DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 3354 **28 April 2023**

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

BRAVO GROUP MANUFACTURING PROPRIETARY LIMITED

AND

L&P SOUTH AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2021NOV0019

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 above-mentioned firms subject to conditions as set out below:

1. On 08 November 2021, the Competition Commission (the "Commission") received notice of an intermediate merger wherein Bravo Group Manufacturing Proprietary Limited ("Bravo") intends to acquire the business conducted by L&P Springs South Africa Proprietary Limited ("L&P SA"), as a going concern. Post-implementation of the proposed transaction, Bravo will have direct control over the whole of the business of L&P SA, as contemplated in section 12(1)(a) of the Act.

Parties and their activities

2. The primary acquiring firm, Bravo is wholly owned by Bravo Brands Proprietary Limited, which is in turn wholly owned by Rockwood Fund I Partnership (an en commandite Partnership). Bravo controls numerous firms outside of South Africa. Within South Africa, Bravo does not control any firm.

3. The primary target firm, L&P SA is ultimately wholly owned by Leggett & Platt, Incorporated ("L&P USA"), a company registered in accordance with the laws of the Missouri. L&P SA does not control any firm.

4. Bravo manufactures lounge furniture and sleep products through two separate divisions, namely its "Lounge Division" and its "Sleep Division". The Lounge Division manufactures lounge suites and recliners, coffee tables and headboards under the brands La-Z-Boy, Grafton Everest, Alpine Lounge and Gommagomma. The Sleep Division manufactures mattresses and base sets under brands such as Sealy, Edblo, Slumberland and King Koil. The division also sources "Top-of-Bed" products locally and internationally for distribution to its customer base. Top-of-Bed products consist of mattress protectors, pillows, fitted sheets and pillow protectors. The Sleep Division also imports adjustable bases for distribution to its customer base. Relevant to the proposed transaction are Bravo's activities relating to the manufacture of mattresses conducted through its Sleep Division.

5. L&P SA manufactures and supplies a variety of open coil and fabric-encased mattress innersprings including Bonnell, VertiCoil, Offset, Pocket, Semi-Flex and Multi Decker versions. The various innersprings are used in the manufacture of mattresses by firms such as the Acquiring Firm.

Competition Assessment

6. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap. However, the proposed transaction presents a vertical overlap as L&P SA manufactures and supplies mattress innersprings to mattress manufacturers, such as Bravo.

7. The primary target firm is involved in the manufacture and supply of various mattress innersprings which are used in the manufacture of mattresses. In particular, L&P SA manufactures and supplies a variety of open coil and fabric-encased mattress innersprings. The Commission set out to consider whether the two types of innersprings (open coil and fabric-encased) make up the same product market. Fabric-encased innersprings are also referred to as pocket springs.

8. Open coil mattresses have a network of uncovered coils, while pocket spring/fabric encased mattresses are made of individually wrapped springs. The Commission has found that the benefits of open coil mattresses are that they are usually very affordable, promote airflow which helps you sleep cooler, the mattresses are lighter and easier to move, and they support the sleeper's body weight very well. The downside of open coil mattresses is that they tend to dip in the middle. Because the coils are all connected it has a high level of motion transfer making the mattresses less durable and meaning that they wear out quickly.

9. Fabric-encased springs on the other hand are durable and usually last 8-10 years, depending on the quality of the mattress. They distribute weight evenly, relieving pressure points. Because the springs are not all connected (unlike open coil) this allows one person to move during the night without the other person noticing the shift. The disadvantage of fabric-encased springs is that because of all the material around each coil, this mattress doesn't have very good airflow, the beds are heavy and hard to move, and the mattresses tend to be expensive.

10. According to the merging parties, open coil and fabric-encased mattress innersprings are substitutable as they perform the same application which is to offer comfort and support to the user of the mattress. This was supported by third parties contacted by the Commission.

11. Regarding geographic market, the Commission considered a national market which is consistent with the geographic market proposed by the merging parties. The Commission therefore considered the impact of the merger in the following relevant markets:

    11.1. The national upstream market for the manufacture and supply of innersprings; and

    11.2. The national downstream market for the manufacture of mattresses.

Vertical assessment

12. L&P SA (the Target Firm) manufactures mattress innersprings which it supplies to mattress manufacturers, such as Bravo (The Acquiring Firm). The merging parties have confirmed that there is an existing relationship between L&P SA and Bravo. The Commission has considered whether the merger will result in input and/or customer foreclosure.

Input foreclosure

13. The Commission considered whether the merged entity would have the ability and incentive to foreclose customers of L&P SA from receiving supplies of mattress innersprings from the merged entity post-merger. The Commission also received concerns from customers to this effect. The merging parties submitted that it is their intention to continue to supply innersprings to the current customers of L&P SA on a non-discriminatory basis.

14. Regarding the ability to foreclose, the Commission considered the extent to which L&P SA has market power upstream. The Commission was not able to collect complete market share data, however based on the limited data collected by the merging parties, the Commission was able to deduce that L&P SA and Option Springs are of a similar market size representing two of the largest innerspring manufacturers in South Africa.

15. The Commission however found that the merged entity is not likely to have the ability to foreclose downstream customers of L&P SA as there are alternative suppliers with excess capacity. In the event that the merged entity takes the decision to no longer supply 3rd party customers of L&P SA post-merger, the customers would have access to other suppliers such as Option Springs.

16. The Commission also noted that certain customers have submitted that Option Springs offers an inferior alternative due to having relatively poorer quality springs. The Commission however noted evidence from a customer that innersprings are generally made according to the customer's specifications. This means spring manufacturers are able to manufacture various designs to order. Further, the Commission noted that Bravo and other major mattress manufacturers purchase a significant proportion of their innerspring requirements from this competitor of L&P SA and accordingly, the Commission accepted this as a signal that this competitor produces innersprings of an acceptable quality.

17. For these reasons, the Commission found that the merged entity is not likely to have the ability to engage in anticompetitive input foreclosure.

Customer foreclosure

18. The Commission considered whether the proposed transaction would result in customer foreclosure. Customer foreclosure is likely to take place if Bravo is an important customer to competitors of L&P SA in the demand for mattress innersprings and if post-merger, Bravo

stops procuring the relevant products from those competitors. In considering this, the Commission noted that Bravo only procures mattress innersprings from two firms, L&P SA and L& P SA's competitori. This means, in essence, the assessment considered whether the foreclosure of this competitor would be harmful to competition.

19. In assessing whether the merged entity would successfully engage in a foreclosure strategy, the Commission considered whether there were alternative customers to whom this competitor could sell. The Commission encountered challenges in calculating market shares for the downstream market. Although there are numerous players active in the downstream level of the market, the submissions received by the Commission suggest that Bravo and another firm in the market are the largest players in the downstream market. This firm is however vertically integrated and does not purchase innersprings from 3rd party suppliers.

20. Market participants consider Bravo to be the largest manufacturer of mattresses in South Africa. This is because it has a number of well-known and leading brands with broad product ranges within each and it is extensively supported by strong marketing and large chain re-sellers. Bravo manufactures mattresses and base sets under brands such as Sealy, Edblo, Slumberland and King Koil. Competitors of Bravo estimated that it has a market share between 30% and 50% in the manufacturing and supply of mattresses in South Africa.

21. A competitor of L&P SA which is the only other supplier of mattress innersprings to Bravo stressed that losing Bravo as a customer would result in it having to downscale its business significantly. This competitor submitted data showing that Bravo is its largest customer and that its business would be negatively affected if it loses Bravo as a customer. The Commission confirmed that there are no other customers of the size of Bravo which could replace Bravo's business for this competitor.

22. The Commission further found that the merged entity will have the incentive to foreclose this competitor. The merging parties submitted that Bravo intends to substitute its purchases from L&P SA's competitor with its own production post-merger so as to become 100% self-sufficient. This at face value indicates that the merging parties would have an incentive to foreclose this competitor post-merger.

23. The Commission's analysis also revealed that L&P SA has been operating below capacity over the past five years. In addition, the Commission's failing firm analysis below confirmed that L&P SA has been loss-making for the past five financial years. It seems likely that Bravo will seek to increase L&P SA's capacity utilisation and improve its financial performance through increased insourcing. The Commission therefore found that the merged entity will have an incentive to foreclose L&P SA's competitor.

24. The Commission however noted that this competitor is only partially reliant on Bravo's purchases. In the event that Bravo stops purchasing from this competitor, this competitor would still have access to its other customers. It was not obvious that losing Bravo as a customer would result in a substantial lessening of competition as this competitor would continue to operate and impose a competitive constraint on the merged entity.

25. Further, as discussed in the failing firm section below, it may be necessary for Bravo to insource its requirements of innersprings in order to improve L&P SA's poor financial performance.

Failing Firm

26. The merging parties had initially not relied on the failing firm defence. Following the Commission's communication that the proposed merger may raise competition concerns, the merging parties submitted several reasons why the proposed merger should be allowed to proceed, one of the reasons submitted was the fact that the target firm is loss making. Despite various management changes and cost cutting initiatives, attempts to turn the business around had unfortunately not been successful.

27. The Commission's analysis confirmed that L&P SA has been loss-making in the last few years preceding the merger filing. Notwithstanding its poor financial performance, the company appeared to have a healthy balance sheet.

28. The analysis suggested that L&P SA may be performing poorly but it is not necessarily under immediate financial danger given the relative strength of its balance sheet. However, given its sustained poor financial performance over the five years preceding the merger filing, it can be concluded that L&P SA is in an unsustainable financial position. Without

support from its parent company, unless its performance improves, it is likely that L&P SA would eventually be liquidated in the medium to long-term.

29. L&P SA's parent company had been unequivocal in that it would not continue to support L&P SA financially going forward. This means that L&P SA will eventually become uncompetitive as its financial position deteriorates further. L&P SA may not be in a financially critical position currently, but its financial position will likely worsen over time which will hamper its ability to compete over time. Although L&P SA is not a failing firm, the Commission notes that its financial performance will likely negatively affect its ability to remain competitive over time.

Remedies

30. Given the concerns received from customers and competitors, the Commission requested that the merging parties consider remedies which would address the concerns raised by some of L&P SA's customers. Although the merging parties did not agree with the Commission's findings that the merger raises foreclosure concerns, the merging parties offered a supply condition to address the input foreclosure concerns. According to the condition provided by the merging parties, the merging parties commit to continue to supply L&P SA's other customers on a non-discriminatory basis and on terms which are economically feasible for a period of 2 years post-merger.

31. Regarding the concern raised by L&P SA's competitor, the merging parties disagreed with the submission made by this competitor and noted that the merger does not raise the risk of customer foreclosure as this competitor has access to other customers. Notwithstanding the merging parties' disagreement with this competitor that it would be foreclosed, the merging parties offered a supply condition according to which Bravo would continue to purchase innersprings from this competitor for two years following the implementation of the merger. This offer fell short of Bravo's current purchases of innersprings from this competitor.

32. The Commission however imposed an amended version of the merging parties' proposal which will require Bravo to purchase a higher minimum percentage of its innersprings requirements from this competitor of L&P SA for two years following the implementation of

the merger. Although this falls short of Bravo's current purchases from this competitor, the Commission accepted this for the following reasons:

32.1. The Commission has found that the merged entity does not have the ability to foreclose L&P SA's competitor and that any customer foreclosure would only be partial and would not result in this competitor exiting the market. This competitor will continue to compete even after it loses the business of Bravo; and

32.2. The Commission has found that the target firm has been struggling financially and it is therefore important for the target firm's financial sustainability that it increase its sales volumes. Bravo's purchase of the struggling business of L&P SA, effectively saves L&P SA from future liquidation therefore expecting Bravo to continue purchasing innersprings from L&P SA 's competitor, while its own upstream arm is loss-making and operating well below capacity may undermine the rationale for the merger.

Public Interest

33. The proposed merger does not raise public interest concerns.

Conclusion

34. For the above reasons, the Commission approved the proposed transaction subject to the conditions attached as Annexure A.

ANNEXURE A: CONDITIONS

BRAVO GROUP MANUFACTURING PROPRIETARY LIMITED

AND

L&P SOUTH AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2021NOV0019

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. "**Approval Date"** means the date on which the Merger is approved by the Commission;

1.1.2. "**Bravo"** means Bravo Group Manufacturing Proprietary Limited;

1.1.3. "**Commission"** means the Competition Commission of South Africa;

1.1.4. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;

1.1.5. **"Conditions"** means these conditions;

1.1.6. **"Customers"** means mattress manufacturers other than Bravo, who are customers of L&P SA for the supply of bed innersprings as at the date immediately prior to the Implementation Date, and "Customer" shall mean any one of them as the context may indicate;

1.1.7. **"Implementation Date"** means the date occurring after the Approval Date, on

which the Merger is implemented by Bravo and L&P SA;

1.1.8. "**L&P SA"** means L&P South Africa Proprietary Limited;

1.1.9. **"Merger"** means the acquisition of control by Bravo over the whole of the business of L&P SA;

1.1.10. **"Merging Parties"** means Bravo and L&P SA;

1.1.11. **"Monitoring Period"** means two years following the Implementation Date; and

1.1.12. **"Option Springs"** means Option Springs Proprietary Limited.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1. For the duration of the Monitoring Period, Bravo shall:

2.1.1. not refuse to supply mattress innersprings to a Customer on terms and conditions which are:

2.1.1.1. economically feasible to Bravo including but not limited to terms which would allow Bravo to:

2.1.1.1.1. operate efficiently;
2.1.1.1.2. exercise normal commercial caution;
2.1.1.1.3. refuse supply when capacity constraints render it unviable; and
2.1.1.1.4. supply mattress innersprings to the Customer on a profitable basis; and

2.1.1.2. not less favourable to the terms and conditions on which Bravo supplies mattress innersprings to other Customers.

2.1.2. purchase a minimum percentage of its mattress innerspring requirements from Option Springs provided that the terms and conditions of supply offered by Option Springs are not less favourable to Bravo than the terms and conditions on which Bravo purchases mattress innersprings from Option Springs as at the Approval Date.

2.2. Bravo shall, for a period of 5 years from the Implementation Date, not refuse to supply

certain Verticoil mattress innersprings to Customers on the terms and conditions referred to in clause 2.1 and provided that the volume of these Verticoil mattress innersprings do not exceed the average monthly volume of exclusive innersprings supplied by L&P SA to the relevant customer for the 6-month period immediately preceding the Approval Date.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.

3.2. For the duration of the Monitoring Period, Bravo shall on or before each anniversary of the Approval Date, submit a written report to the Commission on compliance by Bravo with the Conditions in clause 2.1 during the 12-month period ending on the date falling on the last day of the month preceding the anniversary of the Approval Date ("Reporting Period"), stating:

3.2.1. the identity of the Customers who offered to purchase mattress innersprings from Bravo during the Reporting Period;

3.2.2. the volumes of mattress innersprings sold to those Customers during the Reporting Period, including the price and terms and conditions offered by Bravo;

3.2.3. the identity of the Customers who, during the Reporting Period, terminated their innerspring supply agreements with Bravo and/or significantly reduced the volume of innersprings purchased from Bravo;

3.2.4. the volumes of mattress innersprings manufactured by Bravo, the volumes of mattress innersprings purchased from Option Springs and the terms and conditions offered by L&P SA's competitor in respect of mattress innersprings, during the Reporting Period.

3.3. For the duration of the period referred to in clause 2.2, Bravo shall on or before each anniversary of the Approval Date, submit a written report to the Commission on compliance by Bravo with the Condition in clause 2.2 during the 12-month period ending on the date falling on the last day of the month preceding the anniversary of the Approval

Date stating:

3.3.1. the identity of the Customers who offered to purchase the patented mattress innersprings from Bravo during the Reporting Period; and

3.3.2. the volumes of mattress innersprings sold to those Customers during the Reporting Period, including the price and terms and conditions offered by Bravo.

4. APPARENT BREACH

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

5. VARIATION

5.1. Bravo 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, Bravo 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.

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: ACINO PHARMA AG

AND

ASPEN PHARMACARE HOLDINGS LIMITED IN RESPECT OF CERTAIN PHARMACEUTICAL PRODUCT LINES ("TARGET ASSETS")

CASE NUMBER: 2021NOV0027

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 above-mentioned firms subject to conditions as set out below:

1. On 11 December 2021, the Competition Commission received notice of an intermediate merger whereby Acino Pharma AG ("Acino AG") intends to acquire certain pharmaceutical product lines ("Target Assets") from Aspen Pharmacare Holdings Limited ("Aspen"). Post-merger, Acino AG will exercise sole control over the Target Assets.

Parties

2. The primary acquiring firm is Acino AG, a company incorporated in accordance with the laws of Switzerland. Acino AG is directly controlled by Acino International AG which is in turn controlled by Pharma Strategy Partners GmbH ("Pharma Strategy"). Pharma Strategy is jointly controlled by Nordiac Capital CV1 Limited ("Nordic Capital") and Avista Capital Holdings LP ("Avista Capital"). Nordic Capital and Avista Capital are listed entities whose shares are widely held and are not controlled by any firms. In South Africa, the Acquiring Group controls several firms.

3. All firms directly and indirectly controlled by Nordic Capital and Avista Capital are hereinafter collectively referred to as the “Acquiring Group”.

4. The Acquiring Group has ***[CONFIDENTIAL]***% shareholding by historically disadvantaged person/s (“HDPs”), as defined in section 3(2) of the Competition Act, 89 of 1998 (as amended) (the “Act”).

5. The primary target firm is Aspen in respect of the Target Assets. The Target Assets are wholly owned by Aspen pre-merger. Aspen is a public company that is not controlled by any shareholder/s.

6. Aspen’s shareholding is held as to ***[CONFIDENTIAL]***% by HDPs and therefore, the Target Assets are indirectly held by HDP shareholders as to ***[CONFIDENTIAL]***%.

Activities

7. The Acquiring Group is involved in the marketing, sale, promotion and distribution of pharmaceutical products globally. In South Africa, the Acquiring Group offers *inter alia*, over-the-counter and prescription medicines for the following therapeutic areas: cardiology and metabolism, central nervous system, gastroenterology, infectiology, oncology, pain and rheumatology, respiratory, urology and women’s health.

8. The Target Assets comprise of certain generic prescription pharmaceutical products under the brands Altosec, Aspen Graniseton, Ciavor, Grantryl, Trustan and Zuvamor, and related contracts, marketing authorisations, rights, intellectual property, inventory, records and information pertaining to these products. The Target Assets are used for the following therapeutic areas: gastroenterology, erectile disfunction and cardiovascular diseases. The Target Assets are distributed exclusively ***[CONFIDENTIAL***].

Overlap and competition assessment

9. The Commission considered the activities of the merging parties and found that the proposed transaction does not raise any overlaps.

10. 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

Employment

11. The merging parties submitted an unequivocal statement that the proposed transaction will not have a negative effect on employment.

12. The Commission's investigation found that the merger will not result in any duplications. Furthermore, no employment concerns were raised. Accordingly, the Commission concluded that the merger is unlikely to raise any concerns as regards this public interest.

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

13. As indicated above, the Commission found that the Acquiring Group and the Target Assets have ***[CONFIDENTIAL***]% and ***[CONFIDENTIAL]***% HDP ownership respectively. The Commission concluded that because of the merger, the level of HDP ownership over the Target Assets will reduce by approximately 3.27 percentage points.

14. The merging parties submit that the merger does not result in any dilution of ownership by HDPs as the Target Assets do not have any HDP ownership attributable to them pre-merger. It is further contended that HDP ownership levels (i.e., BBBEE certification) are not strictly attributable to assets such as the Target Assets but to incorporated entities such as Aspen. Consequently, the merger will benefit the Acquiring Group's HDP shareholders and thus enhances the public interest. Notwithstanding the foregoing, and to address the concerns arising from section 12A(3)(e) of the Act, the merging parties have committed to creating at least ***[CONFIDENTIAL]*** new full-time employment positions post-merger. Moreover, the merging parties made local manufacturing commitments.

15. The Commission is of the view that the commitments tendered by the merging parties address the public interest concerns arising from this merger. Therefore, the Commission approves the merger subject to the conditions contained in **Annexure A** hereto.

16. The Commission found that the merger does not raise any other public interest concerns.

Conclusion

17. The Commission approves the proposed transaction subject to the conditions contained in **Annexure A** hereto.

ANNEXURE A: CONDITIONS

ACINO PHARMA AG

AND

ASPEN PHARMACARE HOLDINGS LIMITED IN RESPECT OF CERTAIN PHARMACEUTICAL PRODUCT LINES ("TARGET ASSETS")

CASE NUMBER: 2021NOV0027

CONDITIONS

1. **DEFINITIONS**

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

1. **"Acquiring Firm"** means Acino Pharma Aktiengesellschaft (AG);
2. **"Acquiring Group"** means the Acquiring Firm, all firms controlled by the Acquiring Firm, all firms controlling the Acquiring Firm and all firms controlled by those firms;
3. **"Act"** means the Competition Act, No. 89 of 1998, as amended;
4. "**Approval Date**" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
5. **"Aspen"** means Aspen Pharmacare Holdings Limited, the firm selling the Target Assets;
6. "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

7. **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;

8. **"Conditions"** mean these conditions;

9. **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

10. **"Employment Commitment"** refers to the Acquiring Group's commitment to create and fill no less than ***[CONFIDENTIAL***] new full time employment positions at the Acquiring Group in South Africa by no later than 31 December 2022;

11. **"Employment Commitment Fulfilment Date"** means the date upon which the Acquiring Group has fully implemented the requirements of the Employment Commitment;

12. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

13. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Assets;

14. **"Merging Parties"** mean collectively the Acquiring Firm, the Target Assets and Aspen;

15. **"Target Assets"** means Aspen's generic prescription pharmaceutical products under the brands Altosec, Ciavor, Graniseton, Grantryl, Trustan and Zuvamor, the related contracts, marketing authorisations, rights, intellectual property, inventory, records and information pertaining to these brands;

16. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act;

17. **"Transaction Documents"** means the Asset Purchase Agreement, Transition Agreement, Manufacturing Services Agreement and Interim Distribution Agreement, executed by the Merging Parties on 21 October 2021.

2. **CONDITIONS TO THE APPROVAL OF THE MERGER**

Employment

2.1. The Acquiring Firm shall implement the Employment Commitment.

Local manufacturing

2.2. Subject to the applicable laws and regulations (including regulatory requirements for approval of changes of manufacturers of pharmaceutical products), the terms of the Transaction Documents and existing third-party contractual obligations to which the Merger Parties are bound, the Merging Parties have made certain local manufacturing commitments.

3. **MONITORING**

3.1. Within 5 (five) days of the Approval Date, the Acquiring Firm shall circulate a copy of the Conditions to all its South African employees, employee representatives and trade unions representing the Acquiring Group's employees in South Africa.

3.2. The Acquiring Firm shall provide the Commission with an affidavit from a director attesting to clause 3.1 above within 10 (ten) days of circulating the conditions.

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

3.4. When informing the Commission of the Implementation Date, the Acquiring Firm shall file an affidavit by a director, confirming the aggregate number of full-time employees employed at the Acquiring Group.

3.5. The Acquiring Group shall inform the Commission in writing of the Employment Commitment Fulfilment Date within 5 (five) days of its occurrence. This must be accompanied by –

3.5.1. an affidavit from a director of the Acquiring Group attesting to the Acquiring Group's compliance with the Employment Commitment; and

3.5.2. a description of the employment positions created, and the individuals employed pursuant to the Employment Commitment.

3.6. The Acquiring Firm shall, within 60 (sixty) Days of the anniversary of the Approval Date, the period contemplated in clause 2.2 above, file an affidavit from a director, outlining the commercially reasonable endeavours undertaken to facilitate compliance with clause 2.2 above.

3.7. Within 60 (sixty) Days of the anniversary of the Approval Date, the Acquiring Firm shall submit a comprehensive annual compliance report to the Commission, setting out the extent of its compliance with the Conditions.

3.8. The Commission may request the Merging Parties for any other documentation it deems necessary to monitor compliance with the 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 Acquisition Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

WISIUM SA PROPRIETARY LIMITED

AND

COMHAN PRODUCTS PROPRIETARY LIMITED

CASE NUMBER: 2021NOV0029

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 above-mentioned firms subject to conditions as set out below:

1. On 12 November 2021, the Competition Commission ("Commission") received notice of an intermediate merger wherein Wisium SA Proprietary Limited ("Wisium") intends to acquire 100% of the issued share capital of Comhan Products Proprietary Limited ("Comhan"). On completion of the transaction, Wisium will have sole control over Comhan.

Merging parties and their activities

2. The primary acquiring firm is Wisium SA Proprietary Limited ("Wisium"), a private company incorporated in South Africa. Wisium is controlled by Archer-Daniels-Midland Company ("ADM"). ADM is a firm incorporated in accordance with the laws of Delaware, United States of America. ADM, through its affiliates and subsidiaries, is a global producer of food and beverage ingredients as well as other products made from oilseeds, corn, wheat, and other agricultural commodities. ADM's products include natural flavours and colours, health and nutritional products, vegetable oil, corn sweeteners, flour, animal feed and biofuels.

3. The Target Firm, Comhan, is active in the field of human nutrition. In particular, the company specialises in the importation and distribution of food ingredients including flavourings, emulsifiers, stabilisers, sweetening blends, energy blends, compounds, and gum acacia. The target firm is a distributor for ADM's food additive products in South Africa and other countries in Sub-Saharan Africa. A majority of the products distributed by the Target Firm comprise products supplied by ADM.

Competition assessment

4. The Commission considered the activities of the merging parties and found that there is no horizontal overlap in the activities of the merging parties as they do not offer products or services that can be considered interchangeable by customers or consumers.

5. The Commission found that there is a vertical relationship in the activities of the merging parties as Comhan imports and distributes products supplied to it by ADM in South Africa. At the upstream level, ADM is the manufacturer of food and beverage ingredients as well as other products made from oilseeds, corn, wheat, and other agricultural commodities which Comhan distributes at the downstream level. Comhan therefore acts as a distributor of ADM/Wisium's products in South Africa.

6. The Commission considered whether the proposed merger would result in foreclosure concerns.

Input foreclosure: supply of food and beverage additives

7. For input foreclosure, the Commission assessed whether the ADM would have the ability and incentive to foreclose Comhan's competitors downstream and whether this foreclosure strategy would be harmful to competition. The Commission found that proposed transaction is not likely to result in input foreclosure as ADM does not use any other distributors in South Africa pre-merger. The Acquiring Firm therefore does not have the ability to foreclose competitors of the target firm from accessing important inputs.

Customer foreclosure: importation and distribution of food additives

8. For customer foreclosure the Commission assessed whether Comhan would have the ability and incentive to cease or reduce its importation and distribution of food additives from ADM's competitors upstream and whether the customer foreclosure strategy would be harmful to upstream

rivals. Within the market for food and beverage additives, Comhan has an estimated market share of less than 10% - this suggests that Comhan is not likely to be a significant customer to competitors of the acquiring firm. Further, as noted above, a majority of the products distributed by Comhan prior to the merger comprise ADM products. Less than 5% of the products come from a foreign company based in France. Furthermore, the foreign company submitted that they do not have any concern regarding the proposed transaction. This shows that Comhan is not an important customer to competitors of ADM and no supplier is likely to be foreclosed post-merger.

Public interest

Employment

9. Regarding employment, the merging parties submitted that The Proposed Transaction would have no merger-specific adverse effect on employment in South Africa. Specifically, the Proposed Transaction will not result in retrenchments or job losses.

10. The Commission also considered the effect of the proposed merger 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. The Commission notes that both the Acquiring and Target Firm are not controlled by shareholders who are historically disadvantaged persons. The Commission however engaged the merging parties regarding the impact of the proposed merger on the public interest clauses in section 12A(3) of the Competition Act.

11. The Commission has requested that the merging parties commit to conditions according to which the merged entity will introduce certain shareholding in the merged entity which will be held by Historically Disadvantaged Person/s and/ or employees of the merged entity. The merging parties submitted that they could not commit the required shareholding as it is not commercially feasible. However, the merging parties proposed a suite of commitments intended to (i) promote participation by small and black-owned firms in the market and (ii) support workers and students who are also HDPs. Given the circumstances of this case, the Commission and the merged entity agreed to the conditions attached as **Annexure A**.

12. The Commission therefore approves the proposed transaction subject to conditions.

ANNEXURE A: CONDITIONS

WISIUM SA PROPRIETARY LIMITED

AND

COMHAN PRODUCTS PROPRIETARY LIMITED

CASE NUMBER: 2021NOV0029

CONDITIONS

1. DEFINITIONS

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

1.1. **"Acquiring Firm"** means Wisium SA Proprietary Limited;

1.2. "**Approval Date**" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);

1.3. **"B-BBEE"** means Broad-Based Black Economic Empowerment as defined in terms of the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended;

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"** means the Rules for the Conduct of Proceedings in the Competition Commission;

1.7. **"Conditions"** means these conditions;

1.8. **"Days"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.9. "**HDPs**" means historically disadvantaged persons, as defined in section 3(2) of the Competition Act;

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 collectively the Acquiring Firms and the Target Firms;

1.12. **"Merger"** means the acquisition of control by the Acquiring Firms over the Target Firms;

1.13. **"Merging Parties"** means collectively the Acquiring Firms and the Target Firms;

1.14. **"Target Firms"** means The Food and Beverage Ingredients Business of Comhan Products Proprietary Limited as more fully described in the Schedules to Form CC4(1);

1.15. **"Training and Mentorship Programme"** means a 3-year training and mentorship programme that the Merged Entity shall set up, in terms of these Conditions, the purpose of which is to provide students who are enrolled in academic programmes at institutions of higher learning within the National Qualifications Framework to participate in a learnership programme for a duration of at least 12 consecutive months.

1.16. "**Transfer Date**" means the date on which the last of the Target Firms is transferred to the Acquiring Firms; 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. RECORDAL

2.1. On 12 November 2021, the Competition Commission ("Commission") received notice of an intermediate merger wherein the Acquiring Firm intends to acquire 100% of the issued share capital of the Target Firms. On completion of the transaction, the Acquiring Firm will have sole control over the Target Firms.

2.2. The Commission found that the Merger will not lead to a substantial lessening or prevention of competition in any relevant market.

2.3. The Commission however engaged the Merging Parties regarding the impact of the proposed merger on the public interest clauses in section 12A (3) of the Competition Act. The Commission and the Merging Parties have agreed to these conditions.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

3.1. Within 30 (thirty) Days from the Implementation Date, the Merged Entity shall establish a training and mentorship programme in terms of which HDP students who are enrolled in academic programmes at institutions of higher learning within the National Qualifications Framework to participate in a learnership programme for a duration of at least 12 consecutive months. The programme will take place at the merged entity's premises or at the premises of any of its affiliates and will be structured to provide the students with practical experience and training relevant to the studies for which they are enrolled during the relevant academic year with a view to increasing their prospects of finding employment following the completion of their studies.

3.2. The Merged Entity shall provide appropriate training and upskilling for the Target Firms' transferring employees (80% of whom are HDPs) for the duration of these Conditions.

3.3. Within 1 (one) year of the Implementation Date, the Merged Entity shall ensure that a majority of its third-party suppliers have a minimum B-BBEE Level 3 score, subject to fulfilling the Acquiring Firm's compliance due diligence requirements. If a potential supplier fails to meet such requirements, the Merged Entity undertakes to provide feedback to the potential supplier on the reasons for the failure and guidance in relation to meeting the requirements.

3.4. Within 3 (three) months of the Implementation Date, the Merged Entity shall engage the services of B-BBEE consultancy firm to formulate a strategy around optimising the Merged Entity's black economic empowerment initiatives.

3.5. The Merged Entity shall use its reasonable commercial endeavours to identify entities with a minimum Level 2 B-BBEE rating that are seeking to enter the South African food & beverage industry to participate in a technical advisory opportunity. In terms of this opportunity, the Merged Entity shall provide technical assistance and product development support to the identified entities for a period of 6 months (including practical

time in the Merged Entity's laboratories for up to 2 (two) hours per month) in relation to the development of a new beverage product with which to potentially enter into the South African market.

4. DURATION

4.1. These conditions will remain effective for a period of no less than 3 (three) years following the Implementation Date.

5. MONITORING

5.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date or Transfer Date (whichever is later), within 5 (five) Days of its occurrence.

5.2. The Acquiring Firm shall, within 10 (ten) Days from the Implementation Date, provide the Commission with an affidavit attested to by the Director of the Acquiring Firm, confirming the number of the Merged Entity’s HDP employees including the percentage of HDP employees relative to the Merged Entity’s entire workforce as at the Implementation Date.

5.3. The Acquiring Firm shall, within 40 (forty) Days from the Implementation Date, provide the Commission with an affidavit attested to by the Director of the Acquiring Firm, confirming the establishment of a Training and Mentorship Programme.

5.4. The Acquiring Firm shall, within 30 (thirty) Days from the Implementation Date, provide the Commission with an affidavit attested to by the Director of the Acquiring Firm, confirming the total number of the Merged Entity’s third-party suppliers, the number and percentage of the Merged Entity’s third-party suppliers that have a minimum B-BBEE Level 3 score and those that do not have a minimum B-BBEE Level 3 score.

5.5. The Acquiring Firm shall, within 10 (ten) Days of the expiry of a period of 3 (three) months from the Implementation Date, provide the Commission with an affidavit attested to by the Director of the Acquiring Firm, confirming that the Merged Entity’s compliance with clause 3.5 of the Conditions.

5.6. Within 30 (thirty) Days of the anniversary of the Implementation Date, the Acquiring Firm shall submit a comprehensive annual compliance report to the Commission, setting out the extent of its compliance with the Conditions.

5.7. The Commission may request the Merged Entity for any other documentation it deems necessary to monitor 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 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.

7. VARIATION

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 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:

BAKERS TRANSPORT (PTY) LTD
AND
BARLOWORLD SPECIALISED TRANSPORT (PTY) LTD

CASE NUMBER: 2021NOV0053

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 above-mentioned firms subject to conditions as set out below:

1. On 26 November 2021, the Competition Commission (Commission) was notified of the intermediate merger whereby Bakers Transport (Pty) Ltd (Bakers) intends to acquire sole control over Barloworld Specialised Transport (Pty) Ltd, together with its subsidiaries, Manline Freight (Pty) Ltd and Manline Energy (Pty) Ltd (collectively, the Target Firms). Pursuant to the proposed transaction, Bakers will solely control the Target Firms.

Parties and their activities

2. Bakers is active in the road transport and logistics market in South Africa and neighbouring countries. Bakers' logistics services are mostly geared towards Fast Moving Consumer Goods and the packaging industry. In addition, Bakers operates its own Mercedes Benz accredited vehicle repair and servicing centre for its own transport operations (fleet management service). Bakers is wholly owned and controlled by historically disadvantaged persons as defined in section 3(2) of the Competition Act No. 89 of 1998 (as amended) (the "Act").

3. The Target Firms are owned by Barloworld Limited (Barloworld), a company listed on the Johannesburg Stock Exchange (JSE). The Target Firms are active in the broad logistics market, specifically transportation and warehousing of *inter alia*, fast-moving consumer goods, mining and agricultural commodities and hazardous cargo (e.g., fuel, chemicals and gas). The Target Firms also provide limited fleet management services to Bakers and Orange River Tankers (Pty) Ltd (Orange River Transport).

Competition analysis

4. The Commission found that the merging parties' conduct overlaps horizontally as regards road transportation and warehousing of consumer goods (contract logistics) and fleet management services. The Commission found that the merger is unlikely to raise any competition concerns.

5. The Commission also found that the merger does not raise any foreclosure concerns regarding fleet management services. The Commission found that foreclosure concerns are unlikely given that the merging parties provide such services internally and contracts with third parties have been terminated.

6. Considering the above, the Commission concluded that the merger is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

Public interest analysis

Employment

7. The merging parties submitted an unequivocal statement that there will be no job losses because of the proposed merger. The merging parties further disclosed that the Target Firms retrenched 69 employees in April 2021 (the Retrenched Employees) due to financial distress (the Retrenchments).

8. The Department of Trade, Industry and Competition (DTIC) participated in the merger on 08 December 2021 requesting the Target Firms to consider offering re-employment opportunities to the Retrenched Employees, as and when vacancies arise.

9. The Commission found that the Retrenchments may be merger specific. However, the Commission and the parties have agreed to conditions requiring that the merging parties endeavour to re-employ the Retrenched Employees should vacancies arise for 2 years post-merger. Barloworld has also agreed to establish a fund to afford each Retrenched Employee R25 000 to reskill or start a commercial enterprise. These conditions are included as **Annexure A** hereto.

10. The merger does not raise any other public interest concerns.

Conclusion

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

ANNEXURE A

BAKERS TRANSPORT (PTY) LTD
AND
BARLOWORLD SPECIALISED TRANSPORT (PTY) LTD

CASE NUMBER: 2021NOV0053

CONDITIONS

1. DEFINITIONS

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

1.1. **"Acquiring Firm"** means Bakers Transport (Pty) Ltd;

1.2. **"Affected Employees"** means the 69 (sixty-nine) employees of the Target Firms which comprise of 5 (five) employees of Manline Energy, 28 (twenty-eight) employees of Manline Transport and 36 (thirty-six) employees of Manline Freight that were retrenched in April 2021 due to operational requirements;

1.3. **"Approval Date"** means the date referred to in the Commission's clearance certificate (Form CC 15);

1.4. "**Barloworld**" means Barloworld Limited;

1.5. "**Barloworld Logistics Business**" means, to the extent still directly or indirectly controlled by Barloworld, the remaining logistics business of Barloworld Logistics

Africa (Pty) Ltd;

1.6. **"Barloworld Specialised Transport"** means Barloworld Specialised Transport (Pty) Ltd;

1.7. "**Barloworld Transport**" means Barloworld Transport (Pty) Ltd;

1.8. **"Commission"** means the Competition Commission of South Africa;

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

1.10. **"Conditions"** means these conditions;

1.11. **"Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.12. **"Employment Conditions"** means the conditions set out in clause 2 of this Annexure A;

1.13. "**Fund**" means the allocation of money to the value of R1 725 000 (one million, seven hundred and twenty-five thousand rand) which is set aside for the Affected Employees for reskilling purposes and/or for the purposes of funding small businesses in accordance with the principles and conditions set out in Annexure A1;

1.14. "**Fund Period**" means a period not exceeding 12 (twelve) months after the Implementation Date;

1.15. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.16. "**Individual Fund Amount**" means a maximum of R25 000 (twenty-five thousand rand) allocated to each Affected Employee in terms of the Fund;

1.17. **"Manline Energy"** means Manline Energy (Pty) Ltd;

1.18. **"Manline Freight"** means Manline Freight (Pty) Ltd;

1.19. "**Manline Transport**" means Manline Transport (Pty) Ltd;

1.20. **"Merged Entity"** means the Acquiring Firm and Target Firms;

1.21. **"Merging Parties"** means the Acquiring Firm and the Target Firms;

1.22. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firms;

1.23. **"Retrenchment Process"** means the retrenchment process which resulted in the Affected Employees being retrenched;

1.24. **"Target Firms"** means Barloworld Specialised Transport (together with its subsidiaries), Manline Freight and Manline Energy (together with its subsidiary); and

1.25. **"Tribunal"** means the Competition Tribunal of South Africa.

PUBLIC INTEREST CONDITIONS

2. **EMPLOYMENT CONDITIONS**

2.1. **Vacancies**

2.1.1. To the extent that any suitable employment opportunities arise in either the Target Firms or the Barloworld Logistics Business, each of the Merged Entity or Barloworld undertakes, for a period of no longer than 2 (two) years after the Implementation Date, to use its reasonable endeavors to give preference to the Affected Employees for the aforementioned opportunities, provided that the Affected Employees have the requisite qualifications, skills, know-how and experience.

2.1.2. For the avoidance of doubt, to the extent that Barloworld ceases to control the Barloworld Logistics Business at any time within the 2 (two) year period referred to above, the provisions of clause **Error! Reference source not found.** shall, and shall be deemed to, cease to apply to Barloworld and any of its subsidiaries.

2.1.3. Subject to the provisions in clause **Error! Reference source not found.**, each of the Merged Entity or Barloworld undertakes to use its reasonable endeavours to communicate available vacancies to the Affected Employees for a period of 2 (two) years after the Implementation Date.

2.2. **Reskilling Fund**

2.2.1. It is agreed that Barloworld will establish the Fund which must be disbursed to the Affected Employees within 1 (one) year after the Implementation Date upon successful application by the Affected Employees as envisaged in Annexure A1 of these Conditions.

2.2.2. The purpose of this Fund shall be:

2.2.2.1. to finance the re-skilling or re-training of the Affected Employees; or

2.2.2.2. to fund any small business ventures or educational opportunities for the Affected Employees.

2.2.3. In order comply with the purpose of the Fund as set out in clause **Error! Reference source not found.**, the Fund shall be managed and regulated in accordance with the principles and conditions set out in Annexure A1 of these Conditions.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1. The Merging Parties shall circulate a copy of the Conditions to the trade unions that represented the Affected Employees during the Retrenchment Process within 10 (ten) Days of the Approval Date.

3.2. As proof of compliance with clause 3.1 above, the Merging Parties shall within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit from a senior representative of the Target Firms attesting to the circulation of the Conditions and attach copies of said notices.

3.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.

3.4. In relation to the Fund, after 90 (ninety) days after the Implementation Date, Barloworld shall inform the Commission whether each Affected Employee has applied to have the Individual Fund Amount disbursed. In this regard, Barloworld shall report to the Commission detailing, inter alia, the number of Affected Employees that have (i) applied for funding (ii) their names, (iii) the purpose to which the funding was applied for, (iv) the amount disbursed on behalf of each Affected Employee, and (v) proof of payment on behalf of each Affected Employee that has applied for the Fund.

3.5. The Merged Entity and Barloworld shall submit a letter to the Commission 1 (one) year after the Implementation Date, setting out the extent of their respective 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 Competition Tribunal read together with 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, on good cause shown, apply to the Commission for these 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 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:

NOVUS PRINT (PTY) LTD

AND

PEARSON SA (PTY) LTD

CASE NUMBER: 2022AUG0049

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 26 August 2022, the Competition Commission received notice of an intermediate merger wherein Novus Print (Pty) Ltd ("Novus Print") intends to acquire 75% of the issued share capital in Pearson South Africa (Pty) Ltd ("Pearson SA"). Upon implementation, Novus Print will exercise control of Pearson SA.

2. The primary acquiring firm is Novus Print, a private company incorporated in South Africa. Novus Print is controlled by Paarl Media Holdings (Pty) Ltd ("Paarl Media Holdings"). In turn, Paarl Media Holdings is controlled by Novus Holdings Limited ("Novus Holdings"). Novus Holdings is controlled by A2 Investment Partners Proprietary Limited ("A2").

3. For the purposes of this transaction, all firms directly and indirectly controlled by Novus Print, Paarl Media, Novus Holdings and A2 are referred to as the "Acquiring Group".

4. The primary target firm is Pearson SA, a private company incorporated in South Africa. Pearson SA is controlled by Pearson Holdings Southern Africa (Pty) Ltd (75%). The remaining shareholding in Pearson SA is held by Black Economic Empowerment

entities Sphere RB Investment (Pty) Ltd (22.5%); and Pearson Marang Education Trust (2.5%). The
B-BBEE shareholders will remain invested in Pearson SA post-merger.

Activities

Acquiring Group

5. The Acquiring Group comprises of a commercial printing, manufacturing and packaging business with four specialised printing plants, two packaging manufacturing plants and a tissue plant in South Africa.

6. Novus Print's publishing activities primarily involve magazine publication in the commercial and consumer space. Its products include in-flight magazines, community magazines, digital magazines, internal publications and trade publications. The Novus Group also prints educational material, but does not engage in the conceptualisation, development and publishing of educational courseware in South Africa or elsewhere.

Target Firm

7. The Pearson SA business involves the publishing and sale of educational materials, teacher training and other educational solutions (print and digital) for kindergarten to grade 12 ("K-12"), and higher education. The key brands within the Pearson SA business include Pearson (which focuses on higher education) as well as Heinemann and Maskew Miller Longman which both focus on the K-12 segment.

Overlaps

Horizontal relationship

8. The Commission considered the publishing activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap. This is because Novus Print is active in commercial publishing while Pearson SA is active in publishing courseware in the education sector in South Africa. The Commission's market

investigation and case precedent confirm that courseware and commercial publishing are separate markets. For this reason, the proposed transaction is unlikely to give rise to unilateral anticompetitive effects.

Vertical relationship

9. The Commission found that the proposed transaction raises a vertical overlap as the Acquiring Group provides printing services to publishing service providers that compete with the target firm downstream.

Competition assessment

Input foreclosure: access to printing services by Pearson's competitors

10. In respect of input foreclosure, the Commission assessed whether Novus could refuse to provide printing services to Pearson SA's competitors and whether this would leave Pearson's competitors without suitable alternatives. Having considered, amongst others, the fact that Pearson SA's current printing procurement accounts for about [**Confidential**] of Novus's overall revenue for book printing (which includes fiction, non-fiction and educational books), the Commission is of the view that it is unlikely that the transaction will result in anticompetitive input foreclosure.

11. The Commission received a concern that since the merged entity will be vertically integrated, Pearson SA will receive upstream print prices that are so low that their books can be priced significantly lower than that of any downstream competitor, making it impossible to compete with Pearson SA. Though Novus submits that it would not be rational to price significantly lower to Pearson SA and recover only 75% of the downstream profit, they nonetheless offered a pricing remedy to the effect that Novus Print will not supply printing services to competitors of Pearson SA at prices less favourable than the prices paid by Pearson SA to Novus Print for services of like grade and quality in equivalent transactions for a period of 5 (five) years.

Customer foreclosure: Loss of Pearson as significant customer

12. In respect of customer foreclosure, the Commission found that the Pearson SA business has an estimated market share of more than 30% in the downstream market for publishing of courseware. Market participants confirm that Pearson SA is the largest courseware publisher.

13. The Commission is concerned that the proposed transaction may result in customer foreclosure of other printing service providers, who are either small and medium enterprises and/or owned by HDPs. To resolve the concern, the Commission imposed a procurement condition which is discussed below under the public interest considerations.

Public interest

Employment

14. The merging parties provided an unequivocal undertaking that the proposed transaction will not give rise to a negative effect on employment. In particular, no merger specific retrenchments will arise as a result of the proposed transaction.

15. The Commission received an employment concern from the Chemical Energy Paper Prints Wood and Allied Workers Union (“CEPPWAWU”) relating to restructuring at Novus Print. They submit that a 10 (ten) year moratorium should be imposed if the proposed transaction is approved.

16. Considering the employment concerns, the merging parties agreed to the imposition of a 5-year moratorium on merger specific retrenchments post-merger.

Effect on 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

17. As mentioned above, the Commission found that Pearson SA currently procures printing services from SMEs and firms owned or controlled by HDPs. The merging parties submit that it is the intention of Novus Print that Pearson SA will continue to

procure printing services from Pearson SA's SME and HDP printing suppliers on similar terms and conditions as those that applied prior to the merger.

18. However, the Commission received significant concerns from SMEs and HDP printing suppliers about foreclosure effects considering that Novus Print is a significant printing service provider.

19. The Commission notes that Pearson SA's procurement of printing services from HDPs and SMEs account for a significant part of its printing costs. The Commission is concerned that the proposed transaction might lead to a reduction in the procurement of printing services from the current SME and HDP firms. As such, any post-merger reduction of printing orders from SME and HDP-owned printers may likely impact on the ability of these firms to effectively participate or expand in in the market. Accordingly, the Commission imposed a post-merger procurement condition to alleviate any concerns that may arise post-merger.

20. In terms of the condition, the merging parties will continue to procure printing services from the Pearson SA's SME and HDP printing service providers on similar terms and conditions as applied prior to the merger, for a period of 5 (five) years from the implementation date. The merging parties agreed to the imposition of this remedy.

Other public interest considerations

21. There are no other public interest issues arising from the proposed transaction.

Conclusion

22. The Commission therefore approves the proposed transaction with conditions as set out in **Annexure A** hereto.

ANNEXURE "A"

NOVUS PRINT PROPRIETARY LIMITED

AND

PEARSON SOUTH AFRICA PROPRIETARY LIMITED

CASE NO: 2022AUG0049

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 Novus Print Proprietary Limited;

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 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. "**Commercially Reasonable and Practical Terms**" means terms that provide for the application of appropriate quality standards (based on Novus Print and Pearson SA's usual and standard business practices in South Africa over time), reasonable availability of goods, and reasonably competitive commercial terms. Such terms shall be regarded as commercially unreasonable or impractical if the Merger Parties have, before calling off further negotiations

with an affected supplier, given that supplier written notice as to the reasons why its terms of supply were considered not to provide for appropriate quality standards, reasonable availability, or reasonably competitive commercial terms;

1.7. **"Conditions"** mean these conditions, and "**Condition**" means, as the context requires, any one of them;

1.8. **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.9. "**HDPs**" mean historically disadvantaged persons, as defined in section 3(2) of the Competition Act;

1.10. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.11. **"Merger"** means the acquisition of control of the Target Firm by the Acquiring Firm;

1.12. **"Merging Parties"** means collectively the Acquiring Firm and the Target Firm;

1.13. **"Moratorium Period"** means a period of 5 (five) years from the Implementation Date and includes the period between the Approval Date and the Implementation Date.

1.14. **"SMEs"** means small businesses and medium-sized businesses as defined in the Competition Act;

1.15. **"SME and HDP printing service providers"** means the existing SME and HDP printing service providers and includes any new SME and HDP printing service providers that may become available post-merger;

1.16. **"Target Firm"** means Pearson South Africa 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. **CONDITIONS TO THE APPROVAL OF THE MERGER**

2.1. **Employment**

2.1.1. The Merging Parties shall not retrench any employees as a result of the Merger during the Moratorium Period.

2.1.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchments 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 66 of 1995; (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. If any positions become available within the Merging Parties within 3 (three) years from the Approval Date, the Acquiring Firm will consider employing the former employees of the Acquiring Firm who had been retrenched by the Acquiring Firm in 2022, in circumstances where their skillsets are similar to, and/or suitable for, the relevant positions which may become available, and the Acquiring Firm and the relevant employee(s) are able to agree to mutually agreeable terms of employment. In this regard, a database of the aforementioned employees will be created and maintained during the aforesaid 3 (three) year period.

2.2. **Procurement of services from SME and HDP printing providers**

2.2.1. The Merging Parties will procure printing services from SME and HDP printing service providers, up to at least the gross value of such spend incurred by the Target Firm for services provided to it by SME and HDP printing service providers during the 12 (twelve) month period prior to the Approval Date, on similar terms and conditions, for a period of 5 (five) years from the Implementation Date.

2.2.2. The Condition in paragraph 2.2.1 above is subject to the Target Firm requiring similar volumes of equivalent product in future and such procurement being on Commercially Reasonable and Practical Terms.

2.2.3. **[Confidential]**

2.3. **Pricing**

2.3.1. Novus Print will not sell printing services to competitors of Pearson SA at prices less favourable to the prices paid by Pearson SA to Novus Print for services of like grade and quality in equivalent transactions for a period of 5 (five) years from Implementation Date.

2.3.2. Notwithstanding the Condition in paragraph 2.4.1, conduct involving differential pricing to purchasers will not be precluded if the differential pricing -

2.3.2.1. makes only reasonable allowance for differences in cost or likely cost of manufacture, distribution, sale, promotion or delivery resulting from-

2.3.2.1.1. the differing places to which goods or services are supplied to different purchasers;

2.3.2.1.2. methods by which goods or services are supplied to different purchasers; or

2.3.2.1.3. quantities in which goods or services are supplied to different purchasers;

2.3.2.2. is constituted by doing acts in good faith to meet a price or benefit offered by a competitor; or

2.3.2.3. is in response to changing conditions affecting the market for the goods or services.

3. **MONITORING**

3.1. The Merging Parties will each circulate a copy of the employment Conditions to their employees, the trade union and employee representatives within five (5) Days of the Implementation Date.

3.2. As proof of compliance herewith, each of the Merging Parties must, within five (5) Days of circulating the employment Conditions as required in paragraph **Error! Reference source not found.**, submit an affidavit by a senior official authorised by, and on behalf of, that Merger Party attesting to the circulation of the employment Conditions and provide written evidence of such circulation.

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

3.4. The Acquiring Group shall, within 20 days of the Implementation Date:

3.4.1. publish a non-confidential version of the conditions on the Acquiring Group and Target Firm's websites;

3.4.2. to ensure that relevant SME/HDP printing suppliers and courseware publishers are aware of the conditions, the Acquiring Group shall provide a non-confidential version of the conditions to the Publishers Association of South Africa, and request that this association announces the conditions;

3.5. The Merging Parties shall, within 15 (fifteen) Days of the Implementation Date, provide to the Commission the Target Firm’s total procurement value of printing services from SMEs and HDP firms during the 12 (twelve) months prior the Approval Date.

3.6. A compliance report will be submitted by the Merging Parties to the Commission on the anniversary of the Implementation Date for a period of three (3) years in respect of the Condition set out in paragraph 2.1.3 and 5 (five) years for the remaining Conditions.

3.7. 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**

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, on good cause shown, apply to the Commission for the Conditions to be lifted, revised and/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 and/or amended. The Merging Parties will use all reasonable endeavours to consult with existing SME and HDP printing service providers prior to an application for variation as contemplated in terms of the condition in paragraph 2.2 above.

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:

DEN BRAVEN SA (PTY) LTD

AND

PERMOSEAL (PTY) LTD

CASE NUMBER: 2022JAN0016

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

1. On 10 January 2022, the Competition Commission (Commission) received a notification of an intermediate merger wherein Den Braven SA (Pty) Ltd (DBSA) intends acquiring control of Permoseal (Pty) Ltd (Permoseal). Post-merger, DBSA will control Permoseal.

Parties and their activities

2. DBSA is a wholly owned subsidiary of Arkema Afrique, a company incorporated in France. Arkema Afrique is in turn a wholly owned subsidiary of Arkema France S.A. (Arkema), a company also incorporated in France. Arkema is a public entity listed on the Euronext Paris Stock Exchange, its shares are widely held, and it is not controlled by any single shareholder.

3. Arkema controls several subsidiaries globally, however of relevance to this proposed transaction is its wholly-owned subsidiary Bostik Limited (Bostik). Bostik does not control any firms in South Africa. DBSA does not control any firms. DBSA and Arkema, and all the firms

directly and indirectly controlled by them are collectively referred to as the Acquiring Group. DBSA does not have shareholding by any historically disadvantaged persons (HDPs).

4. The primary target firm is Permoseal. Permoseal is not directly or indirectly controlled by any single shareholder. Permoseal does not directly or indirectly control any firms. Permoseal does not have any shareholding by HDPs.

Competition assessment

5. The Commission considered the activities of the merging parties and found that there are horizontal overlaps between their activities as both parties are active in the supply of sealants and adhesive products in South Africa. The Commission also found a vertical relationship between the merging parties. Pre-merger, the target firm (Permoseal) has manufacturing and distribution agreements with Arkema (Acquiring Group) in relation to the Bostik brand.

6. The Commission has therefore, for purposes of assessing this transaction, considered sealants and adhesives as forming one product market. The Commission segmented the markets for sealants and adhesives by the type of customer groups that are supplied. This is because the distribution channels, packaging size, price and in some instances the products themselves, differ between DIY customers, construction customers and industrial customers. DBSA does not provide any products to industrial customers.

7. The merging parties' products are sold to customers located throughout South Africa. For DIY customers, the merging parties distribute their products through retail outlets, such as Built It, Builders, Cashbuild, and BuCo, that are located throughout South Africa. The Commission learned that competitors of the merging parties also generally supply their products throughout South Africa.

8. The Commission assessed the following markets: the national market for the supply of sealants and adhesives for DIY customers; the national market for the supply of sealants and adhesives for construction customers; and the national market for the supply of sealants and adhesives for industrial customers.

9. In the broad market for the supply of sealants and adhesives supplied to all customer groups, the Commission found that the merged entity will have a post-merger market share not

exceeding 20%. In the market for sealants and adhesives for DIY customers, the Commission found that the merged entity with have a post-merger market share not exceeding 30%. The Commission found that the alternative suppliers of sealants and adhesives to the DIY customers include Henkel, Glue Devil, Qualichem, Pratley, Siltech, Soudal, Sika and A.B.E. All the customers contacted, indicate there are alternative suppliers available. These customers, except for one customer, submit that they can successfully negotiate prices and other terms of supply. This customer submits that because of the merged entity's post-merger dominant position. It will not be able to negotiate on price post-merger. However, as noted above, the Commission did not find the merged entity to be dominant.

10. In the market for the supply of sealants and adhesives for the construction customers, the Commission found that the merged entity will have a post-merger market share of less than 20%. The Commission found that the alternative suppliers in this market include A.B.E ,Sika, Roya Adhesives . Soudal, and Siltec.

11. In the market for the supply of sealants and adhesives for industrial customers, the Commission found that the parties' activities do not overlap as DBSA is not active in this market. However, because Permoseal supplies some industrial adhesives under the Bostik brand, which is owned by the Acquiring Group, the market shares of that product may be attributed to the Acquiring Group. The Commission found a post-merger market share of less than 30%. From market share estimates submitted to the Commission by a competitor, DBSA is not considered active in this market. The alternative suppliers in the market for supplying sealants and adhesives for industrial customers are Henkel, Qualichem, Pekay, Adtech, Melton, and Unikem to mention a few. The Commission found that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in the supply for sealants and adhesives for industrial customers.

12. With respect to the vertical effects the Commission found no evidence to suggest that foreclosure concerns will arise as a result of the proposed transaction. This is because Permoseal is the only firm that manufactures and distributes Bostik products, and this proposed merger does not change this.

Effect on employment

13. The Commission engaged the employee representatives and trade unions representing employees of the merging parties to determine whether the proposed transaction would have a negative effect on employment. The employee representative of DBSA submitted that no employee has raised any concerns arising from this merger.

14. The trade union Chemical, Energy, Paper Printing, Wood and Allied Workers Union ("CEPPWAWU") representing the employees of Permoseal submitted that employees have raised concerns about their conditions of employment and their job security. CEPPWAWU stated that they held a meeting with the merging parties and the parties assured CEPPWAWU that the working conditions will not change and reiterated that the proposed merger will not result in any retrenchments and job losses. CEPPWAWU submits that it also had additional concern about the jobs of some DBSA employees and the merging parties stated that those employees will not be affected as they will be incorporated into Permoseal. Furthermore, CEPPWAWU submitted that its general concern is that in most cases after a merger or immediately after the expiry date of conditions, if any, most merged parties engage into the so-called “non-merger specific retrenchments”. CEPPWAWU submitted that if the merger is approved, it should have conditions to guard against such.

15. To address these employment concerns, the merging parties offered to not retrench any employees as a result of the merger, for a period of 3 (three) years. In addition to the proposed remedy, the Commission considers it necessary to impose additional conditions aimed at ensuring that the merged entity maintains its pre-merger headcount by at least a period of 1 (one) year. Furthermore, that the merged entity informs the Commission of its intention to embark on retrenchments, including those retrenchments that the merging parties may deem operationally related, for a period of 3 (three) years post-merger.

Effect on the promotion of a greater spread of ownership

16. The Commission considered whether the proposed merger promotes ownership by historically disadvantaged persons (“HDPs”). The Commission found that DBSA has no shareholding by HDPs, and similarly the target firm Permoseal does not have any shareholding by HDPs. The Commission requested the merging parties to provide

submissions on the effect of the merger on the promotion of a greater spread of ownership by HDPs and workers.

17. The merging parties have ultimately offered that at least by 2023, subject to the final approval of Arkema's shareholders, Board of Directors, and the French securities regulator (Autorité des Marchés Financiers) Arkema will establish an ESOP in terms of which it will offer each of the employees in South Africa 3 (three) shares at no cost to the employees. The value of the 3 (three) shares allocated to each employee would be EUR 320 with a cumulative value of EUR 119,680 (approximately ZAR 2 million). Should Arkema be unable to secure the necessary approvals for the implementation of ESOP before the end of 2023, it will inform the Commission and propose, for the Commission's approval, an alternative solution for the benefit of Employees in South Africa.

18. The merging parties have also tendered additional remedies in terms of which they would increase their current spend on enterprise development and training & development by 15%, respectively.

19. Considering the above tendered remedies relating to the ESOP and the increase in the merging parties' current spend of enterprise development and training and development initiatives, the Commission is of the view that its concerns relating to the promotion on greater spread of ownership by employees and HDPs will likely be addressed.

Conclusion

20. The Commission therefore approves the proposed transaction subject to the conditions in Annexure A hereto.

ANNEXURE A: CONDITIONS

DEN BRAVEN SA (PTY) LTD

AND PERMOSEAL

(PTY) LTD

CASE NUMBER: 2022JAN0016

CONDITIONS

1. **DEFINITIONS**

In this document, the following expressions bear the meanings assigned to them below, and related expressions bear corresponding meanings: –

1.1 "**Act**" means the Competition Act, No. 89 of 1998 as amended;

1.2 "**Approval Date**" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);

1.3 "**Arkema**" means Arkema S.A., the ultimate parent company of Den Braven;

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 "**Conditions**" means these conditions;

1.7 "**Day**" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.8 "**Den Braven**" means Den Braven SA (Pty) Ltd;

1.9 **"Employees"** mean all the employees of Den Braven and Permoseal;

1.10 "**Employee Share Ownership Plan**" has the meaning set out in paragraphs 2.5 to 2.7;

1.11 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by Den Braven and Permoseal;

1.12 "**Merged Entity**" means Permoseal, subject to the control of Den Braven;

1.13 "**Merger**" means the acquisition of Permoseal by Den Braven;

1.14 "**Merging Parties**" means Den Braven and Permoseal;

1.15 **"Moratorium Period"** means a period of 3 (three) years from the Implementation Date, and includes a period from the Approval Date and the Implementation Date;

1.16 "**Permoseal**" means Permoseal (Pty) Ltd; and

1.17 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.

2. **CONDITIONS TO THE APPROVAL OF THE MERGER**

EMPLOYMENT CONDITION

2.1 The Merging Parties shall not retrench any Employees in South Africa as a result of the Merger during the Moratorium Period.

2.2 The Merging Parties shall maintain the current combined headcount of employees for a period of 1 (one) year from the Implementation Date. This obligation does not apply where the reduction in headcount is as a result of resignations, retirements or terminations in the ordinary course of business.

2.3 For a period of 3 (three) years from the Implementation Date, the Merging Parties shall inform the Commission of its intention to undertake retrenchments prior to

undertaking the retrenchments. For the avoidance of doubt, this clause applies to retrenchments undertaken for operational reasons.

2.4 For the sake of clarity, retrenchments for purposes of clause 2.1 above will not include (i) voluntary severance packages; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended; (iv) resignations or retirements in the ordinary course of business; (v) dismissals 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.

EMPLOYEE SHARE OWNERSHIP PLAN

2.5 At the latest in 2023 subject to the final approval of Arkema's shareholders, Board of Directors and the French securities regulator (Autorité des Marchés Financiers) Arkema will establish an Employee Share Ownership Plan in terms of which it will offer each of the Employees in South Africa three (3) shares at no cost.

2.6 The value of Arkema shares changes from time to time, however, based on the current value of Arkema shares, the value of the three (3) shares allocated to each Employee would be EUR 320 with a cumulative value of EUR 119,680 (approximately ZAR 2 million).

2.7 Shares will vest after a four (4) year period, subject to the Employee still being in the employ of the Merging Parties at the vesting date.

2.8 If Arkema is unable to secure the necessary approvals for the implementation of the Employee Share Ownership Plan before the end of 2023, it will inform the Commission and propose, for the Commission's approval, an alternative solution for the benefit of Employees in South Africa.

TRAINING AND SKILLS DEVELOPMENT

2.9 The Merging Parties shall increase their annual spend on training and skills development to its Employees by 15% for a period of 3 (three) years from the Implementation Date.

ENTERPRISE DEVELOPMENT

2.10 The Merged Entity shall increase its annual spend on enterprise development by 15% for a period of 3 (three) years from the Implementation Date.

3. **MONITORING**

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 Merging Parties shall circulate a non-confidential version of the Conditions to the Employees, the Employee representatives and any relevant trade unions within 10 (ten) Days of the Implementation Date.

3.3 As proof of compliance with clause 3.2, the Merged Entity, shall within 10 (ten) Days of circulating the Conditions, submit an affidavit to the Commission attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees.

3.4 For the purposes of clause 2.2 above, the Merged Entity shall provide the Commission with a list of all Employees by business unit and job grade as at the Approval Date within 5 (five) Days of the Approval Date.

3.5 For the purposes of clause 2.5 above, and subject to compliance with the Protection of Personal Information Act No. 4 of 2013, the Merged Entity shall provide the Commission with the names and number of Employees that will benefit from the ESOP at least 1 (one) month prior to the implementation of the ESOP.

3.6 The Merged Entity shall, within one (1) month of the first anniversary of the Implementation Date and for a period of 2 (two) years thereafter, submit a report to the Commission, confirming its compliance with the Conditions. The compliance

report shall be accompanied by an affidavit from a director of the Merged Entity attesting to the correctness of the report.

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

3.8 Any person who believes that the Merging Parties have not complied with these Conditions may approach the Commission.

4. **VARIATION**

The Merged Entity 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 Merged Entity may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

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. **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:

VANTAGE MEZZANINEFUND II
AND
CEDAR PARK PROPERTIES (PTY) LTD

CASE NUMBER: 2022JAN0031

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 above-mentioned firms subject to conditions as set out below:

1. On 22 December 2021 and 12 January 2022 respectively, the Competition Commission ("Commission") received separate merger notices in respect of an intermediate merger whereby Vantage Mezzanine Fund II Partnership ("VMF II Partnership") intends to acquire 100% of the issued shares in Cedar Park Properties (Pty) Ltd ("Cedar Park Properties"). Post-merger, VMF II Partnership will have sole control over Cedar Park Properties.

2. The proposed transaction arises out of an unmet debt obligation by Cedar Park Properties to VMF II Partnership. VMF II Partnership is realising its loan security by effecting a 100% of the shares in Cedar Park Properties.

3. As background to the proposed transaction, the Commission notes that in 2013, VMF II Partnership extended mezzanine funding / a loan facility to Cedar Park Properties for development of a mixed-use property adjacent to and above the Sandton Gautrain property known as "Kgoro Central". As a condition for this loan, Kgoro Consortium (Pty) Ltd ("Kgoro

Consortium") provided 100% of its shareholding in Cedar Park Properties as security to VMF II Partnership.

4. The proposed transaction was filed under Rule 28 of the Commission's rules. This has occasioned the separate merger filings from the liquidators of Cedar Park Properties ("Cedar Park Liquidators") and the legal representatives of VMF II Partnership, respectively.

5. The primary acquiring firm is VMF II Partnership. VMF II Partnership is controlled by its general partner Vantage Mezzanine Fund II (Pty) Ltd ("VMF II"). VMF II holds shareholding in a number of firms globally.

6. VMF II has shareholding by Historically Disadvantaged Persons ("HDP"). VMF II, VMF II Partnership and all the firms they control shall be referred to as the "Acquiring Group".

7. The Acquiring Group is a global mezzanine funder, which in essence entails providing alternative sources of financing where traditional banks are not willing to lend and wherein shareholders lack cash equity to invest into their respective businesses. Mezzanine funding is predominantly in the form of debt and, to a lesser extent, equity. The Acquiring Group, through VMF II Partnership, has provided mezzanine funding to businesses in South Africa through debt and equity.

8. The target firm is Cedar Park Properties, a private company incorporated in South Africa. Cedar Park Properties is 100% controlled by Kgoro Consortium. Kgoro Consortium is controlled by Regiments Capital (Pty) Ltd ("Regiment").

9. Cedar Park Properties owns a mixed-use property adjacent to and above the Sandton Gautrain property known as "Kgoro Central". Kgoro Central currently comprises of 2 (two) phases, the first phase being two floors above ground level comprising of a parking bay and street front retail space which has been developed. The second (undeveloped) phase has mixed-use development rights (residential, retail, office, entertainment and other amenities).

Relationship between the parties/ products (horizontal/vertical)

10. The Commission assessed the activities of the merging parties and found that the proposed transaction does not give rise to any horizontal overlap. This is because the Acquiring Group does not have any interests (controlling or non-controlling) in retail property within the Sandton area and surrounding areas. Additionally, the proposed transaction does not give rise to any vertical overlap.

11. Based on the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

Views of third parties

12. During its investigation the Commission engaged with a third party in order to obtain its views in relation to the proposed transaction. In its submission, the third party indicated that its interests in the proposed transaction relate to commercial and social interests, namely (i) the recovery of monies owed by Cedar Park Properties to the third party; (ii) the development/and or completion of Kgoro Central and (iii) the promotion of B-BBEE entities and/or achievement of B-BBEE targets in the development of Kgoro Central. The Commission assessed the third concern under public interest.

History of Kgoro Central

13. The Commission understands that in 2009, the City of Johannesburg (“CoJ”) sold the land upon which Kgoro Central was developed by Cedar Park Properties through a tender process (“Kgoro Land”). The tender for the acquisition of the Kgoro Land required a potential purchaser to attain a minimum score of not less than 70% in respect of the following B-BBEE elements: (i) ownership and control (50%); (ii) procurement (23%); (iii) Investment in under privileged areas (12%); (iv) enterprise development (6%); (v) skills development (5%) and (vi) employment equity (3%).

14. Kgoro Consortium was successfully chosen as the preferred purchaser and developer of the Kgoro Land. Cedar Park Properties was awarded the tender to develop Kgoro Central and as part of the development, Kgoro Central was required to promote the socio-economic upliftment of HDPs by ensuring that certain B-BBEE targets towards the development of Kgoro Central are met. This B-BBEE targets related to (i) third-party suppliers, contractors, professional development team members comprising of the youth and women; (ii) labour force from the development community; (iii) tenants comprising of women and youth and (iv) employment of youth and women ("B-BBEE Targets"). This B-BBEE Targets are expressed in percentage form.

Assessment of the concern relating to recovery of payments owed by Cedar Park Properties to the third party

15. The Commission is of the view that since Kgoro Central, the only asset owned by Cedar Park Properties, is under liquidation and the third party is also a listed creditor of Cedar Park Properties, the proposed transaction is unlikely to affect the ability of the third party to recover a portion of what is owed to it.

16. Upon further engagement with the third party, it confirmed that the Commission is unlikely to have jurisdiction in relation to the repayment of the monies owed to the third party.

Assessment of the concern relating to the development/and or completion of Kgoro Central

17. In response to this concern, VMF II Partnership submits that the completion of the development of Kgoro Central is secured given that whoever purchases the Kgoro Central is obligated in terms of the Restricted Registered Servitude to develop the property in accordance with Phase 2 of the Sale and Development Agreement. The third-party has also confirmed this.

18. The Commission is of the view that the concern raised by the third party relates to contractual obligations and the said developments are unlikely to be negatively affected by the proposed transaction given the protection associated with the Restrictive Registered Servitude.

Public Interest

Effect on employment

19. The merging parties submit that the proposed transaction will not have any negative effect on employees at either the target or the acquiring firm. In particular, the merging parties submit that no retrenchments will arise as a result of the proposed transaction. Given the unequivocal statement that the proposed transaction will not result in any retrenchments or job losses and the fact that Cedar Park Properties had no employees at the time of liquidation, the Commission is of the view that the proposed transaction is unlikely to result in a negative effect on employment.

Effect of the proposed merger on 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.

20. The Commission found that the B-BBEE Targets with Cedar Park Properties were envisaged to be implemented during the development of Kgoro Central. In terms of the said B-BBEE Targets, Cedar Park Properties was required to promote the socio-economic upliftment of Historically Disadvantaged Persons (“HDPs”) by ensuring that the B-BBEE Targets highlighted above are met in respect of the development of Kgoro Central.

21. The third party was concerned that post-merger the above B-BBEE Targets will fall away.

22. The Commission is of the view that the B-BBEE Targets constitute important public interest objectives which the Commission has an obligation to advance. In this regard, the Commission concludes that the proposed transaction cannot be justified on public interest grounds. In this regard, the Commission requested the merging parties to consider the following conditions:

22.1. That VMF II Partnership notifies the Commission when it sells Kgoro Central to a third party, regardless of whether the sale constitutes a merger in terms of the Competition Act; and

22.2. That if VMF II Partnership does not dispose of Kgoro Central within a period of 24 months following the approval of the proposed merger, VMF II Partnership shall implement the B-BBEE Targets.

23. In response to the proposed conditions the merging parties indicated that regardless of whether or not the ownership of Cedar Park is transferred to VMF II Partnership, the property will remain under the possession and control of the Cedar Park Liquidators. As such, VMF II Partnership will not be the seller of Cedar Park/Kgoro Central, the liquidators would be. VMF II Partnership therefore could not formally notify any sale to a third party (i.e., in the prescribed form). However, it was submitted that VMF II Partnership is willing to undertake to advise the Commission, in writing, when it becomes aware of any impending sale of Cedar Park or Kgoro Central to any third party (notwithstanding that it will most likely, in any event be subject to a formal notification). This would afford the Commission an opportunity to assert its jurisdiction over any on-sale of Cedar Park or Kgoro Central, including an assessment of the appropriate public interest factors. VMF II Partnership has agreed to this being made a condition. The conditions are attached hereto as **Annexure A**.

24. The proposed transaction does not raise any other public interest concerns.

Conclusion

25. Therefore, the Commission approves the proposed transaction subject to a condition that the merging parties will advise the Commission, in writing, if Vantage becomes aware of any impending sale of Cedar Park or Kgoro Central to any third party. The conditions are attached hereto as Annexure A.

ANNEXURE A: CONDITIONS

VANTAGE MEZZANINEFUND II

AND

CEDAR PARK PROPERTIES (PTY) LTD

CASE NUMBER: 2022JAN0031

CONDITIONS

1 DEFINITIONS AND INTERPRETATION

In this document, the following words bear the meaning assigned to them below, and related words take corresponding meanings –

1.1 "**Acquiring Firm**" means VMR II Partnership and VMF;

1.2 "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC 15) in respect of the Merger;

1.3 "**B-BBEE Targets**" means the requirement on Cedar Park to promote the socio-economic upliftment of Historically Disadvantaged Persons by ensuring that certain B-BBEE targets towards the development of Kgoro Central are met. This B-BBEE targets include (i) third party suppliers, contractors, professional development team members comprising of the youth and women; (ii) labour force from the development community; (iii)tenants comprising of women and youth and (iv) employment of youth and women.

1.4 "**Cedar Park**" means Cedar Park Properties 39 Proprietary Limited, in liquidation;

1.5 **"Cedar Park Liquidators**" means BDO Business Restructuring (Pty) Ltd who are the current liquidators of Cedar Park;

1.6 "**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;

1.9 "**Conditions**" means these conditions;

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

1.11 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented;

1.12 "**Kgoro Central**" means the property known as Erf Remainder 575 Sandown Ext 49 T41695/2013 which consists of certain above ground mixed-use property adjacent to and above the Sandton Gautrain Site, which is currently owned by Cedar Park;

1.13 "**Merger**" means the Acquirer's acquisition of 100% of the issued shares of the Target Firms, as contemplated in the transaction notified to the Commission under Commission case number 2022JAN0031;

1.14 **"Merging Parties"** means Cedar Park and VMF II Partnership

1.15 "**Tribunal**" means the Competition Tribunal of South Africa;

1.16 "**Tribunal Rules**" means Rules for the Conduct of Proceedings in the Tribunal;

1.17 "**VMF**" means Vantage Mezzanine Fund II Proprietary Limited (2008/005879/07); and

1.18 "**VMF II Partnership"** means Vantage Mezzanine Fund II Partnership an en commandite partnership acting through its ultimate general partner VMF.

2 **RECORDAL**

Competition assessment

2.1 The Commission found that the proposed merger does not raise any competition concerns.

Public Interest assessment

2.2 The Commission found that, in 2009, Cedar Park Properties had committed to certain B-BBEE Targets with the City of Johannesburg when Cedar Park assumed ownership of Kgoro Central. The said B-BBEE Targets were to be implemented during the development of Kgoro Central. To date, the B-BBEE Targets have not been realised as Cedar Park has failed to develop Kgoro Central. The City of Johannesburg is concerned that the B-BBEE Targets will fall away after the implementation of the Merger. The Commission is of the view that the B-BBEE Targets constitute important public interest objectives which the Commission has an obligation to advance.

2.3 Given that Kgoro Central is under the custodianship of the Cedar Park Liquidators pre- and post-merger notwithstanding the Merger, VMF will have no de facto control over, and will not be the seller of Kgoro Central when it is sold in liquidation to a third party. The Commission is concerned that a third-party purchaser is unlikely to be bound by the B-BBEE Targets. Since the Cedar Park Liquidators would be the sellers, VMF is unlikely to be able to formally notify any sale to a third party in the prescribed form as per the Competition Act.

2.4 In order to provide the Commission with an opportunity to assert its jurisdiction over any on-sale of Cedar Park and/ or Kgoro Central, including an assessment of the appropriate public interest factors, the Commission has requested VMF to advise the Commission, in writing, when it becomes aware of any impending sale of Cedar Park and/or Kgoro Central to any third-party purchaser. VMF has agreed to this being made a condition of the approval for the Merger.

3 **CONDITION**

3.1 In the event that Cedar Park and/ or Kgoro Central is disposed of to a third-party purchaser, the Acquiring Firm undertakes to inform the Commission in writing of the disposal of Cedar Park and/ or Kgoro Central to a third party within 10 (ten) Days of the sale.

3.2 The above condition does not derogate from any statutory obligation to notify such sale to the Commission as a merger.

4 **MONITORING AND COMPLIANCE**

4.1 VMF shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.

4.2 VMF shall notify the liquidators of Cedar Park of these Conditions within 5 (five) Days of the Approval Date.

4.3 As proof of compliance hereof, a senior official of VMF shall submit an affidavit attesting to the notification referred to in clause 4.2 above and provide a copy of the notice to the Commission within 5 (five) Days of the circulation of the notice.

5 **APPARENT BREACH**

In the event that the Commission receives 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 any of the above 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 OF THE CONDITIONS**

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

7 **CORRESPONDENCE**

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:

THE SHADOW CAPITAL (PTY) LTD & SHADOW CAPITAL AGRI (PTY) LTD

AND

BLUE OCEAN MUSSELS (PTY) LTD & GALLO GROUP (PTY) LTD

CASE NUMBER: 2022JUN0055

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 above-mentioned firms subject to conditions as set out below:

1. On 24 June 2022, the Competition Commission ("the Commission") received notice of a small merger whereby The Shadow Capital (Pty) Ltd (Shadow Capital") & Shadow Capital Agri (Pty) Ltd ("Shadow Capital Agri"), (together referred to as the "SC Group"), intend to acquire control of Blue Ocean Mussels (Pty) Ltd ("BOM") & Gallo Group (Pty) Ltd ("Gallo").

2. Shadow Capital and Shadow Capital Agri are private companies incorporated in accordance with the laws of South Africa. Shadow Capital Agri is wholly owned by Shadow Capital. Shadow Capital is not directly or indirectly controlled by any entity. Shadow Capital and all the firms directly and indirectly controlled by it will hereinafter collectively be referred to as the "SC Group".

3. The SC Group is a private investment group, which specializes in investing in and assisting small to medium size companies to grow into sustainable, successful businesses. They have

particularly strong expertise in the agriculture sector where its management has been active for many years.

4. BOM and Gallo are private companies incorporated in accordance with the laws of South Africa. BOM is wholly owned by Terrasan Beleggings (Pty) Ltd ("Terrasan"). Terrasan Beleggings is controlled by the Terrasan Group Limited. Gallo is not directly or indirectly controlled by any entity. BOM and Gallo will hereinafter collectively be referred to as the "Target Firms".

5. BOM is involved in the farming (harvesting & seeding), processing, sales and marketing of both fresh and frozen mussels. Gallo is only involved in the processing of mussels and is not active in the farming of mussels. Both the Target Firms produce frozen mussel products which are sold on a wholesale basis in South Africa. BOM and Gallo are both located in Saldanha Bay. As part of the proposed transaction, the operations of BOM and Gallo will be merged into a single entity and it will be named "New BOM".

Competition Assessment

6. The Commission considered the activities of the merging parties and found that the proposed transaction does not give rise to any horizontal overlaps between the acquiring group and the target firms. This is because the SC Group is an investment group that does not provide any frozen mussels products. The Commission however notes that the proposed transaction gives rise to a horizontal overlap between the activities of the two Target Firms. The Commission thus found that the proposed transaction results in a horizontal overlap in the market for the processing of mussels and the supply of frozen mussels.

7. The Commission found that the merged entity will be the dominant supplier in the relevant market with an estimated market share of more than 70%. However, the investigation showed that the target firms were, for various reasons, unlikely to be effective competitors.

8. The Commission consulted with customers of the Target Firms and some raised concerns about post-merger pricing, given the post-merger size of the merged entity. The Commission reviewed the post-merger strategy, price projections and efficiencies arising from the

transaction and, found that it was unlikely that the merger would result in significant unilateral effects.

Efficiencies

9. The merging parties submit that the proposed transaction is pro-competitive and that any possible anticompetitive effects that theoretically arise are significantly outweighed by the pro-competitive and public interest benefits arising from the proposed transaction. The merging parties submit that as a low margin, labour intensive product, mussel processing businesses require volume to be profitable. The merger would allow the target firms to gain the scale to be competitive. The merger of the two target firms would thus result in a mussel company that will be able to grow employment, be sustainable and allow South African mussels to be exported competitively at scale for the first time.

10. The Commission considered the merging parties' production efficiencies pre-merger. The Commission was able to confirm the merging parties' submissions regarding current operational challenges and interrogate their submissions on post-merger improvements in operations and likely efficiency improvements. The merging parties were also able to provide information on likely pass-through of efficiency improvements to customers (through pricing and through exports) post-merger.

Assessment of the public interest issues

Effect of the merger on employment

11. The merger parties submitted that the merger would protect existing jobs at the target firms and if the anticipated volumes of the combined entity are achieved, the proposed transaction would create an estimated 73 new jobs. The merger did, however, raise concerns about a change in the terms and conditions of employment. The Commission also received concerns from the union (FAWU) in this regard.

12. To address employment concerns, the merging parties agreed to remedies which will protect the terms and conditions of employment and ensure that there will be no merger-specific retrenchments for 2-years following the merger.

13. The merging parties also agreed to the following public interest conditions:

13.1. In the event that the merged entity meets certain production targets, the merging parties commit to creating an additional 73 positions for mussel sorters within the merged entity.

13.2. Within 5 (five) years, if New BOM meets certain production targets, the merging parties commit to the introduction of an ESOP to the benefit of the employees of New BOM.

13.3. The merging parties will ensure that they at least maintain their procurement of mussels from black-owned farms. The merging parties will also use their best endeavours to increase their procurement of mussels from black farmers over the next 5 (five) years.

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

ANNEXURE A

THE SHADOW CAPITAL PROPRIETARY LIMITED

AND

SHADOW CAPITAL AGRI PROPRIETARY LIMITED

AND

BLUE OCEAN MUSSELS PROPRIETARY LIMITED

AND

GALLO GROUP PROPRIETARY LIMITED

CASE NUMBER: 2022JUN0055

CONDITIONS

1. DEFINITIONS

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

1.1.1. **"Acquiring Firms"** means Shadow Capital and Shadow Capital Agri;

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. **"Black-Owned Farms"** means mussels farming operations with at least 50%+ 1 share shareholding held by historically disadvantaged persons;

1.1.5. **"BOM"** means Blue Oceans Mussels Proprietary Limited;

1.1.6. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;

1.1.7. **“Commission Rules”** means Rules for the Conduct of Proceedings in the Commission;

1.1.8. **"Conditions"** means the conditions set out herein;

1.1.9. **"Days"** means business days, being any day other than a Saturday, Sunday or official public holiday;

1.1.10. **“ESOP”** means Employee Share Ownership Plan;

1.1.11. **“Gallo”** means Gallo Group Proprietary Limited;

1.1.12. **"Implementation Date"** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.1.13. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;

1.1.14. **“Merged Entity”** means Shadow Capital, Shadow Capital Agri, BOM and Gallo;

1.1.15. **"Merger"** means the acquisition and consolidation of BOM and Gallo by Shadow Capital and Shadow Capital Agri;

1.1.16. **“Merging Parties”** means Shadow Capital, Shadow Capital Agri, BOM and Gallo;

1.1.17. **"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;

1.1.18. **“SC Group”** means the Shadow Capital and Shadow Capital Agri;

1.1.19. **“Shadow Capital”** means the Shadow Capital Proprietary Limited;

1.1.20. **“Shadow Capital Agri”** means Shadow Capital Agri Proprietary Limited;

1.1.21. **"SMMEs"** means small and medium-sized enterprises, as defined in the Competition Act;

1.1.22. **"Target Firms"** means BOM and Gallo; and

1.1.23. **"Tribunal"** means the Competition Tribunal of South Africa.

2. EMPLOYMENT

2.1. The Merging Parties shall not retrench any employees as a result of the Merger during the Moratorium Period.

2.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed or to accept amended remuneration in accordance with the provisions of the Labour Relations Act, 1995; (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 contract worker.

2.3. The Merging Parties shall protect the terms and conditions of employment of the employees within the Merged Entity following the Implementation Date.

3. JOB CREATION

3.1. In the event that the Merged Entity meets **[CONFIDENTIAL]** tons of fresh mussels per annum within a **[CONFIDENTIAL]** months of the Implementation Date, the Merging Parties commit to creating an additional 73 positions for mussel sorters within the Merged Entity.

4. PROCUREMENT FROM BLACK-OWNED FARMS

4.1. The Merging Parties shall maintain at least their current level of procurement from Black-Owned Farms for a period of five (5) years following the Implementation Date, provided that the existing black owned farm producers continue to be able to produce at current levels.

4.2. Furthermore, the Merging Parties shall use their best endeavours to increase procurement from Black Farmers over the 5-years period.

5. ESOP

5.1. In the event that the Merged Entity reaches a **[CONFIDENTIAL]** tonnage after five (5) years of the Implementation Date, the Merged Entity shall establish an ESOP interest in New BOM.

5.2. Prior to the implementation of the ESOP, the Merged Entity shall provide the Commission with details of the proposed ESOP in writing. These details shall include, but not be limited to, the structure of the ESOP, funding, identities of prospective shareholders, the proportion of shareholding in New BOM, and any other relevant information for the Commission to consider the ESOP.

5.3. Within 30 (thirty) Days of receipt of the details of the proposed ESOP, the Commission shall provide its written approval, or any comments or queries, in writing. The ESOP may not be implemented without the Commission’s written approval.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

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

6.2. The Merging Parties shall circulate a non-confidential copy of the Conditions to their employees in South Africa and/or their respective representatives within 5 (five) Days of the Approval Date.

6.3. 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.

6.4. The Merging Entity shall, within 20 Days of the Implementation Date, submit a report to the Commission detailing the Target Firm's procurement volumes of mussels from Black-Owned Firms to serve as a baseline to monitor compliance with clause 4 of the Conditions.

6.5. 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, confirming compliance with clauses 2 and 3 of the Conditions. This affidavit must be deposed to by a director of the Merged Entity.

6.6. 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 clause 4 and 5 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.

6.7. The Merged Entity shall provide the Commission with the names and employee numbers of Employees participating in the ESOP at least 1 (one) month prior to the implementation of the ESOP.

6.8. The Merged Entity shall, annually following the Implementation Date, provide to the Commission a report detailing the steps taken to implement the ESOP and the progress made. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report.

6.9. The Merged Entity shall inform the Commission of the commencement date of the ESOP contemplated in clause 5 above within 10 (ten) Days of the implementation of the ESOP.

6.10. 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.

6.11. 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.

6.12. 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.

7. APPARENT BREACH

7.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules.

8. VARIATION

8.1. 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.

9. GENERAL

9.1. 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.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

EASTVAAL MOTORS PROPRIETARY LIMITED

AND

COMBINED AUTO HOLDINGS PROPRIETARY LIMITED AND

CASE NUMBER: 2022MAR0020

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 March 2022, the Competition Commission ("Commission") received notice of an intermediate merger wherein Eastvaal Motors Proprietary Limited ("EVM") intends to acquire certain trading assets from Combined Auto Holdings Proprietary Limited ("CAH"). The assets consist of a new and used vehicle multi-dealership, situated in Middelburg, Mpumalanga ("the Target Dealership"). Post-merger, EVM will control the Target Dealership.

Merging parties and their activities

2. The primary acquiring firm is EVM, a company incorporated in accordance with the company laws of the Republic of South Africa. EVM is controlled by Eastvaal Motors Holdings (Pty) Ltd ("Eastvaal Holdings").

3. EVM controls several firms including Eastvaal Isuzu Proprietary Limited ("Eastvaal Isuzu") **[CONFIDENTIAL]** % Eastvaal Fleet Services Proprietary Limited ("Eastvaal Fleet")

[CONFIDENTIAL] % Quick Lane Tyres, Auto Centre Proprietary Limited Eastvaal Middelburg Ford Proprietary Limited, Eastvaal Isuzu Proprietary Limited ("Eastvaal Isuzu") and Eastvaal Fleet Services Proprietary Limited ("Eastvaal Fleet"). EVM, the firms that control it and the firms it controls will hereinafter be referred to as the ("Acquiring Group").

4. EVM does not have any shareholders who are Historically Disadvantaged Persons (HDPs). EVM also does not have any Employee Share Ownership Programme ("ESOP"). However, the merging parties indicate that 2 (two) subsidiaries of EVM (Eastvaal Isuzu and Eastvaal Fleet) are owned by HDPs. In this regard, the parties indicated that **[CONFIDENTIAL]** % of the shares in Eastvaal Isuzu and Eastvaal Fleet are held by Afrika Tikkun Holdings (Pty) Ltd ("Afrika Tikkun"). Afrika Tikkun is a firm that is controlled by HDPs.

5. The Acquiring Group comprises of a group of companies conducting business primarily in the vehicle dealership market. The Acquiring Group operates various motor dealerships situated in Witbank, Middelburg, Secunda, Standerton and Bethal. The Acquiring Group also operates a dealership in the North-West Province situated in the Potchefstroom area. Brands sold by the Acquiring Group includes the following: Ford, GWM, Honda, Hyndai, Kia, Isuzu, Haval, Mazda, Suzuki, Citroen, Peugeot, Cherry, and Toyota.

6. The primary target firm is CAH in respect of Target Dealership. The Target Dealership is controlled by CAH. CAH is controlled by the following shareholders (i) Solly Latif Holdings (Pty) Ltd (" Solly Latif") **[CONFIDENTIAL]** %, Ronri (Pty) Ltd **[CONFIDENTIAL]** % and P.A Longueira **[CONFIDENTIAL].** CAH is controlled by an HDP shareholder, Solly Latif, who holds [**CONFIDENTIAL]** % of CAH.

7. The Target Dealership operates a multi-brand dealership situated in Middelburg and sells new and used light commercial and passenger vehicles. The vehicles sold comprises a variety of brands including Alfa, Jeep, Peugeot, Cherry, Fiat, Citroen, Suzuki, JAC, and Mahindra.

Relationship between the merging parties

8. The Commission considered the activities of the merging parties and found that they are both active in the retailing of new and used vehicles, sale of spare parts and in the

provision of aftersales maintenance work. The Commission further found that the merging parties compete in the sale of the Citroen; JAC; Peugeot; Cherry; and Suzuki brands of motor vehicles.

9. The Commission did not conclude on the relevant market but assessed the effects of the proposed merger in the following markets: (i)The sale of new PVs within a 50km radius of the Target Dealership in Middleburg; (ii) The sale of new LCVs within a 50km radius of the Target Dealership; (iii) The provision of after sale scheduled services within a 50km radius of the Target Dealership; and (iv) The sale of aftermarket spare parts within a 50km radius of the Target Dealership.

Competition Analysis

10. In determining the market shares of the merging parties, the Commission relied on data from National Association of Automobile Manufacturers of South Africa (NAAMSA).

Assessment of a horizontal overlap in the retailing of passenger vehicles in a 50km radius from the Target Dealership

11. The Commission found that the merged entity will have a post-merger market share of approximately 52% in the market for the sale of new PVs with a market share accretion of 11%. The other dealers active in the relevant geographic market are McCarthy VW and Audi (Middelburg and Witbank), Barloworld Toyota (Middelburg and Witbank), Witbank Nissan and Witbank Datsun, Qembu Isuzu/Opel, and Mitsubishi Witbank.

12. Given the high market share enjoyed by the merging parties in this market, the Commission assessed if the merging parties will be able to unilaterally increase prices of new PVs, post-merger.

Is the merger likely to result in a unilateral effect relating to the sale of PVs?

13. The Commission found that prices for new PVs are set by the Original Equipment Manufacturers (“OEM”) by way of setting a “recommended price”. In this regard, the parties indicate that the OEMs advertise their recommended prices and dealerships will compete

by discounting from the recommended price. In addition, every dealer is given minimum sales targets which they need to achieve in order to keep the dealership licence and this influences the discounts given by the dealer.

14. The Commission notes the high market shares of the merging parties but finds that it is unlikely that this will result in substantial unilateral price effects. Firstly, the Commission's investigation shows that there are nine (9) other dealerships in the relevant geographic market which retail a range of PVs from entry-level to more advanced models. These include Barloworld Toyota (Middelburg and Witbank), Witbank Nissan, McCarthy VW and Audi (Middelburg and Witbank) Qembu Isuzu/Opel, Mitsubishi Witbank, and Witbank Datsun.

15. In addition, the merging parties indicated that even though the Target Dealership will be part of the Acquiring Group post-merger, when it comes to the sale of new vehicles, each dealership will continue to receive its individual sale targets from the OEM. If these sales targets are not met, the dealership risks losing its licences. Therefore, this will disincentivise the merged entity from reducing discounts offered to customers.

16. The Commission is therefore of the view that the proposed merger is unlikely to substantially prevent of lessen competition in in the market for the retailing of PVs.

Assessment of the horizontal overlap relating to the sale of light commercial vehicles

17. The Commission found that the merging parties will have approximately 39% with a market share accretion of 2%. Given the low accretion, the Commission is of the view that the proposed merger is unlikely to significantly alter the structure of the market.

18. The Commission therefore is therefore of the view that the proposed merger is unlikely to substantially prevent or lessen competition in the market for the retailing of light commercial vehicles.

Assessment of intra-brand competition

19. The Commission also considered whether the proposed transaction will negatively affect intra-brand competition in the relevant market. The brands affected by this transaction are Citroen; JAC; Peugeot; Cherry; and Suzuki ("Affected Brands"). The Commission notes that most of the Affected Brands, apart from Suzuki, appear to be marginal brands in the relevant market. The Citroen brand accounts for 0.34% of new PV sales in the relevant market and Peugeot accounts for 1.1.3%. The JAC and Cherry brands are still new brands and NAAMSA does not collect sales figures for these brands. The merging parties submit that they have sold 37 of these cars in the past year, which accounts for 1.17% of overall PV sales in the relevant market. Suzuki accounts for 20% of the PV's sold in the relevant geographic market.

20. The Commission found that the merging parties are the only dealerships in the relevant geographic market that sells Citroen, Peugeot and Suzuki. Post-merger, the merged entity will be the sole suppliers of these brands in the relevant geographic market.

Assessment of unilateral effects relating to sale of Affected Brands within 50km radius of the Target Dealership.

21. The Commission assessed if the merging parties will be able to unilaterally increase prices or will have an incentive to provide lower discounts for the Affected Brands.

22. The merging parties submit that the Acquiring Group will not have incentives to increase prices of new vehicles sold by the Target Dealership as the consequence will inevitably be lower sales of already marginal brands. This will collapse the Target Dealership at a time when it intends concluding new franchise agreements with the OEMs distributing the affected brands. The merging parties submit that offering lower discount will jeopardise sales which may result in them not meeting the sales targets set by the OEMs.

23. In addition, the Commission notes that although the merger effectively removes intra-brand competition in the relevant market, the Tribunal has in a number of matters indicated that intra-brand competition can be offset by inter-brand competition. In the DaimlerChrysler and Sandown merger, for example, the Tribunal indicated that *"…all competition authorities around the globe take the view that any reduction in intra-brand competition can be offset by inter-brand competition".*

24. The Commission also undertook a comparative assessment of the price of entry level PVs sold in the relevant geographic market. The Commission focused on entry-level models on the presumption that these are more likely to affect lower income consumers or first-time buyers. From a pricing perspective, Suzuki competes with other OEM brands such as Toyota, and VW which are sold by other dealerships.

25. The Commission found that the basic price of the entry-level vehicles are similar, although the Toyota and Polo Vivo have a wider range of options from their basic offering. Given that both Toyota and VW are more established brands in the South African market, the Commission is of the view that Suzuki will be constrained by their entry level prices. The Commission also notes that the merged entity does not have any VW and Toyota dealerships in the relevant geographic market. The merger is therefore unlikely to result in a significant reduction of inter-brand competition. Overall, the proposed transaction is unlikely to substantially prevent or lessen competition.

Unilateral effects assessment relating to provision of schedule services or maintenance work relating for in-warranty vehicles or those under service plan (Affected Brands)

26. The Commission found that the merging parties charged the same hourly labour rates for servicing vehicles that are under warranty, at least for Suzuki, Peugeot, Citroen and Cherry. The labour rates for in-warranty work are, and will continue to be, determined by OEMs.

27. Considering the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in this market.

Unilateral effects relating to the provision of schedule services or maintenance work relating for out of warranty vehicles.

28. The Commission also assessed the effect of the merger on the labour rates for vehicles that are not covered by warranty or services plan, i.e., schedule service wherein a car owner pays for schedule service directly.

29. The Commission is cognisant of the existing price differential between the hourly labour rates of the Target Dealership and that of the Acquiring Group. However, in the provision of maintenance work for aftersales service, the merging parties will continue to compete with other independent service centres and workshops such as: VR Diesel Bosch Diesel Centre, Car Care Centre eCars Service Centre, and J&L service centre which are located in Witbank and/or Middleburg.

30. Considering the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in the market for the provision of maintenance service for vehicle that are out of warranty as the merging parties will continue to compete with independent workshops.

Conclusion on unilateral effect assessment

31. Considering the above, the Commission concludes that the proposed transaction is unlikely to result in significant unilateral effects concerns as the Affected Brands are not popular brands and the merging parties will still face competition from other stronger brands.

32. The Commission also notes from the rationale for the proposed merger that the Target Dealership is likely to exit the market as absent the merger, it will be sold through auction.

33. The Commission therefore concludes that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public interest

Employment

34. The merging parties indicated that the proposed merger will not result in any retrenchments as the Target Dealership will be transferred in terms of Section 197 of the Labour Relations Act, 66 of 1995 (“Section 197”).

35. The employees of the merging parties are represented by the Motor Industry Staff Association (“MISA”) and National Union of Metalworkers of South Africa (“NUMSA”). The Commission contacted NUMSA and MISA requesting for their submissions in relation to

future of their members i.e., the employees of the merging parties. Despite the Commission's persistence to secure NUMSA's submission, the were no concerns or any written submissions from NUMSA. MISA did not raise any concerns.

36. Given the above, the Commission is of the view that the proposed merger is unlikely to result in employment concerns.

The promotion of a greater spread of ownership, in particular to increase the levels of ownership of historically disadvantaged persons and workers in firms in the market.

37. The Commission finds that the Acquiring Group does not have a direct HDP shareholder or ESOP. However, the merging parties indicate Eastvaal Fleet a subsidiary of the Acquiring group is **[CONFIDENTIAL]** % owned by HDP shareholder, Afrika Tikkun.

38. The Target Dealership is **[CONFIDENTIAL]** % control by HDP Shareholder, an individual by the name of Solly Latif who controls Solly Latif (Pty) Ltd.

39. Thus, as a direct result of the merger, the HDP shareholding in the Target Dealership will be reduced from **[CONFIDENTIAL]** %.

40. To address this concern, the merging parties agrees to place the Target Dealership in Eastvaal Fleet Services, which has a **[CONFIDENTIAL]** % B-BBEE shareholder, Afrika Tikkun. The parties indicated that the **[CONFIDENTIAL]** % shareholding by Afrika Tikkun in Eastvaal Fleet translates to **[CONFIDENTIAL]** % voting rights. This proposed condition would ensure that the Target Dealership remain controlled by the HDP post-merger.

41. In addition, Afrika Tikkun will have an option to purchase a majority shareholding, in Eastvaal Fleet Services Proprietary Limited and thus become a majority shareholder in the Target Dealership. (**The condition is attached as Annexure B**).

42. The proposed transaction does not raise other public interest concerns.

Conclusion

43. light of the above, the Commission approves the proposed merger with conditions (attached hereto as “Annexure A”).

ANNEXURE A

EASTVAAL MOTORS PROPRIETARY LIMITED

AND

COMBINED AUTO HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: 2022MAR0020

CONDITIONS

1. DEFINITIONS

Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings.

1.1 **Approval Date** means the date on which the Commission approves the Merger;

1.2 **B-BBEE** means broad-based black economic empowerment as defined in the B-BBEE Act;

1.3 **B-BBEE Act** means the Broad Based Black Economic Empowerment Act, 53 of 2003;

1.4 **B-BBEE Shareholder/s** means a natural person who is a “black person” as defined in the B-BBEE Act or a firm (as defined by the Competition Act) a majority of which is controlled by “black persons” as defined in the B-BBEE Act, a “B-BBEE controlled company” as defined in the Generic Codes of Good Practice on Broad-Based Black Economic Empowerment current as at the Implementation Date and which Codes are promulgated in terms of the BBBEE Act or a Historically Disadvantaged Person;

1.5 **B-BBEE Transaction** means a transaction to be concluded between the Primary Acquiring Firm and Eastvaal Fleet Services Proprietary Limited in terms of which

the Target Firm will be placed in an existing B-BBEE-empowered subsidiary of the Primary Acquiring Firm, namely Eastvaal Fleet Services Proprietary Limited, which has a B-BBEE shareholder, namely Afrika Tikkun Holdings Proprietary Limited, holding **[CONFIDENTIAL]** % of the shares, **[CONFIDENTIAL]** % voting rights, and an option to purchase a majority shareholding, in Eastvaal Fleet Services Proprietary Limited.

1.6 **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;

1.9 **Conditions** means the conditions set out in clause 3 of this Annexure A;

1.10 **Days** means business days being any day other than a Saturday, Sunday or official public holiday in South Africa;

1.11 **Historically Disadvantaged Person** means a historically disadvantaged person as defined in sections 3 (2) (a) to (e) of the Competition Act;

1.12 **Implementation Date** means the date which is defined as the Effective Date in the Merger Agreement that is the commencement of business on the first Day of the month succeeding the date on which all the conditions precedent in the Merger agreement are fulfilled and the Merger agreement becomes unconditional and binding on the Primary Acquiring Firm and the Primary Target Firm;

1.13 **Merger** means the Primary Acquiring Firm’s acquisition of the business of the Primary Target Firm as contemplated in the transaction notified to the Commission under case number 2021MAR0020;

1.14 **Merging Parties** means the Primary Acquiring Firms and the Target Firm;

1.15 **Primary Acquiring Firm** means Eastvaal Motors Proprietary Limited;

1.16 **South Africa** means the Republic of South Africa;

1.17 **Primary Target Firm** means Combined Auto Holdings Proprietary Limited's business comprising a multi-franchise motor dealership and a used dealership located in Middleburg Mpumalanga;

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. RECORDAL

2.1 On 06 April 2022, the Commission received notice of an intermediate merger wherein the Primary Acquiring Firm intends to acquire control over the Primary Target Firm. Following its investigation, the Commission found that the Merger is unlikely to substantially prevent or lessen competition in any relevant market.

2.2 However, in considering the effect of the merger on public interest, the Commission found that the merger would result in a dilution of ownership by HDPs in the Primary Target Firm from **[CONFIDENTIAL]** % pre-merger to zero. To remedy the concern, the Primary Acquiring Firm has agreed to these conditions.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

3.1 The Primary Acquiring Firm will ensure that within 12 (twelve) months from the Implementation Date, the Target Firm will be placed in an existing BBE-empowered subsidiary, namely Eastvaal Fleet Services Proprietary Limited, which has an existing B-BBEE shareholder, namely Afrika Tikkun Holdings Proprietary Limited, currently holding of the shares, **[CONFIDENTIAL]** % voting rights, and an option to purchase a majority shareholding, in Eastvaal Fleet Services Proprietary Limited.

3.2 Prior to the implementation of the B-BBEE Transaction, the Primary Acquiring Firm will provide the Commission with details of the B-BBEE Transaction in writing, for the Commission's approval. These details shall include, but not be limited to, the transaction structure, identities of prospective B-BEEE Shareholder/s,

documentary evidence that the prospective shareholders are B-BEEE Shareholder/s, the proportion of shareholding that each prospective B-BEEE Shareholder/s will receive, the number of board appointments each B-BEEE Shareholder/s is entitled to and confirmation of whether the B-BBEE Transaction constitutes a merger for the purposes of the Act.

3.3 Within 60 (sixty) Days after receipt of the details of the B-BBEE Transaction, the Commission shall confirm whether or not the B-BBEE Shareholders complies with the B-BBEE requirements as stipulated in these conditions.

3.4 For the avoidance of doubt, to the extent that the B-BBEE Transaction constitutes a small, intermediate or large merger in terms of the Competition Act, the B-BBEE Transaction can then only be implemented once same has been notified to the Commission as a small, intermediate or large merger as applicable, in terms of the Competition Act and approved with or without conditions.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1 The Primary Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days after its occurrence.

4.2 Within 30 Days after the first anniversary of the Approval Date respectively, the Primary Acquiring Firm shall report to the Commission detailing its progress in achieving compliance with these Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Primary Acquiring Firm confirming the accuracy of the report.

4.3 The Commission may request additional information from the Primary Acquiring Firm from time to time as necessary to monitor compliance with these Conditions.

4.4 Any person who believes that the Primary Acquiring Firm has not complied with the Conditions may approach the Commission. In the event that the Commission determines that there has been an apparent breach by the Primary Acquiring Firm of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5. APPARENT BREACH

5.1 If the Commission receives any complaint concerning non-compliance with the Conditions or otherwise determines that there has been an apparent breach by the Primary Acquiring Firm of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read with Rule 37 of the Tribunal Rules.

6. VARIATION

6.1 The Primary Acquiring Firm 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 concerning the variation of the Conditions, the Primary Acquiring Firm 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 the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za a ministry@thedtic.gov.za.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

REATILE SOLAR POWER 2 PROPRIETARY LIMITED

AND

HULISANI LIMITED

CASE NUMBER: 2021NOV0052

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 above-mentioned firms subject to conditions as set out below:

1. The Primary Acquiring Firm is Reatile Solar Power 2 Proprietary Limited ("Reatile"), controlled by Reatile Group Proprietary Limited ("Reatile Group"), Reatile, its controllers and all firms controlled by them are collectively referred to as the "Acquiring Group".

2. The Primary Target Firm is Hulisani Limited ("Hulisani"). Hulisani is a company listed on the securities exchange operated by the JSE Limited ("JSE") and is not controlled, directly or indirectly, by any firm. Hulisani and all firms controlled by it constitute the "Target Group".

3. As per the proposed transaction, Reatile intends to acquire control over Hulisani.

Areas of Overlap and Market Definition

4. The Commission considered the activities of the merging parties and found that they overlap as the merging parties are both active in the supply of renewable energy (particularly solar

photovoltaic ("PV")) to Eskom. However, it bears mention that the Acquiring Group does not control any of the solar PV parks in which they have a shareholding.

5. The Commission considered the impact of the merger on the supply of solar PV as that is the narrowest product market in which competition concerns may arise and thus presents a worst-case scenario for competition assessment purposes. The Commission assessed the supply of renewable energy on a national basis, without definitively concluding on the appropriate geographic scope due to the lack of concerns arising from the merger.

6. In terms of the national supply of renewable energy through solar PV, the Commission found that the merged entity will have a combined market share of approximately 10 – 20% with an accretion of less than 5%. The Commission found that the market for the supply of Solar PV energy at a national level is fragmented as there are at least 39 other solar PV suppliers participating in the Renewable Energy IPP Procurement Programme ("REIPPPP"). The Commission is of the view that the proposed transaction is unlikely to alter the structure of the market and, therefore, the transaction is unlikely to substantially prevent or lessen competition in any market.

7. The Commission found that the proposed transaction will result in job losses for all 5 employees of Hulisani. The retrenchments are due to duplications that arise from the merger. The merging parties submit that the Reatile Group currently employs the staff in the same designations and/or capable of fulfilling the same role as the Hulisani employees that are to be retrenched.

8. The Commission found that all of the employees of Hulisani will be retrenched as a result of the proposed transaction and as such the Commission requested that the proposed transaction be approved subject to a reskilling condition for the semi-skilled employees affected by the proposed merger. In this regard, the Commission requested the merging parties to set aside R50 000 for each semi-skilled employee, in order for them to further their studies in a qualification of their choosing. The merging parties have agreed to the proposed condition. These conditions are listed in Annexure A.

9. In addition, the merging parties state that the proposed transaction is likely to have a positive effect on the 12A(3)(e) of the Competition Act of promoting the greater spread of ownership

by workers and historically disadvantaged persons as Reatile Group has 100% black ownership and 30% black woman ownership and is a level 1 B-BBEE contributor. As such Hulisani will increase its Black Voting Rights from the current 86,66% to 100% as well as its Black Economic Interest from 51,89% to 100%.

10. The proposed transaction does not raise any other public interest concerns.

Conclusion

11. The Commission approves the proposed transaction with the conditions captured in

Annexure A.

ANNEXURE A: CONDITIONS

REATILE SOLAR POWER 2 PROPRIETARY LIMITED

AND HULISANI

LIMITED

CASE NUMBER: 2021NOV0052

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 Reatile Solar Power 2 Proprietary Limited;

1.1.2. **"Affected Employees"** means the 3 (three) employees employed by the Target Firm whose job functions are classified as 'semi-skilled';

1.1.3. **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);

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. **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;

1.1.6. **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;

1.1.7. **"Conditions"** mean these Conditions;

1.1.8. **"Days**" mean any calendar day which is not a Saturday, a Sunday or an official public

holiday in South Africa;

1.1.9. **"Fund**" means an allocation of money to the value of R150,000 for the purposes of skills development;

1.1.10. **"Fund Manager**" means the Chief Financial Officer or any appointed Finance or Human Resources Manager employed by the Acquiring Firm who shall be appointed to control and manage all financial and accounting aspects of the Fund;

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 66 of 1995, as amended;

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. **"Target Firm"** means Hulisani Limited;

1.1.16. **"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

Training / Skills Development Award

2.1. The Acquiring Firm will establish the Fund to re-skill the Affected Employees. The Affected Employees shall source an accredited third-party re-skilling service provider of their choice whereupon the Acquiring Firm shall fund the enrolment and reskilling of these Affected Employees, up to a maximum amount equal to R50 000 (fifty thousand rand) per employee.

2.1.1 Any Affected Employee wishing to make use of the designated Fund shall apply to the Fund Manager within 12 (twelve) months from the Implementation Date, for the allocation of all or a portion of the fees payable for the training.

2.1.2 The application shall be fully motivated and shall include details (on accredited documentation of the training facility in question) of the cost of the training programme, the material covered in the course and the certification or other accreditation conferred on participants upon successful completion of the training programme.

2.1.3 The Acquiring Firm will, upon request from any Affected Employee, assist or arrange for the assistance of any prospective applicant with the application process to respective institution where the training programme is offered.

2.1.4 Should an application for the training be successful, the Acquiring Firm shall make payment of the fees in question (or the portion thereof granted to the Affected Employee) directly to the training institution in question.

2.2. The Acquiring Firm shall continue to offer funding to the Affected Employees for a period of 2 (two) years from the Implementation Date or until the Fund is exhausted, whichever occurs sooner, at which point, any portion of the amount allocated to the Fund that remains unclaimed by the Affected Employees will be retained by the Acquiring Firm.

Preferential employment

2.3. The Acquiring Firm shall assist any Affected Employees who may be retrenched with offers of preferential employment, for a period of 2 (two) years from the Implementation Date, only to the extent that job opportunities become available and provided that the Affected Employee(s), in the Acquiring Firm's reasonable discretion, are suitably qualified and experienced for such roles.

3. MONITORING

3.1. The Acquiring Firm shall circulate a copy of the Conditions to all employees, the employee representatives and trade unions of the Merging Parties within 5 (five) Days following the Approval Date.

3.2. As proof of compliance thereof, the Merging Parties shall within 5 (five) 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.

3.3. The Acquiring Firm shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of it becoming effective.

3.4. The Acquiring Firm shall submit a report to the Commission indicating their compliance with respect to these Conditions. These reports must be lodged 5 (five) Days after each anniversary of the Implementation Date for a period of 2 (two) years.

4. APPARENT BREACH

4.1. In the event that the Commission receives a complaint regarding non-compliance by the Merging Parties with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Commission Rules.

5. VARIATION

5.1. The Acquiring Firm 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 variation of the Conditions, the Acquiring Firm 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

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:

REAL FOODS INVESTMENTS PROPRIETARY LIMITED

AND

HIGHVELD HONEY FARMS PROPRIETARY LIMITED

CASE NUMBER: 2022OCT0024

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 October 2022, the Competition Commission ("Commission") was notified of an intermediate merger wherein Real Foods Investments Proprietary Limited ("RF Investments") intends to acquire the remaining shares in Highveld Honey Farms Proprietary Limited ("Highveld Honey") that it does not already own. Post-merger, RF Investments will hold 100% of Highveld Honey.

2. . RF Investments, all the firms controlling it, and all the firms controlled by those firms, are collectively referred to as the ("Acquiring Group"). The Acquiring Group has no shareholding by any historically disadvantaged persons as defined in section 3(2) of the Competition Act No. 89 of 1998 (as amended) (the "Act").

3. Highveld Honey, is jointly controlled by the Acquiring Group and Falconer Group Proprietary Limited. Highveld Honey is a honey producer, distributing a broad range of South African honey products as well as imported honey to wholesale and retail markets. Highveld Honey does not have any HDP shareholders pre-merger.

4. The Commission found that the merger is unlikely to result in a substantial lessening or prevention of competition is any relevant market.
5. In response to the Commission's position that the merging parties have a positive obligation to promote section 12A(3)(e) of Act, the parties have agreed to implement an HDP transaction.
6. The Commission found that the merger does not raise any further public interest issues.
7. The Commission therefore approves the proposed transaction subject to the conditions in **Annexure A** hereto

ANNEXURE A: CONDITIONS

REAL FOODS INVESTMENT HOLDINGS PROPRIETARY LIMITED

AND

HIGHVELD HONEY FARMS PROPRIETARY LIMITED

CASE NUMBER: 2022OCT0024

CONDITIONS

1. **DEFINITIONS**

1.1 "**Acquiring Firm**" means Real Foods Investment Holdings Proprietary Limited;

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

1.3 **"Approval Date**" means the date referred to on the Commission's Merger Clearance Certificate;

1.4 "**Commission**" means the Competition Commission of South Africa;

1.5 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Commission;

1.6 **"Conditions"** mean, collectively, the conditions referred to in this document;

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 "**HDPs**" mean historically disadvantaged persons, as defined in section 3(2) of the Act;

1.9 "**HDP Transaction**" means the Acquiring Firm's commitment to transfer not less than **[Confidential]** of the issued share capital of the Target Firm, to one or more HDPs, chosen at the Acquiring Firm's sole discretion;

1.10 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;

1.11 "**Merger**" means the Acquiring Firm's acquisition of the remaining issued share capital of the Target Firm;

1.12 "**Merger Parties**" means the Acquiring Firm and the Target Firm;

1.13 "**South Africa**" means the Republic of South Africa; and

1.14 "**Target Firm**" means Highveld Honey Farms Proprietary Limited.

2. **CONDITIONS**

HDP Transaction

2.1 The Acquiring Firm shall implement the HDP Transaction within **[CONFIDENTIAL]** months of the Implementation Date. In this regard, the Acquiring Firm will, in its sole discretion, determine prospective HDP shareholder/s that will participate in the HDP Transaction as well as the proportion of shares that will be allotted to each such HDP shareholder/s.

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 prospective participants to the HDP Transaction are HDPs, the proportion of shareholding in the Target Firm that each prospective HDP shareholder will receive and confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.

2.3 For the avoidance of doubt, the information in clause 2.2 above, will be provided to the Commission to enable the Commission to assess the Acquiring Firm's compliance with the Conditions.

2.4 For the avoidance of doubt, to the extent that the HDP Transaction 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 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, within 10 Days of the date of implementation of the HDP Transaction, submit an affidavit confirming compliance with the 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 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, 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 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:

LUCKY STAR LIMITED
AND

SUPREME PROCESSING PROPRIETARY LIMITED

CASE NUMBER: 2022OCT0027

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 October 2022, the Competition Commission ("Commission") received notice of an intermediate merger in terms of which Lucky Star Ltd, trading as Lucky Star Operations ("Lucky Star") intends to acquire assets used by Supreme Processing (Pty) Ltd ("Supreme") to manufacture and pack canned corned meat products on behalf of Lucky Star ("the canned meat assets") as well as Supreme's Prima brand.

The parties and their activities

2. The primary acquiring firm is Lucky Star. Lucky Star is a wholly owned subsidiary of the Oceana Group Limited ("Oceana"), which is a publicly listed company trading on the Johannesburg Stock Exchange and the Namibian Stock Exchange. Oceana is not controlled by any single entity. Oceana controls numerous firms. Lucky Star has controlling interests in two unincorporated joint ventures which hold fishing vessels.

3. The merging parties indicate that 81.82% of the shares in Oceana are held by historically disadvantaged persons ("HDPs"). As a result, the shares held by HDPs in Lucky Star are similarly 81.82%.

4. The primary target firms are the canned meat assets of Supreme which were operated by Supreme at its Polokwane plant as well as the Prima brand which is owned by Supreme.

5. Supreme is a wholly owned subsidiary of Country Bird Holdings (Pty) Ltd ("CBH"). CBH controls numerous firms and Supreme does not control any single entity.

6. The merging parties submit that Supreme does not have any shareholding held by HDPs. In addition, Supreme does not have an ESOP.

7. Lucky Star forms part of the pelagic fish business of Oceana and its primary product is canned fish consisting of pilchards, tuna, sardine and mackerel, all of which are marketed under the Lucky Star brand. Lucky Star has recently expanded into other food categories including canned meat, soya, baked beans, and chakalaka.

8. The canned meat assets were utilised by Supreme at its Polokwane plant to manufacture, and pack canned corned meat products on behalf of Lucky Star under the Lucky Star, and Top One brands. In the past year, Supreme also utilised the canned meat assets to manufacture and sell canned meat products under the Prima brand which it sold to Lucky Star. Lucky Star sold the Prima-branded products in Namibia. The canned meat assets remain unutilised since September 2022 due the shutdown of Supreme's Polokwane plant.

Competition assessment

9. The Commission found that there was a pre-existing vertical relationship between the merging parties as Supreme manufactured and packed canned meat products on behalf of Lucky Star prior to this transaction.

10. The Commission found that in May 2022, Supreme decided to discontinue operations of its Polokwane plant. After giving Lucky Star four months' notice of termination of its manufacturing agreement, Supreme shut down the canning operations at the plant at the end of September 2022.

11. Considering the termination of the manufacturing agreement, the Commission found that the vertical agreement between Supreme and Lucky Star ceased at the end of September 2022. Notwithstanding this, the Commission found that even if the vertical relationship remained, the proposed transaction would not result in any input or customer foreclosure because a substantial percentage of the revenues derived by Supreme from the canned meat products were from sales made to Lucky Star.

Public interest consideration

Employment

12. The Commission found that as a result of the discontinuation of operations at the Polokwane plant, there were job losses. The Commission considered the merger-specificity of the job losses and found that it is unlikely that the job losses at the Polokwane plant were as a result of the proposed transaction.

13. The merging parties submitted that retrenchments also took place at Ocean Lobster Limited, a subsidiary of Oceana. The Commission found that these retrenchments were also not related to the proposed transaction.

14. Notwithstanding the fact that the job losses at the Polokwane plant and at Oceana Lobster Limited are unrelated to the proposed transaction, Lucky Star has undertaken to create 30 new jobs as a result of this proposed transaction. Lucky Star has agreed to make its commitment a condition to the approval of the proposed transaction.

15. The proposed transaction does not raise any other public interest concern.

Conclusion

16. The Commission approves the proposed merger with conditions attached hereto as “Annexure A”.

ANNEXURE A

LUCKY STAR LIMITED

AND

THE CANNED MEAT ASSETS OF SUPREME PROCESSING PROPRIETARY LIMITED

CASE NUMBER: 2022OCT0027

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 Firm"** means Lucky Star Limited;

1.2. **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15) 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 these conditions contained in this Annexure A, and "Condition" means, as the context requires, any one of them;

1.7. **"Days"** mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

1.8. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;

1.9. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;

1.10. **"Merger Parties"** means collectively, the Acquiring Firm and the Target Firm;

1.11. **"Oceana Lobster"** means Oceana Lobster Limited;

1.12. **"Target Firm"** means the canned meat assets of Supreme Processing Proprietary Limited; and

1.13. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. CONDITION TO THE MERGER

2.1. **Creation of employment opportunities**

2.1.1. Following the Approval Date, Lucky Star undertakes to create 30 (thirty) permanent jobs within 12 (twelve) months of the Implementation Date.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1. The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.

3.2. As proof of compliance with paragraph 2.1.1, the Acquiring Firm, shall within 12 (twelve) months of the Implementation Date, submit an affidavit to the Commission attesting to the creation of 30 jobs, provide a list of the names of the new employees including their respective positions and the period of the contract of their employment.

3.3. 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.

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 Merger Parties of any of the 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, and on good cause shown, apply to the Commission for the Conditions to be lifted, revised and/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 any of the Conditions to be lifted, revised and/or amended.

6. GENERAL

6.1. All reporting documents referred to in these Conditions and 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:

TRANSPORT COOLING AFRICA (PTY) LTD

AND

TRANSPORT COOLING SOUTH AFRICA (A DIVISION OF GEA AFRICA (PTY) LTD)

CASE NUMBER: 2022OCT0058

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 31 October 2022, the Competition Commission (Commission) was notified of an intermediate merger wherein Transport Cooling Africa (Pty) Ltd (TCA) intends to acquire the entire business of Transport Cooling South Africa, a division of GEA Africa (Pty) Ltd (the Target Firm). Post-merger, TCA will solely control the Target Firm.

2. TCA is a wholly owned subsidiary of Beijer Ref AB (Beijer) which is a public company headquartered in Sweden. Beijer and all the firms it controls in South Africa, are referred to as the "Acquiring Group". In South Africa, the Acquiring Group is an importer and distributor of OEM industrial and commercial grade refrigeration and air conditioning equipment, and components, predominately to refrigeration and air conditioning installers. The Acquiring Group does not have any ownership by historically disadvantaged persons (HDPs)

3. The Target Firm imports, distributes and installs Thermo King and Frigoblock branded transport temperature control units. The Target Firm does not have any HDP ownership.

4. The Commission found that the merger does not result in any horizontal or vertical overlaps. Consequently, the Commission found that the merger is unlikely to result in any competition concerns.

5. In line with section 12A(3)(e) of the Competition Act No. 89 of 1998, the merging parties have agreed to implement an Employee Share Ownership Programme (ESOP) post-merger. The ESOP will hold a 25.1% interest in TCA post-merger and will benefit HDP workers.

6. There are no other public interest concerns.

7. Considering the above, the Commission approves the proposed transaction subject to the conditions attached as **Annexure A** hereto.

ANNEXURE A

TRANSPORT COOLING AFRICA PROPRIETARY LIMITED

AND

TRANSPORT COOLING SOUTH AFRICA, A DIVISION OF GEA AFRICA PROPRIETARY LIMITED

CASE NUMBER:2022OCT0058

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 Beijer Ref AB and all its subsidiaries in South Africa;

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 "**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 12 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 TCA and the Target Business;

1.11 "**Merger**" means the proposed acquisition by TCA of the Target Business as notified to the Commission under Case No. 2022Oct0058;

1.12 "**Merged Entity**" means the combination of TCA and the Target Business pursuant to the merger;

1.13 **"Merging Parties"** means TCA and the Target Business;

1.14 "**South Africa**" means the Republic of South Africa;

1.15 "**Target Business**" means Transport Cooling South Africa, a division of GEA Africa (Pty) Ltd;

1.16 **"TCA"** means Transport Cooling Africa (Pty) Ltd;

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 Worker"** means South African HDP Worker with 2 years or more work experience at the Acquiring Group or Target Business; 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.

2. ESTABLISHMENT OF THE ESOP

2.1. By the end of the ESOP Establishment Period, the Acquiring Group shall establish the ESOP for the benefit of Qualifying Workers. The ESOP shall hold 25.1% of the issued shares in TCA as at the Implementation Date.

3. MONITORING

3.1. 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 Acquiring Group 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 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 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

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ATLANTIS FOOD HOLDINGS PROPRIETARY LIMITED

AND

SNOEK WHOLESALERS PROPRIETARY LIMITED AND THE PROPERTY LOCATED AT 1 BECKER STREET, ERF 41115, HANOVER PARK, PHILIPPI, CAPE TOWN

CASE NUMBER: 2022AUG0035

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 17 August 2022, the Competition Commission ("Commission") received a notification of an intermediate merger whereby Atlantis Food Holdings Proprietary Limited ("Atlantis") intends to acquire (i) 100% of the entire issued share capital of Snoek Wholesalers Proprietary Limited ("Snoek Wholesalers") and (ii) the property located at 1 Becker Street, ERF 41115, Hanover Park, Philippi, Cape Town ("Target Property"). Upon implementation of the proposed transaction, Atlantis will control Snoek Wholesalers and the Target Property.

2. Atlantis is controlled by Cenon Holdings (Pty) Limited ("Cenon") and Cenon is controlled by Lonrho Africa Holdings Limited ("Lonrho Africa"). Lonrho Africa is, in turn, controlled by Lonrho Holdings Limited ("LHL"). Atlantis controls the following firms: Breco Holdings (Pty) Ltd; Atlantis Seafood Distributors (Pty) Ltd; Siyanqoba Fishing (Pty) Ltd; and Superpackers Holdings (Pty) Ltd (dormant). Atlantis, LHL and all the firms directly and indirectly controlled by LHL shall be referred to as "Atlantis Group". The Atlantis Group does not have any shareholding by historically disadvantaged persons ("HDPs"). In South Africa, the Atlantis Group is active in the importation, packaging and trading of seafood. Its business is based in Atlantis, Cape Town.

3. The primary target firms are Snoek Wholesalers and The Target Property. Snoek Wholesalers is engaged in the importation, processing, trading and distribution of seafood products throughout South Africa. Snoek Wholesalers supplies a wide variety of frozen fish, shellfish, and molluscs. In addition, Snoek Wholesalers is a supplier of its own brands, namely Ocean Catch seafood and Atlantic Brand products. Snoek Wholesalers also operates a cold storage facility.

4. The Target Property is a processing facility comprising a factory and factory shop and is currently being leased to Snoek Wholesalers.

5. The Commission assessed the activities of the merging parties and found that the proposed transaction gives rise to a horizontal overlap as the merging parties are both active in the market for the supply of fish and seafood products.

6. In calculating the market shares, the Commission relied on data from GlobalData. The merged entity will have an estimated market share of approximately 5 – 10%, with an accretion of less than 5% in the national market for the supply of fish and seafood products. The customers contacted by the Commission submitted that the merged entity will continue to be constrained by other players such as Sea Harvest, I&J , Blue Continent Products and Pioneer Fishing.

Restraint of trade assessment

7. The merging parties have entered into a restraint of trade agreement which indicates that:

"the Seller, the trustees, …("hereafter referred to as "Seller Members") involved in the business of Snoek Wholesalers will need to sign a restraint of trade of 5 years with effect from the Closing Date. This is to provide Atlantis with comfort that the "Seller Members" would not create or benefit any competitor business which would be to the detriment of Atlantis…."

8. The Commission finds that the period of the restraint period is unreasonable and as such the Commission requested the merging parties to reduce the restraint of trade period. In this regard, the parties agreed to reduce the restraint period to 3 years. See conditions attached hereto as **"Annexure A".**

9. Taking the above into consideration, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any market in South Africa.

Public interest assessment

Effect on employment

10. The merging parties submitted that they have not undertaken any detailed assessment to ascertain the effect of the merger on employment. However, the merging parties indicate that the merger is likely to result in duplication of roles.

11. Given that the merging parties have not undertaken a detailed assessment of the effect of the proposed merger on employment, the parties submitted that they are willing to commit that they will not engage in any merger specific retrenchment for a period of a 1-year. However, the parties indicate that this will exclude 5 (five) jobs at the management level in finance, trade, procurement, logistics and forwarding & clearing where there are likely to be duplications.

Engagements with the employee representatives

12. The Commission contacted the employee representatives of both the Acquiring Group and the Target Firms who did not raise any significant concerns relating to the proposed merger.

Submissions from the Department of Trade Industry and Competition ("DTIC")

13. The Commission received a Notice of Intention to Participate from the DTIC. One of the concerns raised by the DTIC was that the commitment by the merging parties of a one- year moratorium on merger specific retrenchments does not lend adequate protection to workers in the proposed merger. In this regard, the DTIC requested the Commission to engage the merging parties and propose a five-year moratorium on merger specific retrenchments post-merger.

Merging parties' response on the concerns raised by the DTIC

14. The merging parties submitted that they would not be able to commit to a 5-year moratorium. However, they submitted that they are amenable to 3 (three) year moratorium in relation to the 243 unskilled, semi-skilled and certain skilled employees. In this regard, the merging parties proposed a condition that they will not retrench employees of the Target Firm for a period of 3 years. This excludes 5 (five) employees. See conditions attached hereto as "**Annexure A**".

Commission's view

15. The Commission accepts the employment condition proposed by the merging parties.

Effect on greater spread of ownership

16. The merging parties submitted that the proposed transaction will not give rise to a dilution of HDP shareholdings as the Target Group/ and Acquiring Group does not have any HDP shareholdings and/or workers empowerment schemes.

Submissions from the DTIC

17. The DTIC submitted that the merger parties have not made an unequivocal commitment that the merger will indeed promote a greater spread of ownership by HDPs/ workers or other initiatives aimed at broad-based black economic empowerment. In this regard, the DTIC requested the Commission to engage the merging parties with a view to institute the following commitments/ conditions to the merger application:

    17.1. Transferring workers of the Target Group to gain unencumbered participation/benefits in any worker ownership scheme/ programme that existed pre-merger in the acquiring group;
    17.2. To the extent that the above-mentioned ownership scheme/ programme does not exist, the merger parties to commit to implement such a scheme/programme at the merged entity within a period of 24 months, post implementation of the merger.

Merging parties' response

18. The merging parties submitted that Atlantis does not have an employee's ownership scheme/ programme. As such, there is no employee's ownership scheme/ programme that the workers of the Target Group can be transferred to.

19. With respect to the second request of establishing a new worker empowerment scheme/program, the merging parties indicate that introducing a new worker empowerment scheme/program will affect the viability of the transaction as the target firm has been struggling to find a purchaser who is willing to purchase the business as a going concern and secure the employment of workers. Thus, this may result in the target firm having to only sell its stock and not the business as has been proposed by other alternative purchasers.

Commissions view of the effect of the proposed merger on the greater spread of ownership

20. The Commission requested the merging parties to indicate how the proposed merger will contribute to the promotion of greater spread of ownership by HDPs and workers in firms in the market as contemplated in section 12A (3)e of the Act.

21. In response, the parties submitted that Atlantis is willing to commit to continue making contributions towards Skills Development; Supplier Development; Enterprise Development; Socio-Economic Development initiatives to the total value of [CONFIDENTIAL] over [CONFIDENTIAL] following the implementation of the proposed transaction.

22. In the circumstances of this case, the Commission approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.

ANNEXURE "A"

ATLANTIS FOOD HOLDING PROPRIETARY LIMITED

AND

SNOEK WHOLESALERS PROPRIETARY LIMITED AND THE TARGET PROPERTY

CASE NO: 2022AUG0035

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 Atlantis Food Holdings Proprietary Limited;

1.2. **"Affected Employees"** means no more than 5 (five) employees of the Merging Parties within the category of skilled employees employed in the following roles/ departments: senior management, finance, trade, procurement, logistics and forwarding & clearing. The Affected Employees have a matric with many having post-matric qualifications.

1.3. "**Approval Date**" means the date referred to on the Competition Tribunal's Merger Clearance Certificate (Form CT 10);

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 Competition Commission;

1.7. **"Conditions"** means these conditions;

1.8. **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.9. **"Implementation Date"** means the date after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.10. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firms;

1.11. **"Merging Parties"** mean collectively the Acquiring Firm and the Target Firms;

1.12. **"Restraint Period"** means the period as defined in the Non-binding indicative offer dated 11 August 2022 during which the Seller Members are prevented from competing against the Merging Parties for a period of 5 years from the Implementation Date.

1.13. **"Seller Members"** means the seller and trustees (excluding professional trustees)

1.14. **"Target Firms"** means Snoek Wholesalers Proprietary Limited and the Target Property;

1.15. **"Target Property"** means the property located at 1 Becker Street, ERF 41115, Hanover Park, Philippi, Cape Town; 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. The Acquiring Firm commits that it or its subsidiaries will contribute (at a minimum) [CONFIDENTIAL] to, *inter alia*, the following initiatives over a period of [CONFIDENTIAL] commencing on the Implementation Date:

2.1.1. Skills Development;
2.1.2. Supplier Development;
2.1.3. Enterprise Development; and
2.1.4. Socio-Economic Development.

2.2. 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, save for the Affected Employees.

2.3. In respect of the Affected Employees, the Merging Parties will offer –

2.3.1. mutual separation agreements;

2.3.2. preferential employment, in the future for a period of one year, for those employees who are retrenched if job opportunities become available and provided that the applicants are suitably qualified; and

2.3.3. to distribute, upon request, the CVs of retrenched employees to customers/suppliers/third parties and facilitating assistance for such employees through recruitment agencies.

2.4. 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.

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 employment conditions to all their employees and their employee representatives within 5 (five) Days of the Approval Date.

3.3. As proof of compliance thereof, the Managing Director 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.

3.4. As proof of compliance thereof, the Merging Parties shall within 5 (five) Days of the signature date submit signed agreements giving effect to clause 2.5 of the Conditions.

3.5. The Acquiring Firm shall, for a period of 3 years, on the anniversary of the Implementation Date, submit an affidavit confirming 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 Merging 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 Merging Parties 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:

IHS HOLDING LIMITED

AND

MOBILE TELEPHONE NETWORKS PROPRIETARY LIMITED REGARDING THE ACQUISITION OF CERTAIN TOWER INFRASTRUCTURE AND ASSOCIATED ASSETS

CASE NUMBER: 2021DEC0004

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 above-mentioned firms subject to conditions set out below:

1. On 2 December 2021, the Competition Commission ("the Commission") received notice of an intermediate merger whereby IHS Holding Ltd ("IHS") intended to acquire certain passive tower infrastructure assets and associated business operations ("Target Business") owned by Mobile Telephone Networks (Pty) Limited ("MTN"). Post-merger, the Target Business would be controlled by IHS Towers South Africa (Pty) Ltd ("IHS SA"), a wholly owned subsidiary of IHS.

2. The primary acquiring firm, IHS, is duly incorporated in accordance with the laws of the Cayman Islands. IHS intends to establish a South African subsidiary, IHS SA. IHS is publicly listed on the New York Stock Exchange and as its shares are widely held, it is not directly or indirectly controlled by any firm or individual. However, for the sake of completeness, shareholders owning an interest of at least 5% or more in IHS include Mobile Telephone Networks (Netherlands) B.V., Wendel and affiliated entities, ECP and affiliated entities,

Korea Investments Corporation and Warrington Investment Pte Ltd. IHS and all the firms it controls, including IHS SA will henceforth be referred to as the "Acquiring Group".

3. The Target Business was owned by MTN, which is in turn controlled by MTN Holdings Ltd. MTN Holdings Ltd is in turn controlled by MTN Group Limited ("Seller"). The MTN Group is publicly listed on the Johannesburg Securities Exchange Limited and as its shares are widely held, the MTN Group is not directly or indirectly controlled by any firm or individual.

4. In terms of the Sale of Business Agreement ("SBA") between the parties, the Target Business would be sold to the Acquiring Group (IHS). Further, the Seller would lease back the tower infrastructure sites forming part of the Target Business from the Acquiring Group, in terms of a Master Lease Agreement ("MLA"), for an initial period. In addition, the Seller will enter into a Built-to-Suit Agreement ("BTSA") in terms of which the Acquiring Group will have the right to build, develop and deliver some of the new greenfield sites to be rolled out by the Seller. Further, in terms of the SBA, the rights and obligations under the SBA will in due course be ceded to IHS SA which will itself enter into the MLA and BTSA. Post-merger, the Target Business will be owned and controlled by the Acquiring Group.

5. The Acquiring Group constructs, acquires, operates, maintains and decommissions towers with a focus on technology roll-out, power innovation and site-security. The Target Business provides tower infrastructure leasing services through passive tower infrastructure to mobile network operators ("MNOs") and other licensed operators ("OLOs"). Passive infrastructure includes the non-radio frequency elements of a cellular site such as the towers, buildings, air conditioning plant, security, power generation and supply components and the technical premises.

6. The Commission found that the proposed transaction raises a vertical overlap through a structural link in that MTN owns some shares in the Acquiring Group. At the same time, MTN will continue to lease space on the towers of the Target Business through the MLA.

7. The Commission notes that MTN SA will not be selling all its tower infrastructure but will retain some passive tower infrastructure that is not part of the Transferred Business. Therefore, MTN will still be active in direct competition with the Acquiring Group in the passive infrastructure market.

8. The Commission further found that MTN utilises other tower vendors when rolling out new towers as well as managing and maintaining such towers. Such tower operators are typically responsible for the construction of towers as well as managing and maintaining them.

9. For purposes of assessing the proposed merger, the Commission concluded on the (i) national upstream market for the construction of passive infrastructure sites, (ii) the national upstream market for the management and maintenance of passive infrastructure tower sites (iii) and the national downstream market for the provision of mobile and other licensed network services.

10. The Commission found that MTN has a substantial market share in the upstream market, ahead of Vodacom and Telkom.

11. Regarding the downstream market for the provision of broad mobile network services, the Commission found that MTN accounted for a notable share of the market behind Vodacom and the balance is accounted for by Cell C and Telkom. Mobile virtual network operators ("MVNOs") account for the minimum remaining shares, based on revenues, in 2020.

Vertical assessment

Input foreclosure

12. The Commission assessed whether the Acquiring Group would have the incentive to implement an input foreclosure strategy by denying access to space on tower sites to other MNOs and OLOs. This is particularly so given MTN Group's shareholding in IHS, which shareholding may align with the incentives of MTN and IHS SA post-merger. Additionally,

the Commission noted that the MLA stipulated that MTN will be guaranteed space on the transferred towers and the future (to-be-built) towers.

13. Importantly, the Commission noted that while MTN is an Electronic Communications Network Services ("ECNS") licensed operator with obligations to lease its 'essential facility' tower sites to other operators, IHS is not a licensed operator and hence does not have such essential facility obligations. Accordingly, the Commission considered if other MNOs and OLOs could be foreclosed access to tower sites post-merger.

14. The merging parties submitted that the proposed transaction will not have a negative impact on third-party access to the tower infrastructure of the Target Business in favour of MTN. They submitted that if MTN wished to favour itself against rivals from an access perspective, it should already be doing so pre-merger. The merging parties also argued that the Acquiring Group is an independent tower operator whose business model is premised on open access to multiple MNOs and OLOs. Therefore, IHS, as an independent operator does not have incentives to foreclosure other MNOs and OLOs as it is not a network operator itself and does not compete against other licensed operators as MTN does.

15. Considering all the above factors, the Commission takes the view that MTN is a licensed operator with essential facility obligations which IHS does not have as it is not a licensed operator in South Africa. Further, given that the MLA is not yet concluded, there may still be opportunities for terms in the MLA to favour MTN against rival MNOs and OLOs. In all, there remain opportunities and incentives for IHS to foreclose MTN's rivals from access to tower space post-merger.

Customer foreclosure

16. The Commission further assessed whether the proposed transaction would result in the potential foreclosure of other upstream tower vendors who currently provide services to construct and maintain tower sites on behalf of MTN. The Commission noted that MTN is the largest player in the upstream market for passive tower infrastructure. The Commission

was concerned that the proposed merger would raise customer foreclosure concerns particularly because the BTSA, amongst other documents, specified that IHS will be MTN's preferred tower vendor post-merger. The Commission also noted that IHS SA may pursue vendor outsourcing strategies which are different to those employed by MTN prior to the merger.

17. Regarding the management and maintenance of existing sites, MTN had contracts with a number of service providers. The services provided ranged from performing upgrades, battery installation, site construction, base station site maintenance and security solutions. Most of the services involve maintenance (upgrades) on existing sites and only a few vendors perform new site construction.

18. IHS SA submitted that it would continue to utilise the primary vendors appointed by MTN. All subcontracting arrangements under these primary vendors would continue unaffected by the merger. However, once these existing contracts have expired, IHS SA would decide whether to renew them or appoint different third-party providers.

19. Regarding the construction of new sites, the Commission found that MTN had only a few primary tower vendors. These vendors also subcontracted other vendors to carry out the site construction projects. These vendors had contracts that were to expire at different times. It was expected that MTN would continue to utilise these primary vendors for the limited new towers that MTN will build following the implementation of the merger.

20. In terms of the merger agreements, the Commission noted that IHS would be responsible for building a number of the planned new tower sites for several years after the implementation of the merger whereas MTN will retain responsibility for building the remaining (more limited) number of planned new sites.

21. The Commission discovered that although IHS and MTN may continue to use the services of outside vendors to maintain and manage the tower sites post-merger, the BTSA has

exclusionary effects with respect to other independent tower companies involved in the building of tower sites.

Potential information exchange from cross ownership

22. The Commission also considered whether MTN SA's continued operation of some passive tower infrastructure in competition with the Acquiring Group may raise competition concerns of the potential chilling of competition between MTN and IHS SA. This is because of the MTN Group's shareholding in the Acquiring Group. The Commission was of the view that the MTN's members to be appointed to sit on the Acquiring Group's Board of Directors ("Board") may receive competitively sensitive information which could result in the dampening of competition between MTN and IHS SA.

23. However, the MTN Group's shareholding does not confer it a right to appoint or nominate a director to the Board of the Acquiring Group. Accordingly, no directors on the Board of the Acquiring Group are nominated or appointed by the MTN Group and none of the directors currently sitting on the Acquiring Group's Board belongs to the MTN Group. Therefore, the current governance structure does not appear to raise significant concerns.

Public interest

Effects on employment

24. The merging parties submitted that the proposed transaction would not have any negative employment effect as it would not lead to the retrenchment of workers. However, pursuant to being notified of the proposed transaction, the union representing the employees of the merging parties, the Communications Workers Union ("CWU"), contacted the Commission indicating their intention to participate in the matter, citing previous bad experiences with mergers and acquisitions in the telecommunications sector. CWU submitted that there have been retrenchments occurring within this sector following a merger, even when an undertaking had been given that the merger would not result in job losses.

25. The merging parties had tendered a condition in terms of which a 2 (two) year employment moratorium would be put in place from the implementation date of the merger, ensuring that

none of the employees of MTN SA will be retrenched because of the proposed transaction. The Commission is of the view that the condition addresses the concerns arising as it will ensure continued employment of the Target Business employees.

Promotion of a greater spread of ownership by historically disadvantaged persons (HDPs) and workers

26. The merging parties submitted that, in terms of the MLA contractual obligations, the

Acquiring Group was required to –

32.1. have a minimum 30% B-BBEE ownership in respect of the Target Business within 24 months of closing and until the end of the initial term of MLA; and

32.2. be a level 4 B-BBEE contributor within 18 months and level 1 contributor within 4 years of the closing date of the proposed transaction.

27. Ultimately, IHS has committed to achieving 30% B-BBEE shareholding in respect of the Target Business within a 24-month period as a way to promote the spread of ownership by HDPs.

Impact of merger on the ability of small and medium businesses, or firms controlled or owned by HDPs to effectively enter into, participate in or expand within the market

28. The Commission also considered whether the proposed merger could generate a negative impact on the ability of SMMEs or firms owned by HDPs to effectively compete in the market. This is so because MTN currently utilises some SMME tower vendors including some with HDP ownership who might be effectively excluded from the market as a result of the proposed merger.

29. Some SMMEs were concerned that MTN would favour IHS SA for the provision of turnkey tower solutions and for the provision of Power-as-a-Service post-merger, especially

considering that their MLAs are valid for a limited period within a highly concentrated mobile network market where there are not many viable alternative clients. Further, it was also argued that a B-BBEE transaction might not address the exclusionary effects on SMME and HDP tower vendors since such a transaction may be extended to passive investors who might not be experienced in the tower sector. In that event, SMME and HDP tower vendors will likely remain marginalised in the tower market.

30. Given that the contracts of such vendors would expire soon or within a short period of time after the merger, it is the Commission's view that such contracts for tower vendors remain exposed as they have no guarantee that they would be appointed once IHS takes over the management of the tower sites.

31. IHS has since made commitments that it will continue to utilise SME and HDP vendors post-merger.

32. Based on the foregoing, the Commission approved the merger subject to the following conditions: -

(i) Employment Condition

33. MTN SA shall not retrench any of its employees in South Africa because of the Merger for a period of 24 (twenty-four) months from the Implementation Date.

(ii) B-BBEE Condition

34. The Acquiring Firm shall:

- within 18 (eighteen) months of the Implementation Date, achieve a minimum Level 4 B-BBEE Status;
- within 4 (four) years of the Implementation Date, achieve a Level 1 B- BBEE

Status;

- within 24 (twenty-four) months of the Implementation Date, achieve 30% B-BBEE Ownership ("the B-BBEE Ownership Transaction").

- The B-BBEE Ownership Transaction shall also be notified to the Commission, in the prescribed manner or form, if it is a merger, irrespective of whether the lower threshold is met.

(iii) Procurement Condition

35. IHS SA and MTN have committed to procuring a substantial proportion of the goods and services required for (i) the construction of its tower sites and (2) the management, maintenance, and security of tower sites from SMME and HDP Tower Vendors in South Africa (either directly or indirectly), subject to IHS SA, MTN and the relevant Tower Vendor agreeing commercial terms, including terms related to quality and service standards as well as competitive prices. The procurement conditions shall endure for a period of 10 years from the implementation date. For each contract awarded to SMME and HDP tower vendors in terms of the procurement condition, MTN SA and IHS shall provide preferential payment terms to support the working capital requirements of the SMME and HDP tower vendors.

(iv) New Tower Sites Rollout Condition

36. The Commission notes that there is a structural link between MTN and IHS SA. This raised a concern that IHS may be the preferred partner for new site rollouts. To limit the exclusionary effect associated with such a strategy, the Commission has imposed a condition limiting preferential allocation of MTN's new site rollouts in terms of the number of sites for which IHS may be given first preference in a specified period post-merger.

(v) Supplier Development Condition

37. MTN SA shall spend R60 000 000 (sixty million rand) per annum for 10 years from the Implementation Date to support SME and HDP owned vendors in the telecommunications sector. The annual spend shall escalate by CPI in each year for 10 years.

(vi) Site Access Condition

38. In relation to the sites that are to be acquired and transferred to the Acquiring Firm as part of the Merger, the Acquiring Firm will continue to make electronic communications facilities available to all existing users on the same terms and conditions as are currently applicable in terms of the agreements between MTN SA and those users.

39. On the expiry of those agreements, in relation to both the tower infrastructure sites being acquired and any new sites constructed by the Acquiring Firm, the Acquiring Firm will, on request, provide services (including, but not limited to, leasing space on towers) to any party licensed in terms of the Electronic Communications Act (including existing users) on fair, reasonable and non-discriminatory terms, provided that it is technically, commercially and legally feasible to do so and subject to performance by the third parties of their respective obligations under the applicable commercial agreements. The site access conditions set out above will endure for as long as the Acquiring Firm is a site owner in South Africa.

ANNEXURE A: CONDITIONS

IHS HOLDING LIMITED

AND

MOBILE TELEPHONE NETWORKS PROPRIETARY LIMITED REGARDING THE ACQUISITION OF CERTAIN TOWER INFRASTRUCTURE AND ASSOCIATED ASSETS

CASE NUMBER: 2021DEC0004

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 IHS SA;

1.2 "**Act**" means the Competition Act, No. 89 of 1998 as amended;

1.3 "**Approval Date**" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);

1.4 "**B-BBEE**" means broad-based black economic empowerment as defined in the B-BBEE Act;

1.5 "**B-BBEE Act**" means the Broad-Based Economic Empowerment Act, No. 53 of 2003 (as amended);

1.6 "**B-BBEE Codes**" means the Codes of Good Practice on Broad-Based Economic Empowerment issued under section 9(1) of the B-BBEE Act;

1.7 "**B-BBEE Ownership**" means in relation to a person, each and all of the components of the applicable B-BBEE legislation which relate to, or are determined with reference

to, the direct or indirect ownership, voting control and/or effective economic interests held by Black People in such person;

1.8 "**B-BBEE Status**" means the relative score, rating, standing, classification and/or measurement (or its equivalent) attributable to such person under the B-BBEE legislation from time to time reflecting its degree of compliance with the requirements under the applicable B-BBEE legislation;

1.9 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.10 "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Competition Commission;

1.11 "**Conditions**" means these conditions;

1.12 "**Day**" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.13 "**HDPs**" means historically disadvantaged persons, as defined in section 3(2) of the Act;

1.14 "**IHS SA**" means IHS Towers South Africa (Pty) Ltd, the South African subsidiary of IHS Holding Limited established in accordance with the laws of South Africa and to which the rights and obligations under the sale of business agreement concluded between IHS Holding Limited and MTN SA have been ceded by IHS Holding Limited;

1.15 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.16 "**Merger**" means the acquisition of the Target Business by the Acquiring Firm;

1.17 "**Merging Parties**" means collectively, the Acquiring Firm and the Target Business;

1.18 "**MTN SA**" means Mobile Telephone Networks Proprietary Limited;

1.19 **"Passive Tower Infrastructure"** means the passive, physical infrastructure forming part of a greenfield (ground based) or rooftop sites which houses the communications equipment which emits a radio frequency signal to cell phones enabling customers to use their cell phones on a cellular network;

1.20 **"SME"** means either a small business or a medium-sized business, as defined in section 1 of the Act;

1.21 **"Tower Vendor"** means any vendor providing goods or services relating to the construction, management, maintenance or security of tower infrastructure;

1.22 "**Target Business**" means certain passive tower infrastructure, involving greenfield sites, rooftop sites and related power equipment of MTN SA; and

1.23 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

EMPLOYMENT CONDITION

2.1 MTN SA shall not retrench any of its current employees in South Africa as a result of the Merger for a period of 24 (twenty-four) months from the Implementation Date.

2.2 For the sake of clarity, retrenchments for purposes of paragraph 2.1 above will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed; (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.

B-BBEE CONDITION

2.3 The Acquiring Firm appreciates the importance of transformation in South Africa and is committed to promoting a greater spread of ownership by HDPs and workers in the market.

2.4 In this regard, the Acquiring Firm shall:

2.4.1 within 18 (eighteen) months of the Implementation Date, achieve a minimum Level 4 B-BBEE Status;

2.4.2 within 4 (four) years of the Implementation Date, achieve a Level 1 B- BBEE Status; and

2.4.3 within 24 (twenty-four) months of the Implementation Date, achieve a 30% B-BBEE Ownership.

PROCUREMENT CONDITION

2.5 IHS SA shall:

2.5.1. procure a substantial proportion of the goods and services required for the construction of its all its tower sites and HDP Tower Vendors in South Africa (either directly or indirectly), subject to IHS and the relevant Tower Vendor agreeing commercial terms and the Tower meeting IHS SA's on-boarding, quality and service standards and offering competitive pricing.

2.5.2. procure a substantial proportion of goods and services for the management, maintenance, and security of tower sites from SMME and HDP Tower Vendors in South Africa (either directly or indirectly), subject to IHS and the relevant Tower Vendor agreeing commercial terms, including terms and the Tower Vendor meeting IHS SA's on-boarding, quality and service standards and offering competitive pricing.

2.6 MTN SA shall:

2.6.1. procure a substantial proportion of goods and services for the construction of its tower sites from SME and HDP Tower Vendors in South Africa (either directly or indirectly), subject to MTN and the relevant Tower Vendor agreeing commercial terms and the Tower Vendor meeting on-boarding, quality and service standards and offering competitive pricing.

2.6.2. procure a substantial proportion of goods and services for the management, maintenance, and security of tower sites from SMME and HDP Tower Vendors in South Africa (either directly or indirectly), subject to MTN and the relevant Tower Vendor agreeing commercial terms, including terms and the Tower Vendor meeting MTN's on-boarding, quality and service standards and offering competitive pricing.

2.7 The conditions referred to in clause 2.5.1. and 2.5.2 shall commence on the later of the Implementation Date, or where existing agreements are in place in respect of the construction, management, maintenance or security of the relevant Passive Tower infrastructure sites, the expiry of those agreements.

2.8 The conditions in clauses 2.5 and 2.6 shall endure for a period of 10 years from the Implementation Date.

For each contract awarded to SME and HDP Tower Vendors in terms of clauses 2.5 and 2.6 above, MTN SA and HIS SA shall provide preferential payment terms to support the working capital requirements of the SME and HDP Tower Vendors.

SUPPLIER DEVELOPMENT CONDITION

2.9 MTN shall spend R60 000 000 (sixty million rand) per annum for 10 years from the Implementation Date to support SME and HDP owned vendors in the telecommunications sector.

SITE ACCESS CONDITION

2.10 In relation to the sites that are to be acquired and transferred to the Acquiring Firm as part of the Merger, the Acquiring Firm will continue to make electronic

communications facilities available to all existing users on the same terms and conditions as are currently applicable in terms of the agreements between MTN SA and those users.

2.11 On the expiry of those agreements, in relation to both the Target Business sites and any new sites constructed by the Acquiring Firm, the Acquiring Firm will, on request, provide services (including, but not limited to, leasing space on towers) to any party licensed in terms of the Electronic Communications Act (including existing users) on fair, reasonable and non-discriminatory terms, provided that it is technically, commercially and legally feasible to do so and subject to performance by the third parties of their respective obligations under the applicable commercial agreements.

2.12 The site access conditions set out above will endure for as long as the Acquiring Firm is a site owner in South Africa.

MONITORING

2.13 The Merging Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.

2.14 MTN SA shall circulate a copy of the Conditions to the Target Business' employees and the trade union(s) notified of the Merger within 5 (five) Days of the Approval Date.

2.15 As proof of compliance with clause 2.14, MTN SA, shall within 10 (ten) Days of circulating the Conditions, submit an affidavit to the Commission attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees and, the relevant trade union(s).

2.16 MTN SA shall, within 60 (sixty) Days of the first two anniversaries of the Implementation Date, submit a report to the Commission, setting out the extent of its compliance with the Condition set out in paragraph 2.1 above. The compliance report shall be accompanied by an affidavit from a director of MTN SA attesting to the correctness of the report.

2.17 The Acquiring Firm and MTN SA shall, within 60 (sixty) Days of the first four anniversaries of the Implementation Date and on the tenth anniversary of the Implementation Date, each submit a report to the Commission, setting out the extent of its compliance with the Condition set out in paragraph 2.4 above, (as set out). The compliance report shall be accompanied by an affidavit from a director of the Acquiring Firm or MTN SA (as applicable) attesting to the correctness of the report.

2.18 At any time of the Implementation Date, the Commission may request any data or information from the Merging Parties that it may require to monitor compliance with these conditions and the Merging Parties shall provide the requested data or information within a reasonable time.

APPARENT BREACH

2.19 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.

VARIATION

2.20 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.

3. **General**

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 CBD MINES PROPRIETARY LIMITED AND FIRSTMILE PROPERTIES GEORGIAN CRESCENT PROPRIETARY LIMITED

AND

ELITE STAR, MORULAT, ONLY THE BEST, RAINBOW PLACE, THE LEGAE PROPERTY, THE PANAMA PROPERTY, THE QUEENS COURT PROPERTY AND THE LONG STREET PRECINCT DEVELOPMENT AS MORE FULLY DESCRIBED IN THE SCHEDULES TO FORM CC4(1)

CASE NUMBER: 2021DEC0006

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 above-mentioned firms subject to conditions as set out below:

1. On 3 December 2021, the Competition Commission ("Commission") received notice of an intermediate merger in terms of which Firstmile Properties JHB CBD Mines Proprietary Limited ("Firstmile") and Firstmile Properties Georgian Crescent Proprietary Limited ("Firstmile Georgian") (collectively, the "Acquiring Firms") propose to acquire a portfolio of residential properties from AFCHO Holdings Proprietary Limited ("AFHCO").

Parties

Acquiring Group

2. The primary acquiring firms are Firstmile and Firstmile Georgian which are both private companies incorporated in accordance with the laws of the Republic of South Africa.

3. The primary acquiring firms are wholly owned subsidiaries of Firstmile Properties Proprietary Limited ("Firstmile Properties"). Firstmile Properties is in turn a wholly owned subsidiary of Netgame Investments Proprietary Limited ("Netgame"). Netgame is in turn a wholly owned subsidiary of Lonsa Group Limited ("Lonsa"), a company incorporated in Mauritius. Lonsa is 100% held by ***[CONFIDENTIAL].***

4. For the purposes of this transaction, all firms directly and indirectly controlled by ***[CONFIDENTIAL]*** are henceforth referred to as the "Acquiring Group".

5. The Acquiring Group does not have any shareholders who are historically disadvantaged person/s ("HDPs") as defined in section 3(2) of the Competition Act, 89 of 1998 (as amended) (the "Act").

Target Firms

6. The primary target firms are comprised of 6 (six) residential properties, 5 (five) retail properties situated in Johannesburg CBD and the companies holding these properties (collectively, the "Target Firms")

7. The Target Firms are ultimately 100% controlled by AFHCO. AFCHO is in turn 100% controlled by SA Corporate Real Estate Limited ("SACREL"). SACREL is a public company listed on the Johannesburg Stock Exchange and is not controlled by any firm.

8. SACREL is held as to 14.91% by HDPs.

Description

9. The Acquiring Group will acquire the Target Firms in their entirety.

Activities

Acquiring Group

10. Relevant to the proposed transaction is the Acquiring Group's rentable residential property activities in Gauteng. The Acquiring Group's residential property consists of 3 (three) residential properties situated in Bryanston, Randburg and Lenasia. In addition,

the Acquiring Group is currently in the process of developing 2 (two) residential properties in the Johannesburg Central Business District ("CBD").

Target Firms

11. The Target Firms' activities are limited to the letting of residential and retail property in Johannesburg CBD.

12. The Target Firms' residential property portfolio comprises of 2 087 residential units and 62 retail units.

Competition assessment

13. Without taking a definitive view, given the lack of competition concerns, the Commission assessed a horizontal overlap in the provision of rentable residential property in the Johannesburg CBD.

14. The Commission found that the overlaps arising from the merger are unlikely to result in a substantial prevention or lessening of competition in any relevant market

Public interest

Employment

15. The merging parties submitted an unequivocal undertaking that the proposed transaction will not have a negative effect on employment.

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

16. As mentioned above, the Acquiring Group has not HDP shareholder participation, whilst the Target Firms are indirectly held as to 14.9% by HDPs. The Commission concluded that the merger would result in a dilution of HDP ownership over the Target Firms.

17. To address this concern, the merging parties and the Commission have agreed that the merger be approved subject to conditions contained in **Annexure A** hereto.

18. The Commission found that the merger does not raise any further public interest concerns.

Conclusion

19. The Commission approves the proposed transaction subject to the conditions contained in **Annexure A** hereto.

ANNEXURE A: CONDITIONS

FIRSTMILE PROPERTIES JHB CBD CROWN MINES PROPRIETARY LIMITED AND FIRSTMILE PROPERTIES GEORGIAN CRESCENT PROPRIETARY LIMITED

AND

ELITE STAR, MORULAT, ONLY THE BEST, RAINBOW PLACE, THE LEGAE PROPERTY, THE PANAMA PROPERTY, THE QUEENS COURT PROPERTY AND THE LONG STREET PRECINCT DEVELOPMENT AS MORE FULLY DESCRIBED IN THE SCHEDULES TO FORM CC4(1)

CASE NUMBER: 2021DEC0006

CONDITIONS

1. **DEFINITIONS**

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

1.1. **"Acquiring Firms"** mean Firstmile Properties JHB CBD Crown Mines Proprietary Limited and Firstmile Properties Georgian Crescent Proprietary Limited;

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 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 Competition Commission;

1.6. **"Conditions"** mean 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. "**HDPs**" mean historically disadvantaged persons, as defined in section 3(2) of the Act;

1.9. "**HDP Transaction**" means the Acquiring Group's commitment to transfer a shareholding of no less than ***[CONFIDENTIAL***]% in the Acquiring Firms to one or more HDPs;

1.10. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.11. **"Merger"** means the acquisition of control by the Acquiring Firms over the Target Firms;

1.12. **"Merging Parties"** mean collectively the Acquiring Firms and the Target Firms;

1.13. **"Target Firms"** means Elite Star, Morulat, Only the Best, Rainbow Place, the Legae Property, the Panama Property, the Queens Court Property and the Long Street Precinct Development 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 is transferred to the Acquiring Firms; 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. **CONDITIONS TO THE APPROVAL OF THE MERGER**

2.1. The Acquiring Firms shall, ***[CONFIDENTIAL]*** months of the Implementation Date or Transfer Date (whichever is later), implement the HDP Transaction. In this regard, the Acquiring Firms will, in their 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 Firms 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 Firms that each prospective HDP shareholder will receive and confirmation of whether the HDP Transaction constitutes a merger for the purposes of the 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 or Transfer Date (whichever is later), within 5 (five) Days of its occurrence.

3.2. The Acquiring Firms shall, within 10 Days of the date of implementation of the HDP Transaction, submit an affidavit confirming compliance with the 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:

MAGISTER INVESTMENTS LIMITED

AND

TONGAAT HULETT LIMITED

CASE NUMBER: 2021DEC0013

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 above-mentioned firms subject to conditions set out below:

1. On 08 December 2021, the Commission received a notice of an intermediate merger in terms of which Magister Investments Limited (Magister) intends to subscribe for ordinary shares in Tongaat Hulett Limited (THL) under a partially underwritten rights offer, pursuant to which it will own up to 60% of the issued shares in THL.

2. THL will make renounceable rights offer to holders of THL ordinary shares for an anticipated minimum amount of R 3 billion (the Rights Offer). Magister will partially underwrite the Rights Offer, i.e., subscribe for the THL ordinary shares not subscribed for by THL shareholders or their transferees or renouncees, up to an amount of R 2 billion.

The merging parties and their activities

3. The primary acquiring firm is Magister, a private limited company incorporated in accordance with the laws of the Republic of Mauritius. Magister is controlled by the Casa Trust through its 58.67% shareholding in Magister. The Casa Trust is a Mauritian registered trust operating for the benefit of the Hamish Rudland family. Magister does not currently have any ownership by Historically Disadvantaged Persons (HDPs).

4. The primary acquiring firm holds interests in various sectors, including agriculture, transport and logistics, civil construction, and real estate. Its investments span across various

jurisdictions including Guernsey, Mauritius, South Africa, and Zimbabwe. In South Africa, Magister's only controlling interest is its indirect 50% shareholding interest in **[Confidential],** a procurement service provider supplying into Mozambique and Zimbabwe. Magister also holds a minority shareholding of 0.15% in THL. Magister and any other firms directly or indirectly controlling and controlled by it, are collectively referred to as the ("Magister Group").

5. The primary target firm is THL, a public company incorporated in South Africa. THL is listed On the Johannesburg Stock Exchange (JSE). The shares in THL are widely held and as such THL is not controlled by any firm or group of firms. THL is a level two Broad-Based Black Economic Empowerment ("B-BBEE") contributor. As indicated above, Magister holds a minority shareholding of 0.15% in THL.

6. In 2007, THL had implemented a vendor-funded Employee Share Ownership Programme (ESOP) for the benefit of approximately 3 600 South African senior black management and employees of THL, placing a collective shareholding of 7% in the hands of employees. At the time that the employees' shares vested, this ESOP was worth approximately R 212 million (the equivalent of approximately R460 million today) in shareholder equity. THL does not currently have an ESOP.

7. THL is primarily an agriculture and agri-processing business with a focus on the sugar production and animal feeds sectors. THL is one of the major players in the sugar production industry in South Africa. THL also has a property portfolio under its Tongaat Property division.

Competition analysis

8. The Commission considered the merging parties' activities and found that there is no horizontal overlap in their activities in South Africa. THL is active in the sugar production and the animal feed sectors, whereas Magister is an investment firm operating in various sectors including agriculture, transport and logistics, and civil construction. Although Magister holds interest in two entities in the Southern Africa region that are active in the animal feed sector, it does not control nor hold minority shareholding in any other entity in South Africa that is active in the sugar production or animal feed sectors. The other South African companies in which Hamish Rudland holds interests and directorships are not active in sugar production or animal feed. Therefore, the proposed transaction will not result in any market share accretion or any change in the competitive landscape in any relevant market.

9. The Commission notes that THL is one of the largest millers and refiners of sugar in southern Africa with operations in South Africa, Zimbabwe, Botswana and Mozambique. The merging parties estimate that THL has a market share of 38% in the market for the production and supply of sugar to retail or direct customers in South Africa, making it the largest firm in this market, followed by RCL Foods with an estimated market share of 35%, and Illovo with 15%. The parties also estimate that THL has a market share of 22% in the market for the production and supply of sugar to industrial customers in South Africa while Illovo has an estimated market share of 42%, and RCL Foods has a share of 31%.

10. Given these market shares, it is clear that THL holds an important market position in the country, and in the KwaZulu-Natal (KZN) region where it is based.

11. Due to the lack of overlap between the activities of the merger parties, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Prior to setting out the public interest analysis, we provide a brief overview of THL and its operations which contextualises THL's significant impact in the sugar sector and in the region in which it is located.

Overview of THL and its operations

12. As indicated above, THL is one of the major players in the sugar production industry in South Africa. The company had its origins in the North Coast of KZN, specifically the town of Tongaat. The company was formed as a result of a merger between the Tongaat Sugar Company founded by Edward Saunders and Hulett's Sugar founded in 1892 by Liege Hulett.

13. Currently, THL employs some 22 927 people (during the peak sugar milling season) in operations across South Africa, Botswana, Mozambique and Zimbabwe. THL has significant sugarcane processing facilities, a unique land conversion platform, a growing animal feeds position, and opportunities to further grow ethanol production and electricity generation.

14. THL operates four sugar mills in South Africa, located on the KZN north coast and in the Zululand region. The fourth mill is currently mothballed. Together, these three mills produce more than 1 million tons of sugar per year derived from sugar cane grown by large-scale commercial, and small-scale private, farmers in rural KZN. THL's central refinery in Durban produces 600 000 tons of refined sugar per year, with the primary product being the Huletts® sugar brand.

15. THL's animal feeds operation, through its subsidiary Voermol Feeds (Pty) Ltd (Voermol), is located at the Maidstone Mill in Tongaat, KZN. Voermol manufactures and markets a range of energy and supplementary feeds to the livestock farming community through its Voermol® brand, using bagasse and molasses.

16. THL also has a significant portfolio of immovable properties near Durban and Ballito in KZN that has the potential to be converted from sugarcane farms into urban land as urban development expands and demand for residential and commercial properties rises. THL's property portfolio is a core part of its business, and THL describes itself as one of South Africa's leading private land developers. THL has been involved in a number of large property development projects including developments in Bridge City, La Lucia, the Sibaya coastal precinct, Umhlanga Ridgeside and the Zimbali coastal resort.

17. THL also plays a crucial role in socio-economic development (SED), primarily in KZN. Its South African sugar operation sources approximately 43% of its feedstock from a total of 15,704 black farmers and cooperative members. THL has a transformational partnership, Uzinzo Sugar Farming (**Uzinzo**), which is the largest black sugarcane grower in the South African sugar industry. According to THL, this partnership has enabled Uzinzo's shareholders to lease three prime agricultural estates at below market-related rental. The leased area is approximately 3,900 (three thousand nine hundred) hectares with an estimated annual production of 160,000 (one hundred and sixty thousand) tons of sugarcane, making Uzinzo one of the Target Firm's top five largest supplying growers.

18. Three HDP shareholders collectively hold a 65% (sixty five percent) shareholding in Uzinzo. Employees hold a 15% (fifteen percent) shareholding through an employee trust created for this purpose. THL holds a 20% shareholding and plays a facilitative and mentorship role to the shareholders in respect of the various intricacies of the sugar farming business. In addition, THL submits that it contributes towards the development and upskilling of South African community members through its SED programmes and initiatives. For the financial year ended March 2021 THL invested over R14.6 million in various SED programmes and initiatives in South Africa.

19. Based on the above, it is common cause that THL plays a significant role in the KZN region, South Africa and the SADC region more generally.

Nature of the proposed transaction

20. As indicated above, Magister has committed R 2 billion to partially underwrite the Rights Offer, subject to the total shareholding of Magister and related entities in THL not exceeding 60%. To this end, Magister has provided THL with a bank guarantee in an amount of USD 132.7 million in relation to its obligation to subscribe (as underwriter) for shares in THL in terms of the Magister Transaction. In order to implement this, THL will increase its authorised shares from 150 000 000 (one hundred and fifty million) shares to 5 000 000 000 (five billion) shares, by the creation of a further 4 850 000 000 (four billion eight hundred and fifty million) new authorised shares. Consequently, no proceeds would be paid to any existing shareholder. Instead, existing shareholders would have a right to participate in the Rights Offer by acquiring new authorised shares. The proceeds of the new authorised shares and the R2 billion underwritten by Magister will be paid immediately to THL's South African lenders (by 14 April 2022) to reduce THL's current debt levels.

Rationale for the proposed transaction

21. **[Confidential].**

22. THL submits that its comprehensive turnaround strategy commenced two and half years ago and is centred around improving governance and control, reducing debt and repositioning the business as a sustainable entity. Further, that the success of this strategy has created new opportunities for the future. THL's capital raise is based on the need to reduce its current levels of debt. THL's debt reduction imperative entails the raising of equity and other capital to reduce its current unstainable debt levels. THL puts forward that the proposed transaction will facilitate this.

23. In an effort to understand Magister's rationale for the proposed transaction, the Commission requested Magister to outline how it intends to turn the THL business around. Magister submitted that the proposed transaction amounts to an investment opportunity for Magister and that they have no intention to be involved in the day-today operations of THL. Further, Magister, believes in the turnaround strategy being implemented by the current management team. They also submitted that in the event that Magister acquires a maximum of 60% shareholding in THL, they will only be entitled to appoint up to 3 (three) directors to the board of THL.

24. The Commission is concerned about the fact that Magister is injecting a significant amount of capital but seems to have no plans whatsoever to turn THL around post-merger. This is

addressed in the public interest assessment below.

PUBLIC INTEREST ANALYSIS

Effect on employment

25. The Commission, the Food and Allied Workers Union (FAWU) and the Department of Trade, Industry and Competition (DTIC) raised concerns regarding the effect of the proposed transaction on employment, including on direct, indirect and seasonal employees. In order to remedy this concern, the merging parties agreed not to retrench any employees as a result of the merger.

26. Given the significant role that THL plays in the KZN region, the DTIC recommended that the merging parties should for a period of 5 years maintain at least the same number of employees in the aggregate as employed at the merger closing date. The merging parties did not agree to this remedy. Instead, they submit that THL is in an extremely difficult financial position and any unnecessary or inappropriate conditions which negatively impact its commercial position may threaten its very existence on a forward-looking basis. The Commission is concerned that the merging parties' refusal to ensure that at least the same number of jobs are maintained for a 5-year period post-merger, is likely to result in negative consequences for employment.

27. Following further engagement with the merging parties, they then agreed to maintaining the pre-merger headcount by at least of a period of 1 (one) year. In addition, the Commission considered it appropriate to impose an additional condition that requires the merging parties to inform the Commission of its intention to embark on retrenchments, including those retrenchments that the merging parties may deem operationally related, for a period of 3 (three) years post implementation.

Promotion of a greater spread of ownership

28. The merging parties submit that there is uncertainty as to whether the proposed transaction will result in a reduction in the percentage shareholding levels of individual shareholders. The parties submit that while there may be some reduction in the overall HDP ownership levels. as a result of the Rights Offer and Magister's investment in THL, the extent of this is currently unknown and will depend on the extent to which existing shareholders participate in the Rights

Offer.

29. The DTIC submitted that the proposed transaction, if implemented, may reduce the HDP percentage shareholding in the primary target firm as many HDP owners of the THL equity may take up the offer to sell their shareholding to Magister. The potential dilution of HDP shareholding in THL arising from the proposed transaction would contravene section 12(A)3(e) of the Competition Act 89 of 1998 (the competition Act''), and as such the DTIC requested the merging parties to set up a vendor funded ESOP, in which all full-time workers of THL will benefit. FAWU also submitted that the Commission should impose a condition on the merging parties to set up an ESOP Scheme of 10% equity ownership of the value in the merged entity in consultation with labour and at the cost of the merged entity.

30. In order to remedy the above concern, the merging parties agreed to establish an ESOP that will hold an effective 5% in THL within a period of 3 years post-merger.

31. Following further engagements with the merger parties on BEE, the merger parties proposed remedies to increase the post-merger BEE level under specified conditions. The Commission considered the merger parties' submissions and decided to impose a condition that would ensure that the merging parties increase THL's BEE shareholding to its pre-merger levels.

Effect on a particular industrial sector or region

32. The merging parties submit that THL plays a crucial role in socio-economic development, Primarily in KwaZulu-Natal. THL's South African sugar operation sources 43% of its feedstock from a total of 15704 black farmers and cooperative members. Further, the THL Group's transformational partnership, Uzinzo Sugar Farming ("Uzinzo") is the largest black grower in the South African sugar industry. The parties submit that the proposed transaction will boost and stabilise THL's financial position and thus enable THL to continue supporting black farmers and cooperative members and sustain its partnership with Uzinzo and the KZN Department of Economic Development, through Operation Sakhinzuzo.

33. Considering the role of THL in the KZN region, the Commission also requested the merging parties to ensure that the proposed transaction does not impact on HDP suppliers, in particular sugarcane farmers, who are largely dependent on THL for their livelihoods. Both FAWU and the DTIC also raised similar concerns. In particular, FAWU submitted that the merged entity should increase its procurement spend on previously disadvantaged providers to be no less than 35% of the overall procurement budget.

34. In order to remedy this concern, the merging parties have agreed to continue sourcing at least 40% of its feedstock from black farmers and cooperative members for a period of at least five years from the implementation of the merger. Further, the merging parties have committed to continue supporting black farmers and cooperative members and sustain its partnership with Uzinzo and the KwaZulu-Natal Department of Economic Development, through Operation Sakhinzuzo.

35. The DTIC submitted that the merged entity should consider increasing its procurement of feedstock from 40% to 50% over a 5-year period. The merging parties submit that they are unable to commit to this undertaking as there is insufficient supply to meet this. In other words, in order for THL to increase its procurement form small and black farmers annually, there needs to be a commensurate increase in the number of small and black farmers and the volumes that they are able to supply within THL's surrounding area. Further, they submit that to the extent that additional volumes are available from SMME/black farmers on commercially reasonable terms, THL already has an incentive to procure such volumes under the B-BBEE Codes.

36. Considering the above, the Commission agreed to impose a condition that would ensure that the merged entity continues to source at least 40% of its feedstock from HDPs.

Impact of the proposed transaction on the Sugar Master Plan

37. The Commission was also concerned about the likely implications of the proposed transaction on the Sugar Master Plan, in particular THL's participation in the realisation of the objectives of Sugar Master Plan. To this end, the merging parties agreed to a condition that would ensure that THL participates in the implementation of the Sugar Master Plan, including its objectives.

THL's Property Portfolio

38. During the investigation, it emerged that THL will dispose of some of its land holdings. As the Commission is unaware of Magister's plans with regard to the disposal of THL land post-merger, the Commission considered it necessary to impose a condition that requires THL to ensure that a proportion of all the land it sells must be sold to HDPs and HDP-controlled firms, subject to *inter alia* reasonable commercial terms. Although the merging parties had tendered a disposal of 15% of THL land to HDPs, the Commission requested the merging parties to dispose of at least 20% of THL land holdings post-merger. The merging parties

subsequently agreed to this.

Capital expenditure commitments

39. The Commission notes that much of the benefit of the proposed transaction rests on Magister's capital injection and the ability of the current THL Board to implement its current (pre-merger) plans to turn the business around. Given Magister's deference to the plans of the current board and executive management team and the heavy reliance of the merger parties on these plans to deliver the public interest commitments, the Commission requested that the parties commit to making their pre-merger capital expenditure a condition to the approval of the merger.

40. THL confirmed that its total capital expenditure in South Africa over a 4-year period amounts to **[Confidential]**. The merging parties advised the Commission that they are not prepared to agree to such a condition. In particular, they submit that given THL's current uncertain financial position, and from a commercial perspective more generally, it is not appropriate to require THL to commit to certain levels of capex spend for any period given the uncertainties of the future. For example, if there is an unforeseen event such as a serious drought, natural disaster, pandemic, social unrest, etc. which negatively impacts THL's business or cash flow, THL could be in a position where it must suspend or reallocate certain capex projects to maintain its financial stability or even its solvency. If such a condition is imposed and THL faces such a scenario, it would mean that the merger parties would either be placed in contravention of a merger condition and/or need to approach the Commission to agree to vary THL's capex budget.

41. However, following further engagements, the merging parties informed the Commission that THL is in the process of concluding a new refinancing agreement with its South African Lenders and will implement its capital expenditure plan in accordance with that agreement, as and when funds are available, for a period of 5 (five) years following the Implementation Date. To this end, the merging parties offered a remedy to the effect that THL shall submit a copy of the new refinancing agreement to the Commission upon its conclusion.

42. Overall, the Commission is satisfied that the remedies imposed in the instant transaction are likely to address all the concerns identified above.

Conclusion

43. For the above reasons, the Commission approves the proposed transaction subject to the conditions set out in Annexure A hereto.

ANNEXUE A

MAGISTER INVESTMENTS LIMITED

AND

TONGAAT HULETT LLIMITED

CASE NUMBER: 2021DEC0013

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 Magister Investments Limited;

1.2 "**Act**" means the Competition Act, No. 89 of 1998 as amended;

1.3 "**Approval Date**" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);

1.4 "**B-BBEE**" means broad-based black economic empowerment as contemplated in the Broad- Based Black Economic Empowerment Act, No. 53 of 2003;

1.5 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;

1.6 "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Commission;

1.7 "**Conditions**" means these conditions;

1.8 "**Day**" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.9 "**DTIC**" means the Department of Trade, Industry and Competition of South Africa;

1.10 "**Employee**" means any permanent employee (as contemplated under South African labour law) of the Target Firm in South Africa, who is not eligible for participation in the Target Firm's management share plan, or, if eligible to participate in the Target Firm's management share plan, is a historically disadvantaged person, as defined in section 3(2) of the Act;

1.11 "**ESOP**" means the employee share ownership plan or scheme to be implemented by the Merging Parties pursuant to clause 2.1 of the Conditions;

1.12 "**HDP/s**" means historically disadvantaged person/s 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 "**Merger**" means the subscription for ordinary shares in the Target Firm under a partially underwritten rights offer, pursuant to which the Acquiring Firm may own up to 60% of the issued shares in the Target Firm;

1.16 "**Merging Parties**" or "**Merged Entity**" means collectively the Acquiring Firm and the Target Firm;

1.17 **" Minister"** means the Minister of Trade, Industry and Competition of South Africa;

1.18 "**Rights Offer**" means the renounceable rights offer to be made by the Target Firm to holders of ordinary shares in the Target Firm for an anticipated minimum amount of R 2 billion, and which will be partially underwritten by the Acquiring Firm;

1.19 **"South African Employees"** means Employees who are South African citizens and include those employees who are also eligible for participation in the Target Firm's management share plan;

1.20 **"Sugar Master Plan"** means the South African Sugarcane Value Chain Master Plan to 2030, dated 16 November 2020;

1.21 "**Target Group**" means the Target Firm and all firms it controls, and all firms controlled by those firms;

1.22 "**Target Firm**" means Tongaat Hulett Limited; and

1.23 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.

1.20 **"Sugar Master Plan"** means the South African Sugarcane Value Chain Master Plan to 2030, dated 16 November 2020;

1.21 "**Target Group**" means the Target Firm and all firms it controls, and all firms controlled by those firms;

1.22 "**Target Firm**" means Tongaat Hulett Limited; and

1.24 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.

2. **CONDITIONS TO THE APPROVAL OF THE MERGER**

2.1 **ESTABLISHMENT OF AN EMPLOYEE SHARE SCHEME**

2.1.1 Within a period of 3 (three) years of the Implementation Date, the Merging Parties shall establish a new ESOP, in accordance with the design principles set out in **Annexure B** hereto, in terms of which South African Employees of the Target Firm will benefit and participate in the direct ownership in the Target Firm or a South African operating subsidiary of the Target Firm, as appropriate.

2.1.2 The aggregate percentage shareholding to be held by the ESOP will be no less than 5% (five percent) of the total issued ordinary share capital of the Target Firm and, subject to clauses 2.1.3 and 2.1.4, the ESOP shall be consistent with the design principles set out in **Annexure B** hereto.

2.1.3 Prior to the implementation of the ESOP, the Merged Entity shall provide the Commission with details of the proposed ESOP in writing. These details shall include, but not be limited to, the structure of the ESOP, funding, identities of prospective shareholders, the proportion of shareholding in the Target Firm, and any other relevant information for the Commission to consider the ESOP.

2.1.4 Within (thirty) 30 Days of receipt of the details of the proposed ESOP, the Commission shall provide its written approval, or any comments or queries, in writing. The ESOP may not be implemented without the Commission's written approval.

2.2 **EMPLOYMENT CONDITION**

2.2.1 The Merging Parties shall not retrench any employees in South Africa as a result of the merger.

2.2.2 The Target Firm shall maintain the same headcount as at the Approval Date for a period of 1 (one) year from the Implementation Date.

2.2.3 For a period of 3 (three) years from the Implementation Date, the Target Firm shall inform the Commission of its intention to undertake retrenchments prior to undertaking the retrenchments. For the avoidance of doubt, this clause applies to retrenchments undertaken for operational reasons.

2.2.4 For the sake of clarity, retrenchments for purposes of paragraph 2.2.1 above 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.

2.3 **BEE CONDITION**

2.3.1 By no later than 3 years from the Implementation Date, the Target Firm shall ensure that it has at least the same level of B-BBEE/HDP ownership as it did at the Approval Date.

2.3.2 The BEE/HDP ownership level of the Target Firm will be determined with reference to the Target Firm’s latest audited B-BBEE certificate as at the merger Approval Date.

2.3.3 Prior to the implementation of any B-BBEE ownership transaction in line with clause.

2.3.1, the Merging Parties shall provide the Commission with details of the B-BBEE Ownership Transaction in writing. The Commission shall, within 30 (thirty) Days of receipt thereof, provide its approval or any comments or queries. For the avoidance of doubt, no B-BBEE Ownership Transaction entered into in line with clause 2.3.1 may be implemented without the Commission's approval.

2.4 **CAPITAL EXPENDITURE CONDITION**

2.4.1 The Target Firm is in the process of concluding a new refinancing agreement with its South African Lenders and will implement the capital expenditure plan in accordance with that agreement, as and when funds are available, for a period of 5 (five) years following the Implementation Date.

2.4.2 The Merging Parties shall submit to the Commission a copy of the refinancing agreement and capital expenditure plan referred to in clause 41 within 5 (five) days of their conclusion.

2.5 **OTHER PUBLIC INTEREST CONDITIONS**

The Merging Parties undertake that the Target Firm shall continue to contribute towards the socio-economic initiatives as set out in clause 2.5.1 to 2.5.4 below. In particular, the Target Firm shall, for a period of at least 5 (five) years from the Implementation Date:

2.5.1 continue sourcing at least 40% of its feedstock from HDP or HDP-controlled farmers and cooperative members;

2.5.2 maintain its partnership with Uzinzo and the KwaZulu-Natal Department of Economic Development, through Operation Sakhinzuzo;

2.5.3 continue its socio-economic development funding and contributions towards the development and upskilling of South African community members, at the same or higher values as was the case prior to the Merger, it being recorded that for the financial year ended March 2021 THL invested approximately R14.6 million (fourteen million and six hundred thousand rands) in various socio-economic development programmes and initiatives in South Africa; and

2.5.4 sell a minimum of 20% (twenty percent) of its land assets that are made available for sale to HDPs or HDP-controlled firms, subject to the proviso that such sales (and the associated minimum threshold) can be achieved on market-related commercial terms. "Market related-commercial terms" shall be determined by having regard to the ultimate sales prices and independent valuation(s) carried out in respect of the Target Firm's land assets. The 20% (twenty percent) minimum threshold shall be calculated with reference to the:

2.5.4.1 total cumulative value of the Target Firm's land sales achieved over a 5 (five) year period following the Implementation Date; and

2.5.4.2 sale of land classified by the Target Firm as inventory stock, being the land assets which are allocated by the Target Firm for development and are immediately available for sale (i.e., long-term strategic agricultural land that is not yet in development and/or is not allocated for development within 5 (five) years of the Implementation Date is accordingly excluded).

2.5.5 The Acquiring Firm shall ensure that the Target Firm continues its participation in the implementation of the Sugar Master Plan and further continue to implement the objectives of the Sugar Master Plan, for the duration of the Sugar Master Plan and/or any successive similar plan, subject to the Minister, DTIC and other stakeholders implementing and meeting their commitments in terms of the Sugar Master Plan.

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 The Merging Parties shall circulate the non-confidential version of the Conditions to their employees, the employee representatives, any relevant trade unions, and Uzinzo within 10 (ten) Days of the Approval Date.

3.3 As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, submit an affidavit by as senior official attesting to the circulation of these Conditions and provide a copy of the notices' public version that were circulated to the employees, employee representatives, any relevant trade unions and Uzinzo.

3.4 For the purposes of clause 2.1 above, the Merged Entity shall provide the Commission with the names and employee numbers of Employees participating in the ESOP at least 1 (one) month prior to the implementation of the ESOP.

3.5 For the purposes of clause 2.5.4 above, the Merged Entity shall provide to the Commission a list of all of the Target Firm's land that is earmarked for sale in the next 5 (five) years, within
10 (ten) Days of the Approval Date.

3.6 For the purposes of clause 2.2.2 above, the Merged Entity shall provide the Commission with a list of permanent employees by business unit and job grade as at the Approval Date within
5 (five) days of the Approval Date.

3.7 For the purposes of clause 2.3 above, the Merged Entity shall provide to the Commission with its most recent independently audited B-BBEE certificate as at the Approval Date within 5 (five) days of the Approval Date.

3.8 The Merging Parties shall, within 60 (sixty) Days of each anniversary of the Implementation Date, submit a report to the Commission, setting out the extent of its compliance with of the Conditions. The compliance report shall be accompanied by an affidavit from a director of the Target Firm attesting to the correctness of the compliance report.

3.9 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.

3.10 Any person who believes that the Merging Parties have not complied with these Conditions may approach the Commission.

4. **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.

5. **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 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 address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

ANNEXURE B

KEY DESIGN PRINCIPLES OF THE ESOP

Design Principle	Applicable Criteria
Structure	➢ Unitised employee share ownership trust established for allocated shares ➢ Merged entity can also consider apportioning part of profit after tax for purchase of shares at market value and for these to be maintained in share registry by company secretary.
Cost to Workers	➢ No cost to workers: Workers must not be required to pay to participate in the ESOP. ➢ Firms must make provision for independent legal and financial experts to act on behalf of workers in ESOP establishment negotiations. For the avoidance of doubt, any expenses associated with this must be paid for by the Merged Entity.
Governance	➢ A 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 Workers and 1 independent. ➢ The independent trustee will be recommended and appointed by the Workers, subject to the candidate being acceptable to the Merged Entity. ➢ For the avoidance of doubt, a majority of the trustees of the ESOP must be selected by the workers.
Duration	➢ Perpetual/evergreen to cater for changing workforce
Participants	➢ All current and future workers. ➢ Eligibility criteria: permanent employees [a reasonable minimum level of service may be specified, or participation can be from day 1 of permanent employment]. ➢ Maternity leave will have no adverse impact on qualifying criteria.
Participation Benefits	➢ Beneficiaries will be entitled to: (a) dividends and (b) capital growth/upside based on their participation rights calculated with reference to units allocated to beneficiaries. ➢ Beneficiaries will cease to participate for bad leaver events: resignations and dismissals. ➢ Death, retirement and retrenchment will not affect participation.
Value & Funding	➢ Value of the ESOP's 5% interest in the Target Firm or any other relevant entity will be determined with reference to issued shares and valuation as at the closing of the transaction. ➢ Merged Entity must provide some vendor finance if required ➢ If there is Vendor financing, it should be interest-free. ➢ Dividend policy can provide for a "trickle" dividend (in the ratio of 50:50), i.e., at least 50% of any dividends declared will flow to beneficiaries and at most 50% will be utilised to service the vendor financing

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

PUCCINI BIDCO B.V

AND

EKATERRA B.V

CASE NUMBER: 2021DEC0034

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 above-mentioned firms subject to conditions as set out below:

1. On 17 December 2021, the Competition Commission ("Commission") received notice of an intermediate merger whereby CVC Capital Partners SICAV-FIS S.A. ("CVC") intends to acquire sole control over Ekaterra B.V. ("Ekaterra").

2. The primary acquiring firm is Puccini Bidco B.V ("Puccini Bidco") a newly incorporated special purpose vehicle incorporated in the Netherlands. Puccini Bidco is indirectly and ultimately controlled and led by CVC. The "CVC Network" consists of CVC and its subsidiaries, and CVC Capital Partners Advisory Group Holding Foundation and its subsidiaries, which are privately-owned entities whose activities include providing investment advice to, and/or managing investments on behalf of certain investment funds and platforms (CVC Funds).

3. CVC Funds hold interests in a number of companies. The CVC Network is a global private equity and investment advisory business investing in businesses across various industries.

4. Puccini Bidco is a newly incorporated SPV with no activities in South Africa.

5. The primary target firm is Ekaterra, a company incorporated in Netherlands. The Target Firm is solely controlled by Unilever International Holdings B.V. (Unilever). The

Target Firm has the following South African subsidiaries (the South African Subsidiaries):

5.1. Tea Manufacturing South Africa Proprietary Limited; and

5.2. Tea MSO South Africa Proprietary Limited, a private company.

6. The target firm produces and distributes tea globally through a number of different companies. The South African Subsidiaries carry out Ekaterra's tea business in South Africa, operating the Joko and Glen tea brands. The Target Firm's South African production facility, which is located in Pietermaritzburg, supplies all of the Target Firm's tea sold in South Africa (as well as other African countries). The Target Firm's sales in South Africa account for roughly **[Confidential]** of its global turnover.

Areas of overlap

7. The Commission considered the activities of the merging parties and found that they do not overlap as the CVC Network companies are not active in the production and distribution of tea. There are no products or services that can be considered interchangeable or substitutable from a competition perspective. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

8. In terms of employment, the Minister of the Department of Trade, Industry and Competition ("The Minister") requested the merging parties to maintain aggregate levels of employment at the target firm for a period of two years, post-merger implementation. In response, the target firm indicated that it has strong ambitions to grow its South African business, however, given the uncertainty arising as a result of the impact of COVID-19 and other external factors, the flexible operation of the Target Firm's Pietermaritzburg production facility is important. As such, imposing a condition on aggregate employment may have the undesired consequence of adversely impacting the sustainability and competitiveness of a business that currently employs **[Confidential]** full-time employees in South Africa, and which exports products to other countries, thereby competing in international markets.

9. Nevertheless, the merging parties tendered a moratorium on merger-specific retrenchments for a period of 2 years. The merging parties are of the view that the moratorium tendered

by Puccini Bidco will address any potential concerns that may be raised on employment as a result of the proposed merger.

10. The Minister also requested that the proposed transaction should promote the localisation of tea production in South Africa. Amongst other things, with regard to products that are imported, the Minister requested the Commission to explore the potential of these products being sourced locally.

11. The merging parties submitted that Ekaterra primarily sources loose-leaf tea internally from its own tea estates, which are located in Kenya, Tanzania and Rwanda. The Target Firm does not have its own tea estates in South Africa. In addition, the merging parties submitted that there is a limited production of black tea in South Africa. The target firm sources locally where volumes of the right grade and price are available, and this resulted in the Target Firm purchasing roughly **[Confidential]** of the tea offered to it by South African tea estates in 2021. However, the volumes of black tea which the Target Firm was able to source in South Africa still only represents roughly **[Confidential]** of the Target Firm's black tea requirements at the Pietermaritzburg facility. The merging parties state that while the Target Firm made efforts to source additional volumes of black tea from suppliers in South Africa in 2021, this was not achieved due to factors outside its control.

12. With regard to Rooibos tea, the parties state that Rooibos is grown exclusively in South Africa, therefore the Rooibos product will continue to be sourced locally. The Commission shared these responses with the DTIC, to which it was stated that they had no further concerns.

13. The proposed transaction does not raise any other public interest concerns.

Conclusion

14. The Commission approves the proposed transaction with conditions captured in Annexure A.

ANNEXURE A

PUCCINI BIDCO B.V

AND

EKATERRA B.V

CASE NUMBER: 2021DEC0034

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 PUCCINI BIDCO B.V;

1.2 "**Act**" means the Competition Act, No. 89 of 1998 as amended;

1.3 "**Approval Date**" means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);

1.4 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;

1.5 "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Commission;

1.6 "**Conditions**" means these conditions;

1.7 "**Day**" means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.8 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.9 "**Merger**" means the acquisition of the Target Firm by the Acquiring Firm;

1.10 "**Merging Parties**" means collectively, the Acquiring Firm and the Target Firm;

1.11 "**Target Firm"** means Ekaterra B.V; and

1.12 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.

2. **CONDITIONS TO THE APPROVAL OF THE MERGER**

EMPLOYMENT CONDITION

2.1 The Merging Parties shall not retrench any of its employees in South Africa as a result of the Merger for a period of 24 (twenty-four) months from the Implementation Date.

2.2 For the sake of clarity, retrenchments for purposes of paragraph 2.1 above will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed; (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. **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 The Acquiring Firm shall circulate a copy of the Conditions to the Merging Parties' employees and the trade union(s) notified of the Merger within 5 (five) Days of the Approval Date.

3.3 As proof of compliance with clause 3.2, the Acquiring Firm, shall within 10 (ten) Days of circulating the Conditions, submit an affidavit to the Commission attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees and, the relevant trade union(s).

3.4 The Acquiring Firm shall, within 60 (sixty) Days of the first two anniversaries of the Implementation Date, submit a report to the Commission, setting out the extent of its compliance with the Condition set out in paragraph 2.1 above. The compliance report shall be accompanied by an affidavit from a director of the Acquiring Firm attesting to the correctness of the report.

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 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:

FLS GERMANY HOLDING GMBH

AND

THYSSENKRUPP MINING TECHNOLOGIES GMBH

CASE NUMBER: 2021DEC0048

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 above-mentioned firms subject to conditions as set out below:

1. On 21 December 2021, the Competition Commission ("the Commission") received notice of an intermediate merger whereby FLS Germany Holding GmbH ("FLS") intends to acquire the entire share capital of Thyssenkrupp Mining Technologies GmbH ("tk Mining"). Upon implementation of the proposed transaction, FLS will exercise sole control over tk Mining, as envisaged by section 12(2)(a) of the Competition Act 89 of 1998, as amended.

The parties and their activities

2. The primary acquiring firm is FLS, a firm incorporated under the laws of Germany. FLS operates as a German holding company and is an indirect subsidiary of the Danish publicly listed corporation FLSmidth & Co. A/S (FLS&Co). FLS&Co is listed on the NASDAQ OMX Nordic Copenhagen in the C20 index, and approximately 80% of its shares are publicly traded. FLS&Co is not controlled by any one firm. FLS forms part of the FLS group of companies ("the FLS Group"), which also include the following South African firms:

FLSmidth South Africa (Pty) Ltd (74.9%); FLSmidth Roymec (Pty) Ltd (in deregistration) (100%); Euroslot KDSS (South Africa) (Pty) Ltd (deregistered) (100%); and FLSmidth (Pty) Ltd (100%).

3. Globally, the FLS Group is a supplier of complete plant, equipment, and single machine units, as well as spare parts and engineering and service solutions, to the global cement and mining industries. The FLS Group also supplies products, solutions, and services to industries adjacent to its core industries, including the aggregates, water treatment, waste to energy, pulp and paper, power utilities, steel, food, pharmaceuticals and chemicals industries.

4. Relevant to the proposed transaction, in South Africa, the FLS Group conducts business activities relating to plant technology (also referred to as "capital equipment") and industrial solutions in the mining sector. In addition to mining equipment and systems (New Build services), the FLS Group also offers Aftermarket services (Aftermarket), including wear parts, spare parts, global service centres, on-site services (field services and construction), revamps, asset management (operation and maintenance), and consulting and training services.

5. The primary target firm is tk Mining, a firm incorporated under the laws of Germany. tk Mining is directly controlled by ThyssenKrupp Industrial Solutions AG (“tk IS”), a firm incorporated under the laws of Germany. tk Mining and tk IS form part of a wider group of companies ultimately controlled by the German publicly listed corporation ThyssenKrupp AG (“the ThyssenKrupp Group”). ThyssenKrupp AG is listed on the Frankfurt (Prime Standard) and Düsseldorf Stock Exchanges and approximately 79% of its shares are publicly traded; as such, ThyssenKrupp AG is not controlled by any one firm. The Thyssenkrupp Group indirectly controls the following Thyssenkrupp Industrial Solutions (Africa) (Pty) Ltd (“tk IS Africa”) (100%) and Thyssenkrupp Industrial Solutions South Africa (Pty) Ltd (“tk IS SA”) (70%) both of which are active in South Africa.

6. Globally, the Thyssenkrupp Group provides plant technology solutions to industrial customers. This includes designing and building individual machines and complete

installations, as well as modernising and upgrading existing systems. The plant technology business consists of three business units, namely chemical and process technologies, mining technologies, and cement technologies.

7. Relevant to the proposed transaction, in South Africa, the Thyssenkrupp Group's solutions encompass the entire range of supply, refurbishment, and services for mining equipment and systems (New Build) projects. In addition to mining equipment and systems, Thyssenkrupp's South African operations also offer Aftermarket services, including wear parts, spare parts, global service centres, on-site services (field services and construction), revamps, asset management (operation and maintenance), and consulting and training services. Furthermore, the Thyssenkrupp Group focuses on providing business activities relating to plant technology (crushing and sizing, grinding and milling and screens and feeders) and industrial solutions (bulk material logistics) to the mining sector, including certain Aftermarket and consulting services.

Competition assessment

8. The Commission considered the business activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the broad market for the supply of mining equipment and aftermarket services and narrowly in relation to certain overlapping steps in the supply chain, being: (i) bulk material logistics (storage and (un)loading); (ii) crushing and sizing; (iii) grinding and milling; and (iv) screens and feeders. Based on evidence collected by the Commission, there appears to be segmentation between the New Build market and the aftermarket segment.

Bulk Material Logistics

9. In the market for bulk material logistics services to New Build customers, the merging parties will have a low estimated post-merger market share. In the market for the supply of bulk material logistics services to Aftermarket customers, the merging parties will have a high estimated post-merger market share.

10. The Commission notes that although the merging parties will have a high market share in the aftermarket segment, the respective market has a number of players such as, Takraf Tenova, MO Group and Metso, amongst others, that can compete with the merged entity. This was also confirmed by a customer who submitted that the market consists of a large number of suppliers that compete against each other, hence they go on open-tender when seeking a supplier for a certain product.

Crushing and Sizing

11. The merging parties will have a moderate estimated post-merger market share in the market for the supply of Crushing and Sizing services to New Build customers. Moreover, the merging parties will have a relatively high estimated post-merger market share in the market for the supply of Crushing and Sizing services to Aftermarket customers.

12. The Commission notes that although the merging parties will have relatively high market shares in the aftermarket segment, the respective market has a number of players such as MO Group, Sandvik, IMS Engineering / Earth Technika, amongst others, that can compete with the merged entity post-merger. A number of these players are also equivalent in size or larger than the merging parties. The Commission also notes that the significant market share in the segment is largely attributable to the target firm pre-merger. The proposed transaction will therefore not significantly change the structure of this market.

Grinding and Milling

13. With regard to the Grinding and Milling services, the merging parties will have a relatively low estimated post-merger market share to New Build customers. Furthermore, the merging parties will have a slightly higher estimated market share in the market for the supply of Grinding and Milling services to Aftermarket customers, however with a low market share accretion.

14. The Commission found that this market has a number of players such as MO Group, CITIC, Weir and Solo Resources Pty Ltd, amongst others, that can compete with the merged entity. This was also confirmed by a customer who submitted that in the event that the merging parties were to increase their prices by 5-10%, they would be able to switch to other OEM suppliers such as IMS Engineering, Metso, and Multotec, whom they are currently utilizing.

Screens and Feeders

15. Finally, in the market for the supply of Screens and Feeders, the merging parties will have a relatively low estimated post-merger market shares to both New Build and Aftermarket customers.

16. The Commission notes that the merging parties will have relatively low market shares in both the New Build and Aftermarket segments. The Commission also notes that the merged entity will continue to face competition from larger players such as, MO Group, VibraMech, Osborn Engineering and Schenck Process, amongst others, that compete with the merged entity. This was also confirmed by customers such as Eskom, De Beers and Exxaro. Furthermore, a competitor of the merging parties submitted that there are a number of players in the respective market that the merged entity will still face competition from such as Kwatani, Weir Minerals, Screen Doctor, Osborn and Vibpro.

17. Given that the merging parties' activities overlap in several interrelated markets, the Commission also considered whether the proposed merger could result in portfolio effects through anti-competitive tying and bundling. The Commission found that it is not likely that the merging parties could bundle their offering to customers as the products offered by the merging parties are generally procured through tenders/bidding. Customers confirmed that they procure products through tenders for discrete products and that scope does not exist for suppliers to simply offer multiple bundled products. The Commission therefore found that the proposed transaction is not likely to result in anti-competitive portfolio effects.

18. Further, the Commission found that there is no vertical overlap between the activities of the merging parties.

19. In light of the above, 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

Pre-merger retrenchments

20. The merging parties submit that the proposed transaction is global in nature and is not focused on the South African parts of the Thyssenkrupp Group. The Thyssenkrupp Group has been underperforming for several years prior to the merger filing. Due to the poor performance driven by lower order intake leading to poor earnings, the Thyssenkrupp Group retrenched 19 employees during the 2020/2021 financial year.

21. Furthermore, the Thyssenkrupp Group's poor financial performance was exacerbated by the unprecedented and ongoing Covid-19 pandemic, which directly resulted in a hold being put on New Build projects. These circumstances placed the Thyssenkrupp under severe financial pressure and accordingly, it was left with no choice but to downsize its Materials Handling and Chemical Process Technology departments, as well as certain of its overhead functions.

22. Moreover, the Thyssenkrupp Group considered alternative measures before retrenching the employees, which were still not sufficient.

Department of Trade, Industry and Competition's ("DTIC") concerns

23. On 04 January 2022, the Commission received a notice of intention to participate from the Minister of the Department of Trade, Industry and Competition ("DTIC"). The DTIC raised the following concerns in their submission:

a. The pre-merger retrenched South African employees should be offered employment opportunities at the merged entity, when these become available, for a period of two years, post implementation. Furthermore, should the Commission find that the retrenchments are indeed merger specific, the DTIC then requests that all affected employees be reinstated; and

b. Post-merger retrenchments affecting South African nationals should be limited to the greatest extent possible.

Merging Parties' response to the issues raised by the DTIC

24. The Commission shared the concerns of the DTIC with the merging parties. The merging parties responded to the issues raised by the DTIC as follows:

a. The merging parties submit that the retrenchments were due to operational reasons as the Thyssenkrupp Group (both in South Africa and globally) had, for a number of years, been experiencing poor financial results and they were not related to the proposed transaction (and therefore lack merger-specificity).

b. Furthermore, the merging parties had initially submitted that should any vacancies arise within 6 months following the retrenchments, the retrenched employees would be given first preference for re-employment. However, given the DTIC's request, the FLS Group is amenable to extending the period to two years.

c. Regarding the second request of the DTIC, the merging parties submit that neither of the parties currently follow employment policies that give preference to employees on the basis of nationality. However, the merging parties hereby undertake to endeavour to limit retrenchments of employees in South Africa.

25. The Commission presented these responses to the DTIC which indicated that will not make further submissions in this merger.

26. The Commission considered the requests made by the DTIC and the response of the merging parties. The Commission found that there is evidence supporting the merging

parties' contention that the Thyssenkrupp Group has been making losses for a number of years. The Commission did not uncover any evidence that the retrenchments were in any manner related to the proposed transaction and concluded that the pre-merger retrenchments were likely due to operational reasons and are not related to the proposed transaction.

Post-merger retrenchments

27. The merging parties have submitted that the Thyssenkrupp Group has been performing poorly for several of years. The FLS Group has identified post-merger turnaround strategies that could create value for FLS both globally and in South Africa. However, in order to effect the turnaround strategy and to ensure that the merged entity operates at peak efficiency, synergies will need to be realised across the merged entity.

28. The merging parties submit that with limited information at this stage, the FLS Group anticipates that the total workforce of the merged entity in South Africa will need to be reduced. In addition, the FLS Group anticipates that the majority of the reductions will need to take place in skilled roles in the merged firm where duplication exists. These roles include Management, Accounting, IT and Finance.

29. The employees of the FLS Group are represented by the National Union of Metalworkers of South Africa ("NUMSA"), Solidarity and United Association of South Africa ("UASA"). The Commission engaged with the respective trade unions and UASA confirmed to have received the non-confidential version of the merger and did not raise any objections to the proposed transaction.

30. Furthermore, a number of employees within the Thyssenkrupp Group are represented by Solidarity, while the remaining employees are represented by employee representatives. The Commission engaged with the respective trade unions and the employee representatives. The non-unionised employees of tk IS Africa and tk IS SA (South African subsidiaries of the Thyssenkrupp) raised a number of concerns/requests which include:

(i) twenty-four (24) month moratorium on retrenchments, (ii) assistance from the merging parties with finding new employment for the retrenched employees, (iii) transfer of service years, (iv) assurance on the employment conditions post-merger, (v) pension fund, long and short-term insurance benefits, (vi) the merging parties need to provide an undertaking regarding the continuation of existing business lines, (vii) the merging parties also need to clarify their intentions regarding local decision-making authority, and (viii) the merging parties need to provide an undertaking regarding the assurance of continuation of jobs created by the Chloorkop Service Centre and training received from the Training Centre within the local community of Thembisa and surrounding areas.

31. Moreover, the Commission received the following concerns from Solidarity:

a. The employees affected by the merger will not face any reduction in remuneration, nor a decline in the nature and value of benefits;
b. The employees affected by the merger will not face any dismissal due to operational requirements or restructuring before, during or after the merger, for a period of at least 24 months;
c. There will be no change in conditions of employment or company policies benefitting them at this stage;
d. Any change effected in terms of the above, only be done if there is a clear monetary or benefit advantage for the affected employees and by their consent; and
e. All collective agreements be honoured and obtained.

Merging Parties' views on post-merger retrenchments

32. The Commission shared the concerns of Solidarity with the merging parties. The merging parties responded to the issues raised by Solidarity as follows:

a. Regarding employee benefits, the merging parties confirmed that the transferring employees will be employed on terms and conditions that are "on the whole not less favourable" to those on which the employees were employed by tk Mining.

b. Regarding potential post-merger dismissals due to operational requirements for a period of at least 24 months, the merging parties submit that FLS is not in a position to agree to this request as tk mining is failing financially (both globally and in South Africa) and in order to implement its turnaround strategy for the business, there needs to be a downsizing of the workforce.

c. Regarding the request that all collective agreements be honoured, the merging parties submit that FLS confirms that all collective agreements will be honoured.

Commission views on post-merger retrenchments

33. The Commission notes from the merging parties' submission that they had initially identified some duplicated roles within the merged entity. Of the duplicated roles, the majority are skilled employees. Designations affected are in junior and senior management as well as professionally qualified roles, technically trained professionals and academically trained professionals. Furthermore, FLS has committed to limit the retrenchments to these identified roles.

34. Moreover, the merging parties submit that if they are not able to implement their turnaround strategy and improve the financial position of the tk Mining business in South Africa, this will place the entire future of the merged entity in South Africa, and job security for all its employees, in jeopardy. As has already been noted, as a global deal, if the proposed transaction proceeds elsewhere but does not proceed in South Africa, the tk Mining business would find itself cut-off from its former group. This could make continued trading very difficult, particularly in relation to potential new build projects, which are more heavily reliant on the intellectual property of the parent company. Over time, it is likely that the business would find it increasingly difficult to service its remaining customers. In combination with the already poor financial performance of tk's mining business in South Africa, this could potentially result in an ever-increasing need to downsize and reduce the headcount of the tk Mining business.

35. Based on the above, the Commission considered the merging parties' approach to these proposed retrenchments in line with the Commission's public interest guidelines.

a. The first step entails a consideration of the effect of the merger on employment. The merging parties have volunteered information on the likely impact of the merger on employment in that the merger results in a number of duplications which will necessitate the retrenchment of some employees.

b. Secondly, the Commission considered whether the number of retrenchments are merger specific. On this, the evidence is inconclusive. The merging parties have submitted that the roles that will be retrenched are the result of duplications, which is the direct result of the merger. The merging parties have however also submitted that the retrenchments are necessary in order to achieve the target firm's turnaround strategy as the target firm has been making losses for a number of years. As noted above, the loss-making target firm has already had to implement a first round of retrenchments in the 2020/2021 financial year. However, the Commission is of the view that the retrenchments are merger specific.

c. Thirdly, the Commission notes the merging parties identified duplications, and from these, the merging parties will retrench certain employees. The affected employees represent less than 10% of the target firm's staff complement. The Commission is of the view that the percentage of employees to be retrenched is not likely to be considered substantial. The Commission also notes the role to be retrenched are skilled employees.

36. Notwithstanding the above, the Commission is still of the view that it is necessary to ensure that the merger does not result in any further retrenchments. For this reason, the Commission is of the view that the merger should be approved subject to a condition which will ensure that the merging parties do not retrench more than the contemplated number of affected employees for a period of at least 2 years following the implementation of the proposed merger.

The promotion of a greater spread of ownership

37. The merging parties submit that the proposed transaction will result in a minor dilution in BEE shareholding of the Thyssenkrupp Group.

38. The Commission requested the merging parties to propose merger conditions which will promote a greater spread of HDP ownership, in particular to increase the levels of ownership by HDPs and workers in firms in the market, as required by section 12A(3)(e) of the Competition Act, as amended.

39. The merging parties have agreed to the conditions that within 12 (twelve) months from the implementation date, through interest free notional vendor financing or similar funding arrangement, the merged entity will allot an additional shareholding in the FLS Group to Phetogo Bontle Commercial (Pty) Ltd ("Phetogo") (a BEE shareholder within the FLS Group), equivalent in value to a certain amount of shareholding in the Thyssenkrupp Group.

40. Therefore, the Commission is of the view that the proposed transaction is not likely to result in a substantial negative effect on the promotion of greater spread of ownership.

41. The proposed transaction does not raise any other public interest concerns.

Conclusion

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

ANNEXURE A: CONDITIONS FLS

GERMANY HOLDING GMBH

AND

THYSSENKRUPP MINING TECHNOLOGIES GMBH

CASE NUMBER: 2021DEC0048

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 FLS Germany Holding GmbH;

1.1.2. **"Act"** means the Competition Act, No. 89 of 1998 (as amended);

1.1.3. **"Affected Employees"** means a maximum number of 54 Employees in the Merged Entity in skilled roles, Patterson Grade C and above that are likely to be retrenched;

1.1.4. **"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);

1.1.5. "**B-BBEE**" means broad-based black economic empowerment as defined in the B-BBEE Act;

1.1.6. "**B-BBEE Act**" means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003;

1.1.7. **"Commission"** means the Competition Commission of South Africa, a statutory

body established in terms of section 19 of the Act;

1.1.8. **"Conditions"** means the conditions set out herein;

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. **"FLS"** means FLS Germany Holding GmbH;

1.1.11. **"FLS SA"** means FLS group companies in South Africa;

1.1.12. **"Implementation Date"** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.1.13. **"LRA"** means the Labour Relations Act, No. 66 of 1995, as amended;

1.1.14. **"Merged Entity"** means FLS SA and tk Mining in South Africa;

1.1.15. **"Merger"** means the global acquisition by FLS of the entire share capital of tk Mining;

1.1.16. **"Merging Parties"** means FLS and tk IS;

1.1.17. **"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;

1.1.18. **"Phetogo"** means Phetogo Bontle Commercial (Pty) Ltd;

1.1.19. **"tk IS**" means the mining operations of tk IS South Africa (Pty) Ltd and tk IS Africa (Pty) Ltd;

1.1.20. **"tk Mining"** means Thyssenkrupp Mining Technologies GmbH;

1.1.21. **"tk IS Retrenched Employees"** means the 19 employees retrenched by tk IS pre-merger due to poor financial performance that was exacerbated by the ongoing Covid-19 pandemic;

1.1.22. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.

2. RECORDAL

2.1. On 21 December 2021, the Merging Parties notified an intermediate merger to the Commission wherein FLS intends to acquire the entire share capital of tk Mining.

2.2. Following its investigation of the Merger, the Commission found that, as a result of poor financial performance which was also exacerbated by the unprecedented and the ongoing Covid-19 pandemic, during the 2020/2021 financial year the tk IS Retrenched Employees lost their jobs.

2.3. Furthermore, the Merging Parties submit that FLS has identified post-merger turnaround strategies that could be sustainable going forward for tk Mining and create value for FLS both globally and in South Africa. However, in order to effect the turnaround strategy, FLS anticipates that the staff complement at the Merged Entity will need to be reduced post-merger.

2.4. The Commission also found that the Merger potentially results in a diminution of B-BBEE shareholding: specifically by Phetogo, a B-BBEE shareholder within FLS SA.

2.5. In order to address the employment and B-BBEE concerns identified by the Commission, the Merger is approved subject to these Conditions.

3. EMPLOYMENT

The tk IS Retrenched Employees

3.1. For a period of 24 (twenty-four) months after the Implementation Date, the Merged Entity shall give first preference to the tk IS Retrenched Employees for any vacancies within the Merged Entity, provided that the tk IS Retrenched 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.

3.2. The Merged Entity shall maintain a database of the names and contact details of all tk IS Retrenched Employees and, should any vacancies arise within the Merged Entity, undertake to communicate available vacancies to the tk IS Retrenched 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.

The Affected Employees

3.3. Other than the Affected Employees, the Merged Entity shall not retrench any employees during the Moratorium Period.

3.4. For the sake of clarity, retrenchments 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.

3.5. In addition, the Merged Entity undertakes to:

3.5.1. make offers of voluntary separation packages or early retirement, where this is permissible in terms of the relevant policies of the Merged Entity and is preferred by the Affected Employees;

3.5.2. offer assistance in the form of providing certificates of service, UIF claim

assistance, permitting reasonable time off for job interviews and CV preparation; and

3.5.3. provide career guidance consultation sessions through a third-party outplacement service and financial advice services which will also be undertaken by a third-party provider, up to a maximum amount of ZAR 5 000 (excluding VAT) per Affected Employee.

3.6. The Merged Entity shall afford the Affected Employees identical benefits to those set out in 3.1 and 3.2 for a 24 (twenty-four) month period following the conclusion of the retrenchment process under section 189 of the LRA. For avoidance of doubt, any Affected Employees that are not retrenched in terms of section 189 of the LRA shall not be afforded such benefits.

4. B-BBEE SHAREHOLDING

4.1. Within 12 (twelve) months from the Implementation Date, through interest free notional vendor financing or similar funding arrangement, the Merged Entity will allot an additional shareholding in FLSmidth South Africa (Pty) Ltd to Phetogo equivalent in value to a **[CONFIDENTIAL %]** shareholding in tk IS.

4.2. The valuation of such shareholding shall be performed by an independent and suitably qualified valuer, which will be appointed by FLS SA, after the Commission has approved that the proposed valuer is independent and suitably qualified and shall be based on the financials of tk IS in its most recent audited financial year preceding the Implementation Date.

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 it becoming effective.

5.2. 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 5 (five) Days of

the Approval Date.

5.3. 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.

5.4. 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 3 of the Conditions and an affidavit within 5 (five) Days after the anniversary of the Implementation Date confirming compliance with clause 4 of the Conditions. These affidavits must be deposed to by a director of the Merged Entity.

5.5. 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.

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. 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.

7. VARIATION

7.1. 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.

8. **GENERAL**

8.1. 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.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

CITRICO GLOBAL, SL
AND
SAN MIGUEL FRUITS SOUTH AFRICA PROPRIETARY LIMITED AND EC CITRUS INVESTMENTS PROPRIETARY LIMITED

CASE NUMBER: 2022JUN0050

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 23 June 2022, the Competition Commission (Commission) received notification of an intermediate merger comprised of two inter-conditional and indivisible transactions. In the first transaction, Citrico Global, SL (Citrico or the Ultimate Acquiring Firm) intends on acquiring the entire issued share capital in San Miguel Fruits South Africa (Pty) Ltd (San Miguel SA or the First Target Firm) ("the first transaction"). Immediately after (and on the same date as) the closing of the first transaction, San Miguel SA will increase its shareholding in EC Citrus Investment Proprietary Limited (EC Citrus or Second Target Firm) by acquiring the remainder of the stake in EC Citrus held by African Pioneer Beverages (Pty) Ltd (African Pioneer) ("the second transaction"). As a result of the second transaction, San Miguel SA will increase its ordinary shareholding in EC Citrus and wholly control EC Citrus.

2. Upon the implementation of this transaction, Citrico will thus wholly control San Miguel SA and, indirectly, EC Citrus.

3. The ultimate primary acquiring firm is Citrico, a company incorporated in Spain. Citrico is ultimately controlled by a global private equity partner, which is a company incorporated

in Spain. Citrico does not control any firms in South Africa. Citrico does not have shareholding by historically disadvantaged persons ("HDPs"). Citrico is a vertically integrated fresh fruit player in Europe which farms citrus, melon, watermelon, and stone fruit in Spain and Brazil. Citrico does not have a presence in South Africa.

4. The primary target firm in the first transaction is San Miguel SA. San Miguel SA jointly controls EC Citrus. San Miguel SA has no shareholding by HDPs.

5. The second primary target firm is EC Citrus. Prior to the proposed transactions, EC Citrus is jointly controlled by San Miguel SA and African Pioneer Beverages.

6. African Pioneer Beverages is controlled by African Pioneer Group (Pty) Ltd (APG). APG is controlled by Dondolo Family Enterprises Proprietary Limited (Dondolo Family Enterprise). APG directly controls a number of firms in South Africa. APG holds shares in Sun Orange Farms (Pty) Ltd (Sun Orange Farms). African Pioneer is owned and controlled by HDPs.

7. EC Citrus controls Thudana Holdings (Pty) Ltd (Thudana), with some of the ordinary shares of Thudana held by Thudana Citrus BEE Trust, a workers' trust. Thudana controls Thudana Citrus (Pty) Ltd (Thudana Citrus). Thudana Citrus controls the following entities: Thudana Fruit (Pty) Ltd (Thudana Fruit); New Africa (Pty) Ltd; Sun Orange Farm Investment (Pty) Ltd; Sontule Investment (Pty) Ltd (Sontule Investment); San Miguel Farming Services (Pty) Ltd; Ponders End Packers (Pty) Ltd (Ponders End) and Sylvania Farming (Pty) Ltd. All the firms controlled by Thudana are collectively referred to as the "Thudana Group".

8. Sun Orange Investment, Sontule Investment and African Pioneer jointly control Sun Orange Farms. The remainder of the shares in Sun Orange Farms are held by SOF BEE Workers Trust.

9. San Miguel SA is primarily an exporter of citrus fruit into the European market. San Miguel SA is a vertically integrated firm which is broadly active in the production, packing, and marketing and sale of fresh citrus fruit in South Africa.

10. EC Citrus is a holding company with shareholding in Thudana Holdings, which in turn is the holding company for the remaining companies in the Thudana Group. The Thudana Group is an integrated citrus business. Through Ponders End, it operates as a packer of citrus fruit through its packhouses situated in the Eastern Cape. Thudana grows citrus fruit

at Sun Orange Farms and Sylvania Farm. Its fruit portfolio includes oranges, lemons, and soft citrus. Though a majority of Thudana Group's fruit is sold to San Miguel SA for the export market, it also sells a small amount of non-exportable fruit in the local market through its subsidiary Thudana Fruit.

11. The Commission considered the activities of the merging parties and found that the transaction raises horizontal overlaps, some of which are pre-existing. In the first transaction, a horizontal overlap arises because Citrico grows and supplies citrus fruit in Europe and the First Target Firm, San Miguel SA, is a citrus fruit producer in South Africa and is also active in the global (export) market. The Commission notes that Citrico is not active in the production of citrus in South Africa prior to the merger.

12. The second horizontal overlap is a pre-existing overlap with no market share accretion arising from the present proposed transactions. This overlap arises because both San Miguel SA and EC Citrus are involved in growing citrus fruit in South Africa. However, the Commission notes that San Miguel already controls EC Citrus pre-merger.

13. From a vertical perspective, there are no vertical relationships between Citrico and San Miguel, nor between Citrico and any firms within the Thudana Group. The Commission notes that although there are vertical relationships between EC Citrus and San Miguel SA, these relationships all exist prior to the merger and are not assessed further.

14. For completeness, the Commission assessed the parties' market share in the national market for supply of all citrus fruit. The Commission found that San Miguel and EC Citrus (through the Thudana Group) account for less than 10% of all citrus exported from South African (noting that 90% of South African citrus is exported). In considering international dynamics, it is important to bear in mind that Citrico is based in the northern hemisphere while San Miguel and EC Citrus are based in the southern hemisphere. Accordingly, the firms have different growing seasons with negligible overlap. The output of the merger parties is thus largely complementary, allowing Citrico to supplement its "northern hemisphere production" with "southern hemisphere production" to have access to fruit all year round. This is also reflected in Citrico's rationale for the transaction.

15. The Commission engaged customers and competitors of the merger parties. None of these stakeholders have raised concerns with the proposed transaction.

16. Regarding employment, the merging parties submit that there will be no retrenchments because of the proposed transaction. The proposed transaction also does not give rise to

any horizontal overlaps in South Africa. Therefore, the Commission is of the view that the proposed transaction is unlikely to result in any negative effects on employment.

17. The Commission found that the proposed transaction will result in a significant negative effect on HDP ownership in EC Citrus and, consequently, in the Thudana Group. Prior to the proposed transaction, African Pioneer, a firm owned by HDPs, has a stake in EC Citrus. Pursuant to the transaction, African Pioneer will exit EC Citrus, which will then be 100% owned by San Miguel (which, in turn, is owned by Citrico). After the proposed transaction, EC Citrus will have no ownership by HDPs.

18. Prior to the transaction, the HDP shareholding in the Thudana Group is 35.7% indirectly held by African Pioneer through their (pre-merger) shareholding in EC Citrus and the shareholding held by the Thudana Trust. After the proposed transaction, the HDP shareholding in the Thudana Group will reduce by 35.7% because of African Pioneer's exit from EC Citrus. The stake held by Thudana Trust is not affected by the proposed transaction. It retains the same shareholder protection and rights that existed prior to the merger.

19. The Commission notes that African Pioneer remains invested in Sun Orange Farms, where it holds a joint controlling shareholding pursuant to a transaction conditionally approved by the Commission in October 2021. This stake is unaffected by the proposed transaction.

20. The DTIC filed a Form CC5(2) raising concerns about the reduction in HDP ownership arising from the transaction. The DTIC requested that the parties remedy this through the implementation of a (further) worker ownership transaction and/or support to small and/or HDP-owned firms in their value chain.

21. The merger parties acknowledge that the proposed transaction results in a 'numerical dilution' of HDP shareholding in EC Citrus but submit that it is important to bear in mind that the transaction does not result in the complete removal of African Pioneer from the operational activities of the Thudana Group. Specifically, African Pioneer remains a controlling shareholder in Sun Orange Farms. Further, the workers' trust retains a substantial stake in the Thudana Group on the same (pre-merger) terms.

22. Further, African Pioneer's exit must be considered with reference to its original intent in acquiring its stake in EC Citrus. The parties submit that African Pioneer always considered Sun Orange Farms as a strategic and core asset and it was always their intention to

acquire control of the operational entities in the Thudana Group and particularly of Sun Orange Farms. As a subsidiary point, the parties submit that African Pioneer's exit will allow it to realise its investment in EC Citrus sooner than anticipated and to attain a premium which can be used for alternative investments. At the same time, African Pioneer remains invested in Sun Orange Farms, which is a high-value entity in the Thudana Group that is expected to pay regular dividends from 2023.

23. The Commission reviewed African Pioneer's original investment case as well as its board documents to understand their original intent in investing in EC Citrus. The Commission found that African Pioneer's investment in EC Citrus appears to have been made to improve its chances of acquiring control over Sun Orange Farms, in line with the submissions of the merger parties. The Commission's investigation shows that African Pioneer's investment rationale and strategy *vis a vis* Sun Orange Farms is consistent over time and that the current transaction unencumbers a black-owned investment firm at a time when it has realised its original investment intent.

24. However, as noted in the merger between *ECP Africa Fund IV LLC and ECP Africa Fund IV A LLCECP Africa Fund IV LLC and ECP Africa Fund IV A LLC and The Burger King (South Africa) RF (Pty) Ltd and Grand Foods Meat Plant (Pty) Ltd*, a return on investment is a private gain to shareholders and not necessarily responsive to the public interest requirements in section 12A of the Act. The Commission therefore remains concerned about the reduction in shareholding by HDPs in EC Citrus as a result of the transaction.

25. In order to address the Commission's concerns on the reduction of shareholding by HDPs in EC Citrus the merging parties have agreed to remedies whereby they will increase their capital expenditure, procure locally manufactured products and services for the merged entity's operations and make available a development fund for community development projects.

26. The Commission notes that the DTIC has indicated that upon further engagement with the merger parties and after considering their submissions they will not make further submissions in relation to this merger.

27. The Commission therefore approves the proposed transaction subject to the conditions in Annexure A hereto.

ANNEXURE A

CITRICO GLOBAL SL

AND

SAN MIGUEL FRUITS SOUTH AFRICA PROPRIETARY LIMITED

AND

EC CITRUS INVESTMENT PROPRIETARY LIMITED

CASE NUMBER: 2022JUN0050

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 Firms**" means Citrico and San Miguel SA;

1.1.2. "**Approval Date**" means the date the Commission issues a Clearance Certificate (Form CC 15) in terms of the Competition Act;

1.1.3. **"Citrico"** means Citrico Global SL, a company incorporated in accordance with the laws of Spain;

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**" mean these conditions;

1.1.8. "**Days**" means any day which is not a Saturday, Sunday or an official holiday in South Africa;

1.1.9. **"EC Citrus"** means EC Citrus Investment Proprietary Limited, a company incorporated in accordance with the laws of the Republic of South Africa

1.1.10. "**HDPs**" means historically disadvantaged persons as defined in 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 Entity**" means San Miguel SA and the Thudana Group, subject to the control of the Acquiring Firm;

1.1.13. "**Merger**" means the acquisition of control over the Target Firm by the Acquiring Firm;

1.1.14. "**Merging Parties**" means Citrico, San Miguel SA and EC Citrus and their respective subsidiaries;

1.1.15. **"Production Operations"** means the farming, packing and exporting operations of the Merged Entity;

1.1.16. "**SMME**" means Small Medium Micro Enterprises as defined in terms of section 1 of the Competition Act;

1.1.17. **"San Miguel SA"** means San Miguel Fruit South Africa Proprietary Limited, a company incorporated in accordance with the laws of the Republic of South Africa;

1.1.18. "**South Africa**" means the Republic of South Africa;

1.1.19. "**Target Firms**" means EC Citrus and Thudana Holdings;

1.1.20. "**Thudana Group**" means Thudana Holdings and its various subsidiaries excluding Sun Orange Farms (Pty) Ltd;

1.1.21. "**Thudana Holdings**" means Thudana Holdings (Pty) Ltd;

1.1.22. "**Tribunal**" means the Competition Tribunal of South Africa; and

1.1.23. "**Tribunal Rules**" means Rules for the Conduct of Proceedings in the Tribunal.

2. CAPITAL EXPENDITURE

2.1. The Merged Entity commits to aggregate capital expenditure of **[confidential]** over a 5-year (five year) period from the Implementation Date in the overall Production Operations of the Merged Entity in South Africa, subject to the Merged Entity maintaining current levels of profitability.

2.2. For the sake of clarity, the Merged Entity hereby confirms that its profit before tax for the most recently completed financial year is **[confidential]**.

2.3. Pursuant to clause 2.1 above, it is recorded that the Merged Entity's pre-Merger projected capex spend over the next 5 years is approximately **[confidential]** (**Capex Base Figure**), and that the commitment in paragraph 2.1 above represents an increase of more than **[confidential%]** to the Capex Base Figure.

3. PROMOTION OF HDP SUPPLIERS

3.1. San Miguel and the Thudana Group shall use reasonable endeavours to procure locally manufactured products or services from the Merged Entity's current and/or new HDP suppliers (should they become available) on reasonable commercial terms (including credit terms, price, quality), provided that such products meet the requisite industry norms and standards and/or comply with any regulatory requirements imposed on the specific products by law.

3.2. For the avoidance of doubt, a HDP controlled supplier in these Conditions refers to an entity in which HDP/s hold over 50% of the shareholding or membership interest, whichever is applicable.

3.3. Pursuant to clause 3.1 above, it is recorded that the Merged Entity's procurement spend on HDP controlled businesses, as at 31 August 2022, was approximately **[confidential]** and the Target Firm's projected procurement spend on HDP controlled businesses is an aggregate amount of **[confidential]** over the next 3 years (the **HDP**

Base Figure). The Acquiring Firm shall ensure that it increases the HDP Base Figure by a minimum of **[confidential]** i.e., to an aggregate amount of procurement spend on HDP controlled businesses of **[confidential]** (the **Target Figure**) over a period of 3 (three) years from the Implementation Date.

4. DEVELOPMENT FUND

4.1. Over a 3 (three) year period from the Implementation Date, the Merged Entity shall make available an aggregate amount of R2,750,000.00 (two million seven hundred and fifty thousand rand) as a development fund for investment in respect of community development projects (such as infrastructure, provision of water tanks and/or community healthcare projects), and/or the support of SMMEs in the agricultural sector value chain.

4.2. Pursuant to clause 4.1 above, it is recorded that the Merged Entity's spend on corporate social responsibility developmental projects as at 31 August 2022, was approximately **[confidential]** (the **CSR Base Figure**), subject to management's discretion and depending on the performance of the Merged Entity. The commitment in paragraph 4.1 above represents an increase of **[confidential]** to the CSR Base Figure.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

5.1. The Merging Parties shall notify the Commission in writing of the Implementation Date within 5 (five) Business Days of it becoming effective.

5.2. The Merging Parties shall submit a report on an annual basis to the Commission within 30 Days after the anniversary of the Implementation Date detailing compliance with these Conditions, for the duration of these Conditions. Each report submitted in this regard shall be accompanied by an affidavit of the senior director of the Merged Entity confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.

5.3. For purposes of clause 2.1, the Merged Entity shall within 30 Days after the anniversary of the Implementation Date provide the Commission with its annual level of profitability and provide proof thereof in the form of annual financial statements and

any other relevant documents.

5.4. 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 the Conditions.

6. APPARENT BREACH

6.1. An apparent breach by the Merging Parties of any 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 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 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 email address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SEATRADE SHIPPING SERVICES (PTY) LTD

AND

DCP CAPE TOWN (PTY) LTD; DURBAN CONTAINER PARK (PTY) LTD; IDLELO LOGISTICS (PTY) LTD; PENDULA LOGISTICS (PTY) LTD; AND NASCISPAN (PTY) LTD

CASE NUMBER: 2021DEC0056

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 above-mentioned firms subject to conditions as set out below:

1. On 23 December 2021, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Seatrade Shipping Services (Pty) Ltd ("Seatrade") intends to acquire sole control over DCP Cape Town (Pty) Ltd ("DCP Cape Town"); Durban Container Park (Pty) Ltd ("Durban Container"); Idlelo Logistics (Pty) Ltd ("Idlelo Logistics"); Pendula Logistics (Pty) Ltd ("Pendula Logistics"); and Nascispan (Pty) Ltd ("Nascispan"), (hereinafter collectively referred to as the Target Firms). Upon implementation of the proposed transaction, Seatrade will exercise sole control over the Target Firms, as envisaged by section 12(2)(a) of the Competition Act 89 of 1998, as amended.

The parties and their activities

2. The primary acquiring firm is Seatrade, a private company incorporated in South Africa. Seatrade is a special purpose vehicle (SPV) formed for the purposes of this transaction.

Seatrade does not control any firms. Seatrade and all firms directly and indirectly controlling it will be collectively referred to as the ''Acquiring Group''.

3. Seatrade is an SPV that has been incorporated to facilitate the proposed transaction and does not have any business activities. The Acquiring Group consists of firms that operate in the following business activities: property ownership and rental, provision of integrated Supply Chain Services (these services include Air Freight, Sea Freight, Land Transport, Project Cargoes, Sea-Air Cargoes, Ship & Port Agency, Break-bulk cargoes and Warehousing and Distribution), Shipping services, Information Technology services, Container Sales services and provision of an integrated logistics solution (aimed at offering a door-to-door service).

4. The primary target firms are DCP Cape Town; Durban Container; Idlelo Logistics; Pendula Logistics; and Nascispan, hereinafter collectively referred to as the Target Firms. The Target Firms are all private companies incorporated in South Africa. The Target Firms do not own any subsidiaries in South Africa.

5. DCP Cape Town and Durban Container Park provide the following: container storage, sales, container shipping and related maintenance and logistics services in Cape Town and Durban; storage of empty and loaded shipping containers; provision of refrigerated shipping containers storage facilities; loading of shipping containers for transport; administration of shipping container dispatch facilities; repair of shipping containers and general maintenance; and container sales.

6. Idlelo's sole activity is the collection of rent from DCP Cape Town and Durban Container Park and paying the rental to the lessors. Pendula is in the business of transporting shipping containers. Pendula is principally involved in the shuttle of containers from the Durban Port to the DCP Durban depot, with similar service occasionally provided to DCP Cape Town and a limited container delivery service to depots in Johannesburg. Nascispan is an SPV that owns a property that is leased from it by DCP Cape Town.

Competition assessment

7. The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap between the Target Firms and the Acquiring Group (through its indirect subsidiary Simba Africa Maritime (Pty) Ltd ("Simba")) in the market for container sale services.

8. Regarding the market for the provision of container sales services, the merging parties will have a national estimated market share that is relatively low. The Commission asked customers if there were other suppliers in the market for container sales services that they can switch to in the event that the merged entity increases prices. In addition, the Commission also asked a competitor of the merging parties if there are other players in the respective markets that they compete with besides the merging parties. The customers and the competitor confirmed that the merging parties are not big players in the respective markets and that the merged entity will continue to face competition from a number of players in the respective market.

9. In addition to the horizontal overlap in container sales, the Target Firms may be contracted by firms such as the Acquiring Group on an ad-hoc basis in specific instances where: (i) an importer has not taken release of cargoes, in which case the Acquiring Group will move such containers to the Target Firm facilities; and (ii) the Acquiring Group needs to store empty containers returned by importers until they are picked by exporters. The Commission is of the view that this does not result in a vertical overlap as, none of the services provided by the Target Firms could be considered as inputs to the business activities of the Acquiring Group.

10. In addition to the above, the Commission found that Diamond Shipping Services (Pty) Ltd ("DSS"), a South African subsidiary of the Acquiring Group, procured container shipping and logistics services from the Target Firms in the preceding financial year. The Commission further notes that the merging parties are not vertically integrated as they operate at the same level of the value chain (being suppliers of container shipping and logistics services). Nevertheless, the Commission considered this relationship between

the merging parties for completeness. The Commission assessed whether the proposed transaction is likely to result in input foreclosure and customer foreclosure concerns.

11. In assessing input foreclosure concerns, the Commission notes that the Target Firm through DCP and DCP Cape Town is not a dominant supplier of container shipping and logistics services as it has a low estimated market share. The target firm's market share suggests that they are not likely to have the ability to engage in anticompetitive foreclosure.

12. Furthermore, although the Target Firms supplied services to the Acquiring Group that constitute a small amount of its total sales, the majority of their services are supplied to their other customers in the respective market. The fact that a majority of the target firm's revenue is derived from third party customers suggests that the merging parties will not have the incentive to engage in any input foreclosure. In light of the above, the Commission is of the view that the merged entity is unlikely to have the ability to foreclose the merging parties' competitors from access to container shipping and logistics services.

13. In assessing customer foreclosure concerns, the Commission notes that the Acquiring Group is not a dominant player in the market for the supply of container shipping and logistics services. They therefore account for a small proportion of the respective market. In addition, the Acquiring Group is a Ships Agency representing foreign principals. These foreign principals are the container owners and determine the choice of service provider.

14. Moreover, the Commission engaged with two competitors of the merging parties who noted that there are a number of players in the market for the supply of container shipping and logistics services which include but are not limited to, Grindrod Intermodal, MSC, Reload Logistics, SATL Freight (Pty) Ltd ("SATL") and Bidweg Steinweg, amongst others. Therefore, the merging parties will not have the ability to engage in customer foreclosure, as there are a number of players that will pose as a competition constraint in the respective market.

15. The Commission is of the view that the proposed transaction is unlikely to result in input or customer foreclosure.

16. In light of the above, 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

17. The merging parties submit that no job losses will arise in South Africa as a consequence of the transaction. The merging parties further submit that, post-merger, the Target Firms will remain separate subsidiaries in the Acquiring Group.

18. The Commission notes that the merging parties provided an unequivocal statement that the proposed transaction will not result in any retrenchments. The Commission further notes that the Target Firms will continue operating as separate entities to those of the Acquiring Group, therefore resulting in no overlaps. As such, the Commission is of the view that the proposed transaction is unlikely to result in any job losses.

The promotion of a greater spread of ownership

19. The merging parties submit that pre-merger the Acquiring Group (and its controlled subsidiaries) are all foreign-owned and therefore have no B-BBEE shareholding in any of their controlled entities operational in South Africa. However, according to the merging parties, these firms comply with the other B-BBEE requirements set out in the relevant legislation and have ratings ranging from Level 2 to Level 7. Furthermore, the Commission notes that there are no B-BBEE shareholders in any of the Target Firms currently.

20. Moreover, the merging parties submit that the proposed merger will have a positive impact on the public interest in that, post-merger, the Acquiring Group will continue to follow the same approach towards compliance with empowerment legislation which they will also adopt in relation to the Target Firms.

21. The Commission further engaged with the merging parties requesting that the proposed merger be approved subject to the following condition: within 24 (twenty-four) months of the implementation date, the merged entity shall establish an ESOP for an effective 5% (five percent) interest in the Target Firms through an employee trust for the benefit of the Target Firm's Employees. The Merging Parties have agreed to this condition.

22. The proposed transaction does not raise any other public interest concerns.

Conclusion

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

ANNEXURE A

SEATRADE SHIPPING SERVICES (PTY) LTD

AND

DCP CAPE TOWN (PTY) LTD; DURBAN CONTAINER PARK (PTY) LTD; IDLELO LOGISTICS (PTY) LTD; PENDULA LOGISTICS (PTY) LTD; AND NASCISPAN (PTY) LTD

CASE NUMBER: 2021DEC0056

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 Seatrade Shipping Services (Pty) Ltd) registration number 2009/020833/07; a company to be renamed as Transglobe Holdings (Pty) Ltd;

1.1.2. **"Acquiring Group"** means the Acquiring Firm and its controlling shareholders;

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. **"B-BBEE"** means the Broad-Based Black Economic Empowerment as defined in the B-BBEE Act;

1.1.5. **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended;

1.1.6. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

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

1.1.8. **"Condition"** means the conditions set out herein;

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. **"DCP"** means Durban Container Park (Pty) Ltd;

1.1.11. **"DCP Cape Town"** means DCP Cape Town (Pty) Ltd;

1.1.12. **"DTIC"** means Department of Trade, Industry and Competition (South Africa);

1.1.13. **"Employees"** means the respective permanent employees of each of the Target Firms, which shall include Workers, and "**Employee**" means, as the context requires, any one of them;

1.1.14. **"ESOP"** means an Employee share ownership program to be implemented within each Target Firm through an Employee trust or other similar vehicle, that will acquire a shareholding of 5% in the respective Target Firm and in terms of which Employees of the respective Target Firm who are eligible shall be beneficiaries thereunder;

1.1.15. **"HDPs"** means a Historically Disadvantaged Person/s as defined in section 3(2) of the Competition Act;

1.1.16. **"Idlelo Logistics"** means Idlelo Logistics (Pty) Ltd**;**

1.1.17. **"Implementation Date"** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties, which date is defined as the 'Effective Date' under the SPA;

1.1.18. **"Merged Entity"** means the Acquiring Firm and each of the respective Target Firms, post the Implementation Date;

1.1.19. **"Merger"** means the acquisition by the Acquiring Firm of the sole control of the Target Firms;

1.1.20. **"Merging Parties"** means the Acquiring Firm and each of the Target Firms;

1.1.21. **"Nascispan"** means Nascispan (Pty) Ltd;

1.1.22. **"Pendula Logistics"** means Pendula Logistics (Pty) Ltd;

1.1.23. **"South Africa"** means the Republic of South Africa;

1.1.24. **"SPA"** means the sale of shares agreement entered into between the Merging Parties on or about 22 December 2022 relating to the Merger;

1.1.25. **"Target Firms"** means DCP, DCP Cape Town, Idlelo Logistics, Pendula Logistics and Nascispan;

1.1.26. **"Workers"** means employees as defined in the Labour Relations Act, 1995 (Act No. 66 of 1995), and in the context of ownership, refers to ownership of a broad-base of workers; and

1.1.27. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. RECORDAL

2.1. On 23 December 2021, the Competition Commission (**"the Commission"**) received notice of an intermediate merger whereby the Acquiring Firm intends to acquire sole control over the Target Firms. Following its investigation of the Merger, the Commission found that, the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

2.2. Furthermore, the Commission notes that pre-merger the Acquiring Group (and its controlled subsidiaries) are all foreign-owned and therefore have no B-BBEE shareholding in any of their controlled entities operational in South Africa. Furthermore, the Commission notes that there are no B-BBEE shareholders in any of the Target firms currently.

2.3. Notwithstanding this, the Commission notes that the Acquiring Group and the Target Firms have taken steps to implement several measures to enhance B-BBEE in compliance with the B-BBEE Act, in respect of the other elements of the scorecard, applicable to the Acquiring Firms and Target Firms, respectively, including Socio-Economic Development, Management Control, Management Control, Employment Equity, Skills Development, Preferential Procurement and Enterprise Development measures.

2.4. The Commission requested that the Merger be approved subject to Condition that will promote a greater spread of HDP ownership, in particular to increase the levels of ownership by HDPs and Workers in firms in the market, as required by section 12A(3)(e) of the Competition Act, as amended, which the Merging Parties have agreed to.

3. CONDITION

3.1. Within 24 (twenty-four) months of the Implementation Date, the Merged Entity shall establish an ESOP for an effective 5% (five percent) interest in each Target Firm, through an Employee trust or other similar vehicle for the benefit of relevant Target Firm's Employees, in accordance with the design principles set out in Annexure B hereto.

3.2. Prior to the implementation of the ESOP, the Merged Entity shall provide the Commission with details of the proposed ESOP in writing. These details shall include, but not limited to, the structure of the ESOP, funding, identities of prospective shareholders, the proportion of

shareholding in the Target Firm, and any other relevant information for the Commission to consider the ESOP.

3.3. Within 30 (thirty) Days of receipt of the details of the proposed ESOP, the Commission shall provide its written approval, or any comments or queries, in writing. The ESOP may not be implemented without the Commission's written approval.

4. MONITORING OF COMPLIANCE WITH THE CONDITION

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 advise all Employees (and all employees of the Acquiring Firm) and/or their respective representatives in South Africa of the Condition, within 5 (five) Days of the Approval Date and shall make a copy of the Conditions available to all Employees (and employees of the Acquiring Firm) and/or their respective representatives in South Africa.

4.3. The Merged Entity shall, within 10 (ten) Days of the Implementation Date, provide the Commission with an affidavit which provides the total number of Employees that are employed by the Target Firms in South Africa as at the Approval Date. The affidavit referred to herein must be attested to by a senior official of the Merged Entity.

4.4. The Merged Entity shall provide the Commission with the names and employee numbers of Employees participating in the ESOP at least 1 (one) month prior to the implementation of the ESOP.

4.5. The Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 2 years (two 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.

4.6. The Merged Entity shall, annually following the approval of the Merger, provide to the

Commission a report detailing the steps taken to implement the ESOP and the progress made. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report.

4.7. The Merged Entity shall inform the Commission of the commencement date of the ESOP contemplated in clause 3 above within 10 (ten) Days of the implementation of the ESOP.

4.8. 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.

4.9. 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.

5. APPARENT BREACH

5.1. 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.

6. VARIATION

6.1. 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.

7. **GENERAL**

7.1. 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