Settlement and exercises its best endeavours to ensure that all obligations under the CCMA Settlement are met.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. The Merging Parties shall circulate a copy of the Conditions to their employees in South Africa via their respective representatives within 5 (five) Days of the Approval Date.
- 4.3. As proof of compliance thereof, the Merging Parties shall within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit by a director employed by each of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.4. The Merged Entity shall submit an affidavit to the Commission within 5 (five) Days after the anniversary of the Implementation Date and for a period of 2 (two) years, to the Commission, confirming compliance with clause 2 of the Conditions.
- 4.5. The Merged Entity shall submit an affidavit to the Commission within 5 (five) Days after the establishment of the Job Evaluation Committee, confirming compliance with clause 3 of the Conditions.
- 4.6. These affidavits must be deposed to by a director of the Merged Entity.
- 4.7. Any person including any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions

may approach the Commission.

4.8. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. VARIATION

The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

7. GENERAL

All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE A



SETTLEMENT AGREEMENT

-	SEU nbo	Members				0.23 =
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ackn	undersigned parties recon- lowledge that the agreemen	d the settlement of t	heir dispute in the following interpreted (where necessary)	ing terms. By signing	this agreement, to	ne parties
	agreement is in full and f					
рауп	nents due to the applicant a	is reflected at paragra	ph 5 of this agreement (wh	ere no statutory paym	ents are due and or	wing to the
appli	cant it shall be specified at	paragraph 6 of the ag	reement).			1427
. <	·—	2005				
1.	REINSTATEM					
1.1	The respondent agrees	s to reinstate the app	licant on the same terms	and conditions of em	ployment which go	verned the
1.2	The sold relationship	p pnor to the dismissi	il dated			(gate)
1.3	As a secult of the retror	is to operate recospe	ctively with effect from reinstatement, the respond			(date)
1.0	in the amount of R	spective effect of the f	by no later than	ent agrees to pay rem	uneration due to to	e applican
1.4	The applicant must reco	det for duty on				(date)
	at(6	ime) at				(nlace)
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	at	(time) at				(date
2.3	The re-employment will	be on the same terr	ns and conditions of emplo	ovment watch noveme	ed the employment	roloffonsh
2000	prior to the dismissal un	less specifically set of	ut hereunder		oo ara ampioyment	Connisti
	## W-##	F-4		/		
3.	MONETARY S	ETTLEMENT	X			
3.1	The respondent agrees	to pay the applicant t	the amount of R			
	***************************************	p,pp	by no later than			[clat
3.2	The amount in paragrap paragraph 6 below.	oh 3.1 is inclusive of	statutory payments due to	the applicant unless	specifically exclude	d in terms
3.3	In the event that the p	parties agree to sett	le the amount in instalm	ents, the following p	an is agreed with	the spec
	understanding that the	entire amount will	become due and payable	e to the applicant of	a the first navmen	data if
	respondent fails to meet	its obligations to pay	the applicant the specifie	d amount on any date	s set out hereunder	ransani. K
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AGREEMENT ARISING OUT OF HIMMA, BCEA AND WRITTEN UNDERTAKINGS OR COMPLIANCE ORDERS
S. BREADDOWN OF THE AMOUNT REFLECTED AT PARAGRAPH 3.1
The amount reflected at paragraph 3.1 above is inclusive of statutory payments as reflected below
Outstanding unges / salary R Severance pdy R
Notice pay R
Overtime R. Other (please specify) R
6. EXCLUSION OF STATUTORY PAYMENTS
A dispute about statutory payments is already before the Department of Employment and Labour under the following reference number:
A Compliance Order has been issued by the Department of Employment and Labour under the following reference
Some parties agree that a Job Evaluation went
Material Agree Agree
The parties will week and form a job
30 Warch 2024 to earlier to agree on the
leins and conditions of the job ela wation.
8. No variation of this agreement shall be legally binding unless reduced to writing and signed by the parties. 9. The parties consent to this agreement being made an arbitration award in terms of \$142A(1) of the Labour Relations Act.
 The parties consent to this agreement being made an arbitration award in terms of s142A(1) of the Labour Relations Act. The parties agree that in the event of non-compliance of this agreement, the party defaulting will pay the full costs incurred
by the other party in enforcing this agreement.
Done and signed at CURE TOUR on this 13 day of NOVEWBEL ZOZ
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Applicant
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Witness Witness
This agreement was interpreted by: Signature
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COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

N HARRIS COMPUTER CORPORATION

AND

INTERNET FILLING PROPRIETARY LIMITED AND IONIZE TECHNOLOGY PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0002

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 04 July 2023, the Competition Commission ("Commission") received notice of an intermediate merger in which N. Harris Computer Corporation ("Harris") wishes to acquire 100% of the issued share capital in Internet Filing Proprietary Limited ("Interfile") and lonize Technology Proprietary Limited ("Ionize") ("Proposed Transaction").
- 2. The primary acquiring firm is N. Harris Computer Corporation ("Harris"), a private company registered in Canada. Harris is ultimately controlled by Constellation Software Inc. ("Constellation"), a widely held public company listed on the Toronto Stock Exchange.
- 3. Constellation currently has six portfolio companies namely Harris, Jonas Software ("Jonas"), Perseus Group ("Perseus"), Topicus.com ("Topicus"), Vela Software ("Vela") and Volaris Group Inc. ("Volaris"). All of these entities provide vertical software solutions ("VSS") to various industries. Jonas, Vela and Volaris are the only entities that are currently active in South Africa. Constellation and all the firms it controls will be referred to as the "Acquiring Group".
- 4. The Acquiring Group does not have any shareholding by historically disadvantaged

- persons ("HDPs") as contemplated in the Act. The Acquiring Group does not have any shareholding held by workers.
- 5. The primary target firms are Internet Filing Proprietary Limited ("Interfile") and Ionize Technology Proprietary Limited ("Ionize") (collectively, the "Target Firms"). The Target Firms are controlled by Mr Sheldon P Quamby ("Mr Quamby") with a shareholding of 55.36%. The remaining 44.64% shareholding is held by Gurb Investments Proprietary Limited ("Gurb"). Gurb is 100% HDP owned.
- 6. Through Interfile, the Target Firms provide VSS to public entities namely, municipalities, and government agencies.
- 7. The Target Firms have 44.64% of their shareholding held by HDPs. This is due to Gurb's shareholding in the Target Firms.

Competition assessment

- 8. The Commission found that the merger results in a horizontal overlap since the merging parties both have the capability to offer VSS services.
- 9. The Commission further found that merger does not result in a vertical overlap.
- 10. The Commission found that the merger is unlikely to result in any substantial prevention or lessening of competition in any relevant market.

Public interest

- 11. The Commission found that the transaction will not have a negative effect on employment.
- 12. The Commission found that the merger results in a reduction in HDP ownership of 44.64 percentage points. To address this dilution, the parties committed to a package of conditions which including
 - 12.1. Interfile purchasing shares in Constellation on behalf of all Interfile's current and future employees, on an annual basis, in perpetuity.
 - 12.2. National Qualification Framework accredited training programmes for all Target Firm and channel partner employees, for at least 5 years post-merger. These

- initiatives have an aggregate value of approximately R28 million.
- 12.3. Continuing Interfile's existing channel partner programme ("CPP") for at least 5 years. This programme entails Interfile partnering with 100% HDP owned ICT service providers and sharing profits with those firms. The CPP will also be expanded by one HDP owned participant for every new contract acquired by Interfile post-merger.
- 13. The above remedies are set out in Annexure A.
- 14. Notwithstanding the foregoing and whilst every case is considered on its own merits, the Commission considers that the preferrable remedies to address a dilution in HDP ownership is either an HDP or ESOP condition that at least makes good the dilution. Given the case specific circumstances, the remedies offered by the parties in this case, likely render the merger justifiable on substantial public interest grounds.
- 15. The Commission found that there are no other public interest concerns arising.
- 16. The Commission approves the proposed transaction subject to the conditions set out in **Annexure A**.

ANNEXURE A N. HARRIS COMPUTER CORPORATION AND

INTERNET FILING PROPRIETARY LIMITED AND IONIZE TECHNOLOGY PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0002

CONDITIONS

1. **DEFINITIONS**

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

- 1.1 "Acquiring Firm" means N. Harris Computer Corporation;
- 1.2 "Approval Date" means the date referred to on the Commission's merger clearance certificate (Form CC 15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 "Channel Partners" means the SMMEs and HDP-owned firms with whom Interfile concludes reseller and subcontractor agreements to sell and support various software solutions;
- 1.4 "Channel Partner Program" means the program through which the Target Firms share their profit with and pay fees to the Channel Partners;
- 1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.6 "Competition Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.7 "Competition Act" means the Competition Act, 89 of 1998, as amended;

- 1.8 "Conditions" mean these conditions;
- 1.9 "Constellation" means Constellation Software Inc., a company incorporated under the laws of Ontario, Canada and listed on the Toronto Stock Exchange, being the holding company of the Acquiring Firm;
- 1.10 **"Days"** means any calendar day other than a Saturday, a Sunday, or an official public holiday in South Africa;
- 1.11 "Eligible Employee" means an employee in South Africa of the Target Firms who has been an employee for at least 6 (six) months, or such shorter period as the Target Firms may determine, and who continues to be an employee;
- 1.12 **"ESOP"** means the Constellation employee share ownership plan, which is currently operational and is administered by Computershare Limited and which facilitates the ability of Constellation's employees to hold shares in Constellation;
- 1.13 **"HDP"** means a historically disadvantaged person as contemplated in the Competition Act;
- 1.14 "Implementation Date" means the date occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;
- 1.15 "Interfile" means Internet Filing Proprietary Limited;
- 1.16 "Merged Entity" means the Target Firms subject to the control of the Acquiring Firm following the Implementation Date;
- 1.17 **"Merger"** means the proposed acquisition by the Acquiring Firm of the entire issued ordinary share capital of the Target Firms;
- 1.18 "Merger Parties" means the Acquiring Firm and the Target Firms;
- 1.19 "NQF" means the National Qualifications Framework, as overseen by the South African Qualifications Authority, established in terms of section 18 of the Skills Development Act 97 of 1998, as amended;

- 1.20 **"Shares**" means the issued and outstanding common shares in the capital of Constellation:
- 1.21 "SMME" means small, medium, and micro enterprises;
- 1.22 "Target Firms" means Interfile and Ionize Technology Proprietary Limited; and
- 1.23 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. **ESOP**

2.1 Within 18 (eighteen) months of the Implementation Date, the Target Firms shall fund and facilitate the Eligible Employees annually acquiring the Shares and participating in the ESOP in accordance with the design principles set out in **Annexure A.1**.

3. CHANNEL PARTNER PROGRAM

For 5 (five) years from the Implementation Date, the Target Firms shall:

- 3.1 Continue to engage the services of the 5 (five) current Channel Partners;
- 3.2 Include a Channel Partner in each new contract that the Target Firms conclude with a South African customer, provided this is permitted by a prospective customer, does not prevent the Target Firms bidding for a contract, and does not limit the Target Firms' ability to win a contract;
- 3.3 Spend at least R[CONFIDENTIAL] per annum in aggregate on entrepreneurship skills development for the Channel Partners and the Channel Partners' employees;
- 3.4 Distribute in aggregate at least **[CONFIDENTIAL]**% of Interfile's net profit before tax annually to the Channel Partners through the Channel Partner Program; and
- Assist the 5 (five) current Channel Partners in increasing their current number of employees in the aggregate by 50%.

4. TRAINING INITIATIVES

- 4.1 In addition to the R **[CONFIDENTIAL]** commitment in clause 3.3 above, for 5 (five) years from the Implementation Date, the Merged Entity shall implement 4 (four) NQF accredited technical and managerial training programs that are applicable to the Target Firms' and Channel Partners' employees. The 4 (four) additional training programs shall be targeted at different levels of the Target Firms' and Channel Partners' employees and management and shall focus on:
- 4.1.1 international leadership development;
- 4.1.2 operational excellence training focused on the Acquiring Firm's business and subject matter expertise;
- 4.1.3 a mid-management development program focused on the development and elevation of the Target Firms' employees; and
- 4.1.4 a formal mentorship program for the Target Firms' and Channel Partners' employees.
- 4.2 The Merged Entity shall spend at least **[CONFIDENTIAL]** per annum in aggregate on the additional training programs referred to in clause 4.1 above.
- 4.3 The Merged Entity shall also spend an additional R**[CONFIDENTIAL]** per annum in aggregate on other employee development initiatives at the Target Firms.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 5.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- For the duration of the Conditions, the Merged Entity shall, on each anniversary of the Implementation Date, provide the Commission with an affidavit attested to by a senior official of the Merged Entity, confirming the Merged Entity's compliance with the Conditions.

5.3 The Commission may request additional information from the Merged Entity, which the Commission may reasonably deem necessary to monitor the extent of compliance with the Conditions.

6. APPARENT BREACH

6.1 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 by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

7. VARIATION OF CONDITIONS

7.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

8. **GENERAL**

8.1 All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE A.1

DESIGN PRINCIPLES

Design Principle	Applicable Criteria
Structure	Eligible Employees acquiring the Shares through the ESOP in accordance with its terms.
Cost to employees	The cost to Eligible Employees will be R0 (nil/zero Rand) [CONFIDENTIAL].
Value	The value of the Shares will be determined with reference to their publicly traded price and in accordance with the terms of the ESOP.
Funding	The Target Firms will facilitate the Eligible Employees annually acquiring the Shares using in aggregate 5% (five per cent) [CONFIDENTIAL] of the Target Firms' net profit after tax in the annual financial year preceding the acquisitions.
Duration	Perpetual and in accordance with the terms of the ESOP.
Participants	All current and future Eligible Employees.
Benefits	Eligible Employees will be entitled to 100% of any dividends and capital growth from their Shares.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

KANU STRUCTURE PROPRIETARY LIMITED
("KANU")

AND

STRUCTURE PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0007

("KEM")

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- 1. On 6 July 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Competition Commission ("the Commission") received notice of an intermediate merger whereby Kanu Equipment (Mauritius) Limited ("Kanu") intends to acquire 100% of the issued shares of Kem Structures (Pty) Ltd ("Kem"). Following the implementation of the merger, Kanu will hold 100% of the shares in Kem and it will exercise sole control over Kem.
- 2. The primary acquiring firm is Kanu Equipment (Mauritius) Limited ("Kanu"), a company incorporated in Mauritius. Kanu is 100% controlled by Kanu Equipment Limited ("Kanu Equipment"). Kanu Equipment is in turn controlled by Vronbisman Limited ("Vronbisman") as to 51.47%. Vronbisman is controlled by Vronbisman Holding Limited ("Vronbisman Holding") as to 87.9%. Vronbisman Holding is controlled by Adenia Capital (IV) LP ("AC IV") as to 90.43%. AC IV is controlled by various companies. AC IV controls various companies, and in South Africa it controls Kuhlia Investment (Pty) Ltd and Herholdt's Group (Pty) Ltd. Kanu, its subsidiaries and all the firms directly and indirectly controlling it, will hereinafter be collectively referred to as the "Acquiring Group".
- 3. Kanu does not have shareholding by Historically Disadvantaged Persons ("HDPs").

- 4. The primary target firm is Kem Structures Proprietary Limited ("Kem") a company incorporated according to the laws of South Africa. Kem is wholly owned and controlled by MOG ZA Limited ("MOG ZA"), a company incorporated according to the laws of Mauritius. MOG ZA is controlled by MOG Africa Limited as to 66.66% and the remaining 33.33% is held by Hollyvale Investment Limited. MOG Africa Limited is controlled by Sheikh Salim Bin Mustahail Al Mashani and Sheikh Mustahail Bin Ahmed Al Mashani.
- 5. Kem controls KemOps Proprietary Limited ("KemOps") as to 100% and Kemach Equipment (Pty) Ltd ("Kemach") as to 25%, the remaining 75% is held by KemOp. Kem and all the firms it controls are referred to as the "Target Group". Kem is currently in financial distress.
- 6. Kem does not have any shareholding by HDPs.

The parties' activities

- 7. The Acquiring Firm is a distributor of heavy machinery such as agricultural, mining, forestry and construction equipment such as cranes and earthmoving equipment. It distributes products for various Original Equipment Manufacturers (OEMs) such as Liebherr, Case Agriculture, Tigercat, CTP, Black Cat Wear Parts Ltd, G.E.T, Baldwin Filters, Duo Aquatrap, ETR, Berco Duetz and Bell equipment. The Acquiring firm distributes the heavy machinery in various African country except for South Africa.
- 8. The Target Group acts as a service provider, supplier, and distributor of machinery, spare parts and lubricants from a number of OEMs such as BOMAG GmbH, Liebherr, Bull and McCloskey. Essentially, Kem supports and supplies a wide range of heavy machinery to suit a wide variety of applications, including (i) earthmoving and road-building equipment for all types of projects and plant hires; (ii) crushing and screening equipment for quarrying, mining and recycling; and (iii) forklifts. The Target Group offers warranties, services and maintains heavy machinery (including providing replacement parts when necessary) at a retail level.

Competition assessment

- 9. The Commission considered the activities of merger parties and found that there is an overlap in the market for the supply of OEM spare parts for heavy machinery, as the Acquiring Group provides second-hand spare parts and a limited selection of new spare parts used in older obsolete models of heavy machinery whilst the Target Group provides new parts and spare parts used in current models of heavy machinery. The activities of the merging parties do not result in any vertical overlaps.
- 10. In the market for the supply of OEM spare parts in respect of heavy machinery in South Africa, the merged entity will have a combined market share of approximately 0.56% with a market accretion of 0.44% based on the 2022 turnover.
- 11. In the market for the supply of excavators (including spare parts) in South Africa, the merger parties will have a combined market share of approximately 0.80% with a market accretion of 0.63% based on the market statistics published by the Construction and Mining Equipment Association ("CONMESA").
- 12. In the market for the supply of rollers including spare parts, the merged entity will have a market share of approximately 23.57% with a market share accretion of 23.55% based on the market statistics published by CONMESA. The merger parties submit that this market comprises of a significant number of competitors including Barloworld Limited, Wacker Neuson, CNH Industrial, Bell Equipment Ltd, who will continue to constrain the merged entity post-merger. None of the third parties engaged raised concerns.
- 13. Considering the above findings, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest Issues

Employment

14. The merger parties submit that the proposed transaction will not result in any retrenchment, instead it will result in a positive impact, as Kem is in financial distress and the proposed transaction will save approximately 100 jobs. The merging parties argue that the counterfactual is that Kem will likely close and exit the market resulting in 100 job losses. Such job losses would affect 39 semi-skilled and unskilled workers, of which 20 of these 100 employees are HDPs. The Commission engaged the

employee representatives of the Acquiring Group and the Target group, who all confirmed that there were no concerns raised regarding the proposed transaction.

Promotion of greater spread of ownership

- 15. The merger parties submit that the Acquiring Group and the Target Group do not have any shareholding by HDPs.
- 16. In order to promote a greater spread of ownership, the merger parties committed to implement an Employee Share Ownership Plan ("ESOP") that will acquire a shareholding of 5% in the Acquiring Firm within 24 (twenty-four) months of the Implementation Date. The ESOP will be for the benefit of the permanent employees of the Target Firm excluding management and executive employees. The merger parties have agreed to the conditions attached hereto as **Annexure A**.
- 17. In addition, the proposed transaction does not raise any other public interest concerns.
- 18. The Commission approves the proposed merger subject to the attached conditions.

ANNEXURE A

KANU STRUCTURE PROPRIETARY LIMITED ("KANU")

AND

KEM STRUCTURE PROPRIETARY LIMITED ("KEM")

CASE NUMBER: 2023JUL0007

CONDITIONS

DEFINITIONS

- The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings
 - 1.1 "Acquiring Firm" means Kanu Equipment (Mauritius) Limited, a private company limited by shares incorporated in accordance with the laws of Mauritius, with registration number C154711;
 - 1.2 "Approval Date" means the date referred to on the Competition Commission's Merger Clearance Certificate (Notice:CC15) in terms of the Competition Act;
 - 1.3 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.4 "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
 - 1.5 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
 - 1.6 **"Conditions"** means the conditions set out herein;
 - 1.7 "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.8 "Employees" means the permanent employees (as contemplated under the Labour Relations Act 66 of 1995 as amended) of the Target Firm, which shall include Workers, and "Employee" means, as the context requires, any one of them;

- 1.9 "ESOP SPV" means an employee share ownership plan to be implemented through an employee trust, that will acquire a shareholding of 5% in the Acquiring Firm and in terms of which Qualifying Employees shall be beneficiaries thereunder;
- 1.10 **"Implementation Date"** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 "Merged Entity" means the Target Firm subject to control of the Acquiring Firm following the Implementation Date;
- 1.12 "Merger" means the proposed acquisition by the Acquiring Firm of all of the shares in the Target Firm;
- 1.13 "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.14 "Qualifying Employees" means unskilled and semi-skilled Employees of the Target firm, and will exclude management and executive Employees;
- 1.15 "Semi-skilled Employees" means all non-managerial employees that have grade 12 as their highest academic qualification;
- 1.16 "South Africa" means the Republic of South Africa;
- 1.17 "Target Firm" means KEM Structures Proprietary Limited, a private company incorporated in accordance with the laws of South Africa, with registration number 2018/278887/07;
- 1.18 **"Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.19 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.20 "**Unskilled Employees**" means all non-managerial employees that have not obtained a grade 12 qualification; and
- 1.21 "Workers" means Employees, and, in the context of ownership, refers to ownership by a broad base of Employees.

2. BROAD-BASED BLACK ECONOMIC EMPOWERMENT CONDITION

- 2.1 Within 24 (twenty-four) months of the Implementation Date, the Merged Entity shall implement the structures of the ESOP SPV in accordance with the design principles set out in **Annexure A.1**.
- 2.2 The ESOP SPV structure shall be finalised in accordance with the following principles:
 - 2.2.1 the ESOP SPV will be a trust established for the benefit of Qualifying Employees;
 - 2.2.2 the Trust shall have a board of trustees as follows: the Merged Entity and the Workers shall appoint an equal number of trustees. In addition, the Workers shall be entitled to appoint 1 (one) independent chairperson with the prior written approval of the Merged Entity;
 - 2.2.3 all Qualifying Employees shall be eligible for participation, and maternity leave will have no adverse impact on the qualifying criteria;
 - 2.2.4 the ESOP SPV shall acquire a shareholding of 5% in the Acquiring Firm for a nominal consideration and on an unencumbered basis. For the avoidance of doubt, Qualifying Employees will not be required to pay any money to participate in the ESOP SPV and the nominal consideration required to purchase shareholding in the Merged Entity shall be advanced to the ESOP SPV by the Merged Entity and shall not be in the form of a loan; and
 - 2.2.5 as an ordinary shareholder, the ESOP SPV, like all the other ordinary shareholders of the Acquiring Firm, will be entitled to receive dividends in respect of its ordinary shares in the Acquiring Firm once the Acquiring Firm is able to declare ordinary dividends to its ordinary shareholders.
 - 2.2.6 Prior to implementing the ESOP SPV, the Merged Entity shall provide the Commission with (i) copies of the trust deed (ii) any such agreements or documents setting out the terms of the shares in the Acquiring Firm to be issued to such SPV (such documents in relation to a SPV, collectively, the "SPV Documents"), and the following process shall apply:
 - 2.2.6.1 in the event that the Commission (acting reasonably) takes the view that the structure of the ESOP SPV proposed by the Merged Entity is

- not in compliance with the principles set out in these Condition in relation to such ESOP SPV, the following process shall apply:
- 2.2.6.2 the Commission will have a period of 60 Days within which to consider the proposed ESOP and provide the Merged Entity with a response;
- 2.2.6.3 the Merged Entity and the Commission shall thereafter take reasonable steps to engage with each other regarding the alleged noncompliance.
- 2.2.6.4 in the event that any non-compliance with the principles set out in this Condition is established in relation to the proposed structure of the ESOP SPV, the Merged Entity shall as soon as reasonably practicable thereafter take reasonable steps to remedy such non-compliance and deliver a written notice to the Commission informing the Commission regarding the steps taken to remedy such non-compliance.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Merged Entity shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of the Implementation Date.
- 3.2 The Merging Parties shall circulate a copy of the Conditions to their employees in South Africa, and/or their respective representatives within 5 (five) Days of the Approval Date.
- 3.3 As proof of compliance thereof, the Merging Parties shall within 10 (ten) Days of circulating the Condition in clause 4 as required in clause 5, provide the Commission with an affidavit by a director employed by each of the Merging Parties attesting to the circulation of such Condition and attach a copy of the notice sent and/or published.
- 3.4 The Merged Entity shall, annually within 30 days from the anniversary of the approval or implementation date until the ESOP SPV is implemented, provide to the Commission a report detailing the steps taken to implement the ESOP SPV and the progress made in that regard. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report.

CONTINUES ON PAGE 386 OF BOOK 4

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001 Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za Publications: Tel: (012) 748 6053, 748 6061, 748 6065



Vol. 706

19

April April

2024

No. 50528

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- 3.5 The Merged Entity shall inform the Commission of the implementation date of the ESOP SPV contemplated in clause 3.1 above, within 10 (ten) Days of the implementation of the ESOP SPV.
- 3.6 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Conditions.

4. APPARENT BREACH

4.1 In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

5. VARIATION

5.1 The Merging Parties may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merging Parties' application to the Commission, the Merging Parties may apply to the Tribunal for appropriate relief.

6. GENERAL

6.1 All correspondence in relation to the Conditions must be submitted to the following e-mailaddresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SPARTAN TRUCK HIRE (PTY) LTD

AND

LEOPARD TRANSPORT (PTY) LTD

CASE NUMBER: 2023JUL0015

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 10 July 2023, the Competition Commission ("the Commission") received a notice of an intermediate merger wherein Spartan Truck Hire (Pty) Ltd ("Spartan") intends to acquire [CONFIDENTIAL]% of the issued share capital of Leopard Transport (Pty) Ltd trading as Elite Truck Hire ("Elite Truck Hire"). Following the implementation of the proposed merger, Spartan will exercise sole control over Elite Truck Hire.
- 2. The primary acquiring firm is Spartan, a private company incorporated in accordance with the laws of the Republic of South Africa. Spartan is controlled by the following shareholders: Flowering Hydrangea Holdings (Pty) Ltd [CONFIDENTIAL]% and Temo Capital 2 (Pty) Ltd [CONFIDENTIAL]%. Spartan controls (directly and indirectly) several entities in South Africa. Historically disadvantaged persons ("HDPs") hold [CONFIDENTIAL]% of the shares in Spartan.
- 3. Spartan has 8 (eight) branches nationally and provides the following services: (i) short-term rental of commercial vehicles, which involves the provision of a fleet of commercial vehicles ranging from 1-ton light delivery vehicles to larger horse and trailer combinations; (ii) Full maintenance leasing ("FML") services, which encompasses the management of costs associated with the acquisition, maintenance and administration of a vehicle fleet, with fixed monthly payments spread over the lease period; (iii) forklift rental services, which involves the

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provision of rental services for forklifts of various sizes and variations; and (iv) dedicated contracts, which involves the provision of a fleet of commercial vehicles that are uniquely configured for a customer's specific needs.

- 4. The primary target firm is Elite Truck Hire, a private company registered in accordance with the laws of South Africa. Elite Truck Hire wholly controls [CONFIDENTIAL], [CONFIDENTIAL] and [CONFIDENTIAL]. Further, Elite Truck Hire holds a [CONFIDENTIAL]% shareholding in [CONFIDENTIAL]. Elite Truck Hire and all the firms it controls shall be referred to as Elite Truck Hire Group.
- Elite Truck Hire Group has HDPs shareholding of 95%. Elite Truck Hire Group's core activities include FML, short-term rental of commercial vehicles, forklift rental, water tanker rentals and chemical transportation. Elite Truck Hire Group has 10 (ten) branches spread throughout South Africa.

Competition Assessment

- 6. The Commission's investigation of the proposed transaction found that there is a horizontal relationship between the activities of the merging parties in that both Spartan and Elite Truck Hire provide the following services (i) forklift rental services; (ii) FML services; and (iii) short term rental of commercial vehicles.
- 7. The Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest considerations

- 8. On employment, the merging parties agreed to a 2 (two) year moratorium on merger-specific retrenchments. The Commission is of the view that this alleviates any employment concerns that may arise as a result of the proposed merger.
- 9. With respect to the promotion of a greater of ownership by HDPs, the merging parties have agreed to implement a 5% Employee Share Ownership Plan at Elite Truck Hire, within 12 months following the approval of the proposed merger.
- 10. In addition, Spartan will implement an owner driver programme, within 12 (twelve) months of post the approval of the proposed merger, to benefit at least 300 historically disadvantaged owner drivers over a 5 (five) year period.

- 11. The Minister of Trade, industry and Competition participated in this merger and is satisfied with the commitments tendered by the merger parties.
- 12. The Commission therefore approves the proposed merger, subject to the conditions as **Annexure A** hereto.

ANNEXURE A

SPARTAN TRUCK HIRE PROPRIETARY LIMITED AND

LEOPARD TRANSPORT PROPRIETARY LIMITED t/a ELITE TRUCK HIRE

CASE NUMBER: 2023JUL0015

CONDITIONS

DEFINITIONS

- 1.1 "Acquiring Firm" means Spartan Truck Hire Proprietary Limited;
- 1.2 "Act" means the Competition Act 89 of 1998, as amended;
- 1.3 **"Approval Date**" means the date referred to in the Commission's merger Clearance Certificate;
- 1.4 "B-BBEE Act" means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended, and the Codes of Good Practice 2013, as amended;
- 1.5 "B-BBEE Codes" means the Codes of Good Practice issued in terms of the B-BBEE Act;
- 1.6 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.7 **"Conditions"** means these conditions;
- "Days" means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.9 "ESOP" means an employee share ownership plan to be implemented through an employee trust, which will acquire a shareholding of 5% in the Target Firm and in terms of which Qualifying Employees shall be beneficiaries thereunder;
- 1.10 "Historically Disadvantaged" means historically disadvantaged persons within the meaning of the Act;
- 1.11 "Implementation Date" means the date occurring after the Merger becomes unconditional on which it is implemented in accordance with its terms;

- 1.12 "Merged Entity" means the Target Firm subject to the control of the Acquiring Firm following implementation of the Merger;
- 1.13 "Merger" means the Acquiring Firm's acquisition of 100% of the issued shares of the Target Firm;
- 1.14 "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.15 "Owner-Driver Programme" means a new programme to be implemented by the Acquiring Firm to facilitate the entry of at least 300 Historically Disadvantaged owner-drivers into the logistics market in South Africa;
- 1.16 "Permanent Employee(s)" means any permanent employee of the Target Firm, including its subsidiaries, as at the Implementation Date or thereafter who has been employed for a minimum of 12 consecutive months;
- 1.17 "Prime Rate" means the prime lending rate (predominant rate) as published from time to time on the website of the Reserve Bank of South Africa at https://www.resbank.co.za/en/home/what-we-do/statistics/key-statistics/current-market-rates;
- 1.18 "Qualifying Employees" means Permanent Employees of the Target Firm who are not participants in the Owner-Driver Programme and who have accepted an offer to become beneficiaries of the ESOP;
- 1.19 "Rand" means the South African Rand, being the lawful currency of South Africa:
- 1.20 "South Africa" means the Republic of South Africa;
- 1.21 "**Target Firm**" means Leopard Transport Proprietary Limited trading as Elite Truck Hire; and
- 1.22 "Tribunal" means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

OWNER-DRIVER PROGRAMME CONDITION

- 2.1 The Acquiring Firm shall establish the Owner-Driver Programme within 12 (twelve) months of the Implementation Date, which shall be structured in the Acquiring Firm's sole discretion.
- 2.2 For a period of 5 (five) consecutive years following the establishment of the Owner-Driver Programme, the Acquiring Firm shall select at least 60 (sixty) suitably qualified Historically Disadvantaged persons per year to enter into

- owner-driver contracts on mutually acceptable terms ("Participating Owner-Drivers") for periods of up to 60 (sixty) months ("Contract Period").
- 2.3 In the event that any Historically Disadvantaged Persons identified for participation in the Owner-Driver Programme are employees of the Merging Parties prior to joining the Owner-Driver Programme, to the extent required, the Acquiring Firm shall provide independent counselling to such employees through the Commission for Conciliation, Mediation and Arbitration (CCMA) prior to a decision by any individual employee to move to an owner-driver contract for purposes of assisting such employee to understand the risks inherent in moving from an employment relationship to a contracting relationship in terms of the Owner-Driver Programme.
- 2.4 For the duration of each Contract Period, the Acquiring Firm shall:
 - 2.4.1 agree an owner-driver cost model with prospective customers for each Participating Owner-Driver in terms of which the customer shall engage the services of the Participating Owner-Driver;
 - 2.4.2 allocate an appropriate used commercial vehicle from the Merged Entity's fleet to each Participating Owner-Driver or acquire a new commercial vehicle and allocate it to the Participating Owner-Driver ("Allocated Vehicle");
 - 2.4.3 pay a salary per month to each Participating Owner Driver, which shall be in accordance with the terms of pay as stipulated by the National Bargaining Council for the Road Freight Industry;
 - 2.4.4 insure and maintain the Allocated Vehicle at its own cost;
 - 2.4.5 provide relevant training to each Participating Owner-Driver which will include training in relation to driving behaviour, and administrative business requirements;
 - 2.4.6 provide access to a software tool aimed at assisting Participating Owner-Drivers to effectively manage, grow and control their own entities; and
 - 2.4.7 provide assistance to the Participating Owner-Drivers in relation to company registrations and document filing requirements for the operation of their respective businesses for purposes of participating in the Owner-Driver Programme.
- 2.5 At the end of the Contract Period, the Acquiring Firm shall:

- 2.5.1 transfer ownership of the Allocated Vehicle to the Participating Owner-Driver at no cost to the Participating Owner-Driver; and
- 2.5.2 be under no obligation to re-employ Participating Owner-Drivers (including Participating Owner-Drivers that for any reason fail to complete the Owner-Driver Programme).
- 2.6 The identities of the Participating Owner-Drivers as well as the selection criteria that will be applied in selecting them shall be determined by the Acquiring Firm in its sole discretion.
- 2.7 The minimum number of Participating Owner-Drivers per year envisaged in paragraph 2.2 is subject to:
 - 2.7.1 market conditions and requisite participation in the Owner-Driver Programme by customers; and
 - 2.7.2 the Acquiring Firm's ability, acting in good faith, to negotiate reasonable commercial terms with customers for the duration of the Contract Period.

ESOP CONDITION

2.8 The Merged Entity shall establish the ESOP within 12 months of the Implementation Date, in accordance with the design principles set out in **Annexure A1**.

EMPLOYMENT CONDITION

- 2.9 The Merging Parties shall not retrench any employees as a result of the Merger for a period of 24 months from the Implementation Date.
- 2.10 For the sake of clarity, retrenchments for purposes of paragraph 0 above shall not include: (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed; (iv) resignations or retirement in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and/or (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 For the duration of these Conditions, the Merged Entity shall, on each anniversary of the Implementation Date, submit to the Commission a report detailing compliance with the Conditions.
- 3.3 The report contemplated in clause 3.2 shall be accompanied by an affidavit, attested to by a senior official of the Merged Entity, confirming the accuracy of the report.
- 3.4 The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. VARIATION

4.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

5. APPARENT BREACH

5.1 If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

6. **GENERAL**

6.1 All correspondence in relation these conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE A1

KEY DESIGN PRINCIPLES OF THE PROPOSED EMPLOYEE SHARE OWNERSHIP PROGRAMME FOR THE BENEFIT OF THE BENEFICIARIES

Design Principle	Applicable Criteria
Structure	The ESOP shall be allocated 5% of the issued shares in the Target Firm.
	For purposes of valuing the ESOP's equity in the Target Firm, the Target Firm shall carry the same value as determined in the Acquisition Agreement between the Merging Parties dated 8 May 2023 and 5% of the

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	purchase consideration in terms of the Acquisition Agreement will equate to the value of the ESOP ("ESOP Equity Value"). The ESOP Equity Value will be transferred into a trust on loan that will accrue interest at a market-related rate.
Cost to Workers	 No upfront contribution will be required from Qualifying Employees to participate in the ESOP. The cost of establishing and administering the ESOP shall be borne by the Acquiring Firm.
Governance	The ESOP shall be entitled to appoint 1 (one) person to the Target Firm's board of directors.
	The trustees of the ESOP shall be selected by the Qualifying Employees, except for 1 (one) trustee who shall be appointed by the board of directors of the Acquiring Firm.
Duration	> Perpetual/evergreen
Participation	The beneficiaries of the ESOP shall be Qualifying Employees. The Acquiring Firm shall endeavour to achieve a balanced participation in the ESOP with employees representing all skill levels and rates of pay brackets to ensure a broad-based spread of participation.
	The ESOP's interest in the Merged Entity shall have no greater economic benefits than those accruing to any other equity shareholders of the Merged Entity following the Implementation Date.
Participation Benefits	Equal allocation (all Qualifying Employees treated equally in terms of voting and economic participation with no differentiation across employee grades).
	The ESOP shall derive economic benefits alongside any equity shareholders of the Merged Entity following the Implementation Date if and when the Merged Entity declares dividends and/or in the event that any equity shareholder exits its investment in the Merged Entity, to the extent applicable.
Value and Funding	The funding of the ESOP shall be facilitated through a notional vendor funding mechanism, with the funding rate being no more than Prime Rate plus 2% (two per centum).
	The notional vendor funding will provide for a fixed trickle dividend as follows:
	At least 20% of declared dividends will be paid to the beneficiaries with the remaining 80% used to service the vendor financed loan, for the first three years post the implementation of the ESOP;

- At least 25% of declared dividends will be paid to the beneficiaries with the remaining 75% used to service the vendor financed loan, for the 4th and 5th anniversaries post the implementation of the ESOP;
- At least 35% of declared dividends will be paid to the beneficiaries with the remaining 65% used to service the vendor financed loan, from the 6th anniversary post the implementation of the ESOP.
- Once the notional vendor finance loan has been extinguished, 100% of the declared dividends due to the ESOP (after liabilities have been paid) will be distributed to the beneficiaries. The liabilities refer to costs (administration costs, rental, fees of third party service providers such as auditors) and taxes.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

STELLENZICHT WINES PROPRIETARY LIMITED AND

CRUINNEAG PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0018

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

 On 13 July 2023, the Competition Commission (the "Commission") was notified of an intermediate merger whereby, Stellenzicht Wines Proprietary Limited ("Stellenzicht") intends to acquire 100% of the issued share capital in Cruinneag Proprietary Limited ("Cruinneag"). Post-implementation of the proposed transaction, Stellenzicht will exercise sole control over Cruinneag.

Parties

- 2. The primary acquiring firm, Stellenzicht, is wholly controlled by LVS Capital GmbH ("LVS"), a company incorporated in accordance with the laws of Germany. LVS is ultimately solely controlled by a German citizen, Baron Hans Hermann von Staff gen. von Reitzenstein.
- Apart from Stellenzicht, LVS wholly controls the following firms in South Africa: Alto Wine
 Estate Proprietary Limited ("Alto Wines") and Ernie Els Vineyards Proprietary Limited
 ("Ernie Els Vineyards"). Ernie Els Vineyards, in turn, controls Ernie Els Wines Proprietary

- Limited ("Ernie Els Wines"), a private company registered in accordance with the laws of South Africa.
- 4. Stellenzicht does not control any firm/s. Stellenzicht, its controlling firms and their subsidiaries are collectively referred to as the "LVS Group".
- 5. LVS Group does not have any shareholding by historically disadvantaged persons ("HDPs").
- 6. The primary target firm, Cruinneag, is wholly controlled by Paddington SA Proprietary Limited ("Paddington" or the "Seller"), a company registered in accordance with the laws of South Africa. Cruinneag does not control any firm/s.
- 7. Cruinneag does not have any shareholding by HDPs.

Activities

- 8. The LVS Group is active in the production of wines (including growing grapes for that purpose) in South Africa and these activities are conducted through Alto, Ernie Els Wines, Ernie Els Vineyards and Stellenzicht.
- 9. Cruinneag is comprised of a wine farm (the historic Bilton wine farm), equipment and agricultural assets, and farmworkers, which are all currently leased to tenants on a short term lease basis. The tenants are involved in the growing of grapes. Cruinneag receives rental income from the tenants.

Competition analysis

10. The Commission found that post-merger, LVS Group intends to utilise Cruinneag to grow grapes for LVS Group's wine production activities. Thus, the Commission considers that Cruinneag is not a 'bare asset' since Cruinneag will increase LVS Group's wine production capacity and turnover. Accordingly, and without taking a definitive view given the lack of competition concerns, the Commission assessed the merger's impact on the production of wine in South Africa.

11. The Commission found that the merged entity is unlikely to exercise market power as there are numerous competitors such as Constantia Wines, Distell, Babylonstoren, Spier, DGB, Beyerskloof, Durbanville Wine, Stellenbosch Vineyards, Kanu Wines, Paul Cluver Wines and Simonsig Estate, among others, who will constrain the merged entity post-merger. In light of this, the Commission is of the view that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in any relevant market.

Public interest

Employment

12. In order to address employment concerns raised by the Food and Allied Workers Union (FAWU), which represents Cruinneag's 12 employees, the merging parties have agreed to a 3 year moratorium on merger related retrenchments, post-merger.

The effect on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons (HDPs) and workers in firms in the market

- 13. Neither of the merger parties has any HDP ownership.
- 14. In order to address the greater spread of ownership obligations, the parties have agreed to build new houses to the value of R[CONFIDENTIAL] and transfer ownership of same to each of Cruinneag's 12 employees. The Commission considers that this commitment on providing housing for employees alone is insufficient and not directly responsive to s12A3(e) on the promotion of greater spread of ownership requirements. The Commission's preferrable remedies to address this requirement is an HDP Transaction and/or ESOP. However, the Commission acknowledges that every case is considered on its own merits. In this instance, the merging parties have proffered additional commitments that promote other public interest outcomes relating to s12A3(c) of the Competition Act as detailed below.

The effect of the proposed transaction on (i) a particular industrial sector or region and (ii) the ability of national industries to compete in international markets

- 15. In addition, the merging parties commit that Stellenzicht will invest not less than an aggregate amount of R20 000 000 in relation to various aspects (including, inter alia, the replanting of vineyards, investment in facilities and other infrastructure etc.) of Cruinneag. According to the merging parties, this will provide significant benefits for the ability of the affected wine industry to compete internationally and on the particular industrial region in which Cruinneag is located.
- 16. The public interest commitments tendered by the parties are included in the conditions attached as **Annexure A** hereto.

Conclusion

17. The Commission approves the proposed merger subject to attached conditions.

ANNEXURE A

STELLENZICHT WINES PROPRIETARY LIMITED

AND

CRUINNEAG PROPRIETARY LIMITED

CASE NO: 2023JUL0018

CONDITIONS

1. **DEFINITIONS**

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

- 1.1. "Acquiring Firm" means Stellenzicht Wines Proprietary Limited;
- 1.2. "Approval Date" means the date referred to in the Commission's merger clearance certificate (Form CC 15);
- 1.3. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4. "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.5. "Commission Rules" mean the Rules for the Conduct of Proceedings in the Commission;
- 1.6. "Conditions" means these conditions;
- 1.7. "Days" mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

- 1.8. "HDP" means historically disadvantaged persons as contemplated in section 3(2) of the Competition Act;
- 1.9. "Implementation Date" means the date after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10. "LRA" means the Labour Relations Act 66 of 1995, as amended;
- 1.11. "Merger" means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.12. "Merging Parties" mean collectively the Acquiring Firm and the Target Firm;
- 1.13. "Target Firm" means Cruinneag Proprietary Limited; and
- 1.14. "**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
- 2.1. **EMPLOYMENT CONDITIONS**
- 2.1.1. The Merging Parties shall not retrench any employees as a result of the Merger for a period of 3 (three) years from the Implementation Date.
- 2.1.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to dismissals as a result of misconduct or poor performance.
- 2.1.3. All employees of the Target Firm will have terms and conditions of employment (including wages, working conditions and benefits) that are as a whole no less favourable than their current terms and conditions of employment.
- 2.2. HOUSING CONDITIONS

- 2.2.1. The Acquiring Firm will provide up to 12 (twelve) newly built homes up to the value of approximately R[CONFIDENTIAL] and transfer ownership of such homes to qualifying employees who are employees of Cruinneag.
- 2.2.2.It is anticipated that the homes contemplated in paragraph 2.2.1 above will be transferred to the qualifying employees between 24 (twenty-four) and 48 (forty-eight) months of the Implementation Date. For avoidance of doubt, the Acquiring Firm shall pay any costs relating to the transfer of the homes to the qualifying employees.
- 2.2.3. The Acquiring Firm shall engage with employees on its commitment to provide and transfer ownership of the newly built houses to the employees and this includes providing legal advisory services, at no cost to the qualifying employees, to the employees on the transfer process as well as their rights.
- 2.2.4. The criteria for qualifying employees to receive a home (as contemplated in paragraph 2.2.1 above) are as follows:
 - 2.2.4.1. The person must be a farmworker employed by Cruinneag as at the Implementation Date; and
 - 2.2.4.2. The person must be residing on the accommodation provided by Cruinneag and on the farm owned by Cruinneag as at the Implementation Date.
- 2.2.5. To the extent that any employee who satisfies the qualifying criteria in paragraph 2.2.4 above is in a spousal marital relationship (i.e., a legal, consensual, contractual, or common law relationship recognised, sanctioned, and dissolvable by law) with another employee who also satisfies the qualifying criteria, the employees in such spousal marital relationship shall only be provided with 1 (one) home (unless the Acquiring Firm deems otherwise).
- 2.2.6. The Acquiring Firm will consult with the employees of the Primary Target Firm (and their trade union representatives) on the above commitment within 60 (sixty) Days of the Implementation Date.

2.3. CAPITAL INVESTMENT

2.3.1. Within a period of 3 (three) years from the Implementation Date, the Acquiring Firm will invest not less than an aggregate amount of R20,000,000 (twenty million rand) in relation to various aspects (including, *inter alia*, the replanting of vineyards, investment in facilities and other infrastructure etc.) of the Target Firm. The Acquiring Firm will use its best endeavours to spend at least 25% of the aforementioned amount on HDP owned or controlled suppliers provided that the goods or services are of the appropriate quality standards (based on the Acquiring Firm's standard business practices in South Africa over time and/or relevant industry standards, where applicable), there is reasonable availability of the goods/services, and it is on reasonably competitive commercial terms in relation to independent third party suppliers/service providers.

3. MONITORING

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of it becoming effective.
- 3.2. The Merging Parties shall circulate a copy of the conditions to all their employees and their employee representatives within 5 (five) Days of the Implementation Date.
- 3.3. The Merging Parties shall provide the Commission with the names of the qualifying employees to be provided with newly built houses within 5 (five) Days of the Implementation Date.
- 3.4. Within 5 (five) Days of concluding the consultation process with the employees of the Primary Target Firm (and their trade union representatives), the Merging Parties shall submit an affidavit deposed to by a senior employee, attesting to compliance with clause 2.2.6 of the Conditions.
- 3.5. As proof of compliance thereof, a senior employee of the Acquiring Firm shall within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees.
- 3.6. The Acquiring Firm shall, for a period of 3 years, on the anniversary of the Implementation Date, submit a suitable and appropriately detailed annual report

regarding compliance with the Conditions. The report shall be accompanied by an affidavit deposed to by a senior employee of the Acquiring Firm, attesting to the accuracy of the contents of the report and compliance with the Conditions.

4. APPARENT BREACH

4.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

5. VARIATION

5.1. The Acquiring Firm may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Acquiring Firm shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, amended and/or the time period for fulfilment to be extended as aforementioned.

6. GENERAL

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

NTT MOTOR INVESTMENTS (PTY) LTD AND

NISSAN SANDTON DEALERSHIP OF DATCENTRE MOTORS (PTY) LTD

CASE NUMBER: 2023JUL0024

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

 On 18 July 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby NTT Motors Investments (Pty) Ltd ("NTT Group") intends to acquire sole control of the Nissan Sandton retail motor dealership ("Nissan Sandton") operated by Datcentre (Pty) Ltd ("Datcentre"). Upon conclusion of the proposed transaction NTT Group will have sole control of Nissan Sandton.

Parties

- 2. The primary acquiring firm, the NTT Group, is a company incorporated in terms of the laws of South Africa. The NTT Group is wholly owned and controlled by Whelpton Investments (Pty) Ltd ("Whelpton Investments"). Whelpton Investments is wholly owned and controlled by the Whelpton Trading Trust ("Whelpton Trust"). The Whelpton Trust is not controlled by any firm or person.
- Apart from its interest in the NTT Group, Whelpton Investments wholly controls the following firms in South Africa: NTTFin (Pty) Ltd ("NTTFin"), PC Valley (Pty) Ltd ("PC Valley") and Moneybox Investments 23 (Pty) Ltd ("Moneybox Investments"). NTTFin, PC Valley and Moneybox Investments do not control any other firms in South Africa.

- Whelpton Trust, NTT Group and all its subsidiaries are hereinafter referred to as the Acquiring Group.
- 5. NTT Group has no shareholding by historically disadvantaged persons ("HDPs").
- 6. The primary target firm is Nissan Sandton, operated at corner Jan Smuts and Waterfall Avenue, Craighall, Gauteng. Nissan Sandton is wholly owned and controlled by Datcentre; a company incorporated in terms of the laws of South Africa. Datcentre is wholly owned and controlled by CMH Holdings (Pty) Ltd ("CMH Holdings"). CMH Holdings is controlled by Combined Motor Holdings Limited ("CMH") as to 85%. The remaining 15% is held by Main Street 445 (Pty) Ltd ("Main Street").
- 7. Datcentre has no shareholding by HDPs. CMH Holding's effective HDP shareholding is approximately 19,46%. As a result, Datcentre has a shareholding by HDPs of 19,46% on a flow through basis. Nissan Sandton is operated by Datcentre and therefore also has a shareholding by HDPs of 19,46% on a flow through basis.

Activities

- 8. The NTT Group's business activities include the sale of new and used vehicle sales, providing insurance and finance services, fleet management, automotive parts sales and vehicle and truck servicing and repairs. The NTT Group currently operates 41 motor dealerships in South Africa. The motor dealerships operated by the Acquiring Group sell new and used passenger vehicles ("PVs") and new and used light commercial vehicles ("LCVs"). The brands of PVs and LCVs sold by the Acquiring Group include Volkswagen ("VW"), Audi, Isuzu/Honda, Nissan, Toyota and Suzuki. The Acquiring Group also provides aftersales services for the various brands of vehicles as well as spare automotive parts.
- 9. Nissan Sandton operates as a Nissan motor dealership. Nissan Sandton sells new and used Nissan PVs, new and used Nissan LCVs, spare automotive parts for Nissan and Datsun vehicles, provides aftersales services for Nissan and Datsun vehicles and provides financial and insurance services.

Competition assessment

- 10. There is a horizontal overlap in the activities of the merging parties because both the merging parties operate retail motor dealerships. Specifically, the merging parties' activities overlap with respect to the sale of new and used PVs and LCVs (specifically Nissan branded vehicles).
- 11. The merging parties also both operate dealerships which sell automotive parts (specifically for Nissan branded vehicles) and provide aftersales services (specifically for Nissan branded vehicles). There is a further horizontal overlap in the activities of the merging parties because both the merging parties provide financial and insurance services.
- 12. The Commission assessed the proposed transaction in the following markets:
 - 12.1. The market for the sale of new PVs within Sandton and surrounding areas;
 - 12.2. The market for the sale of new LCVs within Sandton and surrounding areas;
 - 12.3. The market for the sale of new PVs in the Gauteng province; and
 - 12.4. The market for the sale of new LCVs in the Gauteng province.
- 13. However, in relation to the market for automotive parts and aftersales services, the Commission notes that case precedent states that the relevant geographic market for the market for automotive parts and aftersales services is 35 km and 80 km, respectively, from the Target Dealership. In the proposed transaction, the nearest Nissan dealership operated by the Acquiring Group is NTT Nissan, 126,3 km away from Nissan Sandton, The Commission will therefore not assess the market for the provision of aftersales servicing and spare automotive parts for vehicles under warranty as there is no geographic overlap.
- 14. The Commission found that in the market for the sale of new PVs within Sandton and surrounding areas, the merged entity has a market share of less than 2%. In Gauteng, the merged entity has a market share of less than 1%.
- 15. In the market for the sale of new LCVs within Sandton and surrounding areas, the merged entity has a market share of approximately 2%. In Gauteng, the merged entity has a combined market share of less than 1%.
- 16. The Commission also considered the effects of the proposed transaction on intra-brand and inter-brand competition within Sandton and surrounding areas and in Gauteng. The

Commission found that in relation to intra-brand competition between Nissan PVs and LCVs, the Acquiring Group does not operate any Nissan dealerships within Sandton and surrounding areas (nor within Gauteng).

- 17. The Commission considered inter-brand competition between various vehicle brands within Sandton and surrounding areas and within Gauteng. The Commission found that the Acquiring Group still faces competition from various other direct rival original equipment manufacturers ("OEMs") dealerships. The Commission found that within Sandton and the surrounding areas there are approximately 39 various dealerships which sell PVs and LCVs which include Fiat Chrysler (1), Ford (4), Hyundai (4), Isuzu (1), Jeep (1), Kia (3), Mahindra (2), Mazda (2), Mitsubishi (2), Opel (1), Peugeot (2), Renault (1), Suzuki (2), Toyota (3) and Volkswagen (4). In Gauteng, there are approximately 415 dealerships of various brands which sell PVs and LCVs.
- 18. Overall, the Commission concludes that the proposed transaction is unlikely to result in any substantial lessening of prevention of competition in the market for the sale of new PVs and LCVs (i) within Sandton and surrounding areas and in the (ii) Gauteng province.

Vertical overlap

- 19. There is also a vertical relationship between Datacentre and the NTT Group. This is because during the 12-month period ending 31 May 2023, NTT Motors bought 9 new LCVs from Datcentre on a spot sale basis. The merging parties submit that there are no formal supply arrangements between the parties. Both NTT Group and Datcentre form part of the Nissan South Africa Dealer network, which means that both parties are Nissan franchisees and from time to time will wholesale vehicles. For example, both dealers might have a certain vehicle but in different colours, and based on a client's needs a swop/wholesale purchase will be considered.
- 20. The Commission is of the view that the proposed transaction is unlikely to result in any vertical foreclosure concerns because the sales occur on a spot sale basis and is infrequent (often done to meet a client's needs or specifications) and not as a result of any formal agreement between the parties.

Public interest

Employment

- 21. The merging parties have provided an undertaking that the proposed transaction will not give rise to any merger specific retrenchments.
- 22. The employee representatives and trade unions representing the employees of the merging parties confirmed that the employees were notified of the proposed transaction and that no employment related concerns were raised. The employee representatives also confirmed that there have been no retrenchments in the last 12 months.

The promotion of a greater spread of ownership by historically disadvantaged persons and workers section 12A(3)(e)

- 23. The merging parties submit that pre-transaction, the Acquiring Firm has no shareholding by HDPs. Nissan Sandton has a 19,46% shareholding by HDPs. Therefore, the net effect is a dilution of HDP shareholding of Nissan Sandton from 19,46% to 0%.
- 24. To remedy the decrease in HDP shareholding, the merging parties proposed the following initiatives:
 - 24.1. The NTT Group and its affiliates will onboard 30 HDP graduates over 5 years on its 12-month graduate trainee program.
 - 24.2. The NTT Group will also onboard 30 HDP motor mechanic apprentices over 5 years for 12-month learnerships in its workshops and together with an identified mentor the successful candidates will be allowed and supported to complete the required training and obtain the required experience to qualify as a motor vehicle mechanic technician.
 - 24.3. The candidates will receive a market related salary and will qualify for all relevant employee benefits offered by the NTT Group. The value of the two programmes referred to above is estimated to be more than **R[CONFIDENTIAL]** over the committed 5-year period.
- 25. The Commission found that pre-transaction, the merging parties already offer a graduate programme and apprenticeship programme. From 2020 to 2023 (over a 4-year period), 19 HDP graduates formed part of the graduate trainee programme. The new proposal would therefore result in 11 more HDP graduates forming part of the graduate

programme. Similarly, from 2020 to 2023, 23 HDP apprentices formed part of the mechanic apprentice programme. The proposal would therefore result in 7 more HDP graduates forming part of the apprentice programme. The proposed approximate spend on the graduate programme and mechanic programme for the 5-year period is **R[CONFIDENTIAL]** which is higher than the **R[CONFIDENTIAL]** amount previously spent on HDP graduates and apprentices between 2020 and 2023.

- 26. The Commission considered the commitments tendered by the merging parties in light of the dilution in HDP shareholding, which the Commission considers to be substantial. In weighing the value of the commitments tendered by the merging parties, the Commission found that an ESOP of 5% of the merger parties' combined asset value would be approximately R[CONFIDENTIAL]. The commitments, which total R[CONFIDENTIAL], are thus substantially lower than the indicative value of an ESOP.
 - 27. The Commission then requested that the merging parties remedy the harm to section 12A(3)(e) of the Act through committing to one of the following: (i) The disposal of shareholding to the value of at least 5% to an ESOP; (ii) The disposal of shareholding to the value of at least 5% through an HDP Transaction; or (iii) The transformation in the ownership of existing and new dealerships at the Acquiring Group level.
 - 28. The merging parties argued that the imposition of further conditions and a requirement that the Acquiring Group spend more than **R[CONFIDENTIAL]** on an HDP transaction or an ESOP in circumstances where it is acquiring a loss-making operation which comprises a small portion of the relevant market will render the proposed merger unfeasible from the Acquiring Group's perspective resulting in the closure of Nissan Sandton. The merging parties argued further that in the event that the proposed transaction is not approved, the dealership will be closed and the 38 employees of Nissan Sandton will lose their jobs.
 - 29. The Commission confirmed that Nissan Sandton has made losses in each of the five financial years from 2019 to 2023.
 - 30. Regarding the merger-specificity of the employment effects, the Commission requested that the parties confirm whether there were alternative bidders for the Nissan Sandton dealership. The parties indicated that there have been no other parties interested in purchasing Nissan Sandton and if the proposed merger is not approved, Datcentre will

- not look for a different purchaser. Further, on 04 October 2023, MISA advised the Commission that it had been served with a section 189 notice by Datcentre.
- 31. In considering whether the proposed transaction is justifiable on public interest grounds, the Commission thus has to consider a counterfactual in which the employees of Nissan Sandton would be retrenched. The Commission found the transaction would result in the preservation of 38 jobs, 25 of which relate to vulnerable employees who are either unskilled or semi-skilled. In the circumstances, the Commission considers the preservation of these jobs to be substantial.
- 32. In all, the Commission therefore accepts the commitments tendered by the merging parties. The conditions to the merger approval are attached hereto as Annexure A.
- 33. In addition, the proposed transaction does not raise any other public interest concerns.

Conclusion

34. The Commission approves the proposed transaction subject to conditions set out in **Annexure A** herein.

ANNEXURE A

NTT MOTOR INVESTMENTS (PTY) LTD

AND

NISSAN SANDTON DEALDERSHIP OF DATCENTRE MOTORS (PTY) LTD

CASE NUMBER: 2023JUL0024

CONDITIONS

1. **DEFINITIONS**

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -
 - 1.1.1. "Acquiring Firm" means NTT Motor Investments (Pty) Ltd;
 - 1.1.2. "Approval Date" means the date referred to on the Commission's merger Clearance Certificate (Notice CC15) in terms of the Competition Act;
 - 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. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
 - 1.1.5. "Competition Act" means the Competition Act 89 of 1998, as amended;
 - 1.1.6. "Conditions" means these conditions;
 - 1.1.7. "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.1.8. "HDP" means historically disadvantaged persons within the meaning of the Act;
 - 1.1.9. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
 - 1.1.10. "Merger" means the acquisition of sole control of the Target Dealership by the Acquiring Firm;

- 1.1.11. "Merging Parties" means the Acquiring Firm and the Target Dealership;
- 1.1.12. "NTT Graduate Programme" means a programme set up by the Acquiring Firm to onboard 30 (thirty) HDP graduates in total over a period of 5 (five) years on our its 12-month graduate trainee programme. During this graduate trainee program, the successful candidates will be given exposure to all the major departments of a motor dealership, this experience will hopefully place them in ideal position to embark on a successful career within the industry.
- 1.1.13. "NTT Mechanic Apprentice Programme" means a programme set up by the Acquiring Firm to onboard 30 (thirty) HDP mechanic apprentices in total over a period of 5 (five) years on our its 12-month learnership programme in its workshops and together with an identified mentor the successful candidates will be allowed and supported to complete the required training and obtain the required experience to qualify as a motor vehicle mechanic technician.
- 1.1.14. "South Africa" means the Republic of South Africa;
- 1.1.15. "Target Dealership" means the Nissan Sandton dealership operated by Datcentre Motors (Pty) Ltd;
- 1.1.16. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.17. "**Tribunal Rules**" mean the Rules for the Conduct of Proceedings in the Tribunal.

2. RECORDAL

- 2.1. The Merging Parties have committed that there will be no job losses or retrenchments as a result of the Merger and that all the employees of the Target Dealership will be retained and continue to be employed by the Target Dealership post-merger. The merger will thus result in job preservation for the 38 employees of the Target Dealership.
- 2.2. Further, the Merging Parties have committed to investing in skills development and workplace training of HDP graduates and apprentices that is intended to improve the ability of these HDP graduates and apprenticeships to obtain employment. The Commission accepts these conditions.

3. Skills development

- 3.1. The Acquiring Firm shall for a period of 5 (five) years following the Implementation Date provide a skills development programme in terms of which the Acquiring Firm will:
 - 3.1.1. Onboard 30 (thirty) HDP graduates in total over a period of 5 years, and
 - 3.1.2. Onboard 30 (thirty) HDP mechanic apprentices in total over a period of 5 years.
- 3.2. The estimated combined value of the NTT Graduate Programme and NTT Mechanic Apprentice Programme will be **R[CONFIDENTIAL]** over the 5-year period.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. The Acquiring Group shall submit a compliance report detailing its compliance with clause 2 of the Conditions, within 60 (sixty) days of each anniversary of the Implementation Date. The report shall be accompanied by an affidavit from a director of the Acquiring Firm confirming the accuracy of the information contained in the report.
- 4.3. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

5.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

6. VARIATION

6.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the conditions to be waived, relaxed, modified and/or substituted.

7. GENERAL

7.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

VALMET OYJ

AND

THE TISSUE BUSINESS OF THE KÖRBER GROUP

CASE NUMBER: 2023JUL0026

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

On 19 July 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Valmet Oyj ("Valmet") intends to acquire the entire issued share capital in Körber Tissue Fold S.r.l. ("Körber Tissue Fold") and Körber Tissue S.p.A. ("The Tissue Business of Körber Group"). Post-merger, The Tissue Business of Körber Group will be solely controlled by Valmet.

Description of the merging parties

- The primary acquiring firm, Valmet, is incorporated under the laws of Finland as a publicly traded company listed on the Nasdaq Helsinki Stock Exchange. As its shares are widely held, Valmet is not directly or indirectly controlled by any single firm or individual. In South Africa, Valmet controls two firms, namely, Valmet South Africa (Pty) Ltd ("Valmet SA") and Valmet Flow Control South Africa (Pty) Ltd ("Valmet Flow" SA).
- 3 Valmet, its controlling firms and their subsidiaries are collectively referred to as the "Acquiring Group".
- 4 None of the shares of Valmet are held by historically disadvantaged persons ("HDPs").

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- The primary target firms are Körber Tissue Fold S.r.l. ("Körber Tissue Fold") and Körber Tissue S.p.A. ("Körber Tissue"). Körber Tissue Fold and Körber Tissue are incorporated under the laws of Italy and are wholly owned by Körber Beteiligungen GmbH, a company incorporated under the laws of Germany. Körber Tissue Fold and Körber Tissue do not directly or indirectly control any firm within South Africa. Körber Tissue Fold and Körber Tissue will henceforth be collectively referred to as The Tissue Business of Körber Group or Target Firms.
- 6 None of the shares of the Target Firms are held by HDPs.

Activities of the merging parties

- Valmet is a leading global developer and supplier of process technologies, automation, and services for the pulp, paper, and energy industries.
- 8 The Target Firms are active in the supply of tissue converting machinery which involves converting tissue base paper into packaged consumer products, such as toilet paper.

Overlapping markets and assessment

- 9 The merging parties submit that there is no horizontal overlap between their activities within South Africa and globally. The acquiring firm provides technology solutions for pulp production, as well as machine rebuilds and process components for board, tissue, and paper production. On the other hand, the Target Firms supply tissue converting machines.
- The Commission notes that whilst both parties are active in the manufacture of machinery for the paper industry, the Acquiring Group provides machinery for the manufacture of pulp and paper whilst the Target Firms manufacture machinery for converting tissue-based paper into packaged consumer products such as toilet paper, household towels and napkins. As such, the merger parties' machines are not substitutable from a demand-side perspective as they are used for distinct products at different stages of the value chain. Further, there is no vertical overlap arising.
- 11 The Commission is of the view that the proposed transaction is unlikely to lead to a substantial prevention and lessening of competition in any of the markets of the merging parties.

Public interest

Effects on employment

12 The proposed transaction does not raise employment concerns.

The promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons (HPDs) and workers in the firms in the market - section 12A(3)(e) of the Competition Act No. 89 of 1998 (as amended) (the "Act")

- 13 The merging parties submit that the merger has no effect on the promotion of a greater spread of ownership, in particular, the proposed transaction will not affect the level of ownership by HDPs and workers within the merging parties.
- The Commission informed the parties that the Competition Act imposes a positive obligation on merger parties to promote a greater spread of ownership and that this applies to all mergers filed in South Africa. Accordingly, the Commission requested the merging parties to implement an HDP transaction and/or an employee share ownership plan ("ESOP") within the merged entity.
- 15 In response, the merging parties submit that section 12A of Act does not impose an obligation to generate positive effects, particularly where the merger is an international transaction and neither the acquiring firm nor the target firm is based in South Africa.
- The Commission reiterated its position that there is a positive obligation to promote a greater spread of ownership in all mergers but in light of the facts of this case, requested the parties to consider making other public interest commitments that may countervail their failure to remedy section 12A(3)(c) of the Act.
- The merging parties have since agreed to conditions to (i) establish enterprise and supplier development fund for the benefit of HDPs and (ii) development of the experience, skills and knowledge of black women and/or employees including through the provision of bursary for study in academic programmes at institutions of higher learning and (iii) procurement from black-owned businesses and black women-owned businesses. The value of commitments will be based on [CONFIDENTIAL]% of the annual net profit after tax of the merged entity's South African entities, over a 3 (three) year period.
- 18 The proposed transaction does not raise any other public interest concerns.

CONCLUSION

19 The Commission approves the merger subject to Conditions attached as **Annexure A**.

ANNEXURE A

VALMET OYJ

AND

THE TISSUE BUSINESS OF THE KÖRBER GROUP

CASE No: 2023JUL0026

CONDITIONS

1 **DEFINITIONS**

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

- 1.1 "Acquiring Firm" means Valmet Oyj., including Valmet Flow Control South Africa(Pty) Ltd and Valmet South Africa (Pty) Ltd;
- 1.2 "Approval Date" means the date referred to on the Commission's merger clearance certificate (Form CC15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 **"Black"** means black people as defined in the Broad-based Black Economic Empowerment Act No 53 of 2003, as amended;
- 1.4 "Black-owned businesses" means businesses which are held as to 51% or more by Black people;
- 1.5 "Black women-owned businesses" means a business that is held as to 51% or more by Black women;
- 1.6 **"Competition Act**" means the Competition Act, No. 89 of 1998, as amended;
- 1.7 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.8 "Commission Rules" means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.9 **"Conditions"** means the conditions specified in this document;
- "Days" mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa. A public holiday shall also include such days as may be declared by the President of South Africa in terms of the Public Holidays Act 36 of 1994;

- 1.11 "Employees" means all the Employees of the Merging Parties, as defined in the LRA, employed as such on the Implementation Date;
- 1.12 **"HDP"** means a historically disadvantaged person as defined in section 3(2) of the Competition Act;
- 1.13 "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.14 "LRA" means the Labour Relations Act 66 of 1995, as amended;
- 1.15 "Merged Entity" means the Acquiring Firm after the Merger is implemented by the Merger Parties;
- 1.16 "Merger" means the proposed acquisition by the Acquiring Firm of the entire issued share capital of the Tissue Businesses of the Körber Group;
- 1.17 "Merger Parties" means collectively the Acquiring Firm and the Target Firms,
- 1.18 "National Qualification Framework" means the national qualification framework contemplated in the National Qualification Framework Act No 67 of 2008;
- 1.19 "NPAT" means net profit after tax, being the amount that remains after a company has paid of all its operating and non-operating expenses, other liabilities, and taxes.
- 1.20 "Target Firms" means Körber Tissue Fold S.r.l. and Körber Tissue S.p.A., collectively referred to as the Tissue Businesses of the Körber Group, namely
- 1.21 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2 ENTERPRISE AND SUPPLIER DEVELOPMENT AND SKILL DELOPMENT FUND

- Over an uninterrupted period of 3 (three) years, following the Implementation Date of the Merger, the Merged Entity shall spend an amount equal to no less than the sum of **[CONFIDENTIAL]%** of the NPAT for the Merged Entity's South African entities for each of the relevant 3 (three) years, on one or more of the following:
 - 2.1.1. Enterprise and supplier development, in particular with regard to the promotion of the ability of SMMEs and firms controlled or owned by HDPs to effectively enter into, participate in or expand within markets in South Africa.

- 2.1.2. Development of the experience, skills and knowledge of Black women and/or employees, including through the provision of bursaries for study in academic programmes at institutions of higher learning within the National Qualifications Framework.
- 2.1.3. Procurement from black-owned businesses and Black Women-Owned businesses, provided that the goods and services that the Merged Entity requires to be procured are available on reasonable, practical and competitive terms that comply with the Merged Entity's reasonable requirements, particularly as regards availability, quantity, counterparty risk and pricing.

3 MONITORING

- 3.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 3 (three) Days of the Implementation Date.
- 3.2 The Merged Entity shall within 6 (six) months of releasing the audited financial statements of its South African entities, provide the Commission with the NPAT of its South African operations.
- 3.3 The Merged Entity shall submit an annual report to the Commission indicating compliance with respect to these Conditions for a period of 3 (three) years. These reports must be lodged within 20 (twenty) Days after each anniversary of the Implementation Date for a period of 3 (three) years. This report shall be accompanied by an affidavit, attested to by a senior official of the Merged Entity, confirming the accuracy of the report.

4 APPARENT BREACH

If the Merger Parties appear to have breached the Conditions, or if the Commission determines that there has been an apparent breach by the Merger Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5 VARIATION OF THE CONDITIONS

The Merger Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to

the variation of the Conditions, the Merger Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6 **GENERAL**

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

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ENVIROSERV WASTE MANAGEMENT PTY LTD

AND

VISSERSHOK WASTE MANAGEMENT FACILITY (PTY) LTD

CASE NUMBER: 2023JUL0029

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

The Transaction

- On 20 July 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Enviroserv Waste Management (Pty) Ltd ("Enviroserv") intends to acquire 50% of the issued share capital in Vissershok Waste Management Facility (Pty) Ltd ("Vissershok") from Cavaris Holdings (Pty) Ltd ("Cavaris"), the seller. Currently, Enviroserv owns 50% in Vissershok and post-merger, Enviroserv will own 100% of the shares in, and have sole control over, Vissershok. Vissershok is a Class A landfill accepting low and high hazardous waste and other forms of waste located in Milnerton, Cape Town.
- 2. The primary acquiring firm, Enviroserv Waste Management Proprietary Limited ("Enviroserv") is controlled by Enviroserv Holdings Proprietary Limited ("EH"), which is in turn controlled by Umzwilili Environmental Solutions Proprietary Limited ("Holdco"). Holdco is controlled by SUEZ International ("Suez") as to 51%. Suez International is controlled by Suez S.A (Pty) Ltd (Suez S.A). Suez S.A is in turn controlled by Suez Holdings. Suez Holdings is not controlled by any single shareholder. The shareholders holding the majority of the shares in Suez Holdings are Global Infrastructure Partners Highbury SAS as to 40.17% and Meridiam Sustainable Water and Waste Fund S.A.S as to 40.17%.

- 3. EH controls Enviroserv Africa Holdings Limited (dormant), which in turn controls Enviroserv Waste Management (Mozambique) Limitada and Enviroserv.
- 4. Enviroserv controls several firms in South Africa. Enviroserv, all the firms that control it and all its subsidiaries are hereinafter referred to as "the Acquiring Group".
- 5. The Acquiring Group has 35.1% shareholding held by historically disadvantaged persons ("HDPs").
- The primary target firm is Vissershok Waste Management (Pty) Ltd ("Vissershok"), a
 private company incorporated under the laws of South Africa. Vissershok is jointly
 controlled by Caravis and Enviroserv Solutions (the Acquiring Firm). Vissershok does
 not control any firm.
- 7. Vissershok, will be referred to as "the Target Firm". The Target Firm has 19.1% shareholding held by HDPs.

The parties' activities

- 8. Globally, Suez, the ultimate controller of Envirosery, is active in the water network management, water treatment, desalination and wastewater recycling solutions for public and industrial customers. It is also active in the collection, sorting, recycling, treatment and disposal of non-hazardous and hazardous waste for industrial and municipal customers.
- 9. The primary acquiring firm, Enviroserv, is a waste management company which provides end-to-end services which include collecting, analysing, treating and disposing of general and hazardous waste at landfills and alternative treatment and disposal facilities. It is active in the waste management sector in South Africa, Mozambique and Uganda.
- 10. Enviroserv provides its services internally as well as to third parties. It owns and operates 5 landfill sites (including the target firm) located in Gauteng, KwaZulu-Natal and the Western Cape.

- 11. Enviroserv categorises the waste it collects and transports it to the relevant landfill site for treatment and disposal. Landfill sites are categorised into (i) general landfill sites which accept any waste that does not pose a significant threat to public health or the environment and (ii) hazardous waste landfill sites which are classified as either 'high' hazardous sites or 'low' hazardous sites. General waste is generally transported to the nearest available landfill site while hazardous waste must be disposed at a hazardous waste landfill site.
- 12. The primary target firm is Vissershok which owns a landfill site in Milnerton in the Western Cape. Vissershok provides downstream services to waste management companies for the treatment and disposal of waste. Enviroserv manages the Vissershok Landfill site on Vissershok's behalf. The Vissershok Landfill Site is a Class A landfill (accepting low and high hazardous waste and other forms of waste). It is currently the only landfill site in the Western Cape which accepts all types of hazardous waste.

Competition assessment

- 13. The Commission considered the activities of the merging parties and found that the proposed transaction raises a vertical overlap between the merger parties as the Acquiring Group is active in the collection, transportation and disposal of waste at Landfill Sites in the Western Cape, whilst the Target Firm owns the Vissershok landfill site which is active in the treatment and disposal of waste. The merger parties have a pre-existing relationship as Enviroserv currently operates the Vissershok Landfill site on behalf of the Target Firm.
- 14. For purposes of assessing the proposed transaction, the Commission will assess the following relevant markets
 - 14.1. A local upstream market (within a 60km radius from collection point) for the collection and transportation of general waste as well as a local downstream market for the treatment and disposal of general waste at landfill sites (also limited to a 60km radius from Vissershok Landfill site in Western Cape).
 - 14.2. A provincial upstream market for the collection and transportation of hazardous waste as well as the provincial downstream market for the treatment and disposal of hazardous waste at landfill sites.

Vertical Assessment

15. Pre-merger, Enviroserv already has a joint controlling 50% interest in Vissershok and therefore the proposed merger is a move from joint to sole control. Therefore, the instant assessment considers the potential change in incentives that may arise as a result of the change in control arising from Caravis exiting its 50% shareholding in Vissershok.

Input foreclosure assessment

- 16. In respect of general waste, the Commission found that in the local market for the collection and disposal of general waste, Enviroserv has approximately 15% market share and is unlikely to exercise market power. Enviroserv is thus unlikely to have the ability to input foreclose downstream landfill sites in respect of general waste.
- 17. In relation to hazardous waste, Enviroserv has a market share of approximately 50%, and is a dominant player and the largest player in this market. Given that Enviroserv is the largest player making up approximately 50% of the upstream market for the collection and disposal of hazardous waste, it is likely to exercise market power in the upstream market for hazardous waste.
- 18. Even if Enviroserv likely exercises market power in the upstream market for the collection and transportation of hazardous waste given its high market shares, there appears to be no incentives for Enviroserv to solely use the Vissershok site postmerger. This is because waste disposal requires waste collectors such as Enviroserv to take into account factors such as logistics of transporting, proximity between the collection point and landfill, type of waste the landfill is licensed to accept, price per ton charged by the landfill site to dispose, amongst other factors. If the merger parties do not use other landfill sites (especially the ones in close proximity) and exclusively use their own Vissershok landfill, this will likely result in higher costs than rivals because of the factors listed above.
- 19. Further, in respect of hazardous waste in particular, it can only be disposed of at a licensed Class A site which can receive untreated hazardous waste. In Western Cape, this is currently only at Vissershok. There are effectively no other operating class A sites that can receive the hazardous waste besides Vissershok. Accordingly, there are

no other downstream hazardous waste landfill sites in Western Cape that could be foreclosed.

Customer foreclosure

- 20. In terms of ability in the downstream landfill market, there are other alternative municipal landfill sites in Western Cape which accept general waste and these landfill sites will likely constrain Vissershok with respect to the receipt of general waste. These include (i) City of Cape Town municipal landfill sites in Vissershok (consisting of the South and North landfills) (ii) general municipality waste sites situated at Coastal Park, (iii) municipal solid organic waste sites at New Horizon's energy waste to energy facility and fruit and pulp at Elgin Biogas facility.
- 21. However, in terms of hazardous waste, Vissershok is currently the only operating landfill site that is licenced to receive all types of hazardous waste in the Western Cape. City of Cape Town only accepts low to moderate grade hazardous waste which is pretreated or waste not requiring treatment at the landfill site. Other non-landfill companies such as brick manufacturers and cement manufacturers also accept some industry related hazardous waste, however they only accept specific types of waste including ash, green mould sand and effluent wastewater as specified in their waste licenses.
- 22. As the only operating hazardous waste landfill site, Vissershok likely has the ability to foreclose other upstream rivals of Enviroserv from accessing the landfill site especially for hazardous waste.

Third party concerns

- 23. The Commission received several third-party concerns relating primarily to possible foreclosure post-merger. The third party concerns are summarised as follows:
 - 23.1. The merged entity will capture the entire waste market in the Western Cape province as Vissershok Landfill site is the only Landfill Site in the Western Cape which accepts extremely hazardous and hazardous waste.
 - 23.2. the proposed transaction will result in a monopoly in the waste management sector, as the merger parties will own multiple landfills which will give Enviroserv unprecedented control over waste management and disposal in the Western Cape province and other provinces.

- 23.3. the merger will result in high barriers to entry, as the acquisition could create insurmountable barriers for new and existing companies in the sector as it will make it increasingly difficult for smaller competitors to invest in new technologies or expand operations.
- 23.4. Enviroserv already charges Averda double the rate whenever they request quotations for disposal services at which accepts general waste. The proposed transaction will result in the higher prices charged at Simmer and Jack landfill site in Johannesburg also being applied at Vissershok.
- 24. The Commission found that the concentration and monopoly related concerns raised above do not arise as a direct result of the proposed merger.
- 25. However, to address the foreclosure concerns arising especially in relation to hazardous waste, the merger parties undertake to continue to accept general and hazardous waste from the Acquiring Firm and its competitors, on a non-discriminatory basis for a period of 5 (five) years.
- 26. Further, the merger parties' have provided a condition that from the Approval Date, the Merging Parties shall ensure that there is no differential treatment of customers relating to payment terms other than on the basis contemplated in section 9(2) of the Competition Act.

Public interest Issues

27. There are no public interest issues arising.

Conclusion

28. The Commission approves the proposed merger subject to conditions in **Annexure A**.

ANNEXURE A ENVIROSERV WASTE MANAGEMENT PROPRIETARY LIMITED AND

VISSERSHOK WASTE MANAGEMENT FACILITY PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0029

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 "Acquiring Firm" means Enviroserv;
 - 1.1.2 **"Approval Date"** means the date referred to in the Commission's Merger Clearance Certificate (Form CC 15) in terms of the Competition Act;
 - 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 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
 - 1.1.5 "Competition Act" means the Competition Act, 89 of 1998, as amended;
 - 1.1.6 **"Conditions"** means these conditions set out herein;
 - 1.1.7 **"Days"** means any calendar day other than Saturday, a Sunday or an official public holiday in South Africa;
 - 1.1.8 **"Enviroserv"** means Enviroserv Waste Management (Pty) Ltd;
 - 1.1.9 **"General Waste"** means general waste as defined in the National Environmental Management Waste Act 2008, Act no 59 of 2008;

"Hazardous waste" means hazardous waste as defined in the National 1.1.10 Environmental Management Waste Act 2008, Act no 59 of 2008; "Implementation Date" means the date, occurring after the Approval 1.1.11 Date, on which the Merger is implemented by the Merging Parties; 1.1.12 "Merged Entity" means Vissershok subject to the control of Enviroserv following the Implementation Date; 1.1.13 "Merger" means the acquisition of control by the Acquiring Firm over the Target firm; 1.1.14 "Merging Parties" means collectively the Acquiring Firm and the Target Firm; 1.1.15 "South Africa" means the Republic of South Africa; 1.1.16 "Target Firm" means Vissershok; 1.1.17 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; 1.1.18 "Tribunal Rules" means the Rules for the conduct of proceedings in the Tribunal; 1.1.19 "Vissershok" means Vissershok Waste Management Facility (Pty) Ltd; and 1.1.20 "Vissershok Landfill Site" means the landfill site operated by Vissershok in Frankdale Road, Vissershok, Milnerton in the Western Cape.

2. **CONDITIONS**

2.1 For a period of 5 (five) years from the Approval Date, the Merging Parties shall procure that the business conducted by the Target Firm as at the Approval Date,

continues to accept general and hazardous waste at the Vissershok Landfill Site from the Acquiring Firm and its competitors on non-discriminatory terms.

2.2 From the Approval Date, the Merging Parties shall ensure that there is no differential treatment of customers relating to payment terms other than on the basis contemplated in section 9(2) of the Competition Act.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 The Acquiring Firm shall, for a period of 5 (five) years, 5 (five) days after the first, second, third, fourth and fifth anniversary of the Implementation Date, submit a report to the Commission detailing its compliance with clause 2.1 of the Conditions.
- 3.3 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary to monitor the extent of compliance with the Conditions.

4. VARIATION OF THE CONDITIONS

4.1 The Acquiring Firm may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Acquiring Firm shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

5. APPARENT BREACH

5.1 Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

GENERAL

6.1 All correspondence concerning the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

BETTERHOME GROUP LIMITED

AND

PRIVATE PROPERTY SOUTH AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0035

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

On 21 July 2023, the Competition Commission (the "Commission") received a notice of an intermediate merger which entails Private Property South Africa Proprietary Limited ("Private Property") entering into a share buy-back arrangement that will result in it repurchasing and cancelling various shares that are currently held by Estate Agents Property Portal Company (Pty) Ltd ("EAPPC"), as well as potentially buying back additional shares owned by certain minority shareholders ("the Potential Transaction"). As a consequence of this share buy-back and the subsequent cancellation of those shares, the proportionate shareholding of BetterHome Group Limited ("BetterHome"), which is an existing shareholder in Private Property, will increase from the current [CONFIDENTIAL]% non-controlling minority shareholding to a controlling majority shareholding in Private Property of at least [CONFIDENTIAL] %.

Parties

- 2. The majority of the shares in BetterHome are controlled by entities associated with **[CONFIDENTIAL]**.
- 3. BetterHome has interests in the following firms:

- 3.1. BetterLife Origination Services (Pty) Limited ("BetterLife Origination Services")([CONFIDENTIAL]%);
- 3.2. BetterSure Financial Consultants (Pty) Limited ("BFC")([CONFIDENTIAL]%);
- 3.3. BetterSure Insurance Brokers (Pty) Limited ("BetterSure Insurance")([CONFIDENTIAL]%);
- 3.4. SwitchX (Pty) Ltd ([CONFIDENTIAL]%) ("SwitchX"); and
- 3.5. Bluedoor Investments (Pty) Ltd ("Bluedoor Investments") ([CONFIDENTIAL]%). Through Blue Door Investments, BetterHome holds preference shares in certain real estate franchisor brands. These firms are: [CONFIDENTIAL].
- 3.6. In addition to the preference shares it holds in real estate franchisor brands, BetterHome holds shares in certain companies providing services in the broader real estate sector. The companies in which it holds more than [CONFIDENTIAL]% include the following: Resize Home Loans (Pty) Limited ([CONFIDENTIAL]%); Sudden Impact 76 (Pty) Limited and BetterLife Foundation NPC ([CONFIDENTIAL]%), amongst others.
- 4. For completeness, BetterHome has **[CONFIDENTIAL]** interests in Loom Property Insights ("Loom") (**[CONFIDENTIAL]**% shareholding).
- 5. BetterHome is currently held as to **[CONFIDENTIAL]** % by historically disadvantaged persons ("HDPs").
- 6. The shares in Private Property are held **[CONFIDENTIAL]**.
- 7. Private Property holds a 100% shareholding in Fusion Agency Solutions (Pty) Ltd ("Fusion"), a company which is duly incorporated in terms of the laws of South Africa. Private Property also owns a 100% shareholding in Even Wise Trading (Pty) Ltd ("Even Wise"), a company that holds treasury shares in Private Property, which is duly incorporated in terms of the laws of South Africa.
- 8. Private Property is currently held [CONFIDENTIAL]% by HDPs.
- 9. EAPPC does not have any shareholding held by HDPs.

Activities

- 10. BetterHome is an investment holding company and its subsidiaries and associated companies provide a range of products and services in the broad real estate sector including mortgage/bond origination as well as long-term and short-term insurance broking. The bond origination services are provided by BetterHome under the brand "BetterBond". BetterHome also holds preference shares in real estate franchisor businesses.
- 11. Loom is a new data business with a pilot product that provides comparative market analysis.
- 12. SwitchX facilitates the submission of, and status updates in respect of, mortgage applications with financial institutions.
- 13. Private Property is a property portal which sells property-related digital advertising services as an online platform. The platform enables property shoppers to search for property listings (both in respect of sales and rentals) and property-related services such as financial services, insurance services, mortgage/bond origination and legal services.
- 14. Fusion provides back-office estate agent listing management cloud-based software that enables estate agents to place their property listings across a variety of competing property portals through a single access point.

Areas of overlap

15. The Commission considered the activities of the merging parties found that the proposed transaction results in vertical overlaps as (i) BetterBond (a subsidiary of BetterHome) lists its bond/mortgage origination services on the Private Property platform and (ii) BetterHome holds preference shares in various real estate franchisors whose franchisees list their property stock on the Private Property platform. Thus, vertical overlaps arise at the mortgage origination level and the real estate level.

Relevant markets

- 16. For purposes of assessing this instant transaction, the Commission did not conclude on the relevant market but considered the following markets:
 - 16.1. The national market of online vertical property classifieds services by online property portals;

- 16.2. The broad national market for the provision of bond origination services, including traditional bond originators and financial lending institutions;
- 16.3. The narrow national market for the provision of bond origination services, excluding financial lending institutions; and
- 16.4. The national market for real estate agency services.

Vertical effects

- 17. The first vertical overlap arises as BetterBond advertises its bond origination services on the Private Property platform. In this regard, the Commission identified an upstream market for online vertical property classifieds services by online property portals and a downstream market for the provision of bond origination services. Private Property is active upstream, whilst BetterBond is active downstream.
- 18. The second vertical overlap arises as real estate franchisees list/advertise their property stock on the Private Property online platform. In this regard, the Commission identified the upstream market for online vertical property classifieds services by online property portals and the downstream market for real estate agency services. Private Property is active upstream while BetterHome (through its interest in franchisors) is active downstream.

The Private Property and BetterBond vertical relationship

- 19. Regarding input foreclosure, the Commission found that Property24 is the dominant platform and Private Property is the second largest player in the market. There are several small vertical property classifieds portals in the market (such as IOL Property, MyProperty, MyRoof, PropertyCentral, Immo Africa and TPN Properties) but the Commission found that these are unlikely to pose a competitive constraint on Property24 and Private Property.
- 20. When considering the effect of the proposed transaction on customers within the narrow downstream market for bond origination services (excluding financial lending institutions), the Commission found that BetterBond and Ooba are the only bond originators that advertise their services on the Private Property platform. The Commission is of the view that any input foreclosure by Private Property is unlikely to have a significant effect on third-party bond originators, mainly Ooba in this instance.

21. Regarding customer foreclosure, the Commission found that **[CONFIDENTIAL]**. Therefore, there is no third-party property portal that is likely to be foreclosed as a result of the proposed transaction.

The vertical relationship between Private Property and the real estate franchisees

- 22. Regarding input foreclosure, the Commission found that in 2022, Private Property generated less than **[CONFIDENTIAL]** % of its total adverting revenue from spend by real estate agents that are franchisees of the franchisors in which BetterHome has an interest. Given this, the Commission is of the view that the merged entity is unlikely to have incentives to adopt an input foreclosure strategy as it is unlikely to recoup the significant loss of revenue from a self-dealing strategy.
- 23. Regarding customer foreclosure, the Commission found that there are numerous other third-party real estate agencies that list their properties on online property classified advertisement portals. These include national franchisors such as Rawson, Pam Golding, Seeff, Just Property, Harcouts, Century 21 and Sotheby's, amongst others.
- 24. The Commission also notes that due to the instant transaction, the EAPPC shareholders will relinquish their shareholding in Private Property. Further as part of the [CONFIDENTIAL]. This will remove the obligation and accompanying incentives [CONFIDENTIAL]. Therefore, the proposed transaction removes the preferential contracts of EAPPC member which strongly incentivised them not to use rival platforms.

Coordinated effects

- 25. The proposed transaction will result in BetterHome and Ooba increasing their shareholding in Private Property. BetterHome and Ooba compete directly in the bond origination market and in the markets for short-term and long-term insurance. Further, BetterHome and Ooba also [CONFIDENTIAL] and [CONFIDENTIAL].
- 26. Prior to the merger, BetterHome and Ooba are each entitled to **[CONFIDENTIAL]** nominations to serve as directors on the board of Private Property. With the proposed transaction, BetterHome will be entitled to **[CONFIDENTIAL]**.
- 27. The Commission notes that the two entities appear to nominate key personnel onto the board of Private Property. For instance, **[CONFIDENTIAL]**.

- 28. The Commission is concerned that the BetterHome's acquisition of a controlling stake in Private Property coupled with **[CONFIDENTIAL]** could enhance the scope for the exchange of competitively sensitive information between BetterHome and Ooba in the bond origination market and also in the market for short-term and long-term insurance.
- 29. When estate agents list their stock on the property portals, they submit information relating to each property including photographs, price, location, size, complete description and applicable levies and taxes. Although this information is not considered to be confidential when listed on the property portals, there is value attached to it when it is consolidated. The property portals are also able to track the 'clicks' and 'leads' generated by estate agents on their listed properties. Once BetterHome acquires control of Private Property, it will have unfettered access to this information and can use the data to augment their service offering in the data analytics and solutions service through Loom.

Third-party views

- 30. The Commission received concerns from competing bond origination, vertical online portal operators and data analytics companies. The main concerns relate to common ownership that exists across the residential property value chain and the potential for anticompetitive information exchange at multiple levels of the residential property buying and selling value chain.
- 31. According to submissions by third parties, Ooba and BetterHome enjoy arrangements known as "tied arrangements" with the big real estate groups. As examples, Pam Golding, Seeff, Wakefields and others are said to be "tied" to Ooba. On the other hand, RE/Max, Chas Everitt, Leapfrog, Real Net and others are said to be "tied" to BetterHome. Market participants submit that there are about 10-13 big real estate brands in South Africa all of whom have some form of tied arrangement with one of these two originators, Ooba and BetterHome, who collectively make up at least 85% of the South African mortgage origination market.
- 32. As part of this significant common ownership, there exists a significant amount of cross-directorship which create an information exchange platform amongst direct competitors, BetterBond and Ooba. This is important because BetterHome also has ownership

interests in the insurance industry, through an entity known as BetterSure, which provides homeowners insurance, home contents cover, life cover and personal loans.

- 33. Another concern is that the removal of the EAPPC as a shareholder in Private Property as a result of the proposed transaction and the replacement of the EAPPC with BetterHome, does not necessarily achieve the OIPMI's objectives of requiring EAPPC to divest its shareholding in Private Property because all that will happen is that one group of estate agents are being substituted with another. The parties to these complex commercial arrangements will continue to be incentivised to engage in exclusionary conduct to favour their interests to the detriment of competition, specifically smaller players or new entrants (platforms, bond originators and estate agents alike).
- 34. With Loom being owned by BetterHome, Ooba, EAPPC and SwitchX, it is the beneficiary of the data that arises from and between estate agency groups, bond originators and bond aggregators, to generate its valuations and other data products. Therefore, Loom will likely become the dominant provider of data to the industry, enabling rent-seeking behaviour. Market participants believe that it is BetterHome's strategy to use the data it is able to harvest through its various ownership points within the residential property industry (including Private Property), to gain greater access to the purchasing decisions of homeowners and use this to consolidate its market power in all its various operations.

Commission's view

- 35. The Commission's view is that the various concerns raised by third parties relating to cross directorships can be remedied through imposition of Chinese wall provisions to restrict the directors who can be appointed to the Private Property and other competing businesses' boards. This restriction would ensure that for as long as Ooba and BetterHome can nominate individuals to the Private Property Board, they shall ensure that their respective nominees to the Private Property board are not the same persons serving, nominated and/or appointed on any board or management committees or subcommittee of either Ooba Home Loans, Mortgage Market South Africa (Pty) Ltd and/or BetterBond respectively.
- 36. However, the merging parties have argued against such conditions, on the basis that the concerns related to common directors are not brought about the proposed merger and [CONFIDENTIAL]. Ultimately, the merging parties agreed to conditions that ensure that for as long as BetterHome and Ooba can nominate individuals to the Private

Property Board, they shall ensure that their respective nominees to the Private Property board shall not disclose competitively sensitive information of competing businesses.

- 37. Further, the concerns relating to the flow of data from Private Property towards Loom and SwitchX can be remedied through restrictions that can be imposed on Private Property. In this instance, BetterHome and Ooba should allow for equal access to the same non-public information that Loom and SwitchX will gain access to from Private Property to their rivals, on the same fair, reasonable and non-discriminatory commercial terms and conditions.
- 38. The Commission notes that the proposed transaction is a result of the remedial action which seeks to addresses the OIMPI findings that the EAPPC estate agents enjoyed preferential pricing as a result of their shareholding in Private Property. However, the Commission is of the view that the proposed transaction does not fully address the OIMPI findings as there would still be residual linkages between Private Property and the real estate agents that are affiliated to BetterHome. Given that BetterHome is acquiring additional control over Private Property and the potential change in incentives of BetterHome that may arise with the merger, the Commission is concerned that the proposed transaction may result in those affiliated estate agents obtaining preferential rates on Private Property post-merger.
- 39. In order to address the aforementioned concern, the merging parties commit that once the current agreements with the EAPPC members expire or are replaced, Private Property will ensure that the listing fees payable by any similarly situated estate agency network (i.e., with a similar sized and footprint) are determined on a similar basis to those payable by the estate agent networks associated with the franchisors in which it has interests. In addition, BetterHome committed that it shall not instruct nor influence any of the real estate franchisors brands in which it has preferential shares, not to use other property portals that compete against Private Property. For the avoidance of doubt, BetterHome will not instruct real estate franchisors which specific platform(s) to list on.

Public interest

Employment

40. The merging parties have offered conditions that ensures that there will be no mergerspecific retrenchments as a result of the proposed transaction for a period of 36 months. The ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons, to effectively enter into, participate in or expand within the market

- 41. The merging parties submit that the proposed transaction will positively affect the public interest by promoting the ability of real estate firms controlled by HDPs ("HDP real estate agents") to effectively enter, participate and expand within the market. This is because it is BetterHome's intent, within 6 months of the implementation of the transaction, to support the promotion of HDP real estate agents by:
 - 41.1. [CONFIDENTIAL]; and
 - 41.2. [CONFIDENTIAL].
- 42. The merging parties have agreed to make the above commitment as public interest conditions to the approval of the merger.

Conclusion

43. The Commission approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.

ANNEXURE A

BETTERHOME GROUP LIMITED

AND

PRIVATE PROPERTY SOUTH AFRICA (PTY) LTD

CASE NUMBER: 2023JUL0035

CONDITIONS

1. DEFINITIONS

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- 1.1. "Acquiring Firm" means BetterHome;
- 1.2. "Approval Date" means the date on which the Commission issues a Clearance Certificate in terms of the Competition Act;
- **1.3.** "BetterHome" means BetterHome Group Limited, a company incorporated in accordance with the laws of South Africa;
- **1.4.** "BetterSure" means BetterSure Insurance Brokers (Pty) Limited, a company incorporated in accordance with the laws of South Africa;
- 1.5. "Bluedoor Investments" means Bluedoor Investments (Pty) Ltd, a company which amongst others holds preference shares in certain real estate franchisor brands including [CONFIDENTIAL];
- 1.6. "BVI Investments" means Business Venture Investments No 1830 (Pty) Ltd, a company [CONFIDENTIAL];
- 1.7. "Commission" means the Competition Commission of South Africa;
- **1.8.** "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission issued in terms of section 21 of the Competition Act;
- 1.9. "Competing Businesses" means any or all of the businesses of Betterhome and ooba operating in the provision of bond origination services, real estate insurance services and any other competing real estate activities in South Africa;
- 1.10. "Competition Act" means the Competition Act No. 89 of 1998, as amended;"

- 1.11. "Competitively sensitive information" means information in relation to the Competing Businesses that is not in the public domain, which is or may reasonably be expected to be competitively sensitive information of BetterBond and Ooba Home Loans, Mortgage Market South Africa (Pty) Ltd in relation to bond origination business and BetterSure and Ooba Investment Holdings (Pty) Ltd in relation to real estate insurance businesses.
- **1.12. "Conditions"** means these Conditions:
- 1.13. "Days" means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.14. "EAPPC" means the Estate Agents Property Portal Company (Pty) Ltd, a company incorporated in accordance with the laws of South Africa;
- 1.15. "HD Products" means those products offered by Private Property to its customers relating to the photography and filming of immovable properties for purposes of advertising the properties;
- 1.16. "HDPs" means historically disadvantaged persons as contemplated in section 3(2) of the Competition Act;
- 1.17. **"Implementation Date"** means the third business day occurring after the Approval Date or such later date on which the Merger is implemented by the Merger Parties;
- 1.18. "Independent Agency" means an estate agency that (i) is an independent agency that is not a member or franchisee of an estate agency group; (ii) employs less than five agents; (iii) operates from one office/premises; (iv) is controlled by persons that do not control any other estate agency (whether an Independent Agency or otherwise) and/or has not controlled any other estate agency within the preceding 24 month period; and (v) has obtained all necessary certificates, consents and licences to conduct business as an estate agency in terms of the Property Practitioners Act No. 22 of 2019;
- 1.19. "Independent HDP Agencies" means Independent Agencies (regardless of whether they have been established in the past twelve months) that (i) are majority owned and controlled by HDPs; (ii) have been verified by Private Property and/or a third party service provider appointed by Private Property as being majority owned and controlled by HDPs;
- 1.20. "Independent SME Rental Agency" means an Independent Agency that (i) facilitates the leasing of properties only or uses the advertising services offered by property portals to advertise rental properties only; (ii) generates no more than 20 leads per month within a twelve month period from the Private Property portal; (iii) has been in business as an

- Independent Agency for under twelve months as at the Implementation Date (if it was incorporated prior to the Implementation Date) or commenced operating as an Independent Agency after the Implementation Date;
- 1.21. "Independent SME Sales Agency" means an Independent Agency that (i) sells and/or sells and facilitates the lease of properties; (ii) generates no more than 20 leads per month within a twelve month period from the Private Property portal; (iii) lists properties with a median value of less than R3.5 million per property; and (iv) has been in business as an Independent Agency for under twelve months as at the Implementation Date (if incorporated prior to the Implementation Date) or commenced operating as an estate agent after the Implementation Date;
- 1.22. "Loom" means Loom Property Insights (Pty) Ltd, a company incorporated in accordance with the laws of South Africa;
- 1.23. **"Merger"** means the acquisition of sole control over the Target Firm by the Acquiring Firm;
- 1.24. "Merger Parties" means BetterHome and Private Property;
- 1.25. "ooba" means K2022550601 (South Africa) (Pty) Ltd, a wholly-owned subsidiary of ooba (Pty) Ltd, a company incorporated in accordance with the laws of South Africa;
- 1.26. "**Private Property**" means Private Property South Africa (Pty) Ltd, a company incorporated in accordance with the laws of South Africa;
- 1.27. "SME" means small, and medium sized entity;
- 1.28. "South Africa" means the Republic of South Africa;
- 1.29. "SwitchX" means SwitchX (Pty) Ltd, a company incorporated in accordance with the laws of South Africa;
- 1.30. "Target Firm" means Private Property;
- 1.31. "Tribunal" means the Competition Tribunal of South Africa;
- 1.32. "Tribunal Rules" means Rules for the Conduct of Proceedings in the Tribunal; and
- 1.33. "Value Added Services" means services in which the listing estate agent pays for a specific position or a ranking boost on the search results page.
- 2. CONDITIONS TO THE APPROVAL OF THE MERGER

Employment

- 2.1. The Acquiring Firm shall not retrench any employees of the Target Firm as a result of the Merger for a period of 36 months from the Implementation Date.
- 2.2. For the sake of clarity, retrenchments for purposes of paragraph 2.1 above shall not include: (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed; (iv) resignations or retirement in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and/or (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance. and (vii) any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

EAPPC Agreements

2.3. The Acquiring Firm will procure that the Target Firm will, within twenty-four months of the Implementation Date, procure that the agreements for the provision of online advertising services between the Target Firm and estate agencies that are shareholders of EAPPC ("EAPPC Shareholders") are amended such that [CONFIDENTIAL];

Board Competition Compliance and Monitoring

- 2.4. For as long as BetterHome remains the controlling shareholder on the board and ooba is able to appoint directors to the board of Private Property (and these are employees of ooba), BetterHome will nominate an independent director for appointment to the board of Private Property.
- 2.5. For as long as Betterhome can appoint or nominate individuals to the board of the Private Property as directors, Betterhome shall ensure that its nominees who are also employed by, serve on, are nominated and/or appointed on any board or board subcommittees of Private Property, shall not disclose Competitively Sensitive Information to Ooba Home Loans, Mortgage Market South Africa (Pty) Ltd and Ooba Investment Holdings (Pty) Ltd in contravention of the Competition Act. This means in particular:
 - 2.5.1. Betterhome shall ensure that its representative/s appointed to the board of Private Property sign a confidentiality undertaking confirming that he or she will keep confidential and not disclose, the Competitively Sensitive Information of its Competing Businesses to any representatives of ooba on the board of the Private Property.

- 2.6. Within 30 (thirty) Days of the Implementation Date, Betterhome shall put in place, for the Commission's approval, an appropriate Confidential and Information exchange policy and Competition Law Compliance Programme detailing the types of Competitively Sensitive Information relating to Competing Businesses which will not be discussed at the Private Property board.
- 2.7. Within 60 Days of receiving the Confidential and Information Exchange Policy and competition compliance policy prepared by Betterhome, the Commission shall provide any comments that it has thereon to Betterhome and Betterhome shall within 30 Days thereof seek to finalize the Policy with the Commission.

The Disclosure of Non-Public Information

2.8. The Acquiring Firm will procure that, to the extent that the Target Firm provides any non-public information to either of Loom or SwitchX, such information will be provided (should it be requested) to competitors of Loom and SwitchX (as the case may be) on the same fair, reasonable and non-discriminatory terms and conditions (including at the same time as the information is provided to these two entities).

Listing Fees

- 2.9. The Acquiring Firm will procure that once the existing agreements with EAPPC Shareholders expire, in line with 2.3 above, the Target Firm ensure that for as long as the Acquiring Firm is the controlling shareholder of the Target Firm, then the listing fees payable by any similarly situated estate agency network (i.e. with a similar size and footprint) are determined on a similar basis to those payable by the estate agent networks associated with the franchisors in which the Acquiring Firm has a controlling interest.
- 2.10. For as long as Betterhome controls and for as long as Bluedoor Investments and BVI own preference shares in real estate franchisor brands:
 - 2.10.1. Betterhome shall not instruct, nor influence, any such real estate franchisors brands, not to use other property portals that compete against Private Property, and
 - 2.10.2. For the avoidance of doubt, BetterHome shall not instruct any such real estate franchisors brands to list on any specific portal(s).

Public Interest Conditions

2.11. The Acquiring Firm undertakes that within six months of the Implementation Date, it will ensure that the Target Firm will introduce the following new SME entry packages (for entities defined below) for a period of four years:

[CONFIDENTIAL];

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 3.2. The Acquiring Firm will circulate a copy of the Conditions to its employees and employee representatives within 5 (five) Days of the Approval Date.
- 3.3. The Merger Parties shall publicize these Conditions on the website of the Target Firm on the same date when the new SME entry packages envisaged in clause 2.11 are introduced.
- 3.4. As proof of compliance herewith, the Acquiring Firm shall, within 5 (five) Days of circulating the Conditions as required in paragraph 2.1, submit an affidavit by a senior official attesting to the circulation of the Conditions and provide a copy of the notice sent.
- 3.5. The Acquiring Firm shall submit an affidavit to the Commission within 1 (one) month after each anniversary of the Implementation Date attesting to its compliance with undertakings set out in clause 2 above.
- 3.6. The Commission may request such additional information from the Acquiring Firm which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

4. APPARENT BREACH

4.1. An apparent breach by the Acquiring Firm of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

5. VARIATION

5.1. The Acquiring Firm may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Acquiring Firm shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, amended and/or the time period for fulfilment to be extended as aforementioned.

6. GENERAL

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

RGBC HOLDINGS PROPRIETARY LIMITED

AND

THE REALLY GREAT BRAND COMPANY PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0037

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 25 July 2023, the Competition Commission ("Commission") received notification of an intermediate merger wherein RGBC Holdings Proprietary Limited ("RGBC") proposes to acquire 82.8% of the shareholding in The Really Great Brand Company Proprietary Limited ("Target Firm") (the "Proposed Transaction").
- 2. The primary acquiring firm is RGBC, a company registered in South Africa. RGBC is controlled by The Really Great Bread Company International Proprietary Limited ("RGBCI"), the Zella Nicola Trust and the Ashley James Trust, all of which are registered in Mauritius. RGBC, all the firms controlling RGBC, and all the firms controlled by those firms, will be referred to as the Acquiring Group.
- 3. The Acquiring Group has no activities and is a special purpose vehicle through which the Acquiring Group proposes to implement the Proposed Transaction. The Acquiring Group is involved in investment activities which include holding non-controlling interests in various listed entities in jurisdictions such as the United States and European Union.
- 4. The Acquiring Group does not have any ownership by historically disadvantaged persons ("HDPs") as contemplated by the Competition Act No. 89 of 1998 (as amended) (the "Act").

The Acquiring Group also has no ownership by workers.

- 5. The Target Firm is an importer and an exclusive distributor of various brands of alcoholic beverages. The Target Firm supplies alcoholic beverages to retailers and wholesalers and the hospitality industry, amongst others. However, the Target Firm does not manufacture any alcoholic beverages. The Target Firm supplies certain brands of whiskies, bourbon, champagne, cognac, tequila, liqueur, rum, and premium white spirits, on an exclusive basis, in South Africa.
- 6. The Target Firm has 6.9% of its shareholding owned by an HDP. The Target Firm has no ownership by workers.

Competition assessment

7. The Commission found that the merger is unlikely to result in any substantial prevention or lessening of competition in any relevant market.

Public interest

- 8. The Commission found that the transaction will not have a negative effect on employment.
- The Commission found that the merger places a positive obligation on the merging parties
 to promote ownership in the merging parties as contemplated by section 12A(3)(e) of the
 Act.
- 10. The indicated that the tendering an ESOP or HDP transaction remedy would render the merger commercially unviable. The HDP shareholding at the Target Firm will remain and that HDP has board representation at the Target Firm and same will continue post-merger. The HDP shareholder has also indicated that he is not interested in increasing his present level of shareholding in the Target Firm. Instead, the parties have tendered a package of remedies which will result in the Target Firm providing approximately R40 million in support to SMMEs owned by HDPs, including interest free loans, gratuitous property leases and working capital, for a period of 3 years post-merger.
- 11. Notwithstanding the foregoing and whilst every case is considered on its own merits, the Commission considers that the preferrable remedies to promote ownership as contemplated by section 12A(3)(e) in the first instance, is either an HDP or ESOP

condition. However, the Commission considers that the remedies offered by the parties are sufficiently weighty to countervail any detrimental public interest effects arising from the merger. Consequently, the remedies offered by the parties in this case, likely render the merger justifiable on substantial public interest grounds.

- 12. The Commission found that there are no other public interest concerns arising.
- 13. The Commission approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.

ANNEXURE A RGBC HOLDINGS PROPRIETARY LIMITED

AND

THE REALLY GREAT BRAND COMPANY PROPRIETARY LIMITED

CASE NUMBER 2023JUL0037

CONDITIONS

1. **DEFINITIONS**

In this document, the expressions used below will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "Acquiring Firm" means RGBC;
- 1.2 "Approval Date" means the date referred to on the Commission's merger clearance certificate (Form CC15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 **"B-BBEE"** means 'broad based black economic empowerment' as contemplated in Act No. 53 of 2003;
- 1.4 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5 "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.6 "Commission Rules" mean the Rules for the Conduct of Proceedings in the Commission;
- 1.7 "Conditions" means the conditions set out herein;

- "Days" mean any calendar day which is not a Saturday, a Sunday, or an official public holiday in South Africa. A public holiday shall also include such days as may be declared by the President of South Africa in terms of the Public Holidays Act 36 of 1994;
- 1.9 **"HDP"** means a historically disadvantaged person as contemplated in the Competition Act;
- 1.10 "HDP Contractors" means collectively, [CONFIDENTIAL] Proprietary Limited, [CONFIDENTIAL] Proprietary Limited and [CONFIDENTIAL] Proprietary Limited [CONFIDENTIAL], or any other majority HDP owned contractor and "HDP Contractor" means any one of them, as the case may be.
- 1.11 "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- "Merger" means the acquisition by RGBC of the Really Great Brand Company Proprietary Limited as notified to the Commission under Case No:2023JUL0037;
- 1.13 "Merging Parties" means collectively the Acquiring Firm and the Target Firm, and "Merging Party" means anyone of them, as the case may be;
- 1.14 "RGBC" means RGBC Holdings Proprietary Limited
- 1.15 "South Africa" means the Republic of South Africa;
- 1.16 "**SMME**" means Small, Medium and Micro Enterprises as defined in the National Small Enterprise Act, Act No. 102 of 1996 (as amended);
- 1.17 "Target Firm" means The Really Great Brand Company Proprietary Limited;
- 1.18 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

CONDITIONS FOR THE APPROVAL OF THE MERGER

2. HDP / SMME SUPPLIER SUPPORT

2.1 The Target Firm will provide the HDP Contractors with the following support over a three year period following the Implementation Date:

- An advancement of an interest free loan with an indefinite repayment term to each HDP Contractor, with a minimum value of R[CONFIDENTIAL] (excluding V.A.T) per year (aggregate value of R[CONFIDENTIAL] per HDP Contractor over three years).
- 2.1.2 The provision of gratuitous business administration services (including business coaching, mentoring, debt counselling, financial accounting, tax compliance support and human resources and payroll support) to the HDP Contractors, with a minimum aggregate value of R[CONFIDENTIAL] (excluding VAT) per year (aggregate of R[CONFIDENTIAL] over 3 years).
- 2.1.3 The provision of gratuitous leased premises to each relevant HDP Contractor with a minimum aggregate value of R3 795 600.00 (excluding V.A.T) over 3 years, as set out in **Annexure 1** hereto.
- 2.1.4 The provision of gratuitous working capital contributions for equipment and vehicle purchases to each HDP Contractor, with a minimum aggregate value of R2 545 500.00 (excluding V.A.T) over 3 years, as set out in **Annexure 2** hereto.
- 2.2 By 31 December 2024, the Target Firm will enter into a service level agreement with an HDP supplier, (chosen at the Target Firm's sole discretion) for a period of at least three years which [CONFIDENTIAL]. The contract fee in this regard, shall be for a minimum of R[CONFIDENTIAL] per annum before annual escalations and commissions (aggregate of at least R [CONFIDENTIAL]) over a 3 year period. The HDP supplier must:
- 2.2.1 be at least 51% HDP owned;
- 2.2.2 have at least 12 employees;
- 2.2.3 have a staff compliment that is 100% comprised of HDPs.

3. MONITORING

- 3.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 3.2 The Acquiring Firm shall submit a compliance report detailing its compliance with

clauses 2 of the Conditions, within 60 (sixty) days of each anniversary of the Implementation Date. The report shall be accompanied by an affidavit from the director of the Target Firm confirming the accuracy of the information contained in the report.

- 3.3 The report referred to in clause 3.2 shall include but not be limited to details and supporting documents regarding
 - 3.3.1 The signed interest free loan agreements, or amended current loan agreements, concluded with each of the HDP Contractors referred to in Error! Reference source not found.:
 - 3.3.2 The annual pro rata invoice for the business administration services rendered to each of the HDP Contractors referred to in **Error! Reference source not found.**;
 - 3.3.3 The proof of payment for each HDP Contractors' warehousing and office fees referred to in **Error! Reference source not found.**:
 - 3.3.4 The proof of payment for each HDP Contractors' capital contributions referred to in **Error! Reference source not found.**;
 - 3.3.5 The name and BBBEE Certificate of the HDP supplier referred to in clause 2.2; and
 - 3.3.6 The numbers, names, and demographic details of each of the employees of the HDP supplier referred to in clause 2.2.
- 3.4 The Commission may request such additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. APPARENT BREACH

4.1 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 by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION OF CONDITIONS

5.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. GENERAL

- 6.1 All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.
 - Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE 1

[CONFIDENTIAL]

ANNEXURE 2

[CONFIDENTIAL]

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

WEBAFRICA NETWORKS PROPRIETARY LIMITED

AND

INTERNET SOLUTIONS DIGITAL PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0045

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

 On 27 July 2023, the Competition Commission (the "Commission") received a notice of an intermediate merger whereby, Webafrica Networks Proprietary Limited ("Webafrica") intends to acquire the entire issued ordinary share capital of Internet Solutions Digital Proprietary Limited ("Mweb"). Post implementation of the proposed transaction, Webafrica will control Mweb.

Parties

- 2. The primary acquiring firm, Webafrica is a private company incorporated under the laws of South Africa. The shares in Webafrica are held by 13 shareholders, none of which control Webafrica.
- 3. Webafrica does not control any firm. Webafrica does not have any shareholding by historically disadvantaged persons ("HDPs").

- 4. The primary target firm, Mweb, is controlled by Dimension Data Proprietary Limited ("Dimension Data"), which is in turn controlled by Dimension Data Investments South Africa (Pty) Ltd ("DDISA"). DDISA is ultimately controlled by Nippon Telegraph and Telephone Corporation ("NTT"), a company listed on the Tokyo Stock Exchange. NTT's shares are held widely and it is not controlled by a single shareholder.
- 5. Mweb does not control any other firm.
- 6. Mweb has no HDP shareholders (whether directly or through an employee share participation structure). However, an employee share participation structure exists for the benefit of South African subsidiaries within the broader Dimension Data group. This employee share participation structure holds [CONFIDENTIAL]% of the shares in [CONFIDENTIAL].

Activities

- 7. Webafrica is a privately held internet service provider ("ISP") providing internet services at the retail level to consumers in South Africa.
- 8. Mweb is a full spectrum ISP with a nationwide consumer offering in South Africa. Mweb's service offering includes the provision of ADSL, fibre and fixed wireless/LTE, amongst others. Its customers include residential customers and small to medium (SMME) businesses.

Competition analysis

- The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the national market for the retail of fixed internet services.
- 10. In terms of market shares, the Commission could not find any confirmed and/or published information that can be used to measure the market shares of the merging parties and their competitors in relation to the retail of fixed internet access services in South Africa. However, the Commission based its market share assessment on the number of

subscribers of fixed internet access services each ISP company has in the market in 2023. The Commission acknowledges that the market share estimates are most likely overstated since they are based on figures received from the merging parties' top competitors. On this basis, the Commission found that the merged entity will have a post-merger market share of approximately [CONFIDENTIAL]%, with a market share accretion of [CONFIDENTIAL]% in the market for the retail of fixed internet access services in South Africa.

- 11. The Commission notes that there are several ISP firms that provide similar products/services as the merging parties. These include Rain (Pty) Ltd, MTN Group Limited ("MTN"), Vodacom Group Limited, Telkom SA SOC Limited, Vox Telecommunications (Pty) Ltd and Afrihost, amongst others. Given the presence of alternatives services providers, the Commission is of the view that the merged entity is unlikely to exercise market power in the market for the retailing of fixed internet access services.
- 12. Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the retailing of fixed internet access services in South Africa.

Public interest

Employment

13. The Commission is of the view that the proposed transaction is unlikely to raise employment concerns.

The effect on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons (HDPs) and workers in firms in the market

14. Neither Webafrica nor Mweb have any HDP shareholding. However, an employee share participation structure exists for the benefit of South African subsidiaries within the broader Dimension Data Middle East and Africa group. This employee share participation structure holds [CONFIDENTIAL] % of the shares in [CONFIDENTIAL].

- 15. In order to promote a greater spread of ownership, Webafrica has committed to implement either an employee share ownership program ("ESOP") totalling up to [CONFIDENTIAL] % of its issued share capital, or alternatively, a combination of an ESOP and HDP Transaction collectively totalling [CONFIDENTIAL] % of its issued share capital within [CONFIDENTIAL] months of closing the transaction. The Commission accepts the commitments by the merging parties.
- 16. The proposed transaction does not raise any other public interest concerns.

Conclusion

17. The Commission approves the proposed transaction with conditions in **Annexure A**.

ANNEXURE A WEB AFRICA NETWORKS PROPRIETARY LIMITED AND

INTERNET SOLUTIONS DIGITAL PROPRIETARY LIMITED

CASE NUMBER: 2023JUL0045

CONDITIONS

1. **DEFINITIONS**

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

- 1.1 "Acquiring Firm" means Web Africa Networks Proprietary Limited;
- 1.2 "Approval Date" means the date referred to on the Commission's merger clearance certificate (Form CC 15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended and the Codes of Good Practice 2012, as amended;
- 1.4 **"B-BBEE Codes"** means the Codes of Good Practice on Broad-Based Black Economic Empowerment in terms of the B-BBEE Act;
- 1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.6 **"Competition Rules"** means the Rules for the Conduct of Proceedings in the Commission:
- 1.7 "Competition Act" means the Competition Act, 89 of 1998, as amended;
- 1.8 "Conditions" mean these conditions;

- 1.9 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.10 **"ESOP"** means an employee share ownership program contemplated in Paragraph 2 of these Conditions:
- 1.11 "HDP" means an historically disadvantaged person as defined in section 3(2) of the Competition Act;
- 1.12 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.13 "Merged Entity" means the Target Firm subject to the control of the Acquiring Firm following the Implementation Date;
- 1.14 **"Merger"** means the proposed acquisition by the Acquiring Firm of the entire issued ordinary share capital of the Target Firm;
- 1.15 "Merger Parties" means the Acquiring Firm and the Target Firm;
- 1.16 "Target Firm" means Internet Solutions Digital Proprietary Limited; and
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. ESOP and share subscription

- 2.1 Within [CONFIDENTIAL] months of the Implementation Date, the Acquiring Firm shall adopt and implement either the option in paragraph 2.1.1 below, or the option in paragraph 2.1.1 below together with the option in paragraph 2.1.2 below, in relation to [CONFIDENTIAL] % of its issued share capital:
- 2.1.1 Establish an ESOP for between [CONFIDENTIAL]% and [CONFIDENTIAL]% effective interest in the Acquiring Firm, in accordance with the design principles

- set out in Annexure "A1" hereto, that will give all employees of the Acquiring Firm (including HDPs) an opportunity to benefit.
- 2.1.2 Conclude a transaction in terms of which one or more HDPs will subscribe for up to **[CONFIDENTIAL]**% of the issued share capital of the Acquiring Firm.
- 2.2 For the avoidance of doubt, the equity subscription [CONFIDENTIAL].

3. B-BBEE RATING COMMITMENT

3.1 The Merged Entity will take such steps as are necessary to ensure that it attains a B-BBEE status level of at least level [CONFIDENTIAL], measured in terms of the B-BBEE Act and B-BBEE Codes, within [CONFIDENTIAL] years of the Implementation Date.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 4.2 Within10 (ten) Days of the adoption and implementation of the option set out in paragraph 2.1.1 above, the Merged Entity shall provide the Commission with an affidavit attested to by a senior official of the Merged Entity, detailing the steps taken by the Merged Entity and confirming the Merged Entity's compliance with the Conditions.
- 4.3 Within 10 (ten) Days of the adoption and implementation of the option set out in paragraph 2.1.2 above, the Merged Entity shall provide the Commission with an affidavit attested to by a senior official of the Merged Entity confirming the Merged Entity's compliance with the Conditions, and including the following details in relation to each HDP involved, namely: (i) the identity of the HDP; (ii) evidence that the HDP is appropriately classified as an HDP; (iii) confirmation of the proportion of shareholding in the Acquiring Firm that the HDP will acquire; and (iv) confirmation of whether the transaction constitutes a merger for the purposes of the Competition Act.

- 4.4 Within 30 (thirty) Days of receipt of the details of the HDP Transaction in 2.1.2, the Commission shall review and provide the Merger Parties' representatives with any comments or queries in relation to the HDP Transaction, in writing.
- 4.5 For the avoidance of doubt, the HDP Transaction in 2.1.2 may not be implemented prior to the Commission's written approval, which approval shall not be unreasonably withheld or delayed.
- 4.6 For the avoidance of further doubt, to the extent that the HDP Transaction in 2.1.2 also constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP Transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.
- 4.7 The Merging Parties shall, for a period of 4 (four) years, on the anniversary of the Implementation Date, provide the Commission with confirmation of its B-BBEE status level.
- 4.8 The Commission may request such additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

5.1 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 by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. VARIATION OF CONDITIONS

The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

7. **GENERAL**

7.1 All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE A1 – Design Principles for the ESOP

Structure > The merging parties will establish an ESOP that we equivalent of at least an effective [CONFIDENTIAL]% of share capital of the Acquiring Firm.	
share capital of the Acquiring Firm.	of the issued
·	
The Merged Entity shall have full latitude to design	appropriate
transaction/s to give effect to the undertaking set out in	n paragraph
2 of the Conditions.	
Cost to Workers > No cost to workers: Workers must not be required	d to pay to
participate in the ESOP.	
Governance > If there is a board of directors/trustees, the board must	be balanced
and workers must be represented on the boar	rd, e.g., 1
director/trustee appointed by the merged entity; 1 dire	ector/trustee
appointed by workers; and 1 independent director/trust	tee.
Any costs associated with the operation of the	e board of
directors/trustees will be borne by the merged entity.	
> The independent director/trustee will be recomm	ended and
appointed by the workers, subject to the candi	idate being
acceptable to the merged entity.	
Duration ➤ Perpetual/evergreen to cater for changing workforce.	
Participants ➤ All current and future workers (not limited to HDPs).	
Eligibility criteria: permanent employees of Webafric	a (including
Mweb) with a minimum 12-month service period.	
Maternity leave will have no adverse impact on qualifying	ing criteria.
Participation > Beneficiaries will be entitled to: (a) dividends and	(b) capital
Benefits growth/upside based on their participation rights calc	culated with
reference to units allocated to beneficiaries.	
➤ Beneficiaries will cease to participate for bad lea	ver events:
resignations and dismissals.	
Death, retirement and retrenchment will not affect part	icipation.

Value & Funding

- Value of the shares will be based on the valuation of the Merged Entity by an independent valuer (i.e., Webafrica and Mweb) on the Implementation Date.
- Merged entity must provide some vendor finance if required.
- ➤ If there is Vendor financing, the merged entity shall be responsible for [CONFIDENTIAL]% of any interest charged.
- ➤ Dividend policy can provide for a "trickle" dividend (in the ratio of 40:60), i.e., at least 40% of any dividends declared will flow to beneficiaries and at most 60% will be utilised to service the vendor financing.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

BRENNTAG SOUTH AFRICA (PTY) LTD AND

THE RESPECTIVE BUSINESSES OF CHEMGRIT COSMETICS (PTY) LTD, CHEMGRIT PLASTICS (PTY) LTD AND CHEMGRIT SA (PTY) LTD

CASE NUMBER: 2023SEP0046

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms, subject to conditions set out below:

Background

- On 29 September 2023, the Competition Commission ("Commission") received notice of an intermediate merger wherein Brenntag South Africa (Pty) Ltd ("Brenntag SA") intends to acquire the respective businesses of Chemgrit Cosmetics (Pty) Ltd ("Chemgrit Cosmetics"), Chemgrit Plastics (Pty) Ltd ("Chemgrit Plastics") and Chemgrit SA (Pty) Ltd ("Chemgrit SA"), collectively referred to as the "Target Businesses".
- 2. The primary acquiring firm is Brenntag SA, a company incorporated in South Africa. Brenntag SA is ultimately wholly controlled by Brenntag SE ("Brenntag"), a German public company listed on the Frankfurt Stock Exchange. Brenntag is not controlled by any firm or individual shareholder. In addition to Brenntag SA, Brenntag controls several firms worldwide including South Africa. Brenntag SA does not control any firm/s. Brenntag SA, all the firms controlling it and all the firms controlled by those are collectively referred to as the "Brenntag Group".
- 3. Brenntag SA does not have any ownership by historically disadvantaged persons ("HDPs") as contemplated in the Competition Act No.89 of 1998, as amended, ("the Act").

- 4. Brenntag Group is an intermediary that connects chemical manufacturers and chemical users. Brenntag Group operates in the broad chemical distribution market in South Africa through Brenntag SA, which imports and distributes specialty and commodity chemicals that serve various industries. Brenntag Group does not manufacture the chemical products it supplies but rather imports them from international manufacturers and distributes them in South Africa.
- 5. The primary target firms are the Target Businesses all of which are incorporated in South Africa. The Target Businesses do not control any firm/s. In addition, the Target Businesses do not have any ownership held by HDPs.
- 6. The Target Businesses are involved in the distribution of raw materials and chemical products that are used as inputs in various industries. The Target Businesses have no manufacturing activities concerning raw materials and chemicals in South Africa.

Competition Assessment

7. The Commission's investigation of the proposed transaction found that there is a horizontal overlap between the activities of the merging parties in relation to the distribution of (i) speciality chemicals and (ii) commodity chemicals. However, the Commission found that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.

Public interest considerations

- 8. The Honourable Minister of Trade, Industry and Competition ("Minister"), participated in this merger raising public interest concerns.
- 9. To address public interest concerns, the merging parties have agreed to commitments to engage the services of HDP-owned businesses, provide interest-free business loans to qualifying majority HDP-owned businesses and provide technical assistance to HDPowned businesses that are seeking to enter the South African chemicals market.
- 10. The proposed transaction does not raise any other public interest concerns.
- 11. The Commission therefore approves the proposed transaction subject to the conditions attached hereto as **Annexure A**.

ANNEXURE A

BRENNTAG SOUTH AFRICA PROPRIETARY LIMITED AND

THE RESPECTIVE BUSINESSES OF CHEMGRIT COSMETICS PROPRIETARY LIMITED, CHEMGRIT PLASTICS PROPRIETARY LIMITED, AND CHEMGRIT S.A. PROPRIETARY LIMITED

CASE NUMBER: 2023SEP0046

CONDITIONS

1. DEFINITIONS

- 1.1 "Acquiring Firm" means Brenntag South Africa Proprietary Limited;
- 1.2 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.3 "Approval Date" means the date referred to in the Commission's merger Clearance Certificate (Form CC 15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.4 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.5 "Conditions" means these conditions;
- "Days" means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.7 "HDP" means a historically disadvantaged person as contemplated in the Act;
- 1.8 "HDP-Owned Business" means a business that is held as to 51% or more by HDPs;
- 1.9 "Implementation Date" means the date occurring after the Approval Date on which the Merging Parties implement the Merger;
- 1.10 "Merged Entity" means the Target Firms subject to the control of the Acquiring Firm following implementation of the Merger;

- 1.11 "Merger" means the Acquiring Firm's acquisition of the Target Firms;
- 1.12 "Merging Parties" means the Acquiring Firm and the Target Firms;
- 1.13 "Rand" or "ZAR" means the South African Rand, being the lawful currency of South Africa;
- 1.14 "South Africa" means the Republic of South Africa;
- 1.15 "Target Firms" means the business of Chemgrit Cosmetics Proprietary Limited, the business of Chemgrit Plastics Proprietary Limited, and the business of Chemgrit S.A. Proprietary Limited; and
- 1.16 "**Tribunal**" means the Competition Tribunal of South Africa.

2. **CONDITIONS TO THE APPROVAL OF THE MERGER**

Engagement of HDP-Owned Sub-Distributors

- 2.1 For a period of 3 (three) years following the Implementation Date, the Merged Entity shall engage the services of no less than 20 (twenty) HDP-Owned Businesses to provide sub-distribution services to the Merged Entity, subject to contracting on reasonable commercial terms. The engagement of such HDP-Owned Businesses shall be phased-in as follows:
 - 2.1.1 10 (ten) HDP-Owned Businesses will be engaged by the first anniversary of the Implementation Date;
 - 2.1.2 5 (five) additional HDP-Owned Businesses will be engaged by the second anniversary of the Implementation Date; and
 - 2.1.3 5 (five) additional HDP-Owned Businesses will be engaged by the third anniversary of the Implementation Date.
- 2.2 For the duration of this condition, the Merged Entity undertakes to provide a discount of at least 10% (ten percent) off the list price of all products sold by the Merged Entity to all HDP-Owned Businesses that are engaged by it as sub-distributors.

Outsourcing of Water Treatment Testing Requirements to HDP-Owned Business

2.3 For a period of 3 (three) years following the Implementation Date, the Merged Entity shall outsource all of its water treatment testing requirements in South Africa to a HDP Owned Business, subject to supply on reasonable commercial terms and subject to the appointed HDP-Owned Business meeting the Merged Entity's quality requirements.

2.4 Pursuant to this condition, the Merged Entity undertakes to procure water treatment services from the appointed HDP-Owned Business to the value of no less than ZAR 500,000 (five hundred thousand Rand) per year, with the total value over the duration of the condition being ZAR 1,500,000 (one million five hundred thousand Rand).

Interest-free loans to HDP-Owned Businesses

2.5 For a period of 5 (five) years following the Implementation Date, the Acquiring Firm shall provide interest-free business loans to qualifying HDP-Owned Businesses that seek to enter into and/or expand within the South African chemicals market that meet credit and selection criteria determined by the Acquiring Firm. The aggregate value of such loans shall be a minimum of ZAR 1,000,000 (one million Rand) per year, with the total value over the duration of the condition being ZAR 5,000,000 (five million Rand).

Technical assistance to HDPs in the chemicals market

- 2.6 For a period of 3 (three) years following the Implementation Date, the Merged Entity shall identify and provide technical assistance to at least two HDP-Owned Businesses that are seeking to enter the South African chemicals market.
- 2.7 The technical assistance to be provided by the Merged Entity includes technical assistance and/or product development support for a period of 6 (six) months (including practical time in the Merged Entity's laboratories for up to 2 (two) hours per month) in relation to the development of new products with which to potentially enter into South African market.
- 2.8 The value of the technical assistance provided by the Merged Entity pursuant to this condition shall be no less than ZAR 250,000 (two hundred and fifty thousand Rand) per year, with the total value over the duration of the condition being no less than ZAR 750,000 (seven hundred and fifty thousand Rand).

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.

- 3.2 For the duration of these Conditions, the Merged Entity shall, on each anniversary of the Implementation Date, submit to the Commission a report detailing compliance with the Conditions.
- The report contemplated in clause 3.2 shall be accompanied by an affidavit, attested to by a senior official of the Merged Entity, confirming the accuracy of the report.
- 3.4 The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. VARIATION

4.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

5. APPARENT BREACH

5.1 Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

6. **GENERAL**

6.1 All correspondence in relation these conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AGT FOODS AFRICA (PTY) LTD AND

THE DRY BEAN SEED BUSINESS OF PANNAR SEED (PTY) LTD

CASE NUMBER: 2023AUG0043

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

Background

 On 25 August 2023, the Competition Commission (the "Commission") received a notice of an intermediate merger wherein AGT Foods Africa (Pty) Ltd ("AGT Africa") wishes to acquire 100% of the dry beans seeds business of Pannar Seed (Pty) Ltd ("Target Business") ("Proposed Transaction").

Parties and their Activities

- The primary acquiring firm is AGT Africa. AGT Africa is 59.58% controlled by Fairfax Financial Holdings Limited ("Fairfax Holdings"), with the remaining shares held by AGT Management (27.31%) and Pointnorth (13.1%). Fairfax Holdings is a public company listed on the Toronto Stock Exchange. Fairfax Holdings is not controlled by any firm. Fairfax holding is not controlled by a single individual or firm. AGT Africa 100% controls AGT Foods (Pty) Ltd ("AGT Foods"). Relevant to the proposed transaction, Fairfax Holdings also controls AFGRI Group Holdings Proprietary Limited ("AGH"). AGT Africa, Fairfax Holdings and AGT Foods shall be referred to as the "Acquiring Group".
- 3. AGT Africa is a value-added pulse, staple food and ingredient processor for export and domestic markets. AGT Africa buys, processes, packages and supplies pulses, staple foods and food ingredients for human consumption. In South Africa, AGT Africa provides a full range of staple foods, such as beans, maize, rice and pasta, pulses and specialty crops including lentils, peas,

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dry beans, chickpeas, and canary seed as well as food ingredients such as pulse flours, proteins, starches and fibres which are sold to wholesalers, retail stores, and through AGT Africa's online store.

- 4. AGH is a provider of agricultural products and services all over South Africa. It operates through three divisions, namely: (i) AFGRI Services, (ii) AFGRI Financial Services and (iii) AFGRI Retail. Relevant to the proposed transaction, AFGRI Retail sells seeds to farmers, including dry bean seeds, which it procures from the Target Business and another suppliers, Dry Bean Seed Proprietary Limited ("DBS").
- 5. The primary target firm is the Target Business. The Target Business is wholly controlled by Pannar Seed (Pty) Ltd ("Pannar"). Pannar is 100% controlled by Pioneer Hi-Bred International Inc ("PHBI"). PHBI is in turn 100% controlled by Corteva Inc. Corteva Inc is a public company listed on the New York Stock Exchange and is not controlled by any firm. Pannar, PHIB and Corteva Inc shall be referred to as the "The Selling Group".
- 6. The Target Business is the dry bean seed business of Pannar. The Target Business is engaged in researching, developing, breeding, testing, producing, and commercialising dry bean seed. The Target Business sells directly to farmers or sells to farmers through distributors, under non-exclusive distribution agreements.

Competition Assessment

7. The Commission found that the merger is unlikely to result in any substantial lessening or prevention of competition in any relevant markets.

Public interest

- 8. The Commission found that the Acquiring Group and the Target Business has no direct or indirect HDP ownership. The Commission requested the parties to tender remedies that promote a greater spread of ownership as contemplated by section 12A(3)(e) of the Competition Act No. 89 of 1998 (as amended).
- 9. To address the public interest concerns identified by the Commission, the parties have tendered a commitments to provide discounts to the Department of Agriculture, Land Reform and Rural Development for the procurement of dry bean seeds and support to HDP dry bean seed farmers.
- The Commission considers that the commitments tendered by the parties render the merger justifiable on substantial public interest grounds.

- 11. The merger does not raise any further public interest concerns.
- 12. The Commission approves the proposed transaction subjected to the conditions set out in **Annexure A** hereto.

ANNEXURE A

AGT FOODS AFRICA (PTY) LTD

AND

THE DRY BEAN SEED BUSINESS OF PANNAR SEED (PTY) LTD

CASE NUMBER: 2023AUG0043

1. **DEFINITIONS**

In this document, the expressions used below will have the appropriate meaning assigned to them and the following and related expressions will bear the following meaning:

- 1.1. "AGT Africa" means AGT Foods Africa (Pty) Ltd;
- 1.2. "Approval Date" means the date on which the Merger is approved by the Commission in terms of the Competition Act;
- 1.3. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.5. "Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.6. "Conditions" means the conditions in this Annexure A;
- 1.7. "Days" means any day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.8. **"HDPs"** means historically disadvantaged persons as contemplated in section 3(2) of the Competition Act;
- 1.9. "HDP Farmers" means smallholder and/or subsistence farmers that are HDPs;
- 1.10. "Implementation Date" means the closing date on which the Merger is completed and implemented by the Merging Parties;
- 1.11. "Merger" means the acquisition by AGT Africa of the Target Business as notified to the Commission under Commission case number 2023AUG0043;
- 1.12. "Merging Parties" means collectively AGT Africa and Pannnar;

- 1.13. "South Africa" means the Republic of South Africa;
- 1.14. "Pannar"" means Pannar Seed (Pty) Ltd;
- 1.15. "Target Business" means The dry bean seed business of Pannar Seed (Pty) Ltd;
- 1.16. "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.17. "Tribunal Rules" mean the Rules for the Conduct of Proceedings in the Tribunal.

2. PRICE DISCOUNT

2.1. For 5 years following the Implementation Date, AGT Africa will supply dry bean seeds to the Department of Agriculture, Land Reform and Rural Development (DALRRD) at a discount of at least 30% below the retail price. The dry bean seeds sourced by the DALRRD from the Target Business, are supplied by the DALRRD to subsistence farmers.

3. HDP FARMER DEVELOPMENT

- 3.1. For 3 years following the Implementation Date, AGT Africa will spend an aggregate of R3 million to identify, upskill, develop and assist HDP farmers with inputs required for the growing of dry bean seed. For the avoidance of doubt, AGT will spend a minimum of R1 million per annum with respect to this commitment.
- 3.2. In addition, over the 3 years following the Implementation Date, AGT Africa will enter into buy-back contracts to purchase the dry bean seed produced by these HDP Farmers, provided that the HDP farmers are willing to enter into buy-back contracts with AGT Africa.

4. MONITORING

- 4.1. The Merging Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 4.2. The Merging Parties shall, within 30 (thirty) Days of the first anniversary of the Implementation Date and for a period of 5 (five) years thereafter submit to the Commission a written report detailing compliance with these Conditions. The compliance report shall be accompanied by an affidavit from a senior official attesting to the correctness of the report.

4.3. The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with these Conditions.

5. VARIATION OF CONDITIONS

5.1. The Merging Parties may at any time, and on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merging Parties' application to the Commission, the Merging Parties may apply to the Tribunal, on good cause shown, for appropriate relief.

6. APPARENT BREACH

6.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

7. GENERAL

7.1. All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

LENMED HEALTH PROPRIETARY LIMITED

AND

MOOIMED OPERATING COMPANY PROPRIETARY LIMITED

CASE NUMBER: 2023JUN0009

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

On 07 June 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Lenmed Health (Pty) Ltd ("Lenmed") intends to acquire 100% of the issued share capital of Mooimed Operating Company (Pty) Ltd ("Mooimed"). Following completion of the proposed transaction, Lenmed will exercise sole control over Mooimed as envisaged by section 12(2) of the Competition Act No. 89 of 1998, as amended ("Act").

The parties and their activities

2. The primary acquiring firm is Lenmed, a company incorporated in accordance with the laws of South Africa. Lenmed is wholly owned by Lenmed Investment Limited ("Lenmed Investment"). Lenmed Investment is held by the following shareholders: Lenvestco Investments Proprietary Limited (de facto control) and 1200 Lenmed Investing Individuals. The Commission notes that the Lenmed Group has 89.81% shareholding held by Historically Disadvantaged Persons (HDPs) pre-merger.

- 3. Lenmed provides multi-disciplinary private hospital services. In South Africa, Lenmed operates 14 hospitals with 1 782 beds in total. Relevant to the proposed merger are two of Lenmed's hospitals, Lenmed Sunningdale and Lenmed Wilmer Park, both in Klerksdorp.
- 4. The primary target firm is Mooimed, a company incorporated in accordance with the laws of South Africa. Mooimed is not controlled by any single shareholder. The shareholding in Mooimed is widely held. Mooimed is a multidisciplinary private hospital in Potchefstroom, North-West Province with 85 medical, surgical and ICU beds. Mooimed has 3 (three) fully equipped theatres, and 1 (one) minor theatre/procedure room.

Competition assessment

- 5. The Commission found that the merger raises a horizontal overlap as both Lenmed and Mooimed operate private hospitals offering multi-disciplinary acute inpatient hospital services in the area within 50km of Mooimed which is in Potchefstroom. The Commission found that the merged entity will own three of the five hospitals located in the Potchefstroom and Klerksdorp area. The other two hospitals are Mediclinic Potchefstroom and Life Anncron Hospital in Klerksdorp. The merged entity will have a combined estimated market share that renders the merged entity presumptively dominant as contemplated by section 7 of the Act, in the market for the provision of acute multidisciplinary inpatient private hospital services in Potchefstroom/Klerksdorp based on the number of beds.
- 6. In the national market, the merged entity will have an estimated market share that is relatively low, of less than **[CONFIDENTIAL]%**, which suggests that they are a small player in the national market. The Commission also notes that the merging parties will continue to face competition at the national level from a number of much larger private hospital groups post-merger, such as Netcare Group (>20%), Mediclinic Group (>20%) and Life Healthcare Group (>20%).
- 7. Notwithstanding the relatively high market shares of the merged entity in the Potchefstroom/Klerksdorp local market, the Commission notes that the following:

- 7.1. Although they form part of the same geographic market, the Commission notes that the Lenmed hospitals in Klerksdorp are not likely to be Mooimed's closest competitors. The most direct competitive constraints will likely be imposed by Mediclinic Potchefstroom due to its proximity to Mooimed, its larger size, and broader service offering. Although Lenmed Sunningdale and Mooimed are likely to be closer competitors in terms of service offering, Lenmed Sunningdale is the smallest hospital in the region with fewer than half the beds of Mooimed.
- 7.2. Based on Cost Per Event (CPE) data, the merging parties' hospitals are generally more efficient than the industry average. This means it generally costs a patient less to receive treatment at the Lenmed Hospitals in Klerksdorp and Mooimed than it would at the average private hospital.
- 7.3. The merger is likely to have a pro-competitive impact on the national market by allowing a smaller player to contest a market with otherwise stubbornly high barriers to entry and persistent levels of concentration enjoyed by the 3 large hospital groups. The Commission is therefore of the view that this merger is likely to enhance competition in the national market.
- 8. The Commission considered the impact of the merger on the national tariffs charged by Mooimed post-merger. For medical scheme patients, the Commission compared Lenmed's tariffs to those at Mooimed. The Commission notes that Mooimed is part of the National Hospital Network (NHN). Although Lenmed is also part of the NHN, it has opted out of the NHN for certain medical schemes. For those medical schemes where Lenmed remains part of NHN, the merger will have no impact on tariffs.
- 9. For those medical schemes where Lenmed has opted out of NHN, the Commission found that Lenmed's tariffs are lower for some medical schemes while being higher for others. However, as noted above, the CPE for both the merging parties are lower than the industry standard. Also, the medical scheme tariffs are subject to negotiation between the hospitals and the medical schemes. The medical scheme contacted by the Commission confirmed that they are not concerned about their ability to negotiate tariffs with the merged entity post-merger.

- 10. The Commission however identified a concern regarding uninsured patients. The Commission found that Lenmed's tariffs charged to private patients are significantly higher than those of Mooimed. However, the merging parties have provided an undertaking that they will continue to make use of the lower Mooimed tariffs for non-insured patients postmerger for at least 5 (five) years with annual increases limited to the Consumer Price Index. The parties have agreed to make this a condition to the approval of the merger.
- 11. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public Interest

Effect on employment

12. The merging parties submit that the proposed transaction will not have a negative effect on employment. The Commission finds that no merger related retrenchments or job losses will result from the proposed transaction.

The promotion of a greater spread of ownership by HDPs and workers (section 12A(3)(e))

- 13. The proposed transaction results in an increase in ownership by HDPs in the Target Firm. The Commission also noted the historical lack of transformation in the private healthcare sector in South Africa as identified in the Commission's Health Market Inquiry as well as various government policy documents.
- 14. This means the proposed transaction has a positive effect on the greater spread of ownership by HDP in terms of section 12A(3)(e) of the Act. This positive effect is both merger-specific and substantial.

Effect on the ability of HDP owned firms to effectively enter into, participate in or expand within the market (section 12A(3)(c))

- 15. The Commission considered the impact of the merger on the ability of HDP-owned firms to effectively enter into, participate in or expand within the market in line with section 12A(3)(c) of the Act. The Commission considered this in the context of the country's public policy goals regarding hospital care. The purpose of granting the exemption for collective tariff negotiations to the NHN is to promote the ability of small businesses, or firms controlled or owned by historically disadvantaged persons to become competitive. A further benefit of the exemption is that the NHN serves as a competitive counterbalance to the big three hospital groups, as members to the NHN are individually in a competitively weak bargaining position in negotiations with private healthcare funders.
- 16. In this context, the Commission notes Lenmed's stated rationale according to which it intends to bargain independently of the NHN in future as a standalone group. By bargaining independently of the NHN, the number of competitors that participate in national bargaining with funders will increase from 4 (four) (Netcare, Life, Mediclinic, and the NHN) to 5 (five). This merger serves to further strengthen Lenmed as it seeks to grow and become a more effective competitor to the 3 (three) large hospital groups which is a positive outcome in terms of section 12A(3)(c) of the Act.
- 17. The proposed transaction does not raise any other public interest concerns.

Conclusion

18. The Commission therefore approves the proposed transaction with conditions attached in "Annexure A".

ANNEXURE A

LENMED HEALTH PROPRIETARY LIMITED

AND

MOOIMED OPERATING COMPANY PROPRIETARY LIMITED

CASE NUMBER: 2023JUN0009

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. "Acquiring Firm" means Lenmed Health (Pty) Ltd;
 - 1.1.2. "Act" means the Competition Act, No. 89 of 1998 (as amended);
 - 1.1.3. "Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
 - 1.1.4. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
 - 1.1.5. "Conditions" means the conditions set out herein;
 - 1.1.6. **"CPI"** means Consumer Price Index as published periodically by Statistics South Africa:
 - 1.1.7. "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

- 1.1.8. **"Implementation Date"** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.9. "Lenmed" means Lenmed Health (Pty) Ltd;
- 1.1.10. "Merged Entity" means Lenmed and Mooimed following the Merger;
- 1.1.11. "Merger" means the acquisition by Lenmed of the entire share capital of Mooimed;
- 1.1.12. "Merging Parties" means Lenmed and Mooimed;
- 1.1.13. "Mooimed" means Mooimed Operating Company (Pty) Ltd;
- 1.1.14. "South Africa" means the Republic of South Africa;
- 1.1.15. "Target Firm" means Mooimed Operating Company (Pty) Ltd;
- 1.1.16. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.
- 1.1.17. "**Tribunal Rules**" means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.1.18. **"Uninsured Patients"** means patients that are not covered by any medical scheme or medical insurance in South Africa.

2. CONDITIONS

- 2.1. For a period of 5 years from Implementation Date -
 - 2.1.1. the Merged Entity undertakes to charge the lower of the Merging Parties' respective tariffs applicable for Uninsured Patients at the Target Firm.

- 2.1.2. The tariff referred to in clause 2.1.1 above will not be increased by more than the CPI annually.
- 2.2. The lower of the Merging Parties' tariffs applicable to Uninsured Patients shall not increase between the Approval Date and the Implementation Date.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2. The Merged Entity shall submit an affidavit within 5 Days after the anniversary of the Implementation Date and for a period of 5 years, to the Commission, confirming compliance with clause 2 of the Conditions. This affidavit must be deposed to by a director of the Merged Entity.
- 3.3. Any person including any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.
- 3.4. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. APPARENT BREACH

4.1. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5. VARIATION

5.1. The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged

Entity may apply to the Tribunal for appropriate relief.

6. **GENERAL**

6.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AGROFRESH SOUTH AFRICA (PTY) LTD

AND

TESSARA HOLDCO (PTY) LTD

CASE NUMBER: 2023JUN0021

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- 1. On 14 June 2023, the Competition Commission ("the Commission") received a notice of an intermediate merger whereby, AgroFresh South Africa (Pty) Ltd ("AgroFresh") intends to acquire 100% of the issued share capital of Tessara HoldCo (Pty) Ltd ("Tessara").
- The primary acquiring firm is AgroFresh, a company incorporated in accordance with the laws
 of the Republic of South Africa. AgroFresh is directly controlled by [CONFIDENTIAL].
 AgroFresh does not control any firm in South Africa. AgroFresh does not have any
 shareholding by historically disadvantaged persons ("HDPs").
- 3. AgroFresh develops and provides food preservation and food waste reduction products and services, to ensure the freshness of fruits, by managing and delaying the ripening process. AgroFresh's range of solutions includes plant growth regulators, plant-based coatings, antimicrobials, equipment and proprietary solutions that help improve the freshness of the supply chain from harvest to the end-consumer.
- 4. The primary target firm is Tessara, a South African company. Tessara is controlled by [CONFIDENTIAL]. Tessara has several subsidiaries in various countries including South Africa. Tessara does not have any shareholding by HDPs.

5. Tessara is a manufacturer of preservation technologies for use in the marketing and export of fresh produce. Tessara produces sulphur dioxide (SO₂)-based sheets for use in the preservation of fresh produce post-harvest. Its product *Uvasys* is a SO₂-based sheet, primarily used to protect table grapes against *Botrytis* infection. Tessara's other commercial product is *Berrisys* which is focused on post-harvest preservations of berries. Tessara is also seeking to extend its product line into solutions for crops such as cut flowers (recently launched), tomatoes and litchis.

Competition Assessment

6. The Commission's investigation of the proposed merger found that same does not result in any overlaps. Accordingly, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.

Public Interest considerations

- 7. To address a greater spread of ownership, the parties have committed to establish an Employee Share Ownership Plan ("ESOP") to facilitate workers acquiring a 5% interest in Tessara, post-merger.
- 8. The merging parties also agreed to engage with the Department of Trade Industry and Competition to identify local manufacturers who may potentially be able to manufacture Tessara's main inputs, post-merger.
- 9. The Minister of Trade, Industry and Competition, participated in this merger and was satisfied with the commitments tendered by the merging parties.
- The proposed transaction does not raise any other public interest concerns.
- 11. The Commission therefore approves the proposed merger, subject to the conditions contained in **Annexure A** hereto.

ANNEXURE A AGROFRESH SOUTH AFRICA (PTY) LTD

AND

TESSARA HOLDCO (PTY) LTD

CASE NUMBER: 2023JUN0021

CONDITIONS

1. DEFINITIONS

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1. "Acquiring Firm" means AgroFresh South Africa Proprietary Limited, a private company incorporated in accordance with the laws of South Africa under registration number 2014/118297/07;
- 1.2. "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.3. **"Approval Date"** means the date on which the Proposed Transaction is approved in terms of the Act;
- 1.4. "Commission" means the Competition Commission of South Africa;
- 1.5. "Condition" means the merger condition included in this Annexure A;
- 1.6. "Days" means any day that is not a Saturday, Sunday, or public holiday in South Africa:
- 1.7. "DTIC" means the Department of Trade, Industry and Competition;
- 1.8. **"ESOP"** means the Employee Share Ownership Programme (or the trust as the context requires) to be established pursuant to the Condition;
- 1.9. **"ESOP Establishment Period"** means a period of 12 months reckoned from the Implementation Date;
- 1.10. "ESOP Shares" has the meaning given to it in paragraph 2;
- 1.11. "HDPs" means historically disadvantaged persons as defined in section 3(2) of the Act;
- 1.12. "Implementation Date" means the date on which the merger is implemented by the Merging Parties;

- 1.13. "Merger" means the proposed acquisition by the Acquiring Firm of the Target Firm as notified to the Commission under Case No. 2023JUN0021;
- 1.14. "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.15. "South Africa" means the Republic of South Africa;
- 1.16. "Target Firm" means Tessara SA Holdco Proprietary Limited, a private company incorporated in accordance with the laws of South Africa under registration number 2018/104590/07;
- 1.17. "**Tessara Group**" means the Target Firm and its direct and indirect subsidiaries as at the Implementation Date;
- 1.18. "Tribunal" means the Competition Tribunal of South Africa;
- 1.19. "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.20. "Qualifying Workers" means Workers employed by the Tessara Group and with a minimum of 2 years employment with the Tessara Group; and
- 1.21. "Worker" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESTABLISHMENT OF THE ESOP

2.1. On or before the expiry of the ESOP Establishment Period, the Merging Parties shall establish the ESOP for the benefit of Qualifying Workers. The ESOP shall hold an equity interest equivalent, in value, to 5% (five percent) of the issued shares in the Tessara Group as at the Implementation Date ("ESOP Shares"), in accordance with the design principles set out in Annexure B.

3. LOCAL PROCUREMENT

3.1. On an annual basis after the Implementation Date for a period of 3 (three) years, Tessara Group will provide the DTIC with a list of Tessara's key raw materials and a high-level summary of the specifications, and will engage with the DTIC and (subject to the conclusion of appropriate non-disclosure agreements) any local manufacturers that the DTIC identifies and which appear to be able to supply the raw materials to the requisite standards with a view to sourcing these inputs locally on commercially competitive terms.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. Within 10 (ten) Days of the Implementation Date, the Target Firm shall circulate a non-confidential version of the Condition to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Target Firm shall within 5 (five) Days of circulating the Condition, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 4.2. Within 5 (five) days after the Implementation Date, the Acquiring Firm shall notify the Commission in writing of the Implementation Date.
- 4.3. The Merging Parties shall submit a compliance report (including a trust deed for the registration of the ESOP) within 5 (five) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of the Acquiring Firm confirming the accuracy of the information contained in the report.
- 4.4. The Merging Parties shall submit a report on an annual basis to the Commission, setting out its compliance with clause 3 of the Conditions. This report shall be accompanied by an affidavit, attested to by a director or other suitable person of the Merged Entity in South Africa confirming the accuracy of the report.
- 4.5. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with the Condition.

5. APPARENT BREACH

5.1. If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of

the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

6. VARIATION

6.1. The Merging Parties may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merging Parties' application to the Commission, the Merging Parties may apply to the Tribunal for appropriate relief.

7. GENERAL

7.1. All correspondence in relation to the Condition must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B - CONFIDENTIAL

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

WITZENBERG PROPERTIES PROPRIETARY LIMITED AND

THE DECIDUOUS FRUIT OPERATIONS OF CROOKES BROTHERS SOUTH AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2023JUN0027

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- 1. On 20 June 2023, the Competition Commission ("Commission") received notice of an intermediate merger where Witzenberg Properties Proprietary Limited ("Witzenberg") intends to acquire the deciduous fruit operations of Crookes Brothers South Africa Proprietary Limited ("Crookes Brothers") as a going concern.
- 2. The primary acquiring firm is Witzenberg, a South African firm. Witzenberg is [CONFIDENTIAL]% held by the Pieter Graaff Family Trust. Witzenberg controls the following firms (i) [CONFIDENTIAL]; (ii) [CONFIDENTIAL]; and (iv) [CONFIDENTIAL]. Witzenberg, all the firms it controls and all the firms controlling Witzenberg, shall be referred to as the "Acquiring Group".
- 3. Through Witzenberg, the Acquiring Group is an agricultural business and producer of pome fruit (pears and apples). Through its controlling interest in [CONFIDENTIAL], the Acquiring Group is also active in packaging, and juice processing, and marketing of pome fruit for the South African and export markets.

4. The primary target firm is the deciduous fruit (pome fruit) operations of Crookes Brothers ("Target Enterprise"). The Target Enterprise is active in the following pome fruit value chain elements in South Africa: selling pome fruit into deciduous fruit packing, logistics, marketing and sales; and the processing of fruit not suitable for packing and marketing into concentrates (juice). The Target Enterprise produces pome fruit from the Ouwerf, Vygeboom, Dennebos and Belleview (Bellcro Farming) farms, which are all located in the EGV (Elgin-Grabouw-Villiersdorp) region of the Western Cape.

Competition Analysis

5. The Commission considered the activities of the merging parties and found that they overlap horizontally as both the Acquiring Group and the Target Enterprise are involved in the production of pome fruit. The Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any the market relevant market.

Public interest analysis

- 6. To address public interest concerns, the parties have tendered the following commitments:
 - 6.1. procure a minimum of R**[CONFIDENTIAL]** for all services for security fences and electrified fences on the Target Enterprises' Vygeboom farm operations for a period of 5 (five) years from an HDP owned company;
 - 6.2. procure a minimum of R**[CONFIDENTIAL]** for all civil construction services required regarding water distribution and irrigation schemes on the Target Enterprises' Vygeboom properties for a period of 5 (five) years from an HDP owned civil contractor; and
 - 6.3. the Acquiring Group will take over from CBL to ensure the continued ownership and participation of the farm workers of the Vygeboom farm in the Ithemba Elitsha structure, which structure lies outside of the CBL entities. This amounts to approximately R[CONFIDENTIAL] per year for the next 5 years.
- 7. The proposed transaction does not raise any other public interest concerns.
- 8. The Commission approves the proposed transaction with the public interest conditions attached in **Annexure A** hereto.

ANNEXURE A

WITZENBERG PROPERTIES PROPRIETARY LIMITED

AND

THE DECIDUOUS FRUIT OPERATIONS OF CROOKES BROTHERS SOUTH AFRICA PROPRIETARY LIMITED

CASE NO: 2023JUN0027

CONDITIONS

DEFINITIONS

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -
 - 1.1.1. "Acquiring Firm" means Witzenberg Properties Proprietary Limited;
 - 1.1.2. "Approval Date" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
 - 1.1.3. "B-BBEE" means Broad-Based Black Economic Empowerment Amendment Act, 2013 (Act No. 46 of 2013);
 - 1.1.4. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.5. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission.
 - 1.1.6. "Competition Act" means the Competition Act 89 of 1998, as amended;

- 1.1.7. **"Conditions"** means these conditions, and "Condition" means, as the context requires, any one of them;
- 1.1.8. "Crookes Brothers" means Crookes Brothers South Africa (Pty) Ltd.;
- 1.1.9. **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.10. "HDPs" means historically disadvantaged persons as contemplated by the Competition Act No. 89 of 1998 (as amended);
- 1.1.11. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12. "Ithemba Elitsha Structure" means an empowerment structure which was created by Crookes Brothers and certain other participating growers according to which their workers directly own shareholding in three (3) farms in the Elgin region. The farms are owned 33.33% by Ithemba Elitsha Farming; 33.33% by participating growers; and 33.33% by the farm workers. The structure was created in 2015 and requires ongoing support by the growers for a period of 12 years;
- 1.1.13. "Merger" means the acquisition of sole control of the Target Firm by the Acquiring Firm;
- 1.1.14. "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.1.15. "South Africa" means the Republic of South Africa;
- 1.1.16. "SMME" means a small, medium, or micro enterprise as contemplated in the National Small Enterprise Act, No. 102 of 1996;
- 1.1.17. "Target Firm" means the deciduous fruit operations of Crookes Brothers South Africa Proprietary Limited;
- 1.1.18. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and

- 1.1.19. "Tribunal Rules" mean the Rules for the Conduct of Proceedings in the Tribunal
- 1.1.20. "Vygeboom Properties" means Ouwerf, Vyeboom, Dennebos and Belleview (Bellcro Farming).

CONDITIONS

2. HDPs Support

- 2.1. The Merging Parties shall spend a minimum of R**[CONFIDENTIAL]** million to procure all service for security fences and electrified fences on the Target Firms' Vygeboom Properties over a period of 5 (five) years from an HDP owned company;
- 2.2. The Merging Parties shall spend a minimum of R[CONFIDENTIAL] million to procure all civil constructions services required regarding water distribution and irrigation schemes on the Target Firms Vygeboom Properties over a period of 5 (five) years from an HDP owned civil contractor; and
- 2.3. The Acquiring Firm will continue to make the necessary financial contributions in order to ensure the continued ownership and participation of the farm workers of the Vygeboom farm in the Ithemba Elitsha Structure. This will amount to a minimum financial contribution of R [CONFIDENTIAL] per year for at least 5 years or however long is necessary to ensure the farm workers receive ownership in the Vygeboom farm in terms of the Ithemba Elitsha Structure.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2. The Merged Entity, on the first to fifth anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 2.
- 3.3. Each report submitted in terms of paragraphs 3.2 to 3.3 shall be accompanied by an affidavit deposed to by a senior official of the Target Firms, confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.

3.4. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. APPARENT BREACH

4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Merger Parties and/or the Commission may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, amended or relaxed. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. **GENERAL**

6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

REDSUN DRIED FRUIT & NUTS (PTY) LTD

AND

DESERT RAISINS (PTY) LTD

CASE NUMBER: 2023JUN0030

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 21 June 2023, the Competition Commission ("the Commission") received notice of an intermediate merger wherein Redsun Dried Fruit & Nuts (Pty) Ltd ("Redsun") intends to acquire the assets of Desert Raisins (Pty) Ltd ("Desert Raisins"). Post-merger, Redsun will have sole control over the assets of Desert Raisins.
- 2. The primary acquiring firm, Redsun, is incorporated in South Africa. Redsun is controlled by One Thousand & One Voices Africa 1 (Mauritius) Ltd ("1K1V") as to 68.5% and the remaining shareholding is held by One Thousand and one Voices Funding Solutions (Mauritius) ("1K1V Solutions"). 1K1V is wholly owned and controlled by One Thousand & One Voices Africa 1 Fund ("1K1V Fund"), which is ultimately controlled by an individual, Mr Hendrik Jordaan, through a general partner, One Thousand & One Voices Africa Fund I, L, P Cayman Islands Limited Partnership. Redsun wholly owns and controls the following firms: Edidor 139 (Pty) Ltd, RTE Snacks (Pty) Ltd, and Redsun Property Vrendendal (Pty) Ltd.

- 3. Redsun has control over Rising Sun Raisins (Pty) Ltd according to 12(2)(g) of the Competition Act No.89 of 1998 (as amended) (the "Act").
- 4. 1K1V wholly owns and controls Redsun, Trineal (Pty) Ltd, Sybrin Holdings (Pty) Ltd, Aquaculture Investment Holdings Pty Ltd and Saniel (Pty) Ltd. Redsun, all the firms controlling it and all the firms controlled by those firms, will hereinafter be collectively referred to as the "Acquiring Group".
- 5. The Acquiring Group does not have shareholding by historically disadvantaged persons ("HDPs").
- 6. The primary target assets are comprised of the raisin processing and packaging assets owned by Desert Raisins (Pty) Ltd. Desert Raisins is ultimately indirectly wholly owned by BKB Limited ("BKB"). The assets owned by Desert Raisins will be referred to as the "Target Assets".
- 7. The Target Assets have an 11% indirect shareholding by HDPs. These credentials are derived from BKB's latest B-BBEE certificate dated 12 December 2022.

The parties' activities

- 8. The Acquiring Group is involved in a number of activities in the agricultural sector. Of relevance to this merger assessment are the Acquiring Group's raisin processing and supply activities in South Africa, which are conducted through Redsun. In that regard, the Acquiring Group operates a raisin processing factory located in Keimoes Northern Cape, which has the capacity to produce 15 000mt per year. The Acquiring Group supplies various types of raisins. The Acquiring Group procures these raisins from local farmers and once processed, they are predominately sold into export markets.
- 9. The Target Firm comprises the assets of Desert Raisins that are utilised in the processing and supply of various types of raisins including processing and packaging equipment with a processing capacity of 15 000mt per annum.

Competition assessment

- 10. The Commission considered the activities of the merging parties and found that the proposed transaction raises a horizontal overlap as the Acquiring Group is involved in the processing and supply of raisins while the Target Assets comprise assets that are used to process and supply raisins.
- 11. The merger parties submit that the merger will result in a combined market share of approximately 29%, with a market share accretion of approximately 15% in the processing and packaging of raisins in South Africa based on processing capacity. The Commission found that other players in this market are Pioneer Foods (Pty) Ltd, Carpe Diem Raisins (Pty) Ltd ("Carpe Diem"), Prosperitas Foods (Pty) Ltd ("Prosperitas"), The Raisin Company ("Raisin Company") and Northern Cape Raisins ("Cape Raisins").
- 12. The merger parties submit that to the extent that the proposed transaction does not proceed, the counterfactual is that Redsun will continue to build its factory in Vredendal and import the required assets from Greece. Desert Raisins has taken a definitive decision to exit the market and its participation in the market will be lost with or without the merger.
- Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest Issues

Employment

14. The merging parties submit that the proposed transaction will not have any negative effects on employment. That is because the Target Assets have no employees (they are comprised of assets only). The seller of the Target Assets, Desert Raisins, will cease to operate post-merger and has already served its employees with section 189A notices in terms of the Labour Relations Act, irrespective of whether the proposed transaction goes ahead.

- 15. The Commission notes that Desert Raisins took a decision to retrench 157 employees in or around August / September 2022. The merging parties argue that the decision to retrench was driven by the non-performance of the business as it had been loss making. However, the section 189A notices were only issued in May 2023, about 9 months later. Desert Raisins' final decision to close the business was taken in July 2023.
- 16. The Commission reviewed the financial statements and several board documents of Desert Raisins and found that it was indeed in a precarious financial position. However, it also appears that the discussions with and acquisition proposal from Redsun is likely to have accelerated the decision to wind up the business and retrench the Desert Raisins employees.
- 17. As a way to remedy the negative effect on employment that arises as a result of the proposed transaction, the merger parties commit to create 100 new full-time jobs at the new factory that Redsun will commission in Vredendal, over a 7-year period. Redsun also commits to advertising employment opportunities that arise at the Acquiring Firm's existing facility in Keimoes for a period of 2 years from the implementation date.
- 18. In considering whether the merger can be justified on public interest grounds, the Commission took into account the following factors:
 - 18.1. The concurrency of the decision to retrench 157 employees and the timing of entering into the proposed transaction, and
 - 18.2. The merger parties' willingness to remedy these retrenchments by creating 100 new jobs at the new factory as well as offering priority employment opportunities in the Acquiring Group's operations in the Northen Cape area where the retrenched employees reside.
- 19. Although the 100 new jobs do not directly countervail the 157 lost jobs, the Commission has also taken the view that in the counterfactual, Redsun will likely continue to build its new factory, thus the public interest benefits may be lost without this merger.
- 20. Further, the Commission notes that the Trade Unions and employee representatives have not raised any concerns.

Promotion of greater spread of ownership by historically disadvantaged persons and workers

- 21. The Acquiring Group does not have any HDP ownership and the Target Assets have a 11% indirect ownership through BKB. The Commission indicated that the merger parties must remedy this dilution by implementing either an ESOP or HDP transaction in line with s12A(3)(e) of the Act.
- 22. The merging parties requested that the Commission consider the following public interest benefits arising from the merger:
 - 22.1. The Acquiring Group will utilise the Target Assets to build a new raisin processing facility in the Vredendal in the Western Cape region, which is likely to result in the creation of approximately 100 employment opportunities over 7 (seven) years.
 - 22.2. In addition, the Acquiring Firm will advertise employment opportunities that may arise at the Acquiring Firm's existing facility in Keimoes and will, for a period of 2 (two) years from the Implementation Date, favourably consider applications from suitably qualified former employees of Desert Raisins to fill the available posts.
 - 22.3. The Acquiring Group will make a capital investment of approximately R15 000 000 (fifteen million) in its new raisin processing and packaging facility at Vredendal.
 - 22.4. In terms of procurement, Redsun submits that it supports and procures all its raisins from a development project (Eksteenskuil) involving approximately 110 black farmers and directly from 3 black farmers along the Orange River. Redsun will continue to do so post-merger. Redsun is open to exploring opportunities to ensure that black farmers are not excluded from supplying their raisins to Redsun at market related prices.
- 23. Notwithstanding the foregoing and whilst every case is considered on its own merits, the Commission considers that the preferable remedies to address a dilution in HDP ownership is either an HDP and/or ESOP condition that at least makes good the dilution.

Given the case specific circumstances in this matter, the remedies offered by the parties in this case likely render the merger justifiable on public interest grounds.

Conclusion

24.	The Commission	approves	the proposed	merger	subject to	conditions i	n Annexur e	e A
	hereto.							

ANNEXURE A

REDSUN DRIED FRUIT AND NUTS PROPRIETARY LIMITED AND

THE TARGET ASSETS OWNED BY DESERT RAISINS PROPRIETARY LIMITED CASE NUMBER: 2023JUN0030

CONDITIONS

1. **DEFINITIONS**

In this document, the following expressions bear the meanings assigned to them below, and related expressions have corresponding meanings:

- 1.1 "Acquiring Firm" means Redsun Dried Fruit and Nuts Proprietary Limited;
- 1.2 "Affected Employees" means former employees of Desert Raisins who were retrenched during the s189 process before Desert Raisins' closure of its raisin processing factory in Kanoneiland.
- 1.3 **"Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC 15) in terms of the Competition Act;
- 1.4 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act:
- 1.5 "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
- 1.6 **"Competition Act"** means the Competition Act 89 of 1998, as amended;

- 1.7 "Conditions" means these conditions set out herein;
- "Days" means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.9 "Desert Raisins" means Desert Raisins Proprietary Limited;
- 1.10 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Proposed Transaction is implemented by the Merging Parties;
- 1.11 "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.12 "Proposed Transaction" means the acquisition of the Target Assets by the Acquiring Firm;
- 1.13 "South Africa" means the Republic of South Africa;
- 1.14 "**Target Assets**" means the selected Assets owned by Desert Raisins Proprietary Limited;
- 1.15 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.16 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal.

2. **CONDITIONS**

- 2.1 The Acquiring Firm shall create 100 (one hundred) direct new full-time jobs within the Acquiring Firm. The creation of the 100 (one hundred) direct jobs will take place within 7 (seven) years after the Implementation Date broken down as follows:
 - 2.1.1 50 new full-time jobs by no later than 2 (two) years after the Implementation Date; and

- 2.1.2 50 new full-time jobs no later than 5 (five) years after the factory has been built (which time period is required as the factory scales and increases its operations to capacity).
- 2.2 The Acquiring Firm's investment in the commissioning of the new factory shall not be less than an amount of R15 000 000 (fifteen million rand).
- 2.3 The Acquiring Firm will advertise vacancies that may arise at the Acquiring Firm's existing facility in Keimoes and will do so, for a period of 2 (two) years from the Implementation Date. To the extent that any Affected Employees apply for these positions and to the extent that such employees are suitably qualified for the relevant positions, preference shall be given to the Affected Employees over equally qualified applicants who are not Affected Employees.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 The Acquiring Firm shall, for a period of 7 years, on the anniversary of the Implementation Date, submit a report which provides the Commission with a status update and/or confirming compliance with the Conditions.
- 3.3 The Commission may request additional information from the Acquiring Firm, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with these Conditions.

4. VARIATION OF THE CONDITION

4.1 The Acquiring Firm may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions extended. Should a dispute arise in relation to the variation of the Conditions, the Acquiring Firm shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

5. APPARENT BREACH

5.1 Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. **GENERAL**

6.1 All correspondence in relation these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

NOVOZYMES A/S AND

CHR. HANSEN HOLDING

CASE NUMBER: 2023JUN0035

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

 On 23 June 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Novozymes A/S ("Novozymes") intends to acquire sole control of Chr Hansen Holding A/S ("CH Holding").

Description of the merging parties

- 2. The primary acquiring firm, Novozymes, is a public company incorporated under the laws of Denmark. Novozymes is a wholly owned subsidiary of Novo Holdings A/S ("Novo Holdings"). Novo Holdings is in turn a wholly owned subsidiary of the Novo Nordisk Foundation. Novozymes, Novo Holdings and Novo Nordisk Foundation will be referred to as "Novozymes" or the "Novo Group". In South Africa, the following firms form part of the Novo Group:
 - 2.1. Novo Nordisk Proprietary Limited.
 - 2.2. Novozymes SA (Pty) Ltd.
 - 2.3. BBI Enzymes SA (Pty) Ltd.
 - 2.4. Vision Biotech (Pty) Ltd.
 - The Novo Group does not have any shareholding held by historically disadvantaged persons ("HDPs").

- 4. The primary target firm, CH Holding, is a public company incorporated under the laws of Denmark. CH Holding is publicly listed on the Nasdaq Copenhagen Stock Exchange. As its shares are widely held, no single firm or individual directly or indirectly controls CH Holding.
- 5. The acquiring group, Novo Group, holds a non-controlling shareholding of 21.98% in CH Holding.
- 6. In South Africa, CH Holding controls Chr Hansen South Africa Proprietary Limited ("Chr Hansen SA"). CH Holding and its subsidiaries will be collectively referred to as "CH Holding" or the Target Firm.
- 7. CH Holding does not have shareholding held by HDPs.

Activities of the merging parties

- 8. Novozymes is a global biotechnology company which provides sustainable biological solutions for industrial and consumer use and is predominantly a manufacturer of industrial enzymes.
- 9. CH Holding is a global, differentiated bioscience company that develops natural ingredients solutions for various industries.

Overlapping markets and competition assessment

10. The Commission considered the activities of the merging parties within South Africa and found that they overlap horizontally in relation to (i) the commercialisation/distribution of lactase enzymes and (ii) the manufacture of probiotic ingredients for human health. The Commission also found a vertical overlap in relation to the manufacture of lactase and phospholipase products as Novozymes supplies CH Holding with these products for commercialisation/distribution globally, including in South Africa.

Horizontal overlap in commercialisation and distribution of lactase

11. The Commission found that the merger parties will have an estimated post-merger market share of approximately [CONFIDENTIAL]% in the distribution of lactase enzymes in South Africa, based on sales value, with an accretion of approximately [CONFIDENTIAL]%. For completeness, the Commission notes that the merger parties' global market share in the distribution of lactase enzymes is approximately [CONFIDENTIAL]%, with an accretion of [CONFIDENTIAL]%.

Horizontal overlap in the manufacture of probiotics

- 12. The Commission found that both Novozymes and CH Holding manufacture probiotics for human health within South Africa. Novozymes derived annual revenue of only [CONFIDENTIAL] for the manufacture of probiotic ingredients in the 2022 financial year whereas CH Holding derived annual revenue of [CONFIDENTIAL] for the manufacture of probiotic ingredients (bulk powder) as an input for dietary supplements for humans within South Africa in the 2022 financial year.
- 13. Based on the estimated total annual revenue of **[CONFIDENTIAL]** in the market for the manufacture of probiotic ingredients as an input for dietary supplements for humans, the merged entity will have a combined market share of less than **[CONFIDENTIAL]**%.

Vertical overlap in lactase and phospholipase

Lactase

14. As stated above, the Commission found that the merged entity will account for approximately [CONFIDENTIAL]% of the downstream market for the distribution of lactase in South Africa. The Commission also found that CH Holding already sources a substantial share of its lactase requirements ([CONFIDENTIAL]% during the 2022 financial year) from Novozymes. Given the low post-merger market shares of the merged entity in the distribution of lactase in South Africa and the fact that CH Holding already procures a significant amount of its lactase enzyme requirements from Novozymes prior to the merger, the Commission found that the merger is unlikely to result in substantial foreclosure concerns.

Phospholipase

- 15. The Commission found that Novozymes supplies all its phospholipase exclusively to CH Holding for distribution in South Africa and globally. CH Holding in turn distributes all Novozymes' phospholipase products. CH Holding does not distribute third parties' phospholipase but only that of Novozymes' products. Therefore, the Commission is of the view that this vertical dimension is unlikely to raise customer foreclosure concerns.
- 16. None of the third parties engaged raised concerns about the merger.
- 17. Considering the above, the Commission is of the view that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market.

Public interest

Effect on employment

18. The Commission is of the view that the proposed transaction is unlikely to lead to negative employment effects.

The promotion of a greater spread of ownership, in particular to increase the levels of ownership by historically disadvantaged persons (HDPs) and workers in firms in the market

- 19. The merging parties submit that none of the shares of either the Novo Group or the Target Firm are held by HDPs and that the proposed merger is a foreign-to-foreign transaction which only has an incidental effect on local subsidiaries within South Africa.
- 20. The Commission requested that the merging parties establish HDP shareholding or an employee share ownership plan ("ESOP") in line with the requirements of section 12A(3)(e) of the Act. The merging parties made several written arguments, ultimately arguing that the proposed transaction does not give rise to any negative effect on the public interest.
- 21. The Commission holds that section 12A(3)(e) of the Act imposes a positive obligation to promote a greater spread of ownership, in particular to increase ownership by HDPs and

- workers. The positive obligation applies to all transactions filed in South Africa and should, in the first instance, be remedied by an ESOP or an HDP transaction.
- 22. However, given the facts of this proposed transaction, the Commission and the merger ultimately agreed that the merger be approved subject to conditions relating to skills development, enterprise and supplier development and procurement that are responsive to sections 12A(3)(b) and 12A(3)(c) of the Act.
- 23. There are no other public interest issues arising.

Conclusion

24. The Commission approves the merger with the Conditions attached as **Annexure A**.

ANNEXURE

NOVOZYMES A/S

AND

CHR. HANSEN HOLDING A/S

CASE NUMBER: 2023JUN0035

CONDITIONS

1. **DEFINITIONS**

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

- 1.1 "Acquiring Firm" means Novozymes A/S;
- 1.2 "Approval Date" means the date referred to on the Commission's merger clearance certificate (Form CC 15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 "Black" means black people as defined in the Broad-Based Black Economic Empowerment Act No 53 of 2003, as amended;
- 1.4 "Black-owned business" means a business that is held as to 51% or more by Black people;
- 1.5 **"Black women-owned business"** means a business that is held as to 30% or more by Black women;
- "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.7 "Competition Rules" means the Rules for the Conduct of Proceedings in the Commission;

- 1.8 "Competition Act" means the Competition Act No 89 of 1998, as amended;
- 1.9 "Conditions" means these conditions;
- 1.10 "Days" means any calendar day that is not a Saturday, Sunday, or official public holiday in South Africa;
- 1.11 "HDP" means a historically disadvantaged person as defined in the Competition Act;
- 1.12 **"Implementation Date"** means the date occurring after the Approval Date on which the Merger Parties implement the Merger;
- 1.13 "Merged Entity" means the Acquiring Firm after the Merger is implemented by the Merger Parties;
- "Merger" means the merger between the Acquiring Firm and the Target Firm, with the Acquiring Firm as the surviving entity and the Target Firm as the dissolving entity as described in the intermediate merger notified to the Commission under Commission case number 2023JUN0035;
- 1.15 "Merger Parties" means the Acquiring Firm and the Target Firm;
- 1.16 "National Qualifications Framework" means the national qualifications framework contemplated in the National Qualifications Framework Act No 67 of 2008;
- 1.17 "NPAT" means net profit after tax, being the amount that remains after a company has paid off all of its operating and non-operating expenses, other liabilities, and taxes;
- 1.18 "SMME" means small, medium and micro enterprises;
- 1.19 "Target Firm" means Chr. Hansen Holding A/S; and
- 1.20 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. ENTERPRISE AND SUPPLIER DEVELOPMENT AND CORPORATE SOCIAL RESPONSIBILITY INITIATIVES

In total over a period of 5 (five) years, commencing at the start of the Merged Entity's financial year following the Implementation Date, the Merged Entity shall, in its sole discretion, in the aggregate, spend an amount equal to no less than the sum of **[CONFIDENTIAL]**% (ten per cent) of the NPAT of the Merged Entity's South African entities for each of the relevant 5 (five) years, on one or more of the following or similarly intended initiatives:

- 2.1 Enterprise and supplier development, in particular with regard to the promotion of the ability of SMMEs and firms controlled or owned by HDPs to effectively enter into, participate in or expand within markets in South Africa.
- 2.2 Development of the experience, skills and knowledge of Black women and/or employees, including through the provision of bursaries for study in academic programmes at institutions of higher learning within the National Qualifications Framework.
- 2.3 Procurement from black-owned businesses and black women-owned businesses, provided that the goods and services that the Merged Entity requires to be procured are available on reasonable, practical and competitive terms that comply with the Merged Entity's reasonable requirements, particularly as regards availability, quantity, counterparty risk and pricing.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- The Merged Entity shall inform the Commission in writing of the Implementation

 Date within 5 (five) Days of the Implementation Date.
- 3.2 For the duration of the Conditions, the Merged Entity shall, on each anniversary of the Implementation Date, provide the Commission with an affidavit attested to by a senior official of the Merged Entity, confirming the Merged Entity's compliance with the Conditions.

3.3 The Commission may request such additional information from the Merger Parties, which the Commission may, from time to time, deem necessary to monitor the extent of compliance with these Conditions.

4. APPARENT BREACH

Should the Commission receive any complaint in relation to non-compliance with the Conditions, or otherwise determine that there has been an apparent breach by the Merger Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION OF CONDITIONS

The Merger Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. **GENERAL**

All correspondence concerning the Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

BLANTYRE CAPITAL LIMITED

AND

DYNAMIC COMMODITIES HOLDINGS PROPRIETARY LIMITED AND DC FOODS PROPRIETARY LIMITED

CASE NUMBER: 2023JUN0037

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 23 June 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby Blantyre Capital Limited ("Blantyre Capital") intends to acquire control over Dynamic Commodities Holdings Proprietary Limited ("DCH") and DC Foods Proprietary Limited ("DC Foods").
- 2. The primary acquiring firm is Blantyre Capital, a firm incorporated in the United Kingdom. Blantyre Capital is a wholly owned subsidiary of Blantyre Capital (Cayman) Limited, which is, in turn majority owned by [CONFIDENTIAL]. In South Africa, Blantyre Capital controls Ster-Kinekor Theatres Proprietary Limited ("Ster-Kinekor"). Blantyre Capital is registered in the United Kingdom. In South Africa, Blantyre's only business is its joint control of Ster-Kinekor, which is a movie exhibitor that operates several commercial sites across Southern Africa.
- 3. The primary target firms are DCH and DC Foods (collectively the "Target Firms"), firms incorporated in South Africa. DCH is a holding company through which [CONFIDENTIAL] and [CONFIDENTIAL] hold their respective interests in DC Foods. DC Foods is an export driven business which is active in the manufacturing and supply of high-quality frozen desserts and

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frozen fruit pieces. DC Foods' fruit products are exported to countries that include the United States of America, France, Australia, Japan and various countries in Europe.

Competition Assessment

- 4. The Commission considered the activities of the merging parties and found that the proposed transaction does not give rise to any horizontal or vertical overlaps in South Africa.
- 5. As such, the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public Interest

- 6. The merging parties submitted an unequivocal statement that the proposed transaction will not result in any job losses. The Commission found that the proposed transaction does not raise any overlaps, as such the proposed transaction is unlikely to result in any redundancies. The Commission is therefore of the view that the proposed transaction is unlikely to result in a negative effect on employment.
- 7. The Commission found that the proposed transaction raises concerns in terms of section 12A (3)(e) of the Competition Act as Blantyre does not have any shareholders who are Historically Disadvantaged Persons ("HDPs") whereas the DC Foods has indirect HDP shareholding of 6%. Post implementation of the proposed transaction, this shareholding will fall away, resulting in a dilution of HDP shareholding in DC Foods. As such, the Commission required that the merging parties introduce a 6% employee share ownership plan ("ESOP") and/or introduce an HDP transaction that will address the dilution in HDP shareholding resulting from the merger.
- 8. Following extensive engagements between the merging parties and the Commission, the merging parties have made the following undertakings:
 - 8.1. By **[CONFIDENTIAL]**, the Acquiring Firm shall invest at least ZAR **[CONFIDENTIAL]** to increase the manufacturing capacity of DC Foods' production facility situated near Gqeberha, Eastern Cape Province;
 - 8.2. By no later than **[CONFIDENTIAL]**, the Merged Entity shall employ a minimum of **[CONFIDENTIAL]** additional employees and shall ensure that no less than **[CONFIDENTIAL]** % of such new hires are HDPs and predominantly female;

- 8.3. For a period of **[CONFIDENTIAL]** years following the Implementation Date, the Merged Entity shall use its reasonable commercial endeavours to ensure that at least **[CONFIDENTIAL]**% of suppliers to DC Foods are HDP-Owned Businesses;
- 8.4. Existing agreements with HDP-Owned Businesses in force as at the approval date of the transaction will be honoured in accordance with their terms; and
- 8.5. For a period of **[CONFIDENTIAL]** years following the Implementation Date, subject to supply on reasonable commercial terms, the Merged Entity shall procure personal protective equipment for its employees at DC Foods' facility in Gqeberha, Eastern Cape Province from The Association for Persons with Physical Disabilities, Nelson Mandela Bay, with a minimum spend of ZAR **[CONFIDENTIAL]** per year.
- 9. The proposed transaction does not raise any other public interest concerns.
- 10. The Commission, therefore, approves the proposed transaction with conditions attached on **Annexure A**.

ANNEXURE A

BLANTYRE CAPITAL LIMITED

AND

DYNAMIC COMMODITIES HOLDINGS PROPRIETARY LIMITED

CASE No: 2023JUN0037

CONDITIONS

DEFINITIONS

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -
 - 1.1.1. "Acquiring Firm" means Blantyre Capital Limited;
 - 1.1.2. "Approval Date" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
 - 1.1.3. "Blantyre" means Blantyre Capital Limited;
 - 1.1.4. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.5. "Commission Rules" means the Rules for the Conduct of Proceedings in the Commission;
 - 1.1.6. "Competition Act" means the Competition Act 89 of 1998, as amended;
 - 1.1.7. **"Conditions"** means these conditions, and "Condition" means, as the context requires, any one of them;
 - 1.1.8. "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

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- 1.1.9. "DC Foods" means DC Foods Proprietary Limited;
- 1.1.10. "HDPs" means historically disadvantaged persons as contemplated in the Competition Act No. 89 of 1998 (as amended);
- 1.1.11. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12. "Merger" means the acquisition of sole control of the Target Firms by the Acquiring Firm;
- 1.1.13. "Merging Parties" means the Acquiring Firm and the Target Firms;
- 1.1.14. "South Africa" means the Republic of South Africa;
- 1.1.15. "SMME" means a small, medium, or micro enterprise as contemplated in the National Small Enterprise Act, No. 102 of 1996;
- 1.1.16. "Target Firms" means (i) Dynamic Commodities Holdings Proprietary Limited, and (ii) DC Foods Proprietary Limited;
- 1.1.17. "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.18. "**Tribunal Rules**" mean the Rules for the Conduct of Proceedings in the Tribunal.

CONDITIONS

2. Capital Investment

- 2.1. By **[CONFIDENTIAL]**, Blantyre will invest at least R**[CONFIDENTIAL]** to increase the capacity of DC Foods' existing production facility near Gqeberha, Eastern Cape Province.
- 3. Procurement From Black-Owned Businesses
- 3.1. For a period of [CONFIDENTIAL] following the Implementation Date, the Merged Entity shall use its reasonable commercial endeavours to ensure that at least [CONFIDENTIAL]% of suppliers to DC Foods are HDP-Owned Businesses, subject to supply on reasonable commercial terms that comply with DC Foods' requirements as

- determined by DC Foods in its sole discretion.
- 3.2. Existing agreements with HDP-Owned Businesses in force as at the Approval Date will be honoured in accordance with their terms.
- 3.3. For a period of [CONFIDENTIAL] years following the Implementation Date, subject to supply on reasonable commercial terms, the Merged Entity shall procure personal protective equipment for its employees at DC Foods' facility in Gqeberha, Eastern Cape Province from The Association for Persons with Physical Disabilities, Nelson Mandela Bay, with a minimum spend of ZAR [CONFIDENTIAL] per year.

4. Increased Employment of HDPS

4.1. By no later than **[CONFIDENTIAL]**, the Merged Entity shall employ, a minimum of **[CONFIDENTIAL]** additional employees and shall ensure that no fewer than **[CONFIDENTIAL]** % of such new hires are HDPs and predominantly female.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 5.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 5.2. The Merged Entity shall, on the first to third anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 2.
- 5.3. The Merged Entity shall, on the first to third anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 3.
- 5.4. The Merged Entity shall, on the first to third anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 4.
- 5.5. Each report submitted in terms of paragraphs 5.2 to 5.4 shall be accompanied by an affidavit deposed to by a senior official of the Target Firms, confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 5.6. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

6. APPARENT BREACH

6.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

7. VARIATION

7.1. The Merger Parties and/or the Commission may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, amended or relaxed. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

8. **GENERAL**

8.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

HENEKEN S.R.O

AND

EPKO OIL SEED CRUSHING PROPRIETARY LIMITED

CASE NUMBER: 2023JUN0042

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 26 June 2023, the Commission was notified of an intermediate merger in terms of which Heneken s.r.o ("Heneken") intends to acquire 100% of the entire issued share capital of GfE-MIR Alloys and Minerals SA (Pty) Ltd ("the Target Firm"). Upon implementation of the proposed transaction, Heneken will obtain sole control over the Target Firm.
- The primary acquiring firm is Heneken. Heneken does not have an interest in any firm within South Africa. Heneken is controlled by [Confidential]. Heneken is a Slovakian entity with no South African shareholders or interests within South Africa. Accordingly, Heneken does not have any ownership by Historically Disadvantaged Persons ("HDPs").
- 3. The Target Firm is a private company incorporated in South Africa. The Target Firm does not directly or indirectly control any other firm. The Target Firm is wholly controlled by GfE-MIR Holdings AG, an entity incorporated in Switzerland. The Target Firm does not have any shareholding by HDPs.

- 4. Heneken is a supplier of non-ferrous metals, scrap, and master alloys globally. The majority of its products (approximately 80%) are sold within Europe, with the remainder exported worldwide. Of relevance to the proposed transaction is Heneken's production and supply of silicon metal and ferro-titanium as these products are also supplied by the Target Firm. Heneken produces silicon metal globally and does not produce or supply silicon metal in South Africa. Ferro-titanium is the only product which has been sold by Heneken in South Africa. However, Heneken has not sold any ferro-titanium into the South African market since October 2021.
- 5. The Target Firm is involved in the importing, exporting, processing, sale and distribution of ores, minerals, alloys, and calcium aluminate. Of relevance to the proposed transaction, the Target Firm produces silicon metal and sells it through distributors locally and to the export market. The Target Firm does not itself produce ferro-titanium locally. The Target Firm imports ferro-titanium and sells it to steel producers who use it as an alloy in steel production.

Competition assessment

- 6. The Commission found that there is a horizontal overlap in the activities of the merging parties as both the merging parties supply silicon metal and ferro-titanium.
- 7. The Commission noted that the Target Firm's ferro-titanium sales are made from local sales only. On the other hand, Heneken has not sold ferro-titanium into South Africa since October 2021 and is active as a supplier of ferro-titanium at a global level. The volumes of ferro-titanium imported by Heneken in 2021 account for [Confidential] of the total ferro-alloys imported into South Africa in 2021. It follows that irrespective of whether the market is global or national, it is unlikely that there will be a substantial structural change in the market brought about by the proposed transaction in respect of ferro-titanium. The Commission therefore did not assess this horizontal product overlap further.
- 8. With respect to silicon metal, the Commission found that the merged entity will have a negligible market share of less than [Confidential]% in the global market for the production and supply of silicon metal.

- 9. There is also a vertical relationship between the merging parties in that Heneken produces and sells ferro-titanium while the Target Firm is active as a supplier of ferro-titanium and imports ferro-titanium. The Commission found that this supply relationship is unlikely to negatively impact any customers and suppliers in South Africa. This is because the Target Firm imports ferro-titanium pre-merger and is not a customer of any local supplier. In addition, Heneken has not sold ferro-titanium to any customers in South Africa since October 2021. In any event, Heneken is a small suppler of ferro-titanium accounting for less than [Confidential]% of the global supply of ferro-titanium in 2022.
- 10. Based on the above, the Commission found that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition.

Public Interest

Employment

11. The merging parties provided an unequivocal undertaking that the proposed transaction will not result in any job losses.

Effect on a particular industrial sector or region

- 12. Heneken produces silicon metal globally but does not produce silicon metal in South Africa. The Target Firm produces silicon metal at its production plant located at 2 Atomic Street, Vulcania, Brakpan, Gauteng. The Commission was concerned that the proposed transaction may raise the risk of shifting silicon metal production from South Africa.
- 13. The merging parties agreed to a condition to the effect that the Target Firm's plant producing silicon metal will not be removed from South Africa and the Target Firm's silicon metal production will continue in South Africa. The production commitment condition has been attached hereto as **Annexure A**.

The promotion of a greater spread of ownership

- 14. Neither of the merger parties have any shareholding by HDPs. The merging parties agreed to establish a 5% ESOP in the Target Firm. The Qualifying Workers for the ESOP are defined as Workers employed by the Target Firm with a minimum employment tenure of 2 (two) years, and comprise [Confidential].
- 15. The proposed transaction does not raise any other public interest concerns.
- 16. The Commission approves the proposed transaction with conditions attached as **Annexure A**.

ANNEXURE A

HENEKEN, S.R.O

AND

GFE-MIR ALLOYS AND MINERALS SOUTH AFRICA (PTY) LTD

CASE NUMBER: 2023JUN0042

CONDITIONS

1. **DEFINITIONS**

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "Acquiring Firm" means Heneken s.r.o;
- 1.2 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.3 "Approval Date" means the date on which the Merger is approved in terms of the Act;
- 1.4 "Commission" means the Competition Commission of South Africa;
- 1.5 "Conditions" means the merger conditions included in this Annexure A;
- "Days" means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **"ESOP"** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.8 **"ESOP Establishment Period"** means 12 months from the Implementation Date;
- "Implementation Date" means the date on which the merger is implemented by the Merging Parties;

- 1.10 "Merger" means the proposed acquisition by Heneken, s.r.o, of 100% of the shareholding in GfE-MIR Alloys and Minerals South Africa (Pty) Ltd as notified to the Commission under Case No. 2023Jun0042;
- 1.11 "Merged Entity" means the combination of Heneken, s.r.o and GfE-MIR Alloys and Minerals South Africa (Pty) Ltd;
- 1.12 "Merging Parties" means Heneken, s.r.o and GfE-MIR Alloys and Minerals South Africa (Pty) Ltd;
- 1.13 "South Africa" means the Republic of South Africa;
- 1.14 "Target Firm" means GfE-MIR Alloys and Minerals South Africa (Pty) Ltd;
- 1.15 "Target Firm's Plant" means the Target Firm's silicon metal production plant located at 2 Atomic Street, Vulcania, Brakpan, Gauteng.
- 1.16 "Tribunal" means the Competition Tribunal of South Africa;
- 1.17 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.18 "Qualifying Workers" means Workers employed by the Target Firm with a minimum employment tenure of 2 (two) years; and
- 1.19 "Worker" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESTABLISHMENT OF THE ESOP

2.1. By the end of the ESOP Establishment Period, the Merged Entity shall establish an ESOP through an employee trust for the benefit of Qualifying Workers. The ESOP shall hold 5% of the issued shares in the Target Firm and shall be established in accordance with the design principles set out in Annexure B.

3. MAINTAINING PRODUCTION IN SOUTH AFRICA

- 3.1. The Target Firm's Plant producing silicon metal shall not be removed from South Africa.
- 3.2. The Target Firm's Plant shall continue to produce silicon metal in South Africa.

4. MONITORING

- 4.1. Within 10 (ten) Days of the Implementation Date, the Target Firm shall circulate a non-confidential version of the Conditions to its employees and their employee representative(s). As proof of compliance herewith, the Target Firm shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 4.2. Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 4.3. The Merged Entity shall submit a compliance report (including a trust deed for the registration of the ESOP) within 15 (fifteen) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of the Acquiring Firm confirming the accuracy of the information contained in the report,
- 4.4. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

5.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. VARIATION

6.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

7. GENERAL

7.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: Mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B

Design Principle	Applicable Criteria
Structure	 Will be a unitised structure whereby a trust will be established, and Qualifying Workers will receive units.
Cost to Workers	o The ESOP will be funded through a loan from the Merged Entity. The notional vendor funding will provide for a fixed trickle dividend in terms of which at least 35% of declared dividends will be paid to the beneficiaries with the remaining 65% used to service the vendor financed loan until such time as it is extinguished. Once the loan has been extinguished, 100% of the declared dividends due to the ESOP (after liabilities have been paid) will be distributed to the beneficiaries. The liabilities refer to costs (administration costs, rental, fees of third party service providers such as auditors) and taxes.
	 No cost to workers: Workers will not be required to pay to participate in the ESOP.
	 The Merged Entity must make provision for independent legal and financial experts to act on behalf of workers in ESOP establishment negotiations. For the avoidance of doubt, the Merged Entity will pay the reasonable costs of these independent experts.
Governance	 The board of trustees must be balanced and workers must be represented on the board, e.g., 1 trustee appointed by Merged Entity; 1 appointed by Qualifying Workers and 1 independent trustee.
	 The independent trustee will be recommended and appointed by the Qualifying Workers, subject to the candidate being acceptable to the Merged Entity.
Duration	ESOP is evergreen.
Participants	 All Workers with 2 years or more experience at the Target Firm.
	 Maternity leave will have no adverse impact on qualifying criteria.
Participation Benefits	 ESOP – Qualifying Workers will be entitled to dividends. Beneficiaries will cease to participate for bad leaver events: resignations and dismissals.

0	Death,	retirement	and	retrenchment	will	not	affect
	participation.						

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

FIDELITY ADT MONITORING (PTY) LTD AND

PART OF THE BUSINESS OF NATIONAL SECURITY AND FIRE (PTY) LTD CASE NUMBER: 2023MAY0007

Competition Commission hereby gives notice in terms of Rule 38 (3)(c

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- 1. On 2 May 2023, the Competition Commission ("Commission") received notice of a small merger wherein Fidelity ADT Monitoring (Pty) Ltd ("Fidelity ADT") intends to acquire a part of the security business of National Security and Fire (Pty) Ltd ("the Target Business"). Upon implementation of the proposed transaction, Fidelity ADT will exercise sole control of the Target Business. The parties voluntarily notified this transaction.
- 2. The primary acquiring firm is Fidelity ADT, a private company incorporated in accordance with the laws of South Africa. Fidelity ADT is a wholly owned subsidiary of Fidelity Services Group (Pty) Limited ("Fidelity Services Group"). Fidelity Services Group is not controlled by any individual firm. Fidelity ADT does not control any other firm.
- 3. The merging parties submit that Fidelity ADT is a level 1 broad-based black economic empowerment contributor ("B-BBEE") as it is 51.04% held by historically disadvantaged persons ("HDPs"). In addition, Fidelity ADT has the Khula Nathi employee share ownership scheme ("Khula Nathi ESOP") which holds shareholding in Fidelity ADT.

- 4. Fidelity ADT is a security solutions provider in South Africa, offering a range of protection services and equipment. Relevant to the proposed transaction is Fidelity ADT's services relating to monitoring and response services.
- 5. The primary target firm is the Target Business. The Target Business comprises of (i) identified clients' contracts for providing monitoring and response services as well as their data, (ii) alarm radios/transmitters, (iii), radio signal relaying site agreements, (iv) radio signal equipment, (v) base stations and radio frequency spectrum licenses and (vi) alarm systems. The contracts being acquired consist of residential and small and medium enterprises ("SME") clients spread across all nine provinces in South Africa.
- The Target Business is controlled by National Security and Fire (Pty) Ltd ("National").
- 7. The merging parties submit that National is a level 1 B-BBEE contributor with 70.56% of its shareholdings held by HDPs.
- 8. The Target Business is involved in the provision of monitoring and response services to residential and SME clients and does not include large commercial clients.
- 9. The Commission considered the activities of the merging parties and found that the proposed transaction raises a horizontal overlap as both the merging parties are active in the provision of monitoring and response services to residential customers and SMMEs. The Commission assessed the horizontal overlap between the activities of the merging parties at the provincial level and found that the merging parties' market shares in the relevant geographic markets will remain low, at less than 10%.
- 10. Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

Employment

- 11. The merging parties submit that the proposed transaction does not pose an adverse impact on employment.
- 12. National decided to sell all its non-core assets, including the Target Business.

13. The Commission concludes that the proposed merger is unlikely to result in any negative employment concerns. On the contrary, the proposed merger will limit the potential employment concerns resulting from the financial performance of National.

Effect on the promotion of a greater spread of ownership, in particular, to increase the levels of ownership by historically disadvantaged persons and workers in firms in the market

- 14. Fidelity ADT has 51.04% shareholding by HDPs. The Target Business on the other hand has 70.56% shareholding held by HDPs. Thus, as a direct result of the merger, the shareholding held by HDPs in the Target Business will be diluted by 19.52 percentage points from 70.56% to 51.04%. However, the Commission notes that the Target Business will remain transformed with 51.04% shareholding held by HDPs.
- 15. In addition, the merging parties submit that any National employees who are absorbed by Fidelity ADT would be able to participate in the Fidelity ADT's Khula Nathi ESOP. The requirement for employees to qualify to be part of the Fidelity ADT's Khula Nathi ESOP is that they should serve 10 years as employees of Fidelity ADT. However, the parties have agreed to a condition that Fidelity ADT will consider the number of years worked by incoming National employees when considering years of services in terms of the Khula Nathi ESOP qualifying criteria. See condition attached hereto as "Annexure A".
- 16. The proposed transaction does not raise any other public interest concerns.

Conclusion

17. The Commission approves the proposed transaction with conditions. See **Annexure**A.

ANNEXURE A

FIDELITY ADT MONITORING PROPRIETARY LTD

AND

PART OF THE BUSINESS OF NATIONAL SECURITY AND FIRE PROPRIETARY LTD

CASE NUMBER: 2023MAY0007

CONDITIONS

1 **DEFINITIONS**

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

- 1.1 "Acquiring Firm" means Fidelity ADT Monitoring Proprietary Ltd;
- 1.2 **"Board"** means the Fidelity Services Group's board of directors;
- "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4 "Competition Act" means the Competition Act 89 of 1998 (as amended);
- 1.5 "Conditions" means these conditions;
- "Eligibility Criteria" means the criteria, as set from time-to-time by the Board, for the Acquiring Firm's employees to become participants of the ESOP;
- 1.7 **"ESOP"** means the Acquiring Firm's Khula Nathi employee share ownership participation structure;
- 1.8 "Implementation Date" means 1 May 2023;
- 1.9 "Merger" means the acquisition of control by the Acquiring Firm over the Target;
- 1.10 "Merging Parties" means the Acquiring Firm and the Target collectively;

- 1.11 "National Employees" means employees, and former employees, of National that have joined the employ of the Acquiring Firm between 1 March 2023 to 31 August 2023;
- 1.12 "National" means National Security and Fire Proprietary Ltd;
- 1.13 "Target" means Part of the Business of National Security and Fire Proprietary Ltd;
- 1.14 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.15 "Years of Service" means the number of completed years of service from joining date that the National Employees served at National prior to joining the Acquiring Firm's employ.

2 CONDITION TO THE APPROVAL OF THE MERGER

- 2.1 The Acquiring Firm undertakes to recognise the Years of Service of the National Employees when considering the Eligibility Criteria for National Employees to become a participant in the ESOP.
- 2.2 The Acquiring Firm undertakes to treat any National Employees in the same manner as it would treat employees of the Acquiring Firm with comparable years' service at the Acquiring Firm.

3 MONITORING COMPLIANCE WITH THE CONDITIONS

- 3.1 The Acquiring Firm will inform National Employees of the effect of this condition on their eligibility to participation in the ESOP.
- 3.2 By no later than 30 November 2023, the Acquiring Firm will provide the Commission with a report identifying National Employees that have benefited from this condition, together with their recognised Years of Service.

4 APPARENT BREACH

An apparent breach of these Conditions shall be dealt with in terms of Rule 39 of the Rules of the Conduct of Proceedings in the Commission.

VARIATION OF THE CONDITION

The merging parties may at any time, on good cause shown, apply to the commission for the conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the conditions to be waived, relaxed, modified and/or substituted.

6 **GENERAL**

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

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SMARTGROWTH INVESTMENTS (PTY) LTD

AND

SCUDERIA SOUTH AFRICA (PTY) LTD

CASE NUMBER: 2023MAY0011

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

On 03 May 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Smartgrowth Investments (Pty) Ltd ("Smartgrowth") intends to acquire 100% of the issued share capital of Scuderia South Africa (Pty) Ltd ("Scuderia"). Upon implementation of the proposed transaction, Smartgrowth will exercise sole control over Scuderia.

The parties and their activities

2. The primary acquiring firm is Smartgrowth, a company incorporated in accordance with the laws of South Africa. The shares in Smartgrowth are held by the following shareholders: Globalcom Capital Partners Limited ("Globalcom Capital"); The Black Pointer Trust; and The Green Grass Trust. Smartgrowth controls a number of entities, which include but not limited to: Smartcall Insurance Administrators Proprietary Limited, Smartcall Proprietary limited, Smartcall Technology Solutions Proprietary Limited and HED Distribution Proprietary Limited. Smartgrowth and all the firms directly and indirectly controlled by it and all the firms directly and indirectly controlling it, will hereinafter collectively be referred to as the "Acquiring Group".

- 3. The Acquiring Group is an investment group focusing on the property sector although it also invests in telecommunication related services, such as distribution of starter packs, prepaid airtime and smartphone insurance.
- 4. The primary target firm is Scuderia, a company incorporated in accordance with the laws of South Africa. Scuderia is a car distribution business for Ferrari branded cars under licence from Ferrari S.p.A (Società per azioni). Scuderia is an importer and distributor of Ferrari vehicles. The business model of the Scuderia Group can be broken down as follows: (i) the Sales department which is tasked with the selling of new and pre-owned vehicles; (ii) the After-sales department; (iii) the Marketing department, which has the responsibility to build the Ferrari brand in South Africa; and (iv) the Administration department, which is responsible primarily for the finance, payroll and customs / clearing functions.

Competition assessment

- 5. The Commission assessed the business activities of the merging parties and found that the proposed transaction does not result in any horizontal overlap, as the Acquiring Group does not own dealerships or any other activities that could be considered as substitutable with those of the Target Group. Moreover, the Commission found that there is no vertical overlap between the activities of the merging parties.
- 6. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public Interest

Effect of the merger on employment

 The merging parties submit that the implementation of the proposed transaction will not result in any retrenchments of employees and will therefore not have a negative effect on employment.

- The promotion of a greater spread of ownership by HDPs and workers
- 8. The merging parties submit that pre-merger the Acquiring Group and the Target Group do not have any shareholding by Historically Disadvantaged Persons (HDPs). The Commission thus requested that the parties indicate how the merger will promote a greater spread of ownership.
- 9. The merging parties initially submitted that they are prepared to commit to establishing a Trust for the benefit of HDP employees and the children of the employees of Scuderia, which Trust will be an educational Trust to fund education initiatives. Following further engagement, the merging parties and the Commission agreed to a condition that the merging parties will, within a specified period of [CONFIDENTIAL] months after the Implementation Date of the proposed transaction, either: (i) sell [CONFIDENTIAL]% the specified percentage of the shares in the Target to a HDP entity/person; or (ii) establish an ESOP for the employees of the Buyer and Target group in respect of the [CONFIDENTIAL]% specified percentage of the shares in the Target.
- 10. The merging parties submit that they are also prepared to commit to procure (in respect of suppliers other than Ferrari) from local small, micro, and medium-sized enterprises (SMMEs) and HDP suppliers. In this regard, the merging parties have agreed to target to procure at least [CONFIDENTIAL]% of all non-Ferrari procurement from local SMMEs and HDP suppliers.
- 11. In addition, the proposed transaction does not raise any other public interest concerns.

Conclusion

12. The Commission therefore approves the proposed transaction with conditions attached in "Annexure A".

ANNEXURE A

SMARTGROWTH INVESTMENTS (PTY) LTD AND SCUDERIA SOUTH AFRICA (PTY) LTD

CASE NUMBER: 2023MAY0011

CONDITIONS

DEFINITIONS

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning
 - 1.1.1. "Acquiring Firm" means Smartgrowth Investments (Pty) Ltd;
 - 1.1.2. "Approval Date" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
 - 1.1.3. **"Beneficiaries"** means Eligible Employees who have been allocated units in the ESOP;
 - 1.1.4. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.5. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
 - 1.1.6. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
 - 1.1.7. **"Conditions"** means these conditions, and "Condition" means, as the context requires, any one of them;
 - 1.1.8. "Days" means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.1.9. "Divestiture Period" means a specified period of [CONFIDENTIAL] months from the Implementation Date;
 - 1.1.10. "Eligible Employees" means persons who are permanently in the employ of the Buyer and Target Group;

- 1.1.11. "Employees" means any permanent employee (as contemplated under the Labour Relations Act, No. 66 of 1995) of the Merged Entity or of any subsidiary or associated entity of the Acquiring Firm in South Africa, but excluding top and senior management;
- 1.1.12. "ESOP" means an Employee Share Ownership Program which may be established for the purpose of owning up to 100% of the shareholding in HDP Co.;
- 1.1.13. "HDPs" means a Historically Disadvantaged Person/s as contemplated in section 3(2) of the Competition Act;
- 1.1.14. "HDP Co." means the special purpose vehicle incorporated for the purpose of acquiring [CONFIDENTIAL]% the specified percentage of shares in the Target Firm;
- 1.1.15. "HDP Transaction" means the Acquiring Group's commitment to transfer a specified percentage shareholding [CONFIDENTIAL]% in the Target Firm to one or more HDP shareholders;
- 1.1.16. "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.17. "Merged Entity" means Scuderia subject to the control of Smartgrowth following the Implementation Date;
- 1.1.18. "Merging Parties" means Smartgrowth and Scuderia;
- 1.1.19. "Merger" means the acquisition of 100% of the issued share capital in Scuderia by Smartgrowth;
- 1.1.20. "**NVF**" means notional vendor financing or any other vendor financed funding arrangement;
- 1.1.21. "SMMEs" means small, micro, and medium-sized enterprises;
- 1.1.22. "Scuderia" means Scuderia South Africa (Pty) Ltd;
- 1.1.23. "Smartgrowth" means Smartgrowth Investments (Pty) Ltd;
- 1.1.24. "South Africa" means the Republic of South Africa; and
- 1.1.25. "Target Firm" means Scuderia South Africa (Pty) Ltd.

2. HDP TRANSACTION AND/OR ESOP

- 2.1. Within the Divestiture Period, the Merged Entity shall:
 - 2.1.1. incorporate the HDP Co.;
 - 2.1.2. transfer or issue (as the case may be) **[CONFIDENTIAL]**% specified percentage of the issued shares in the Target Firm to the HDP Co.; and
 - 2.1.3. transfer or issue (as the case may be) 100% of the issued shares in HDP Co to. HDP shareholders or the ESOP.
- 2.2. For the avoidance of doubt, the Acquiring Firm shall have the discretion to elect whether it will transfer ownership of HDP Co. to HDP shareholders or an ESOP.
- 2.3. To the extent that the Acquiring Firm elects to implement an HDP Transaction, prior to the implementation of the HDP Transaction, the Acquiring Firm will provide the Commission with details of the HDP Transaction in writing. These details shall include, but not be limited to, the structure of the HDP Transaction, identities of prospective HDPs, evidence that the prospective participants to the HDP Transaction are HDPs, the proportion of shareholding in the Acquiring Firm that each prospective HDP shareholder will receive and confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Competition Act.
- 2.4. Within (sixty) 60 Days of receipt of the details of the HDP Transaction, the Commission shall provide its written approval, or any comments or queries to the HDP Transaction, in writing.
- 2.5. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval.
- 2.6. For the avoidance of further doubt, to the extent that the HDP Transaction approved by the Commission in writing also constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP

- Transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.
- 2.7. To the extent that the Acquiring Firm elects to implement an ESOP, the ESOP will be implemented in accordance with the design principles attached in Annexure B.
- 2.8. The valuation of the specified percentage [CONFIDENTIAL]% shareholding in the Target Firm to be acquired by HDP Co., only if significantly different from the current transaction price/valuation, shall be performed by an independent and suitably qualified valuer, which will be appointed by the HDP Shareholders or the ESOP, after the Commission has approved that the proposed valuer is independent and suitably qualified. The Merged Entity shall bear the costs of the valuation.

3. Enterprise And Supplier Development

3.1. Upon implementation of the Merger, the Merged Entity shall, for a period of no less than 3 years, other than any procurement from Ferrari, target to procure at least [CONFIDENTIAL]% of all non-Ferrari procurement from local SMMEs and HDP suppliers.

4. MONITORING OF COMPLIANCE

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. Once every 6 (six) months during the Divestiture Period, the Merged Entity shall provide the Commission with a written report, accompanied by an affidavit attested to by a senior official of the Merged Entity confirming the accuracy of the report, outlining: (i) the progress made towards the realisation of Clause 2.
- 4.3. The Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 3 years (three years), provide to the Commission a report detailing its compliance with clause 3 (three) of the

Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report.

- 4.4. The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Condition.
- 4.5. Any person, including any Employee (and any Employees of the Merging Parties), who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.

5. APPARENT BREACH

5.1. In the event that the Commission discovers that there has been an apparent breach of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

6. VARIATION

6.1. The Merged Entity may at any time, and on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal, on good cause shown, for appropriate relief.

7. GENERAL

7.1. All correspondence in relation to the Condition must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B

Design Principle	Applicable Criteria
Structure	 The ESOP is a unitised structure, embodied in a Trust, in which Eligible Employees receive units. The ESOP will own 100% of the shares in HDP Co.
Eligible Employees	 All persons who are in the permanent employ of the Buyer and Target group.
Cost	The Merged Entity shall bear the entirety of the costs of the establishment, together with any related costs, associated with: (i) establishing the HDP Co.; (ii) transferring or issuing (as the case may be) [CONFIDENTIAL]% of the issued shares in the Target Firm to the HDP Co.; and (iv). transferring or issuing (as the case may be) 100% of the issued shares in HDP Co. to the ESOP.
	 The acquisition of the shares in the HDP Co. will be at zero upfront cost to the ESOP and will be funded by a notional vendor funding (NVF) or other vendor financed funding arrangement.
Trustees and Management of the HDP Co.	 The ESOP will have 3 (three) Trustees, with two being appointed by the Beneficiaries and with 1 (one) being appointed by the Merged Entity. The Trustees will serve as directors of the HDP Co.
Participation Benefits	 Eligible Employees and Beneficiaries on an annual basis are allocated units in the ESOP. Upon allocation Eligible Employees are entered into the register of Beneficiaries and become Beneficiaries of the ESOP.
	 Beneficiaries are entitled to proportionately share in all distributions declared by the Trust based on the number of units held by them in the ESOP.
	When dividends are paid by HDP Co, the ESOP distributes a trickle dividend of 35% less costs and taxes to Beneficiaries with the balance used to repay the NVF, until such time as the NVF has been repaid, whereafter the ESOP will distribute to Beneficiaries 100% of dividends paid to it by HDP Co. (net of costs and taxes).
	 Beneficiaries cease to participate in the ESOP and forfeit their units if they are no longer in the permanent employ of the Target Firm.
Duration	o Evergreen.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

CIDER HOUSE INVESTMENTS (PTY) LTD

AND

THE LICENSE FOR THE SALE AND DISTRIBUTION OF THE STRONGBOW BRAND

CASE NUMBER: 2023MAY0020

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the abovementioned firms subject to conditions set out below:

- On 09 May 2023, the Competition Commission (Commission) received notice of an intermediate merger where Cider House Investments (Pty) Ltd (CHI) intends to acquire the license for the sale and distribution of the Strongbow business (the Target Business). Post-merger, CHI will control the Target Business.
- 2. This transaction stems from the Competition Tribunal's (Tribunal) conditions in the large merger between Sunside Acquisitions (Pty) Ltd and Namibian Breweries Investments Holdings Ltd and Distell Group Holdings Ltd (Heineken Transaction). The Heineken Transaction was approved subject to several conditions, including the divestiture of the Strongbow business (the Tribunal Conditions).

Parties to the transaction and their activities

- 3. The primary acquiring firm is CHI which is jointly controlled by Signal Hill Products Holdings (Pty) Ltd (SHPH) and Livor Investments (Pty) Ltd (Livor). CHI and all the firms controlling it and all firms controlled by these firms will be referred to as "the Acquiring Group".
- 4. The Acquiring Group is active in the production, packaging, distribution and marketing of beer and Flavoured Alcoholic Beverages (FABs) including ciders in South Africa. The FABs brands of the Acquiring Group are known as KIX and Alpha.

- 5. CHI is 62.7% owned by historically disadvantaged persons (HDPs) or workers as contemplated in the Competition Act No. 89 of 1998 (as amended) (the Act).
- 6. The Target Business is the license for the sale and distribution of the Strongbow brand. The Target Business is ultimately controlled by Heineken N.V. (Heineken). The Target Business will take the form of a perpetual royalty-free license giving CHI the exclusive right to manufacture, market and distribute alcoholic beverages under the Strongbow brand.
- 7. The Target Business does not have any ownership by HDPs or workers.

Competition assessment

- 8. In the Heineken Transaction, the Tribunal Conditions stipulate that for a set period of time, Heineken will provide transitional services to facilitate the ability of the Strongbow licensee to sustainably take over the operation of the Strongbow business. The Tribunal Conditions include obligations to mitigate information exchange concerns for the duration of the transitional services. The Commission found that it is appropriate to impose similar obligations requiring CHI to put measures in place to mitigate information exchange with Heineken. The Commission and the merging parties have agreed to the conditions as set out in Annexure A.
- 9. The Commission found that the merger is unlikely to result in any substantial lessening or prevention of competition in any relevant market/s.

Public interest

- 10. The Commission found that the merger positively impacts employment, a particular industrial sector (through capital investments and skills development), participation by SMMEs and HDP firms (through local procurement) and ownership by HDPs and workers in the Acquiring Group.
- 11. The Department of Trade Industry and Competition, which participated in this matter, was satisfied with the commitments. The merging parties and the Commission have agreed to the abovementioned commitments, and these are included in the conditions attached as **Annexure A** hereto.

12. Considering the above, the Commission approves the proposed transaction subject to the conditions attached as **Annexure A** hereto.

ANNEXURE A

CIDER HOUSE INVESTMENTS (PTY) LTD

AND

THE LICENSE FOR THE SALE AND DISTRIBUTION OF THE STRONGBOW BRAND CASE NUMBER:2023MAY0020

1. **DEFINITIONS**

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 "Acquiring Group" means CHI, Livor, SHPH and SHP;
- 1.2 "Act" means the Competition Act No. 89 of 1998, as amended;
- 1.3 "Approval Date" means the date on which the Proposed Transaction is approved in terms of the Act;
- 1.4 "CHI" means Cider House Investments (Pty) Ltd, a joint venture between Livor and SHP;
- 1.5 "Commission" means the Competition Commission of South Africa;
- 1.6 "Commission Rules" means rules for the conduct of proceedings in the Competition Commission;
- 1.7 **"Competitively Sensitive Information"** includes, but is not limited to, information relating to:
- 1.7.1 pricing including but not limited to pricing of specific products, prices/discounts offered to specific clients and planned price reductions or increases:
- 1.7.2 margin information by product or client;
- 1.7.3 cost information for particular products;
- 1.7.4 information on specific clients and client strategy, including information with respect to the sales volumes of clients; and

- 1.7.5 budgets, business plans and marketing strategies;
- 1.8 "Conditions" means the merger conditions included in this Annexure A;
- 1.9 "**Days**" means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.10 **"ESOP"** means Employee Share Ownership Programme;
- 1.11 "FABs" means Flavoured Alcoholic Beverages;
- 1.12 **"HDPs**" means historically disadvantaged persons as contemplated in section 3(2) of the Act;
- 1.13 "Heineken" means Heineken group of companies (comprising Heineken N.V. and all its subsidiaries), the licensor of the Strongbow License;
- 1.14 "Implementation Date" means the date on which the merger is implemented by the Acquiring Group and the Target Business;
- 1.15 "Livor" means Livor Investments (Pty) Ltd;
- 1.16 "LRA" means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.17 "Merger" means the proposed acquisition by the Acquiring Group of the Target Business as notified to the Commission under Case No. 2023May0020;
- 1.18 "Merged Entity" means the combination of the Acquiring Group and the Target Business pursuant to the Merger;
- 1.19 "Merging Parties" means the Acquiring Group and the Target Business;
- 1.20 "SHP" means Signal Hill Products (Pty) Ltd, a subsidiary of SHPH;
- 1.21 "SHPH" means Signal Hill Products Holdings (Pty) Ltd;
- 1.22 **"SMME"** means small business or a medium-sized business, as defined in the Competition Act;
- 1.23 "South Africa" means the Republic of South Africa;

- 1.24 **"Strongbow License"** means the perpetual and royalty free license contemplated in the Sunside / NBL Conditions;
- 1.25 "Strongbow Licensee" means CHI or its successors in title as the direct holder of the Strongbow License;
- 1.26 **"Sunside / NBL Conditions"** means the conditions pursuant to the Tribunal's decision in LM136Dec21, issued on 8 March 2023;
- 1.27 "Target Business" means the Strongbow License;
- 1.28 "Transitional Services" means the transitional services as defined in the Sunside / NBL Conditions, that may be provided to the Licensee in respect of the Strongbow Business (to the extent required) which, include but not limited to:
- 1.28.1 cider production and packaging services;
- 1.28.2 warehousing and logistics (primary and secondary logistics) services;
- 1.28.3 sales and marketing support services, including access to fridges within the distribution network; and
- 1.28.4 other transitional services (including services such as returnable bottle tracking, cash collection, IT and knowledge transfer);
- 1.29 "Tribunal" means the Competition Tribunal of South Africa;
- 1.30 "Worker" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. STRONGBOW LICENSEE

- 2.1 The Strongbow Licensee is required to always maintain at least 50% + 1 direct ownership by an HDP/s for the duration of the Strongbow License (i.e., in perpetuity).
- 2.2 For the avoidance of doubt, the Merging Parties may not engage in any transaction that results in the Strongbow Licensee having less than 50% plus 1 direct HDP ownership.

3. EMPLOYMENT

- 3.1 The Acquiring Group commits that it shall employ at least 219 new additional permanent employees at the Merged Entity, within 2 years from the Implementation Date.
- 3.2 No fewer than 175 of the 219 new permanent employees at the Merged Entity will be HDPs.

4. ESTABLISHMENT OF AN ESOP

4.1 The Acquiring Group shall establish an evergreen/perpetual ESOP that will hold a fully voting shareholding of at least 5% in CHI, for the benefit of all Workers in the Merged Entity (the majority of whom shall be HDPs), within 3 years of Implementation Date. The ESOP will be created in accordance with the design principles set out in Annexure B hereto.

5. CAPITAL EXPENDITURE

- 5.1 The Acquiring Group commits to new capital expenditure of at least R1 450 000 000 (one billion, four hundred and fifty million) over a 5 (five) year period, in relation to the Target Business. This expenditure shall be as follows:
 - 5.1.1 an aggregate amount of at least R600 000 000 (six hundred million) within 2 years post the Implementation Date, to establish a new and fully operational brewery facility in Gauteng with a production capacity of 1 500 000 Hectolitres (expandable to 3 000 000 Hectolitres) that will be used for the production of the Strongbow brand.
 - 5.1.2 an aggregate amount of at least R150 000 000 (one hundred and fifty million) within 2 years post the Implementation Date to expand the Acquiring Group's existing brewery facility in Cape Town to its full production capacity of 450 000 Hectolitres.
 - 5.1.3 an amount of R50 000 000 (fifty million Rands) each year, for 5 (five) years post the Implementation Date (i.e., aggregate of R200 000 000 (two hundred million)) in fridges and draught machines.
 - 5.1.4 an amount of R50 million (fifty million Rands) in 2023 and R100 million (one hundred million) each year thereafter up to an including 2027 (i.e., aggregate of

R450 million (four hundred and fifty million)), to expand the productive capacity of returnable glass and crate replenishment.

6. LOCAL PROCUREMENT, SMME AND HDP SUPPORT

- 6.1 The Acquiring Group shall procure Apple Juice Concentrate from SMME and/or HDP suppliers to the aggregate value of R1 500 000 000 over a period of 5 (five) years (subject to a minimum of R200 million per year) from the Implementation Date. This commitment is subject to Apple Juice Concentrate being available from SMME and/or HDP suppliers at the appropriate quality standards and on reasonably competitive commercial terms.
- 6.2 For the avoidance of doubt, the Acquiring Group shall ensure that any Apple Juice Concentrate procured on its behalf pursuant to any transitional services arrangements contemplated in the Sunside / NBL Conditions, adheres to the requirements in clause 6.1 above.

7. COMPETITIVELY SENSITIVE INFORMATION

7.1 The Acquiring Group will implement a Competition Act Compliance Programme within 60 (sixty) Days from the Implementation Date for all its employees involved in procuring any transitional services from Heineken, as contemplated by the Sunside / NBL Conditions. This is to ensure that any such Acquiring Group employees are aware of and understand the provisions of the Act that are relevant to the exchange of Competitively Sensitive Information between competitors, including section 4 of the Act in particular.

8. SKILLS TRANSFER

8.1. For as long as Livor is a shareholder in CHI and SHPH, Mr Litha Yaya (an HDP) and another HDP director, will be appointed to all SHPH Group operating boards which enjoy oversight over SHPH's South African operations within 3 (three) months post the Implementation Date.

9. MONITORING

9.1. Within 10 (ten) Days of the Implementation Date, the Acquiring Group shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Target Business shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.

- 9.2. Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 9.3. The Acquiring Group shall submit a compliance report (including a trust deed for the registration of the ESOP) within 5 (five) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of the Acquiring Group confirming the ESOP's adherence to the principles set out in Annexure B, hereto.
- 9.4. Within 30 (thirty) Days of each anniversary of the Implementation Date, the Acquiring Group shall submit a compliance report detailing the Acquiring Group's compliance with the Conditions. The report shall be accompanied by an affidavit from a director of the Acquiring Group confirming compliance confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 9.5. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

10. APPARENT BREACH

10.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

11. VARIATION

11.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

12. GENERAL

12.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B

Design Principle	Applicable Criteria
Structure	 ESOP - unitised structure whereby a trust will be established, and all Workers in the Merged Entity will receive units
Cost to Workers and participating HDPs	 ESOP – there will be no upfront contribution required from Workers to participate in the ESOP. All Workers will be treated equally in terms of voting and economic participation with no differentiation across employee grades.
	 The ESOP will be funded through a notional vendor funding (NVF) mechanism, with the funding rate being no more than what CHI is able to obtain from third party lenders for the NVF to establish the ESOP.
	 A trickle dividend of no less than 35% of the actual dividend declared shall be paid to the ESOP with the remainder used to repay the NVF.
	The costs of establishing and administering the ESOP and implementing the acquisition of the CHI shareholding shall not be borne by the ESOP but shall be borne by CHI or the Acquiring Group. The costs of expert advisors and representatives of Workers in relation to establishing and administering the ESOP will be borne by CHI or the Acquiring Group.
Governance	 ESOP – The ESOP will be entitled to appoint 1 person to the board of directors of CHI.
	 The trustees of the ESOP shall be selected by the Workers of CHI, except for one trustee who shall be appointed by the board of directors of CHI.
Duration	ESOP- evergreen/perpetual
Participants	ESOP – All Workers of the Merged Entity
Participation Benefits	ESOP – All Workers will be entitled to dividends