

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**

**NO. 3695**

**21 July 2023**

**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**AL MABROOR PROJECTS (PTY) LTD AND AL MABROOR AGRI (PTY) LTD**

**AND**

**BEEFCOR (PTY) LTD)**

**CASE NUMBER: 2022NOV0006**

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 04 November 2022, the Competition Commission (Commission) received notice of an intermediate merger wherein Al Mabroor Projects (Pty) Ltd and its wholly owned subsidiary Al Mabroor Agri (Pty) Ltd (collectively Al Mabroor) intend to acquire the entire business of Beefcor (Pty) Ltd (Beefcor). Post-merger, Al Mabroor will control Beefcor.

**Parties to the transaction and their activities**

2. The primary acquiring firm is Al Mabroor. Al Mabroor, all the firms it controls, all the firms controlling Al Mabroor and all the firms controlled by those firms, shall be referred to as "Al Mabroor".
  3. Al Mabroor does not have any ownership by historically disadvantaged persons ("HDPs") or workers as defined in the Competition Act No. 89 of 1998 (as amended) (the "Act")
  4. Al Mabroor is an investment firm with a focus on cattle farming, specifically the production of cattle for slaughter. Al Mabroor does not have feedlot operations and places its feedlot ready cattle at third party feedlots on a contract feeding basis until the cattle are ready for slaughter. Once the cattle are slaughter ready, Al Mabroor sells the cattle to abattoirs.
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5. The primary target firm is Beefcor. Beefcor does not have any ownership by HDPs.
6. Beefcor is active in the production of cattle for slaughter. Beefcor produces slaughtered cattle from its own feedlot based in Gauteng. Beefcor also offers limited contract feeding services to third parties (such as Al Mabroor) who may own cattle but not have their own feedlots.

#### **Competition assessment**

7. The Commission found that the merger is unlikely to result in a substantial lessening or prevention of competition in any relevant market.
8. Beefcor is a respondent to an ongoing cartel investigation and the Commission sought to ensure that any risk of Beefcor being unable to pay any fine arising pursuant to the conclusion of that investigation, is mitigated. The Commission and the merging parties have agreed to the conditions are set out **Annexure A**.

#### **Public interest**

9. The Commission was concerned regarding employment post-merger. The merging parties have tendered a condition that there will be no merger specific retrenchments post-merger.
  10. The Commission found that the merger does not promote a greater spread of ownership by HDPs, or workers as contemplated in section 12A(3)(e) of the Act. To mitigate this concern, the parties have agreed to implement an Employee Share Ownership Programme (ESOP) post-merger. The ESOP will be to the value of 5% of the issued share capital in Beefcor and will benefit HDP workers of Beefcor.
  11. The merging parties have also agreed to continue existing initiatives to promote the entry and participation of HDPs in the cattle production sector and in agriculture more generally. The details of these conditions are set out in **Annexure A**.
  12. There are no other public interest concerns.
  13. Considering the above, the Commission approves the proposed transaction subject to the conditions attached as **Annexure A** hereto.
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**ANNEXURE A**

**AL MABROOR PROJECTS (PTY) LTD AND AL MABROOR AGRI (PTY) LTD**

**AND**

**BEEFCOR (PTY) LTD**

**CASE NUMBER:2022NOV0006**

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**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 Al Mabroor Projects (Pty) Ltd and Al Mabroor Agri (Pty) Ltd;
  - 1.2 **“Act”** means the Competition Act No. 89 of 1998, as amended;
  - 1.3 **“Al Mabroor Agri”** means Al Mabroor Agri (Pty) Ltd;
  - 1.4 **“Al Mabroor Projects”** means Al Mabroor Projects (Pty) Ltd;
  - 1.5 **“Approval Date”** means the date on which the Proposed Transaction is approved in terms of the Act;
  - 1.6 **“Commission”** means the Competition Commission of South Africa;
  - 1.7 **“Commission Rules”** means rules for the conduct of proceedings in the Competition Commission;
  - 1.8 **“Conditions”** means the merger conditions included in this Annexure A;
  - 1.9 **“Days”** means any day that is not a Saturday, Sunday, or public holiday in South Africa;
  - 1.10 **“ESOP”** means Employee Share Ownership Programme;
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- 1.11 “**ESOP Establishment Period**” means 24 months from the Implementation Date;
- 1.12 “**Feedlots Investigation**” refers to the Commission’s ongoing investigation initiated on 20 February 2018, and any other cartel investigations to which the Target Business, is a respondent.
- 1.13 “**HDPs**” means historically disadvantaged persons as defined in section 3(2) of the Act;
- 1.14 “**Implementation Date**” means the date on which the merger is implemented by the Acquiring Group and the Target Business;
- 1.15 “**LRA**” means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.16 “**Merger**” means the proposed acquisition by the Acquiring Group of the Target Business as notified to the Commission under Case No. 2022Nov0006;
- 1.17 “**Merged Entity**” means the combination of the Acquiring Group and the Target Business pursuant to the merger;
- 1.18 “**Merging Parties**” means the Acquiring Group and the Target Business;
- 1.19 “**Rafi Cattle Project**” Al Mabroor’s initiative in the Eastern Cape to assist HDP cattle farmers;
- 1.20 “**SMME**” means small business or a medium-sized business, as defined in the Competition Act;
- 1.21 “**South Africa**” means the Republic of South Africa;
- 1.22 “**Target Business**” means Beefcor (Pty) Ltd;
- 1.23 “**Tribunal**” means the Competition Tribunal of South Africa;
- 1.24 “**Qualifying Worker**” means full time HDP Worker with 2 years or more work experience at the Target Business; and
- 1.25 “**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.
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## **2. EMPLOYMENT**

- 2.1 The Merged Entity undertakes that there will be no merger-specific retrenchments of the employees of the Merged Entity post-merger.
- 2.2 For the sake of clarity, merger-specific retrenchments do not include (i) voluntary separation arrangements and/or voluntary retrenchments; (ii) voluntary early retirement; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including (but not limited to) terminations as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract or a fixed-term third party contract employee or contract with a third party.

## **3. ESTABLISHMENT OF the ESOP**

- 3.1 By the end of the ESOP Establishment Period, the Merged Entity shall establish an ESOP for the benefit of Qualifying Workers of the Target Business. The Qualifying Workers will receive shareholding in the Target Business equal in value to 5% of the ordinary shares in the Target Business as at the Implementation Date, in accordance with the design principles set out in Annexure B.

## **4. SMME AND HDP SUPPORT**

- 4.1 The Acquiring Group will increase the number of cattle placed with the Rafi Cattle Project from 1000 to at least 3000 (in total) over the years 2023 – 2025. This will include:
- 4.1.1. The provision of mentorship, training and skills transfer to the Rafi Cattle Project HDP farmers as regards to animal husbandry and commercial management of cattle.
- 4.1.2. The supply of 20 breeding bulls by the merged entity to the Rafi Cattle Project farmers.
- 4.1.3. Sponsoring an annual cattle auction to facilitate the Rafi Cattle Project farmers to sell their cattle on the open market.
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## **5. ONGOING FEEDLOTS INVESTIGATION**

- 5.1 The Target Business will remain responsible for any fines that may be imposed in relation to the Feedlots Investigation.
- 5.2 Should the Target Business undergo any restructuring, prior to the conclusion of the Feedlots Investigation and prosecution by the Commission and/or any appeal or review proceedings before the Competition Appeal Court or any other court in relation to the aforesaid ongoing investigation and prosecution, the Target Business shall notify the Commission of the restructuring prior to its implementation, regardless of whether it constitutes a notifiable merger in terms of the Act.

## **6. MONITORING**

- 6.1 Within 10 (ten) Days of the Implementation Date, the Acquiring Group shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Target Business shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 6.2 Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 6.3 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.
- 6.4 The Acquiring Group shall submit proof of payment of dividends upon the establishment of the ESOP.
- 6.5 The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

## **7. APPARENT BREACH**

- 7.1 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
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by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

**8. VARIATION**

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

**9. GENERAL**

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

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**ANNEXURE B**

**[CONFIDENTIAL]**

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## **COMPETITION COMMISSION**

### **NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**SOUTH BAKELS PROPRIETARY LIMITED  
AND  
KERRY ORLEY FOODS (A DIVISION OF KERRY INGREDIENTS  
SOUTH AFRICA PROPRIETARY LIMITED)**

**CASE NUMBER: 2022NOV0035**

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. This is an intermediate merger wherein South Bakels Proprietary Limited ("South Bakels") intends to acquire Kerry Orley Foods, the sweet foods manufacturing business conducted by Kerry Ingredients South Africa Proprietary Limited ("Kerry Ingredients").
2. The primary acquiring firm is South Bakels, a private company incorporated in accordance with the laws of South Africa. South Bakels, and the firms controlling it, are collectively referred to as the "Bakels Group". The Bakels Group is 96,4% owned by EMU AG, a company incorporated in accordance with the laws of the Netherlands.
3. The Commission found that South Bakels has a B-BBEE certificate that rates the company as a Level 8 B-BBEE contributor with no black ownership.
4. South Bakels offers a full range of products, raw materials and expertise to the bakery, patisserie, and chocolate sectors. It designs, develops, and manufactures ingredients and solutions (such as cake mixes) for bakery, patisserie, and chocolate companies. South Bakels also produces compound chocolate chips, nibs, crumble, slabs, discs, blocks and coatings. South Bakels' customers include large supermarkets and food service companies.
5. The primary target firm is Kerry Orley Foods, a division of Kerry Ingredients, a private company incorporated in accordance with the laws of South Africa. Kerry Ingredients, the

firms controlling it and all firms controlled by it (including Kerry Orley Foods), are collectively referred to as the "Kerry Group". Kerry Ingredients is a South African subsidiary of the Kerry Group. Kerry Ingredients is wholly owned by Kerry Group BV, a company incorporated in accordance with the laws of the Netherlands. The Kerry Group BV is wholly owned by the Kerry Group PLC, a listed company on both the Dublin ISEQ and the London Stock Exchange. Kerry Group's top shareholders include Kerry Co-operative Creameries Limited (11.6%) and Blackrock Investment Management (5%).

6. Kerry Orley Foods (via Kerry Ingredients) holds a Level 6 B-BBEE rating with no black ownership.
7. Kerry Orley Foods is a supplier to the South African bakery industry and provides sweet ingredients for the confectionary, ice cream, beverage, cereal, dairy and baked goods markets. Kerry Orley Foods also offers compound chocolates (including slabs, nibs, chips, chunks, blocks, discs, chocolate filling, ICC, sauces and sticks), real chocolate and non-sucrose chocolates. Kerry Orley Foods sells bakery ingredients on a wholesale basis to various industrial bakers, the craft market and distributors and does not have its own distribution network. Kerry Orley Foods' biggest customers include baking-ingredients distributors and industrial bakers with smaller customers being specialty baking ingredients supply stores.
8. The merger parties submit that the Kerry Orley Foods business has been in a consistent state of financial decline since 2019, culminating in an inability to meet its financial obligations. The Commission is of the view that the proposed transaction is aimed at improving the efficiency of Kerry Orley Foods' operations and ensuring the sustainability of the Kerry Orley Foods business going forward.

### **Competition analysis**

9. The Commission found that the proposed transaction gives rise to a horizontal overlap with respect to the manufacture and supply of compound chocolate. The merger parties submit that South Bakels' share of the South African compound chocolate market is less than [0 - 10%] and Kerry Orley Foods' share is also less than [0 - 10%].
10. The Commission did not have sufficient information to calculate its own market shares but checked the relative size of the merger parties' businesses with two competitors. The competitors confirmed that Kerry Orley and South Bakels are small players, with less than

15% market share collectively. Neither of the competitors raised concerns with the transaction.

11. The Commission also found that there are pre-existing vertical overlaps between the parties in that Kerry Orley Foods purchases chocolate vermicelli from South Bakels. Further, South Bakels procures materials for the manufacture of its chocolate-mint crumble from an intermediary who sources compound chocolate products from Kerry Orley Foods. However, the pre-existing vertical overlaps are unlikely to give rise to anticompetitive foreclosure concerns as the merger parties are small players, as indicated above.
12. During the investigation the Commission received a concern from one of the customers of the Target Firm. The customer is concerned that it may no longer receive access to Kerry Orley Foods' products if South Bakels takes over the distribution of Kerry Orley Foods' products. Following its investigation of the concern, the Commission notes that:
  - 12.1. The Kerry Orley business is financially distressed with high operating costs, high input costs (linked to the import price of cocoa and chocolate products) and machinery in need of capital expenditure to improve the business's performance. Given six failed sale attempts prior to this proposed transaction, it appears that the parties' counterfactual of the liquidation of Kerry Orley, is likely.
  - 12.2. On 11 January 2023, Kerry Group plc, the global owner of the Kerry Ingredients business, announced that it is exiting its Sweet Ingredients Portfolio at a global level and refocusing on its 'Taste and Nutrition' portfolio. This means that it is unlikely that the Group would continue to support the South African sweets business in future.
  - 12.3. The parties have a low post-merger market share (<15%) which means that any foreclosure effects are unlikely to be substantial.
  - 12.4. Further, the merger parties submit that the South Bakels distribution system is currently capacity constrained, and that South Bakels has not allocated any capital to increase their delivery vehicles and expand their distribution network.
  - 12.5. Nonetheless, South Bakels has confirmed, as a condition to the transaction, that it intends to continue supplying all customers, including those that fulfil an

'unofficial' distribution function, on similar terms as they did pre-merger. This commitment has been made a condition to the merger (see Annexure A).

13. Given the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

#### **Restraint of trade and non-solicitation clause**

14. The Commission notes that South Bakels and Kerry Ingredients have agreed to a non-compete obligation in relation to Kerry Orley Foods for a period of 18 months. Having considered the clauses, the Commission's view is that the duration of the restraint of trade and non-solicitation clause is reasonable and justifiable.

#### **Public interest considerations**

##### ***Employment***

15. The merger parties submit that the proposed transaction will not have an adverse effect on employment as no retrenchments will result from the proposed transaction. Instead, the proposed transaction will maintain the status quo insofar as employment at the Kerry Orley Foods manufacturing plant is concerned and will also lead to increased employment insofar as the operational requirements of the merged entity are concerned. In particular, South Bakels indicates that Kerry Orley Foods is not a self-sustaining business and received operational and administrative support from Kerry Ingredients. South Bakels intends to appoint several employees to manage and improve the performance of the Kerry Orley plant post-merger. To this end, the parties have agreed to a condition that there will be no merger-specific retrenchments for a period of three years and that the merged entity will create at least ten new jobs (see Annexure A).

##### ***Effect on the promotion of a greater spread of ownership***

16. The Commission also considered whether the proposed merger promotes ownership by historically disadvantaged persons ("HDPs") and workers in firms in the market. The Commission notes that the merger parties currently have no HDPs as shareholders. The merger parties submit that the ownership structure of the EMU Foundation, which is the ultimate beneficiary and owner of the Bakels Group, makes it impossible to enter into a worker ownership structure as the founding deed of the EMU Foundation prevents the (i)

dilution of ownership, (ii) trading of shares and (iii) distribution of dividends from the Group. Instead, all profits must be reinvested in the Group.

17. The Commission notes that South Bakels currently has a Level 8 B-BBEE rating, which is lower than that of Kerry Orley Foods (via Kerry Ingredients). Therefore, the Commission requested the merger parties to commit to increasing the merged entity's B-BBEE rating to a Level 4 . In response, the merger parties explained that since there is a restriction on the dilution of its shareholding, it is not possible to achieve a Level 4 B-BBEE rating. However, the merger parties submitted that South Bakels intends to initiate and implement initiatives to improve its current B-BBEE rating to the equivalent of a Level 5 rating. However, given that 1 point is automatically deducted from the B-BBEE score of foreign entities, their effective rating will be a Level 6 , equivalent to that of Kerry Ingredients pre-merger. To achieve the Level 6 rating, the merged entity will appoint HDPs into management positions, conduct skills development initiatives and commit to increased procurement from HDPs (see the conditions in Annexure A).
18. In addition, the parties have also made a public interest commitment to make a capital investment of no less than R **[Confidential]** million into Kerry Orley Foods within 18 months of the Implementation Date. This investment is earmarked for the maintenance of the equipment at the plant to ensure the continued viability of the plant.
19. To ensure that the proposed merger does not give rise to any negative impact on the current distributors and/or customers of Kerry Ingredients, the merger parties are also prepared to commit to honour the contracts of existing customer and distributors.
20. Considering the parties' submission that the corporate structure of South Bakels does not allow third parties to hold shares in or receive dividends from South Bakels, and that this makes the implementation of an ESOP/HDP transaction unworkable, the Commission requested the merger parties to provide a procurement commitment that would promote entry, participation and expansion of small and/or HDP-owned firms to address the failure to directly remedy the promotion of a greater spread of ownership. The Commission requested the parties to consider procurement commitments that would support small and HDP sugar growers as well as HDPs/small firms that could provide maintenance services at the Kerry Orley plant. The merger parties agreed to commit a further R **[Confidential]** million to procurement conditions that will

benefit HDP and small suppliers in both the sugar value chain and in the provision of maintenance services for a period of three (3) years of the Implementation Date.

**Conclusion**

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

**ANNEXURE A**

**SOUTH BAKELS PROPRIETARY LIMITED**

**AND**

**KERRY ORLEY FOODS (A DIVISION OF KERRY INGREDIENTS SOUTH AFRICA  
PROPRIETARY LIMITED)**

**CASE NUMBER: 2022NOV0035**

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**CONDITIONS**

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**1 DEFINITIONS**

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

- 1.1 **"Approval Date"** means the date on which the Commission issues a Clearance Certificate (Notice CC15) in terms of the Competition Act;
- 1.2 **"Bakels Group"** means the international Bakels Group, registered in The Netherlands (trade registry number CHE 112.837.198), which manufactures, distributes and technically supports innovative baking ingredients and solutions to bakery and confectionery customers worldwide;
- 1.3 **"B-BBEE"** means Broad-Based Black Economic Empowerment;
- 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 89 of 1998, as amended;
- 1.6 **"Compliance Report"** means a report compiled by the Merger Parties/merged entity which outlines the Merger Parties' adherence to these Conditions;

- 1.7 “**Conditions**” means these conditions contained in this **Annexure A**;
- 1.8 “**days**” means any calendar day which is not a Saturday, Sunday or an official public holiday in South Africa. A public holiday shall include such days as may be declared by the President of the Republic of South Africa in terms of the Public Holidays Act, 36 of 1994;
- 1.9 “**employee(s)**” means all the permanent employees of the Primary Acquiring Firm or the Primary Target Firm, as defined in the LRA, and employed as such on the Implementation Date;
- 1.10 “**HDP**” means historically disadvantaged person within the meaning of the Competition Act;
- 1.11 “**Implementation Date**” means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
- 1.12 “**LRA**” means the Labour Relations Act 66 of 1995, as amended;
- 1.13 “**merger**” means the acquisition of control of the Primary Target Firm by the Primary Acquiring Firm;
- 1.14 “**Merging Parties**” means the Primary Acquiring Firm and the Primary Transferred Firm;
- 1.15 “**month**” means a period of 30 (thirty) calendar days;
- 1.16 “**Moratorium Period**” means a period of 3 (three) years from the Implementation Date, and includes a period between the Approval Date and the Implementation Date;
- 1.17 “**Primary Acquiring Firm**” means South Bakels Proprietary Limited, a subsidiary of the Bakels Group;



- 1.18 **"Primary Target Firm"** means the sweet foods manufacturing business conducted by Kerry Ingredients as a going concern and income earning activity at the premises under the name of "Kerry Orley Foods" (a division of Kerry Ingredients), subject to the acquisition by the Primary Acquiring Firm;
- 1.19 **"Seller"** means Kerry Ingredients South Africa Proprietary Limited (registration number: 2004/000621/07);
- 1.20 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.21 **"Y.E.S"** means the YES 4 Youth business-led collaboration/initiative.

## 2 RECORDAL

- 2.1 The Merging Parties and the Commission have engaged in various discussions relating to the impact of the merger on the public interest grounds listed under section 12A(3) of the Competition Act, and specifically section 12A(3)(e) of the Competition Act.
- 2.2 Accordingly, both the Merging Parties and the Commission agree to the Conditions set out below.

## 3 EMPLOYMENT

- 3.1 The Primary Acquiring Firm undertakes that it will not conduct any merger-related retrenchments in respect of the employees during the Moratorium Period.
- 3.2 For the sake of clarity, merger-specific retrenchments do not include: (i) voluntary separation arrangements and/or voluntary retrenchments; (ii) voluntary early retirement; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the merger; (vi) terminations in the ordinary course of business, including (but not limited to) terminations as a result of misconduct or poor

performance; and (vii) any decision not to renew or extend a contract or a fixed-term third-party contract employee or contract with a third party.

3.3 The Primary Acquiring Firm will, within 12 (twelve) months of the Approval Date, on-board an additional 10 employees. The hiring of such additional employees will be in respect of (but not limited to) the following positions:

- 3.3.1 Management Accountant;
- 3.3.2 Senior NPD Technologist;
- 3.3.3 Production Manager;
- 3.3.4 Telesales Administration Clerk;
- 3.3.5 Warehouse Manager;
- 3.3.6 Industrial Sales Manager;
- 3.3.7 Industrial Sales Representative;
- 3.3.8 Production Supervisor;
- 3.3.9 Production Supervisor; and
- 3.3.10 Site Manager.

Management control

3.4 The Primary Acquiring Firm shall promote the following individuals to senior management positions within 12 (twelve) months of the Approval Date:

Name	Current Job Title	Promotion Level	Race	Gender
[Confidential]	[Confidential]	Top management	Indian	Female
[Confidential]	[Confidential]	Executive director	Black	Male
[Confidential]	[Confidential]	Branch Manager (Senior management)	Coloured	Male
[Confidential]	[Confidential]	Procurement Manager	Black	Female

#### 4 CUSTOMERS OF THE MERGER PARTIES

##### Post-merger security of supply

- 4.1 The Primary Acquiring Firm shall ensure that existing supply agreements and/or arrangements are honored for the duration of such agreement/arrangement.
- 4.2 The Primary Acquiring Firm will continue to supply the Primary Target Firm's products to existing customers and distributors. The aforementioned products of the Primary Target Firm will be supplied on terms and conditions that are no less favourable than those conditions that existed between the Primary Target Firm and its customers and/or distributors prior to the merger.
- 4.3 The Primary Acquiring Firm will ensure that upon expiration of the aforementioned agreement(s)/arrangement(s), a review of same will be undertaken and, depending on standard terms and conditions, whether the impugned customer/distributors wishes to continue to deal with the Primary Acquiring Firm.
- 4.4 The supply of products as referred to in 4.1 - 4.3 above will be subject to -
- 4.4.1 the impugned customer's/distributor's adherence to the standard terms and conditions of the Primary Acquiring Firm; which will be no less favourable than those conditions that existed between the Primary Target Firm and its customers and/or distributors prior to the merger;
  - 4.4.2 the impugned customer's/distributor's ability to meet and/or fulfil the Primary Acquiring Firm's credit criteria (including, but not limited to, the Primary Acquiring Firm's credit-limit requirements);
  - 4.4.3 the impugned customer's/distributor's full payment of any amount(s) due in respect of any commercial arrangement(s)/agreement(s) between such customer and the Primary Acquiring Firm; and
  - 4.4.4 the continued commercial viability of supplying the impugned customer/distributor with the relevant product, where such commercial viability

is assessed based on the availability of requisite raw materials for the manufacturing and supply of the relevant product.

## 5 SOCIO-ECONOMIC DEVELOPMENT

### Skills development

- 5.1 Within 12 (twelve) months of the Implementation Date, the Primary Acquiring Firm will implement the Y.E.S initiative for a minimum of 30 candidates.
- 5.2 For a period of 3 (three) years following the Implementation Date, the Primary Acquiring Firm will -
  - 5.2.1 offer a minimum of 5 eligible HDPs placement in its Professional Cookery and Baking and Confectionary learnership programmes (respectively), per annum;
  - 5.2.2 absorb a minimum of 2 of the aforementioned HDP learnership participants as permanent employees, per annum;
  - 5.2.3 offer a minimum of 5 eligible HDPs placement in its internship programme, per annum;
  - 5.2.4 on-board a minimum of 1 of the aforementioned HDP interns as permanent employees, per annum. and
  - 5.2.5 avail a total of 5 bursaries to eligible HDPs to attend Sparrow College, per annum.

## 6 INVESTMENTS

The Primary Acquiring Firm will make a capital investment into the Primary Target Firm within 18 (eighteen) months of the Implementation Date. This investment will be no less than R **[Confidential]** million.

## 7 PROCUREMENT

7.1 For a period of 3 (three) years following the Implementation Date, the Merging Parties commit to procuring -

7.1.1 sugar from suppliers that directly support HDP sugar cane growers; and/or

7.1.2 general maintenance services (not already performed in-house by HDPs) from HDP suppliers that are qualified, accredited and certified to perform such services in South Africa.

7.2 The cumulative value of the products or services procured above will be no less than R **[Confidential]** million over the 3-year period contemplated in this paragraph.

## 8 MONITORING OF UNDERTAKINGS

8.1 The Primary Acquiring Firm shall notify the Commission in writing of the Implementation Date of the merger and the number of employees within 5 (five) days of the merger becoming effective.

8.2 The Merging Parties shall circulate a copy of the employment conditions to the employees, trade-union representative(s) and employee representative(s) of the Primary Acquiring Firm and the Primary Target Firm, respectively, within 5 (five) days of the Approval Date.

8.3 As proof of compliance with paragraph 3 above, a senior executive of the Primary Acquiring Firm shall within 10 (ten) days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notices that were circulated to the employees, trade union(s) and their employee representative(s).

- 8.4 The Primary Acquiring Firm shall, within the first 30 (thirty) days of the merger becoming effective, publish a non-confidential version of the Conditions on its website so as to ensure that potential beneficiaries in respect of all conditions (with the exception of the employment conditions in 3 above) are notified of same. .
- 8.5 Within 10 (ten) days of the anniversary of the Implementation Date and on each anniversary of the Implementation Date, for 3 (three) years, the Acquiring Group shall provide the Commission with a Compliance Report regarding its adherence to the Conditions. This Compliance Report shall include:
- 8.5.1 management control: - the total number of HDPs in senior managerial and/or executive positions;
- 8.5.2 employment - the total number of employees at its operations housing the Primary Target Firm, and a confirmation that there have been no merger-specific retrenchments. To the extent that retrenchments unrelated to the merger are effected, the Primary Acquiring Firm will provide all necessary details and documents;
- 8.5.3 socio-economic development – the details of:
- 8.5.3.1 eligible learner-ship participants and interns that have been appointed to permanent positions of employment or fixed-term contracts; and
- 8.5.3.2 the bursaries awarded, and individuals onboarded in order to obtain practical training, including the monetary value of the Primary Acquiring Firm's investments in advancing the broad socio-economic imperatives of South Africa.
- 8.5.3.3 To the extent that the Primary Acquiring Firm does not award such bursaries and/or on-board HDPs, the Primary Acquiring Firm shall provide the Commission with reasons for same.
- 8.5.4 procurement - the details of:

- 8.5.4.1 the progress made, and steps implemented towards sourcing alternative suppliers whose B-BBEE rating has a positive impact on the Primary Acquiring Firm's B-BBEE scorecard, and investing in the infrastructure necessary to enable the Primary Acquiring Firm to manufacture products currently sourced from non-compliant suppliers; and
- 8.5.4.2 the cumulative value of procurement spend placed with HDPs as contemplated in paragraph 7 above.
- 8.6 The Compliance Report submitted in terms of paragraph 8.5 above shall be accompanied by an affidavit deposed to by a senior executive of the Primary Acquiring Firm confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.
- 8.7 The Commission may request any additional information from the Merging Parties which the Commission, from time to time, may deem necessary for the purpose of monitoring the extent of compliance with these Conditions.

## 9 VARIATION

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.

## 10 APPARENT BREACH

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.

## 11 GENERAL

All correspondence in relation to these Conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [Ministry@thedtic.gov.za](mailto: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:**

**MACMILLAN SOUTH AFRICA (PTY) LTD**

**AND**

**TROUPANT PUBLISHERS (PTY) LTD**

**CASE NUMBER: 2022NOV0036**

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

1. On 18 November 2022, the Competition Commission ("Commission") was notified of a small merger wherein Macmillan South Africa (Pty) Limited (Macmillan SA") intends to acquire the entire issued share capital of Troupant Publishers (Pty) Limited ("Troupant"). Post-merger, Troupant will be a wholly owned subsidiary of Macmillan SA.

**The parties to the transaction**

2. The primary acquiring firm, Macmillan SA, is a private company duly incorporated in accordance with the laws of the Republic of South Africa. Macmillan SA is directly controlled by eSwatini incorporated, Macmillan Boleswa Publishers (Pty) Ltd ("Macmillan Boleswa"), which is in turn controlled by Macmillan Education Ltd, UK ("Macmillan UK"). Macmillan UK is controlled by Springer Nature Group of companies ("Springer Nature Group"). Springer Nature Group is in turn jointly controlled by Holtzbrinck Publishing Group, (through Vermögenswattungsgesellschaft mbH ("HPG")), as to 53% of its issued share capital and BC Partners (through Springer Nature Group Springer+Science Business Media Gaileo Participation S.a.r.l ("BC Partners"), as to the remaining 47% of the Springer Nature Group's share capital.
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3. The merging parties submit that **[CONFIDENTIAL]** % of the entire issued share capital of Macmillan SA is held by Macmillan SA Employee Trust ("MSET"). The acquiring firm and its controllers will henceforth be collectively referred to as "Macmillan SA" or the "Acquiring Group".
4. The primary target firm, Troupant, is a company duly incorporated in accordance with the laws of the Republic of South Africa. Troupant is ultimately controlled by Medu Capital (Pty) Ltd, as to **[CONFIDENTIAL]** % of its issued share capital. The target firm will henceforth be collectively referred to as the "Target Firm" or "Troupant".
5. The merging parties submit that there is no member of historically disadvantaged persons ("HDPs") who owns shares in Troupant.

#### **Activities of the merging parties**

6. Macmillan SA publishes textbooks and related educational material for the education sector in South Africa. Most of the material is in print form, with digital-only produced recently.
  7. Troupant specialises in publishing textbooks and other learning and teaching resource materials in the post-school TVET sector.
  8. Prior to this merger, the merging parties entered into a joint venture agreement ("Macmillan SA/Troupant JV" or "JV") whereby Troupant contributes its technical expertise in developing and publishing vocational and technical textbooks whereas Macmillan SA contributes marketing and distribution activities and financial resources used to publish the TVET textbooks co-owned by their joint venture. The JV publishes the national certificate ("vocational") textbook titles ("NCV JV") and the National Accredited Technical Education textbook titles ("NATED JV"). The profits from the NCV JV and NATED JV are split **[CONFIDENTIAL]** % and **[CONFIDENTIAL]** % in favour of Macmillan SA, respectively. The JV further makes a provision for each of the merging parties to self-publish titles independently of the JV. **[CONFIDENTIAL]** % of Troupant revenues from TVET textbooks is earned through the JV arrangement.
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### Overlapping markets

9. The Commission considered the activities of the merging parties and found that each of them publishes NCV curriculum textbooks independently as well as through the NCV JV business. The Commission however further found that Troupant offers only 2 (two) textbooks on Information Technology ("IT") titles for the NCV segment, and they are both earmarked for NQF level 4 (matric equivalent) whereas the NCV IT textbooks offered by Macmillan SA and the NCV JV are meant for NQF level 2 & 3 (equivalent to grade 10 and 11, respectively). Therefore, the Commission is of the view that the proposed transaction is unlikely to raise any concerns in the NCV segment as the IT textbooks of the merging parties are not targeting the same NCV levels. Therefore, the Commission is of the view that the proposed transaction does not raise any horizontal overlap between the NCV textbooks activities of the merging parties.
10. Regarding the NATED segment, only Troupant self-publishes NATED curriculum textbooks outside the JV and the NATED JV business publishes all the titles co-produced by the JV partners. There is a notional horizontal overlap on the NATED curriculum textbooks activities between Troupant's self-published NATED titles and the NATED JV titles. The reason why this horizontal overlap is notional is because Troupant still utilises the NATED JV to market and distribute the Troupant self-published NATED titles.
11. The Commission further found that although the merging parties' activities overlap vertically in that Macmillan SA markets and distributes the TVET textbook titles of Troupant, Macmillan SA does not render these services to any other third parties in the open market. Therefore, the vertical overlap is unlikely to raise competition concerns.

### Competition analysis

12. The Commission calculated market shares for the publishing and distribution of TVET NATED textbooks based on annual revenues by each publisher from the printed textbooks. The Commission found that the merged entity will account for approximately **[CONFIDENTIAL]** % of the market, with a market share accretion of **[CONFIDENTIAL]** %.
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13. The Commission notes that Macmillan SA is already responsible for the publishing, marketing and distribution of the target firm's and the JV's textbooks. The Commission further found that both the NCV and the NATED JV agreements provide that Macmillan SA **[CONFIDENTIAL]**.
14. Accordingly, the proposed transaction is unlikely to lead to a substantial prevention and lessening of competition in the affected markets.

#### **Public interest considerations**

##### *Employment effects*

15. The merging parties submit that the merger will not result in negative employment effects as it will not lead to retrenchments. The Commission contacted the employee representatives of the merging parties and confirmed that they were assured that the merger will not result in job losses.
16. The Commission is of the view that the proposed transaction is unlikely to result in any negative employment effects.
17. The merging parties submit that **[CONFIDENTIAL]** employees of the acquiring firm are covered by MSET. Sixty-one of these employees are HDPs and 66 are women. Sixty-one of the employees are 35 years or younger. The target firm employs **[CONFIDENTIAL]** employees, 4 (four) of whom are HDPs and 10 are women. Three employees are 35 years or younger.

##### *Promotion of a greater spread of ownership by historically disadvantaged persons (HDPs) and workers - section 12A(3)(e)*

18. The merging parties submit that **[CONFIDENTIAL]** % of the acquiring firm's shares are held by MSET. The target firm does not have any HDP shareholding.
  19. The merging parties have submitted that the proposed merger results in a positive impact on the promotion of greater spread of ownership by workers, since the target
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employees will be incorporated as beneficiaries of MSET. However, the Commission notes that the merging parties have not made a decision yet on when the target employees will be incorporated into Macmillan SA. In order to ensure that the target employees benefit from the employee scheme in a timely manner, the Commission imposes conditions that ensure that the target employees will qualify for incorporation into MSET, 2 years from the approval date of the proposed merger. The merger parties have agreed to these conditions.

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

### **Conclusion**

21. Based on the above, the Commission approves the proposed transaction with the Conditions attached as “**Annexure A**”.
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**ANNEXURE A**  
**MACMILLAN SOUTH AFRICA (PROPRIETARY) LIMITED**  
**AND**  
**TROUPANT PUBLISHERS (PROPRIETARY) LIMITED**

**CASE NUMBER 2022NOV0036**

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**CONDITIONS**

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**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 Macmillan South Africa (Proprietary) Limited;
  - 1.2 **"Act"** means the Competition Act, No. 89 of 1998 as amended;
  - 1.3 **"Affected Employees"** means any employees of Troupant Publishers (Proprietary) Limited as at the Implementation Date of the merger;
  - 1.4 **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
  - 1.5 **"B-BBEE"** means broad-based black economic empowerment as defined in the B-BBEE Act;
  - 1.6 **"B-BBEE Act"** means the Broad-Based Economic Empowerment Act, No. 53 of 2003 (as amended);
  - 1.7 **"B-BBEE Codes"** means the Codes of Good Practice on Broad-Based Economic Empowerment issued under section 9(1) of the B-BBEE Act;
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- 1.8        **"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;
- 1.9        **"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;
- 1.10       **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.11       **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.12       **"Conditions"** means these conditions;
- 1.13       **"Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.14       **"MSET"** means Macmillan SA Employee Trust, a trust for the benefit all the employees of Macmillan SA who have served the company for more than 2 (two) year (Moratorium Period) on a permanent basis;
- 1.15       **"HDPS"** means historically disadvantaged persons, as defined in section 3(2) of the Act;
- 1.16       **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.17       **"Macmillan SA"** means the Acquiring Firm;
- 1.18       **"Merger"** means the acquisition of the Target Firm by the Acquiring Firm;
- 1.19       **"Merger Parties"** means collectively, the Acquiring Firm and the Target Firm;
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- 1.20 **"Moratorium Period"** means a 2 (two) year period it takes a permanent employee of the Acquiring Firm to qualify as a beneficiary of the Employee Trust;
- 1.21 **"Target Firm"** means Troupant Publishers (Pty) Ltd; and
- 1.22 **"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**

### **MEMBERSHIP TO THE EMPLOYEE TRUST**

- 2.1 The Moratorium Period for the Affected Employees to qualify as beneficiaries of MSET shall start on the Approval Date of the merger.

## 3. **MONITORING**

- 4.1. The Merger Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 4.2. Macmillan SA shall circulate a copy of the Conditions to the Target Firm's employees and the trade union(s) notified of the Merger within 5 (five) Days of the Approval Date.
- 4.3. As proof of compliance with clause 4.2, Macmillan 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 Target Firm's employees and, the relevant trade union(s).
- 4.4. Macmillan 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 3.1 above. The compliance report shall be accompanied by an affidavit from a director of Macmillan SA attesting to the correctness of the report.
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4.5. Macmillan SA shall, within 60 (sixty) Days of the second anniversary of the Implementation date, submit a report to the Commission, setting out the extent of its compliance with the Condition set out in paragraph 3.1 above. The compliance report shall be accompanied by an affidavit from a director of Macmillan SA attesting to the correctness of the report.

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

#### 4. **APPARENT BREACH**

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

#### 5. **VARIATION**

6.1. 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 to the Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto: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.

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**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**K2022659170 (SOUTH AFRICA) PROPRIETARY LIMITED**

**AND**

**ONELOGIX GROUP LIMITED**

**CASE NUMBER 2022NOV0037**

1. On 18 November 2022, the Competition Commission ("Commission") received notice of an intermediate merger wherein K2022659170 (South Africa) Proprietary Limited ("Bidco") intends to acquire [CONFIDENTIAL] % of the issued share capital in OneLogix Group Limited ("OneLogix") from various minority shareholders ("the Minorities"). As part of the proposed merger, the other shareholders of OneLogix who hold the balance of [CONFIDENTIAL] % shares will exchange their shares in One Logix for shares in Bidco and some will sell their shares back to OneLogix.
2. Post-merger, Bidco will have sole control over OneLogix. Bidco will be jointly controlled by Best-Krug Saco Proprietary Limited ("BK SACo") (60%) and CVM Investments Proprietary Limited ("CVM Investments") (20%). The balance of the shares in Bidco will be held by the following non-controlling shareholders: Nel Investment Holdings Proprietary Limited ("Nel Investments") (10%); GM Glass Investments Proprietary Limited ("GM Glass") (5%); and K20222654135 (South Africa) Proprietary Limited ("Manco") (5%). BK SACo, CVM Investments, GM Glass, and Manco are firms established by the shareholders and management of OneLogix who do not form part of the Minorities.
3. Thus, the proposed transaction effectively involves the current management of OneLogix buying out the Minorities through Bidco.

**Merging parties and their activities**

4. The primary acquiring firm is Bidco, a newly incorporated special purpose vehicle established for the purposes of implementing the proposed transaction. Bidco does not

control any single firm. Bidco, BK SACo, CVM Investments and all firms controlled by these firms will hereinafter be referred to as the "Acquiring Group".

5. The Acquiring Group does not have any shareholding by historically disadvantaged persons ("HDPs").
6. Bidco has not conducted any business since its incorporation and does not carry any business activities or trade and is not active in any market. BK SACo and CVM Investments are investment holdings companies and does not have any investments in firms that compete with OneLogix.
7. The target firm is OneLogix, a public listed company incorporated in accordance with the laws of South Africa. OneLogix is not controlled by any single firm. Its major shareholders are BK SACo (34.84%); Kagiso Capital Proprietary Limited ("Kagiso") (10.27%) and OLG Esizayo (Pty) Ltd ("OLG Osizayo"), an ESOP established for the benefit of OneLogix employees, (9.69%).
8. OneLogix controls a number of firms in South Africa. OneLogix and the firms it controls will hereinafter be referred to as the "Target Group".
9. The merging parties indicate that OneLogix has 19.94% shareholding by HDPs. The HDP shareholders in OneLogix are: (i) Kagiso Capital Proprietary Limited ("Kagiso") (10,27%) and OLG Esizayo (an ESOP) (9.67%).
10. The Target Group offers specialised logistics services. These include: (i) carrying of abnormal loads (for example, vehicle and agricultural equipment transportation), (ii) primary product logistics (for example, transportation of hazardous bulk liquids, movement of commodities and general freight), and (iii) logistics / other logistics services (for example, clearing and forwarding services and warehousing).

#### **Relationship between the merging parties**

11. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal or vertical overlaps between the activities of the merging parties. The Acquiring Group does not provide any products or services that could be considered by customers as substitutable with the services provided by the Target Group.

12. Given the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

**Public interest**

*Employment*

13. The merging parties submit that the proposed merger will not have any detrimental effects on employment. Specifically, no merger-related retrenchments will occur because of the proposed transaction.

14. The Commission contacted the employee representatives of the Target Firm who confirmed that they were notified of the proposed merger and no concerns were raised.

15. 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.*

16. The merging parties submit that the Acquiring Group does not have any shareholding by HDPs.

17. OneLogix has 19.94% HDP shareholdings, 10,27% held by Kagiso and 9,67% held by OLG Esizayo, which is an ESOP. Kagiso forms part of the Minorities and as such, it will sell its shares in terms of the proposed transaction. OLG Esizayo (the ESOP) will cease to exist. Thus, the proposed merger will result in a dilution of 19.94 percentage points.

**Proposed remedies for the dilution.**

18. The merging parties indicated that even though the proposed merger result in a significant dilution in percentage terms, this dilution should be considered in line with the following:

18.1. Kagiso is an institutional investor and does not have any board representation in the board of OneLogix.

18.2. OLG Esizayo (ESOP) has no intrinsic value. Absent the transaction, the ESOP would be wound up with no benefit flowing to the beneficiaries. The merging parties have

elected to make a R5 million ex gratia contribution to the ESOP despite not being contractually required to make any such contribution.

19. Notwithstanding the above, the merging parties proposed a condition to establish a new ESOP within 24 months of the implementation of the proposed transaction that will hold 10% shares in OneLogix.
20. The DTIC also participated in the proposed transaction and requested the merging parties to ensure that – (i) a majority of the representatives of the board / trustees controlling the ESOP must be employees who are members of the ESOP, and (ii) The board of the merged entity to have representation by at least one employee of the merged entity.
21. The merging parties agreed to DTIC's request to have the majority of the directors/trustees of the ESOP's board of directors be appointed by the employees of OneLogix, with the remainder of the ESOP's directors/trustees to be appointed by the board of directors of OneLogix. In addition, the merging parties **[CONFIDENTIAL]**. The Commission shared the conditions with the DTIC. The DTIC did not make any further submissions on the proposed conditions.

### **Conclusion**

22. In light of the above, the Commission approves the proposed transaction with conditions attached hereto as **Annexure A**.

**ANNEXURE A**  
**K2022659170 (SOUTH AFRICA) PROPRIETARY LIMITED**  
**AND**  
**ONELOGIX GROUP LIMITED**  
  
**CASE NUMBER: 2022NOV0037**

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**CONDITIONS**

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**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 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.2 **“Approval Date”** means the date on which the Proposed Transaction is approved in terms of the Act;
- 1.3 **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.4 **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.5 **“Conditions”** means the merger conditions included in this Annexure A;
- 1.6 **“Days”** means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **“ESOP”** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.8 **“ESOP Establishment Period”** means 24 months from the Implementation Date;
- 1.9 **“HDPs”** means historically disadvantaged persons as defined in section 3(2) of the Act;
- 1.10 **“Implementation Date”** means the date on which the merger is implemented by the Merging Parties;

- 1.11 **“Merging Parties”** means the Primary Acquiring Firm and the Primary Target Firm;
- 1.12 **“Merger”** means the Primary Acquiring Firm's acquisition of the Primary Target Firm as contemplated in the transaction notified to the Commission under case number 2022Nov0037;
- 1.13 **“Primary Acquiring Firm”** means K2022659170 (South Africa) Proprietary Limited, a newly incorporated entity, formed by the current management members of the Primary Target Firm;
- 1.14 **“Primary Target Firm”** means Onelogix Group Limited;
- 1.15 **“South Africa”** means the Republic of South Africa;
- 1.16 **“Tribunal”** means the Competition Tribunal of South Africa;
- 1.17 **“Qualifying Workers”** means all permanent Workers of the Primary Target Firm's South African business regardless of race, gender, and position, subject to any bad leaver disqualifications (currently, approximately 80% of the South African OLX permanent employees are HDPs);
- 1.18 **“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. The Merging Parties shall establish the ESOP in the Primary Target Firm for the benefit of Qualifying Workers within the ESOP Establishment Period. The ESOP shall hold 10% of the issued shares in the Primary Target Firm, in accordance with the design principles set out in Annexure B.

## 3. MONITORING

- 3.1. Within 10 (ten) Days of the Implementation Date, the Merging Parties shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Merging

Parties 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 Merging Parties shall notify the Commission in writing of the Implementation Date.

3.3. The Merging Parties shall submit a compliance report (including a trust deed or memorandum of incorporation 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 Primary Target Firm 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](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za)

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

## ANNEXURE B -

<b>Design Principle</b>	<b>Applicable Criteria</b>
<b>Structure</b>	<ul style="list-style-type: none"> <li>○ Will be a unitised structure whereby a trust or company will be established, and Qualifying Workers will receive units or shares (as the case may be).</li> </ul>
<b>Cost to Workers and participating HDPs</b>	<ul style="list-style-type: none"> <li>○ The ESOP will be funded through a vendor funded share sale. The notional vendor funding will provide for a fixed trickle dividend in terms of which at least <b>[CONFIDENTIAL]</b> % of declared dividends will be paid to the beneficiaries with the remaining <b>[CONFIDENTIAL]</b>% used to service the vendor financed loan until such time as it is extinguished. Once the loan has been extinguished, <b>[CONFIDENTIAL]</b> % of the declared dividends due to the ESOP (after liabilities have been paid) will be distributed to the beneficiaries. The liabilities refer to costs (administration costs, rental, fees of third-party service providers such as auditors) and taxes.</li> <li>○ The employees themselves will not be required to provide and/or repay the initial funding. The funding will be directly between the ESOP and the Primary Target Firm.</li> </ul>
<b>Governance</b>	<ul style="list-style-type: none"> <li>○ ESOP – The majority of the directors/trustees of the ESOP's board of directors/trustees will be appointed by the employees of the Primary Target Firm (with the remainder (minority) of the ESOP's directors/trustees to be appointed by the board of directors of the Primary Target Firm).</li> <li>○ All employees will be treated equally in terms of voting and economic participation and there will be no differentiation across employee grades.</li> <li>○ The ESOP will be entitled to elect one representative to the board of directors of the Primary Target Firm.</li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>○ ESOP- will endure until terminated by the trustees of the Trust or directors (as the case may be).</li> </ul>
<b>Participants</b>	<ul style="list-style-type: none"> <li>○ ESOP – all permanent Workers of the Primary Target Firm's South African business regardless of race, gender, and position, subject to bad leaver qualifications (currently, approximately <b>[CONFIDENTIAL]</b>% of the South African OLX permanent employees are HDPs).</li> </ul>
<b>Participation Benefits</b>	<ul style="list-style-type: none"> <li>○ ESOP – Qualifying Workers will be entitled to dividends</li> </ul>



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**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**STRATCAP FUNDING (PTY) LTD**

**AND**

**BLUEKAP TRUST**

**CASE NUMBER: 2022NOV0042**

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

1. On 22 November 2022, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Stratcap Funding (Pty) Ltd ("Stratcap") intends to acquire certain rights and claims in the Bluekap Trust and thereafter restructure the affairs of the Bluekap Group of companies. Following the completion of the proposed transaction Stratcap will ultimately hold a 50% interest in the Bluekap Group of companies.

**The parties and their activities**

2. The primary acquiring firm is Stratcap, a private company incorporated in accordance with the laws of South Africa. Stratcap is owned by Stratcap Holdings Trust and Glendene Holding Trust (the "Stratcap Trusts"). The Stratcap Trusts are in turn controlled by the Shimmer Capital Trust.
  3. Stratcap holds equity investments in the following companies, Celsius Hospitality (Pty) Ltd and African Aloe (Pty) Ltd.
  4. Stratcap and all the firms directly and indirectly controlling it and all the firms directly and indirectly controlled by it, will hereinafter be collectively referred to as the "Acquiring Group".
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5. The Acquiring Group controls several companies but relevant to the proposed transaction are its activities in the provision of residential, commercial, industrial properties and particularly its light industrial, office and retail properties located in Gqeberha and Cape Town.
6. The primary target firm is the rights and interests in the Bluekap Trust, a trust registered in accordance with the laws of South Africa.
7. The Bluekap Trust controls the Bluekap group of companies which consists of the following entities: Bluekap Properties (Pty) Ltd; Bluekap Access Retail Park (Pty) Ltd; and Zakly Investments Fourteen (Pty) Ltd, and Mortgage Advisors (Pty) Ltd.
8. The Bluekap Trust and all the firms directly and indirectly controlled by it, will hereinafter be collectively referred to as the "the Bluekap Group".
9. The Bluekap Group specialises in the rental of industrial, commercial/ office and retail properties in Gqeberha and Cape Town.

#### **Competition assessment**

10. The Commission considered the activities of the merger parties and found that the proposed transaction results in product overlap in (i) the market for the provision of rentable warehouse/ light industrial space and (ii) the market for the provision of rentable retail space, as both the Acquiring Group and Bluekap Trust own and control warehouse/light industrial and retail properties.

#### *Office property*

11. With regard to office properties, the Acquiring Group owns Grade A office space, while the Bluekap Group owns Grade B office. Therefore, the merger parties do not own office properties that are considered substitutable.

#### *Retail property*

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12. The merger parties both own retail properties in Gqeberha. In this regard, the Acquiring Group owns a local convenience centre called Dolphins Leap in Gqeberha. The Target Group owns a community centre called Access Retail Park, located 11.4km from the Acquiring Group's property.
13. If the market is narrowly defined, there is no overlap in the activities of the merger parties. However, should the market be defined broadly, there is a geographic overlap in the activities of the merger firms as both own rentable retail space in Gqeberha. Nonetheless, the Commission found that the merged entity will continue to face competition from other shopping centres in close proximity to the target property such as Moffet Retail Park (with more than 30 stores), Walmer Park (with more than 140 stores) and Sunridge Village Park (with more than 35 stores), amongst others.

*Light Industrial property*

14. The Acquiring Group and the Bluekap Group both own light industrial properties in Cape Town. The light industrial property of the Acquiring Group is located approximately 10.7km away from the three (3) light industrial properties of the Bluekap Group, which are (i) 69 Manhattan Road in Cape Town, (ii) 76 Manhattan Road in Cape Town and (iii) 89 Manhattan Road in Cape Town. Therefore, there is a geographic overlap between these properties.
  15. The Commission found that the merged entity will have a relatively low estimated market share of less than 5%, post-merger, which suggests that they are a small player in the relevant market. The Commission also consulted two property agencies that are based in Cape Town and operate in the market for the provision of rentable light industrial properties. Both agents submitted that there are a number of warehouse properties that will continue to pose a competition constraint to the properties owned by the merger parties post-merger. Neither of the agents raised concerns.
  16. Furthermore, the merger parties submitted that the warehouses owned by the Bluekap Group are leased out to third parties and that this will remain the same post-merger.
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17. The proposed transaction does not result in any vertical overlap between the activities of the merger parties.
18. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

### **Public Interest**

#### *Effect of the merger on employment*

19. The merger parties submit that there will be no job losses in South Africa pursuant to the merger. The employees of both the Acquiring Group and the Bluekap Group are represented by employee representatives. The Commission engaged the relevant employee representatives who confirmed that the employees were made aware of the proposed transaction and no employee raised any concerns with the proposed transaction.

#### *The promotion of a greater spread of ownership by HDPs and workers*

20. It is submitted that neither of the merger parties have any HDP shareholding pre-merger. The Commission requested that the parties indicate how the merger will promote a greater spread of ownership and proposed that the merged entity establishes an Employee Share Ownership Scheme (ESOP).
  21. The merger parties submitted that the transaction is ultimately a private equity investment and will have no effect on employees as both the Acquiring firm and the Target firm only have one employee each. Accordingly, an ESOP will not be beneficial to any significant number of employees. In addition, the proposed transaction does not give rise to a dilution of any existing HDP ownership. Further, the merger parties' shareholders have made significant financial commitments as part of the proposed transaction and it is submitted that they will not be in a position to secure a HDP shareholder to make the same financial commitments.
  22. Considering the circumstances of this case, including the parties' submission that the merger parties only have two employees, the Commission requested the merger
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parties to provide procurement commitments that would promote entry, participation and expansion of small and/or HDP-owned firms to address the failure to directly remedy the promotion of a greater spread of ownership. In this regard, the parties committed to utilize the following B-BBEE level one or two service providers within a 36-months period of the implementation date:

- a. Security services from B-BBEE level one or two service providers and the spending will increase with 288% in value as compared to the previous year's spend.
- b. Cleaning services from B-BBEE level one or two service providers and the spending will increase with 438% in value as compared to the previous year's spend.
- c. Electrical services from B-BBEE level one or two service providers and the spending will increase with 100% in value as compared to the previous year's spend.

23. The Commission requested the parties to make these commitments conditions to the transaction. The parties agreed to the conditions.

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

### **Conclusion**

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

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**ANNEXURE A**

**STRATCAP FUNDING (PTY) LTD  
AND  
BLUEKAP TRUST  
CASE NUMBER: 2022NOV0042**

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**CONDITIONS**

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**1. DEFINITIONS**

- 1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -
- 1.1.1. **"Acquiring Firm"** means Stratcap Funding (Pty) Ltd;
  - 1.1.2. **"Approval Date"** means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
  - 1.1.3. **"B-BBEE"** means Broad Based Black Economic Empowerment as defined in the B-BBEE Act;
  - 1.1.4. **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended, and the Codes of Good Practice 2013, as amended;
  - 1.1.5. **"Bluekap Group"** means collectively Bluekap Trust, Bluekap Properties (Pty) Ltd and Bluekap Access Retail Park (Pty) Ltd;
  - 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. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
  - 1.1.8. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
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- 1.1.9. **“Conditions”** means these conditions, and "Condition" means, as the context requires, any one of them;
- 1.1.10. **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.11. **“HDPs”** means a Historically Disadvantaged Person/s as defined in section 3(2) of the Competition Act;
- 1.1.12. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.1.13. **“Merged Entities”** means the Target Firm subject to control of the Acquiring Firm following the Implementation Date;
- 1.1.14. **“Merger Parties”** means the Acquiring Firm and the Target Firms;
- 1.1.15. **“Merger”** means the acquisition of certain rights and claims in the Target Firm from the trustees of the Target Firm and the subsequent restructure of the affairs of the Bluekap Group, resulting in the Acquiring Firm will ultimately holding a 50% interest in the Bluekap Group. The;
- 1.1.16. **“Qualifying Entities”** means any service provider with a level one or a level two B-BBEE Status;
- 1.1.17. **“Reporting Period”** means a period of 36 months after the Implementation Date;
- 1.1.18. **“South Africa”** means the Republic of South Africa;
- 1.1.19. **“Stratcap”** means Stratcap Funding (Pty) Ltd;
- 1.1.20. **“Target Firm”** means Bluekap Trust.

## 2. CONDITIONS

### PROCUREMENT FROM B-BBEE SERVICE PROVIDERS

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2.1. In relation to the Bluekap Group properties, the Merged Entity shall for the Reporting Period (36 months) procure the following services from HDPs:

2.1.1. security services from Qualifying Entities;

2.1.2. cleaning services from Qualifying Entities; and

2.1.3. electrical services from Qualifying Entities.

### **3. MONITORING OF COMPLIANCE**

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

3.2. The Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 3 years (three years), provide to the Commission a report detailing its compliance with the Condition. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report.

3.3. The Commission may request additional information from the Merger Parties, which the Commission may reasonably deem necessary for the purposes of monitoring the extent of compliance with the Condition.

3.4. Any person, including any Employee (and any employees of the Acquiring Firm), who believes that the Merger Parties have not complied with or have acted in breach of the Condition may approach the Commission.

### **4. APPARENT BREACH**

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

### **5. VARIATION**

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

## **6. GENERAL**

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

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**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**SPARK ATM SYSTEMS PROPRIETARY LIMITED**

**AND**

**THE BANKING BUSINESS DIVISION OF ALTRON MANAGED SOLUTIONS, A DIVISION  
OF ALTRON TMT (PTY) LTD**

**CASE NUMBER: 2022OCT0055**

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 28 October 2022, Spark ATM Systems Proprietary Limited ("Spark") notified the Commission of an intermediate merger in terms of which it will acquire the entire banking business of Altron Managed Solutions, a division of Altron Limited ("Target Business").
  2. Spark is ultimately controlled by NCR Corporation ("NCR"). NCR and all the firms it controls shall be referred to as the "Acquiring Group".
  3. The activities of the Acquiring Group which are relevant for this merger assessment are the manufacture and supply of automated teller machines (ATMs) and associated software. In South Africa, the Acquiring Group distributes NCR-branded ATMs primarily to banks, through a non-exclusive distribution agreement with the Target Business. Through Spark, the Acquiring Group also supplies, deploys and maintains the Acquiring Group's Cardtronics-branded ATMs to merchants such as retailers, garage forecourts and the hospitality sector.
  4. The Acquiring Group does not have any ownership by historically disadvantaged persons ("HDPs") as defined in section 3(2) of the Competition Act No. 89 of 1998 (as amended)
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(the "Act"). The Acquiring Group also does not have any ownership by workers as defined in the Act.

5. The Target Business is an unincorporated division of Altron TMT Proprietary Limited ("Altron TMT"). The Target Business is the only distributor of the Acquiring Group's NCR branded ATMs in South Africa. The Target Business also provides repair and maintenance services only in relation to those ATMs.
  6. The Commission found that the Target Business has HDP ownership of 52.62%, through Altron TMT. The Target Business has no ownership by workers.
  7. The Commission found that the merger is unlikely to result in a substantial lessening or prevention of competition in any relevant markets.
  8. The Commission found that the proposed transaction does not give rise to any employment concerns.
  9. The Commission found that the merger does not promote a greater spread of ownership as required by section 12A(3)(e) of the Act.
  10. To address this, the merging parties have agreed to (amongst others) implement a transaction that will transfer a minimum of 5% of the Target Business to either one or more HDPs or to Workers. The merging parties have also made commitments in relation to skills and or enterprise and supplier development. The Commission found the remedy tendered by the parties to be acceptable in the circumstances.
  11. The Commission therefore approves the merger subject to the conditions set out in **Annexure A** hereto.
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**ANNEXURE A**  
**SPARK ATM SYSTEMS (PTY) LTD**  
**AND**  
**THE BANKING BUSINESS OF ALTRON MANAGED SOLUTIONS, A DIVISION OF**  
**ALTRON TMT (PTY) LTD**  
**CASE NUMBER: 2022OCT0055**

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**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 **"Altron"** means Altron Ltd;
  - 1.2 **"Altron TMT"** means Altron TMT (Pty) Ltd, a subsidiary of Altron;
  - 1.3 **"AMS"** means Altron Managed Solutions, a division of Altron TMT;
  - 1.4 **"Approval Date"** means the date on which the Merger is approved in terms of the Competition Act;
  - 1.5 **"B-BBEE"** means broad-based black economic empowerment as defined in the B-BBEE Act;
  - 1.6 **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003;
  - 1.7 **"B-BBEE Codes"** means the revised Codes of Good Practice under the B-BBEE Act as applicable;
  - 1.8 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
  - 1.9 **"Competition Act"** means the Competition Act, No. 89 of 1998;
  - 1.10 **"Conditions"** means these conditions attaching to the Commission's approval of the Merger, as set out in this Annexure A;
  - 1.11 **"Days"** means any calendar day that is not a Saturday, Sunday or public holiday in
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South Africa;

- 1.12 **"Employee"** means any permanent employee (as contemplated under the Labour Relations Act, 66 of 1995) of the Merging Parties in South Africa;
- 1.13 **"HDP"** means a historically disadvantaged person as defined in the Competition Act;
- 1.14 **"HDP Transaction"** means a transaction consistent with the B-BBEE Act involving the transfer of issued share capital within the Merged Firm equivalent to a minimum of 5% of the value of the Target Business in South Africa to Workers or one or more HDPs chosen at the Merged Firm's sole discretion;
- 1.15 **"Implementation Date"** means the date, occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;
- 1.16 **"Integration Period"** means a period of 1 (one) year following the Implementation Date;
- 1.17 **"Merged Firm"** means the Target Business in South Africa subject to the control of NCR (through Spark) following the implementation of the Merger;
- 1.18 **"Merger"** means the proposed transaction between the Merging Parties, and which constitutes an intermediate merger for the purposes of the Commission's assessment under the Competition Act;
- 1.19 **"Merging Parties"** means NCR (through Spark) and the Target Business;
- 1.20 **"NCR"** means NCR Corporation;
- 1.21 **"South Africa"** means the Republic of South Africa;
- 1.22 **"Spark"** means Spark ATM Systems (Pty) Ltd, a subsidiary of NCR;
- 1.23 **"Target Business"** means the Banking Business of AMS;
- 1.24 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.25 **"Worker"** means worker as defined in the Competition Act.

## **2. BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

- 2.1 Following the Integration Period, the Merging Parties undertake to prepare a comprehensive plan to achieve the highest and/or most optimal scorecard level
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appropriate and practical in terms of the B-BBEE Act and any B-BBEE Codes.

- 2.2 The Merging Parties shall appoint a recognised empowerment consultancy firm or organisation within 3 (three) months following the Integration Period to facilitate the preparation of the plan and the implementation thereof. The Merging Parties shall inform the Commission of the identity of the firm and the Commission shall be entitled to approve such appointment (which approval or consent shall not be unreasonably withheld).
- 2.3 The Merging Parties commit to implementing the HDP Transaction.
- 2.4 In addition to the HDP Transaction, the Merging Parties shall implement measures aimed at occasioning meaningful opportunities for ownership / economic interests on the part of HDPs and/or Workers, provided that such opportunities contribute to enhancing the scorecard level under the B-BBEE Act.
- 2.5 Such a plan shall also include, without limitation and as may be necessary:
- 2.5.1 Skills development: measures to undertake expenditure with respect to skills development programmes that meet the requirements of the B-BBEE Act; and/or
- 2.5.2 Enterprise and supplier development: measures to undertake preferential procurement, as well as enterprise and supplier development programmes, that meet the requirements of the B-BBEE Act;
- such that the highest and/or most optimal scorecard level appropriate and practical in terms of the B-BBEE Act and any B-BBEE Codes may be achieved.
- 2.6 The outcomes contemplated by the plan shall be implemented within 2 (two) years following the end of the Integration Period.
- 2.7 Prior to the implementation of the ownership outcomes and HDP Transaction described herein, the Merged Firm shall provide the Commission with details of the transaction/s or outcomes in question in writing. These details shall include, without limitation, the structure of the transaction/s, the identities of prospective beneficiaries, information that the prospective participants are Workers and/or HDPs, the proportion of shareholding in the Merged Firm that each prospective beneficiary will receive and confirmation of whether any transaction/s constitutes a merger for the purposes of the Competition Act.
- 2.8 For the avoidance of doubt, to the extent that any HDP Transaction constitutes a

merger as defined in the Competition Act (and the thresholds for mandatory notification are met), the transaction can then only be implemented once same has been notified to the Commission as required by the Competition Act.

- 2.9 Consistent with the above, the Merged Firm shall provide the Commission with details of the skills development expenditure, and enterprise and supplier development measures, noted above and the reasons that they comply with the requirements of the B-BBEE Act. These details shall include, without limitation, information sufficient to permit the Commission to monitor and confirm the expenditure, the duration thereof and the beneficiaries of the programmes and measures.
- 2.10 For the avoidance of doubt, the above information shall be provided to the Commission to enable the Commission to assess compliance with the Conditions.

### **3. MONITORING**

- 3.1 The Merging Parties shall circulate non-confidential versions of the Conditions to Employees within 10 (ten) Days of the Approval Date.
- 3.2 As proof of compliance herewith, the Merging Parties shall within 5 (five) Days of circulating the Conditions, submit an affidavit by a senior official attesting to the circulation of the Conditions and provide a copy of the non-confidential version of the notices that were circulated to the Employees.
- 3.3 Within 5 (five) days after the Implementation Date, the Merged Firm shall notify the Commission in writing of the Implementation Date.
- 3.4 Within 45 (forty-five) Days of each anniversary of the Implementation Date up until the 3<sup>rd</sup> (third) anniversary of the Implementation Date, the Merged Firm shall provide a suitable and appropriately detailed annual report regarding the Merged Firm's compliance with the Conditions.
- 3.5 The report referred to in Clause **Error! Reference source not found.** above shall be accompanied by an affidavit attested to by a senior official confirming the accuracy of the report and full compliance with these Conditions in the 12 months to which the report relates.

### **4. VARIATION OF CONDITIONS**

The Merging Parties may at any time, and on good cause shown (including any adverse effect on financial performance or macroeconomic or political conditions), apply for the

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Conditions to be waived or relaxed, including any resultant modification or substitution thereof.

**5. APPARENT BREACH**

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

**6. GENERAL**

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

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**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**CHART INDUSTRIES INC.**

**AND**

**GRANITE HOLDINGS II B.V**

**CASE NUMBER: 2022DEC0031**

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

1. On 19 December 2022, the Competition Commission ("the Commission") received notice of an intermediate merger whereby, Chart Industries Inc. ("Chart Industries") intends to acquire 100% of the issued share capital of Granite Holdings II B.V. (trading under the brand name Howden). Following the implementation of the proposed transaction, Howden and its subsidiaries will be solely controlled by Chart Industries.
  2. The primary acquiring firm is Chart industries, a public company established in accordance with the laws of the United States of America. Chart Industries is listed on the New York Stock Exchange, with its shares widely dispersed, and is not controlled by any single firm or shareholder. Chart Industries has several subsidiaries in countries such as Canada, India, Mexico, Italy, France and Germany. Chart Industries does not directly or indirectly control any firm in South Africa. Chart Industries is not owned or controlled by historically disadvantaged persons ("HDPs").
  3. Chart Industries is a global manufacturer of highly engineered cryogenic storage and liquefaction equipment servicing multiple market applications in the industrial gas and energy industries. Chart Industries provides technology, equipment and services related to liquefied natural gas (LNG), hydrogen, biogas, carbon capture and water treatment, among other applications within the energy sector. Chart Industries has over 25 global
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manufacturing locations in countries in the United States of America, Europe, China, and India. Chart Industries' primary customers are large, multinational producers and distributors of hydrocarbon and industrial gases and their end-users.

4. Relevant to the proposed transaction, Chart Industries provides heat transfer systems which facilitate major natural gas, petrochemical processing, petroleum refining, power generation and industrial gas companies in the production or processing of their products. With primary manufacturing capabilities in the United States of America and Europe, heat transfer systems serve customers globally. This segment supplies engineered equipment and technology-driven process systems used in the separation, liquefaction, and purification of hydrocarbon and industrial gases that span most gas-to-liquid applications.
5. In South Africa, Chart Industries is a supplier of legacy distribution and storage products, namely cryogenic storage, cryogenic transport trailers, Chart ORCA's products, packaged gas, LNG ISOs and trailers and LNG stations.
6. The primary target firm is Granite Holdings II B.V. (trading as Howden), a private company incorporated with limited liability having its seat in Amsterdam. Howden has subsidiaries in countries such as Brazil, Canada, Germany, Mexico and the Netherlands. In South Africa, Howden controls (directly and indirectly) Howden Group South Africa Limited, Howden Africa Holdings Limited, Howden Africa (Pty) Ltd ("Howden Africa"), Howden SA Holdings (Pty) Ltd, Howden Donkin (Pty) Ltd and James Howden Holdings (Pty) Ltd.
7. The merging parties submit that Howden Africa is the principal operating company of the Howden Group in South Africa and is the entity through which workers are employed in South Africa. It is submitted that the BEE shareholding in Howden Africa is [CONFIDENTIAL]%.

#### **Competition Assessment**

8. The Commission's investigation of the proposed transaction identified a horizontal overlap in the activities of both Chart Industries and Howden in relation to the supply of industrial fans in South Africa.
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9. In assessing the effect of the proposed transaction on competition, the Commission could not find any publicly available information pertaining to the relevant market and it therefore relied on the estimates from the merging parties. On this basis, the Commission notes that the merged entity will have a post-merger market share of approximately [CONFIDENTIAL]% with an accretion of [CONFIDENTIAL]% in the market for the supply of industrial fans in South Africa. The merged entity will continue to face competition from Zitron SA (Pty) Ltd, CFW Fans (Pty) Ltd, Universal Fans (Pty) Ltd, Luft Industries and LH Marthinuse, amongst others. In addition, no competition concerns have been raised by customers and competitors of the merging parties in relation to the proposed transaction. Considering this, the Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the supply of industrial fans in South Africa.

#### **Public interest considerations**

##### ***Employment***

10. The merging parties submit that there will be no job losses in South Africa as a result of the transaction given that all employees of Howden will be transferred to Chart Industries in terms of Section 197 of the Labour Relations Act ("LRA"), No.66 of 1995, as amended ("Section 197").
11. Notwithstanding the above, the Commission engaged the employee representatives to obtain their views. The employees of Howden in South Africa are represented by the South African United Association of South Africa ("UASA") and the National Union of Metalworkers of South Africa ("NUMSA"). Chart Industries does not have employees given that it has no presence in South Africa. UASA confirmed that they were consulted about the merger and did not raise any concerns with respect to employment. The Commission has not received any employment concerns from NUMSA despite reaching out to them on several occasions. Further, given that Chart Industries has no employees in South Africa, the Commission is of the view that the proposed merger is unlikely to raise any employment concerns.
12. Given the above, the Commission is of the view that the proposed transaction is unlikely to have a negative effect on employment.
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***Impact on a greater spread of ownership***

13. The Commission notes that Chart Industries is not owned or controlled by any HDPs. Howden Africa (which is an entity through which workers are employed in South Africa) has an HDP shareholding of [CONFIDENTIAL]%, through an Employee Trust, the Howden Kusasa Employee Trust. Post-merger, Howden will be owned and controlled by Chart Industries which has no HDP shareholder. Accordingly, the Commission invited the merging parties to make submissions in this regard.
  14. In response, the merging parties submitted that the proposed transaction will not have any negative impact on the greater spread of ownership by HDPs post-merger. The merging parties explained that the proposed transaction is a share of sales between companies registered in foreign jurisdictions. The proposed transaction does not affect the shareholding of any South African entity, including the current BEE shareholding of Howden Africa. Further, Howden Africa is already significantly empowered and owned by workers, and this will remain unchanged post-merger. Therefore, the merging parties submitted that there will be no reduction in HDP ownership as a result of the proposed transaction and, as such, there is no restitution of HDP ownership that is required. For the reasons above, the merging parties submit that no additional Employee Share Ownership Program ("ESOP") is required as a result of the proposed transaction.
  15. The merging parties further submitted that without conceding that an ESOP is required for the proposed transaction to meet the requirements of Section 12A(3)(e) of the Act, the merging parties have agreed to the Commission's request for a further ESOP. The merging parties explained that since Howden Africa already has an ESOP (the Howden Kusasa Employee Trust), instead of creating a new ESOP for the purposes of the current transaction, Howden Africa will instead transfer a further [CONFIDENTIAL]% of the issued share capital in Howden Africa to the Trust. The Commission is satisfied that the proposed transaction would ensure that HDP workers within Howden remain empowered post-merger. The conditions are attached as **Annexure A** hereto. Furthermore, there are no other public interest concerns that are likely to result from the proposed transaction.
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### **Conclusion**

16. The Commission therefore approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.
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**ANNEXURE A**  
**CHART INDUSTRIES INC.**  
**AND**  
**GRANITE HOLDINGS II B.V.**  
**CASE NUMBER. 2022DEC0031**

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**1. DEFINITIONS**

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

- 1.1. **“Act”** means the Competition Act No. 89 of 1998, as amended;
  - 1.2. **“Additional Shares”** means a further [CONFIDENTIAL]% of the shares in Howden Africa to be allocated to the ESOP;
  - 1.3. **“Approval Date”** means the date on which the Proposed Transaction is approved in terms of the Act;
  - 1.4. **“B-BBEE Act”** means the Broad-Based Black Economic Empowerment Act, No. 53 of 2003, as amended;
  - 1.5. **“Beneficiaries”** means Eligible Employees who have been allocated units in the ESOP;
  - 1.6. **“Black”** means black people as defined in the B-BBEE Act (as read with the Codes of Good Practice) from time to time;
  - 1.7. **“Chart Industries”** means Chart Industries, Inc.;
  - 1.8. **“Codes of Good Practice”** means the Codes of Good Practice on Broad Based Black Economic Empowerment issued by the Department of Trade, Industry and Competition in terms of the B-BBEE Act, as amended from time to time;
  - 1.9. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
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- 1.10. “**Conditions**” means the Merger conditions included in this **Annexure A**;
- 1.11. “**Days**” means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.12. “**Eligible Employees**” means persons who are permanently in the employ of Howden Africa;
- 1.13. “**ESOP**” means Howden Africa’s existing employee share ownership programme, the Howden Kusasa Employee Trust, through which Eligible Employees hold 30% of Howden Africa’s issued share capital;
- 1.14. “**ESOP Share Allocation Period**” means 24 months from the Implementation Date;
- 1.15. “**Granite**” means Granite Holdings II B.V.;
- 1.16. “**Howden Africa**” means Howden Africa Holdings Limited;
- 1.17. “**Implementation Date**” means the date on which the Merger is implemented by the Merging Parties;
- 1.18. “**Merger**” means the proposed acquisition of Granite by Chart Industries as notified to the Commission under Case No. 2022DEC0031;
- 1.19. “**Merged Entity**” means Howden Africa as controlled by Chart Industries in South Africa;
- 1.20. “**Merging Parties**” means Chart Industries and Granite;
- 1.21. “**South Africa**” means the Republic of South Africa;
- 1.22. “**Tribunal**” means the Competition Tribunal of South Africa;
- 1.23. “**Tribunal Rules**” means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.24. “**Trust Deed**” means the Trust Deed through which the ESOP was established;
- 1.25. “**Trustees**” means the Trustees of the ESOP from time to time.

## 2. THE ESOP

- 2.1. The ESOP holds [CONFIDENTIAL]% of the shares in Howden Africa. The manner in which the ESOP is structured is set out in **Annexure B**, which structure will continue unless otherwise determined by the Trustees in accordance with the Trust
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Deed.

- 2.2. The Additional Shares will be allocated by Howden Africa to the ESOP within the ESOP Share Allocation Period. The acquisition of the Additional Shares will be:
  - 2.2.1. At zero upfront cost to the ESOP or Eligible Employees; and
  - 2.2.2. Be funded by a notional vendor or similar funding structure.

### **3. MONITORING**

- 3.1. Howden Africa shall circulate a non-confidential version of the Conditions to the ESOP, Beneficiaries and Eligible Employees within 10 (ten) Days of the Implementation Date.
- 3.2. As proof of compliance with paragraph 3.1, Howden Africa shall, within 5 (five) Days of circulating the non-confidential version of the Conditions, submit to the Commission an affidavit by a senior official of Howden Africa or Chart Industries attesting to the circulation of the Conditions and provide a copy of the notice contemplated in 3.1.
- 3.3. Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 3.4. The Merged Entity shall submit a report at the end of the ESOP Share Allocation Period, setting out its compliance with the Conditions. This report shall be accompanied by an affidavit, attested to by a senior official of Howden Africa or Chart Industries, confirming the accuracy of the report.
- 3.5. The Commission may request any additional information from the Merged Entity, which the Commission may, from time to time, deem reasonably necessary for purposes of monitoring the extent of compliance with the Conditions.
- 3.6. Any person who believes that the Merging Parties have failed to comply with the Conditions may approach the Commission with their complaint. If the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, the matter shall be dealt with in terms of Clause 5 below.

### **4. VARIATION OF CONDITIONS**

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4.1. 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.

## **5. APPARENT BREACH**

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

## **6. GENERAL**

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

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**ANNEXURE B – CONFIDENTIAL**

<b>Design Principle</b>	<b>Applicable Criteria</b>
<b>Structure</b>	<ul style="list-style-type: none"> <li>○ The ESOP is a unitised structure, embodied in a trust, in which Eligible Employees receive units.</li> <li>○ The structure will be at zero upfront cost to the ESOP or Eligible Employees; and will be funded by a notional vendor or similar funding structure.</li> </ul>
<b>Governance</b>	<ul style="list-style-type: none"> <li>○ Beneficiaries are at all times entitled to appoint 50% of the Trustees of the ESOP and Howden Africa the balance.</li> <li>○ Resolutions are taken by a majority of Trustees and in the event of any deadlock, the resolution fails.</li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>○ Evergreen.</li> </ul>
<b>Eligible Employees</b>	<ul style="list-style-type: none"> <li>○ All persons who are in the permanent employ of Howden Africa.</li> </ul>
<b>Participation Benefits</b>	<ul style="list-style-type: none"> <li>○ At least 85% of the units in the ESOP are allocated to Black Beneficiaries.</li> <li>○ Eligible Employees and Beneficiaries on an annual basis are allocated units in the ESOP. Upon allocation Eligible Employees are entered into the register of Beneficiaries and become Beneficiaries of the ESOP</li> <li>○ Beneficiaries are entitled to proportionately share in all distributions declared by the Trust based on the number of units held by them in the ESOP.</li> <li>○ Any units allocated in the ESOP must be issued in a manner to ensure that at least 85% of the benefits of the ESOP accrue to Black Beneficiaries.</li> <li>○ When dividends are paid by Howden Africa, the ESOP distributes a trickle dividend of 20% less costs and taxes to Beneficiaries, until such time as the notional vendor financing has been repaid, whereafter the ESOP will distribute to Beneficiaries 100% of dividends paid to it by Howden Africa (net of costs and taxes).</li> <li>○ Beneficiaries cease to participate in the ESOP and forfeit their units if they are no longer in the permanent employ of Howden Africa.</li> </ul>

**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**TRIDENT STEEL AFRICA PROPRIETARY LIMITED**

**AND**

**TRIDENT STEEL, A DIVISION OF AVENG AFRICA PROPRIETARY LIMITED**

**CASE NUMBER: 2022NOV0021**

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 11 November 2022, the Competition Commission (the "Commission") received a notice of an intermediate merger whereby, Trident Steel Africa Proprietary Limited ("TSA") intends to acquire the entire business of Trident Steel, a division of Aveng Africa Proprietary Limited ("ATS"), comprising the assets and liabilities of the business. Post implementation of the proposed transaction, the business of ATS will be owned by TSA.

**Parties**

2. The primary acquiring firm, TSA, is wholly owned by Trident Steel Holdings Proprietary Limited ("TSH"). TSH is a special purpose vehicle company which will, upon implementation of the proposed transaction, be held as follows:
    - 2.1. [CONFIDENTIAL]% by SAF Metal Holdings LLC, a limited liability company organised in the State of Indiana, United States of America ("USA Co");
    - 2.2. [CONFIDENTIAL]% by a special purpose vehicle company incorporated in South Africa, which will be a wholly owned subsidiary of Aveng Limited pending an empowerment transaction; and
    - 2.3. [CONFIDENTIAL]% by TriCo Industrial Proprietary Limited, a special purpose vehicle company, incorporated in South Africa ("SA Invest Co").
  3. USA Co will be held 100% by Ambassador Enterprises, LLC, an Indiana limited liability company ("Ambassador").
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4. SA Invest Co will be held [CONFIDENTIAL]% by Arbor Capital Investments Proprietary Limited ("ACI") and Joseph Investments Proprietary Limited ("Joseph Investments"); and [CONFIDENTIAL]% by existing management of the primary target firm.
5. TSA is a newly incorporated company which does not control any firm. TSA and all its direct and indirect shareholders are collectively referred to as the "Acquiring Group".
6. The primary target firm, ATS, is controlled by Aveng Africa Proprietary Limited ("Aveng Africa"), which is in turn a wholly owned subsidiary of Aveng Limited ("Aveng"). The shares of Aveng are listed on the JSE Limited. Its shares are widely held with no single shareholder having control over Aveng. As of 30 June 2022, the top five shareholders in Aveng were: Highbridge Capital Management LLC (16.4%); Whitebox Advisors LLC (13.3%); Steyn Capital Management Proprietary Limited (8.2%); ABSA Bank Limited (7.1%); and Standard Bank Issuer Services Settle Acc (4.8%).
7. ATS is a division which does not have any subsidiaries and accordingly does not directly or indirectly control any firm.

#### **Activities**

8. TSA and TSH are newly incorporated special purpose vehicles which do not currently conduct any activities.
  9. The activities conducted by the broader Acquiring Group include: the provision of professional transaction and corporate advisory and related services; the manufacture and supply of recreational watercraft; the supply of building products/materials to professional contractors within the agricultural and residential building markets; the manufacture and distribution of on-and off-road utility terrain vehicles and power sport vehicles; the provision of property (real estate) development and management services; and the provision of services to designers and homeowners in the custom and luxury home interior market, amongst others.
  10. ATS is a steel service centre business which provides steel processing and related services, including platework (including laser, plasma and oxy gas cutting), structural steelwork, coil processing, tube laser cutting and other services. Through these operations, ATS produces automotive blanks, special steel, structural and plate steel, and pipe and tube steel products.
  11. The majority of ATS's services are provided to the automotive sector. Outside of the automotive sector, ATS provides steel processing services to produce steel products to the specifications of customers in the rail, mining, energy and engineering sectors.
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### **Competition analysis**

12. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap. This is because the Acquiring Group does not have investments in companies that are active in the provision of steel processing and related services in South Africa.
13. In addition, the proposed transaction does not result in a vertical overlap.
14. Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in the steel processing market within South Africa.

### **Public interest**

#### *Employment*

15. The primary acquiring firm, TSA does not have any employees. The direct and indirect shareholders of TSA are investment holding companies which also do not have any employees in South Africa. The employees of the primary target firm, ATS, are represented by the National Union of Metalworkers of South Africa (NUMSA) and Solidarity, while the non-unionised employees are represented by an employee representative.
16. The Commission engaged with the representatives of the ATS employees and found that most employees raised concerns on whether their conditions of employment will change as a result of the proposed transaction. The employees were assured that the sale of the business will not change conditions of employment. The Commission did not uncover any evidence that suggests that the proposed transaction is likely to negatively affect the employees of ATS.

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

17. The Commission found that TSA has an indirect HDP ownership of [CONFIDENTIAL]% by virtue of the participating management of ATS who qualify as HDP individuals, who will collectively hold an indirect [CONFIDENTIAL]% shareholding in TSH post-merger, immediately upon implementation. On the other hand, Aveng's beneficial black economic empowerment shareholding is [CONFIDENTIAL]%
18. The Commission notes that the proposed transaction entails the implementation of the Transformation Initiative of at least [CONFIDENTIAL]% shareholding within [CONFIDENTIAL] months of the implementation date of the proposed transaction. This would result in an increase in the shareholding in

ATS held by HDPs relative to pre-merger from [CONFIDENTIAL]% to at least [CONFIDENTIAL]%, indirect ownership in ATS. The merging parties have agreed to a merger condition in this regard.

19. The Commission received a notice of intention to participate from the Department of Trade, Industry and Competition (the "DTIC") based on the impact of the proposed transaction on the promotion on a greater spread of ownership in the market.
  20. The DTIC requested the Commission to engage with the merging parties with a view to institute a commitment/condition to the merger that the merging parties will commit to implement a worker ownership scheme/programme ("ESOP") in the merged entity, as part of the proposed BEE structure. In addition, the merging parties are required to indicate what initiatives will be implemented at the merged entity to further support broad-based black economic empowerment.
  21. In response to the DTIC's request, the merging parties submit that the proposed transaction does not give rise to a negative public interest effect. When the proposed transaction is assessed independently of the Transformation Initiative, the proposed transaction will not create a worse outcome for the public interest in relation to the spread of ownership. Independently of the Transformation Initiative, it will in fact improve ownership through an additional HDP ownership of [CONFIDENTIAL]%. The merging parties therefore argue that an ESOP is unwarranted in these circumstances. Further, the merging parties submit that the DTIC's proposed condition will result in greater restrictions and, therefore, constraints on the merging parties' ability to ensure a successful Transformation Initiative, which needs to be achieved in a relatively limited period of time.
  22. The proposed transaction does not raise any other public interest concerns.
  23. In all, the Commission approves the proposed transaction subject to conditions attached as **Annexure A**
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**ANNEXURE A**  
**TRIDENT STEEL AFRICA PROPRIETARY LIMITED**  
**AND**  
**TRIDENT STEEL, A DIVISION OF AVENG AFRICA PROPRIETARY LIMITED**  
**CASE NUMBER: 2022NOV0021**

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**CONDITIONS**

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**1. DEFINITIONS**

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

- 1.1 “**Acquiring Group**” means TSA, TSH and all the direct and indirect shareholders of TSH;
- 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 “**ATS**” means Trident Steel, a division of Aveng Africa;
- 1.4 “**Aveng**” means Aveng Limited, the holding company owning 100% of the shares in Aveng Africa;
- 1.5 “**Aveng Africa**” means Aveng Africa Proprietary Limited, a wholly owned subsidiary of Aveng;
- 1.6 “**B-BBEE**” means broad-based black economic empowerment as defined in the B-BBEE Act;
- 1.7 “**B-BBEE Act**” means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended, read with the Codes of Good Practice 2013 (as amended), and the Amended Financial Sector Code of 2017;
- 1.8 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.9 “**Competition Act**” means the Competition Act 89 of 1998, as amended;

- 1.10 “**Commission Rules**” means the Rules for the Conduct of Proceedings in the Commission;
- 1.11 “**Conditions**” means these conditions, and "Condition" means, as the context requires, any one of them;
- 1.12 “**Days**” means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.13 “**HDPs**” means historically disadvantaged persons as contemplated in the Competition Act;
- 1.14 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties, and all conditions precedent to the implementation of the Merger are fulfilled;
- 1.15 “**Merged Entity**” means the entity that will exist after the implementation of the Merger;
- 1.16 “**Merger**” means the acquisition of the entire business of ATS, comprising the assets and liabilities of the business by TSA;
- 1.17 “**Merging Parties**” means TSA and ATS;
- 1.18 “**Transformation Initiative**” means the Acquiring Group’s commitment to enter into one or more empowerment transactions within [CONFIDENTIAL] months of the Implementation Date, which will result in the introduction of a B-BBEE shareholder who will, together with all other B-BEEE shareholders thereafter hold a [CONFIDENTIAL]% interest in TSH and, thereby, indirectly into the business of ATS;
- 1.19 “**Tribunal**” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.20 “**Tribunal Rules**” mean the Rules for the Conduct of Proceedings in the Tribunal;
- 1.21 “**TSA**” means Trident Steel Africa Proprietary Limited; and
- 1.22 “**TSH**” means Trident Steel Holdings Proprietary Limited, a company which wholly owns TSA.
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2. **RECORDAL**

- 2.1 On 11 November 2022, the Merging Parties filed the Merger. The Commission found that the proposed transaction is unlikely to substantially lessen or prevent competition in the steel processing market within South Africa.
- 2.2 From a public interest perspective, the Commission notes that the Merger entails the implementation of the Transformation Initiative within [CONFIDENTIAL] months of the Implementation Date. Accordingly, from the Implementation Date, this shareholding would constitute shares held by or for the benefit of HDP shareholders. This would result in an increase in the shareholding in ATS held by HDPs relative to pre-merger from [CONFIDENTIAL]% to approximately [CONFIDENTIAL]% or possibly more, indirect ownership in ATS.
- 2.3 The Merging Parties are amenable to a Condition relating to the implementation of the Transformation Initiative.

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

3.1 **Transformation Initiative**

- 3.1.1 The Acquiring Group shall, within [CONFIDENTIAL] months of the Implementation Date, sign all the necessary formal documentation to allow it to implement the Transformation Initiative, subject to the Commission's approval.
- 3.1.2 Prior to the implementation of the Transformation Initiative, the Acquiring Group shall provide the Commission with details, in writing, of the Transformation Initiative. These details shall include at least the following information:
- 3.1.2.1 the proposed transaction structure and its mechanics;
  - 3.1.2.2 the identities of the parties involved in the Transformation Initiative and their proposed roles and shareholdings;
  - 3.1.2.3 a report prepared by a suitably qualified independent B-BBEE certification firm or other appropriate professional firm confirming that TSH will after implementation of the Transformation Initiative qualify as at least [CONFIDENTIAL]% black-owned in terms of the B-BBEE Act;
  - 3.1.2.4 the number of appointments to the board of TSH that all HDPs, including the HDPs participating in the Transformation Initiative and otherwise, will be entitled to after implementation of the Transformation Initiative;
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- 3.1.2.5 confirmation of whether the Transformation Initiative constitutes a merger for the purposes of the Competition Act; and
  - 3.1.2.6 submissions as to why the Transformation Initiative is unlikely to give rise to competition concerns (including, for instance, information exchange through common members, directors and/or shareholders).
- 3.1.3 If the Transformation Initiative does not constitute a merger for the purpose of the Competition Act, in 60 (sixty) Days of receipt by the Commission of all details required in terms of paragraph 3.1.2 above, the Commission may consider whether the implementation of the Transformation Initiative results in TSH qualifying as at least [CONFIDENTIAL]% black-owned in terms of the B-BBEE Act, and indicate in writing whether:
- 3.1.3.1 the Transformation Initiative meets the requirements of the Conditions and can therefore be implemented; or
  - 3.1.3.2 the Transformation Initiative does not have the effect that TSH will after implementation of the Transformation Initiative qualify as at least [CONFIDENTIAL]%black-owned in terms of the B-BBEE Act, and if so, providing reasons therefor so that the Acquiring Group can respond thereto, alternatively formulate a revised Transformation Initiative that will have the effect that TSH will after implementation of the Transformation Initiative qualify as at least [CONFIDENTIAL]%black-owned in terms of the B-BBEE Act and/or consider its rights and recourse.
- 3.1.4 For the avoidance of doubt, the Transformation Initiative may only be implemented if, within 60 Days of the Acquiring Firm complying with the requirements set out in paragraph 3.1.2, the Commission provides its written approval as per paragraph 3.1.3.1 above or the Commission fails to issue its decision in writing, in which case the Commission will be deemed to have approved the Transformation Initiative on the 60<sup>th</sup> Day following the Acquiring Firm complying with the requirements set out in paragraph 3.1.2.
- 3.1.5 If the Transformation Initiative constitutes a merger (whether or not the thresholds for mandatory notification are met), -
- 3.1.5.1 the Transformation Initiative must be notified to the Commission as a small, intermediate or large merger (as the case may be) and such notification shall address the details in paragraph 3.1.2, as part of the merger notification;
  - 3.1.5.2 the Commission shall consider the matters contemplated in these conditions, in particular those in paragraphs 3.1.2 and 3.1.3, as part of its assessment of the merger so notified; and
  - 3.1.5.3 in such circumstances, the Transformation Initiative can only be implemented once it has been approved with or without conditions.
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4. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

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

4.2 The Acquiring Group shall, with 10 (ten) Days of implementation of the Transformation Initiative contemplated in clause 3.1, submit an affidavit confirming compliance with the Conditions.

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

5. **APPARENT BREACH**

5.1 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.

6. **VARIATION**

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

7. **GENERAL**

7.1 The affidavits and or documents referred to in the Conditions shall be and all correspondence in relation these Conditions must be submitted to the following email addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto: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.

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**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**NWK LIMITED**

**AND**

**EPKO OIL SEED CRUSHING PROPRIETARY LIMITED**

**CASE NUMBER: 2022DEC0030**

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

1. On 19 December 2022, NWK Limited ("NWK") notified the Competition Commission ("Commission") of its intention to acquire the remaining 50% of the shares in Epko Oil Seed Crushing Proprietary Limited ("Epko") that it does not already own. Post-merger, NWK will have sole control of Epko.
2. The primary acquiring firm is NWK. NWK is a wholly owned subsidiary of NWK Holdings Limited ("NWK Holdings"). NWK Holdings is listed on the Cape Town Stock Exchange and is not controlled by any person. NWK controls several firms, with the following being the most relevant for purposes of this proposed transaction: Epko (50%) (the target firm); and Mogaladi Fuel Proprietary Limited (100%) ("Mogaladi Fuel"). NWK Holdings and NWK, and all the firms that they directly and indirectly control are referred to as the Acquiring Group.
3. Through NWK, the Acquiring Group supplies a variety of agricultural inputs in South Africa, with a focus on the North West province. The Acquiring Group retails fertilizer, grain, chemicals, new and second-hand agricultural vehicles (tractors), automotive fuel, animal feed and consumer goods among others. It also supplies grain storage and grain handling services. Of relevance to this merger assessment are the Acquiring Group's activities as a trader/supplier of sunflower seeds. The Acquiring Group's only sunflower seeds customer is the target firm.

4. The Acquiring Group does not have any ownership by any historically disadvantaged persons ("HDPs"), or 'workers' as defined in the Competition Act No. 89 of 1998 (as amended) (the "Act").
5. The primary target firm is Epko. Pre-merger, Epko is jointly controlled by NWK (50%) and Louis Dreyfus Company Africa Proprietary Limited ("Louis Dreyfus") (50%). Epko does not control any firms.
6. Epko is a sunflower oilseed processor and its primary business is to crush and process sunflower seeds into crude sunflower oil and sunflower meal. Epko sells crude sunflower oil and sunflower meal to customers throughout South Africa.
7. Epko does not have any ownership by HDPs or workers.
8. The Commission found that the merger is unlikely to result in a substantial prevention and lessening of competition in any relevant market.
9. The Food and Allied Workers union (FAWU) raised employment concerns despite the parties providing an unequivocal statement that the proposed merger will not result in retrenchments. However, the merging parties have agreed to address any employment concerns by agreeing to a condition placing a moratorium on merger specific retrenchments for 24 months post-merger. This is reflected in the conditions set out in **Annexure A** hereto. The Commission considers that this remedy addresses any employment concerns raised.
10. To promote a greater spread of ownership as contemplated in section 12A(3)(e) of the Act, the parties have agreed to implement an HDP transaction within 24 months of implementing this proposed merger. The HDP transaction will facilitate ownership by HDP workers of the merged entity as well as HDP individuals residing in the areas in which the merged entity operates. Specifically, the HDP workers and individuals will acquire a 25.1% interest in NWK's subsidiary, Mogaladi Fuel Proprietary Limited ("Mogaladi"). The HDPs' ownership in Mogaladi will be facilitated through a trust accredited in terms of the Broad-based Black Economic Empowerment Act 53 of 2003 as amended. In addition, the Acquiring Group commits to apply for its future retail fuel licenses and hold all such licenses in the name of Mogaladi for a period of at least 5 years from registration of the B-BBEE Trust. In addition, the Acquiring Group will apply to transfer the 16 retail fuel licences it holds and/or application for new licences in relation to its grain silo activities to Mogaladi. However, these licence transfers are subject to approval by various government

departments and if such approval is not obtained, these licences will revert to the Acquiring Group. Moreover, the merging parties submit that they will endeavour to lodge applications for 4 new retail fuel licences to be held by Mogaladi during the first half of 2024. Based on its experience the Acquiring Group notes that retail fuel licences applications process can take 2-5 years.

11. **[CONFIDENTIAL]**

12. In addition to this, the parties have agreed to implementing an internship programme to benefit a maximum of 5 HDP learners annually for a period of five years to obtain nationally recognised qualifications.
13. The aforementioned commitments are set out in more detail in the merger conditions attached as **Annexure A** hereto. The Commission considered that the same addressed the concern raised by both FAWU and the Department of Trade, Industry and Competition.
14. Considering the above, the Commission concludes that the merger does not raise any further public interest issues.
15. The Commission therefore approves the proposed transaction subject to the conditions in **Annexure A** hereto.

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**ANNEXURE A: CONDITIONS**

**NWK LIMITED**

**AND**

**EPKO OIL SEED CRUSHING PROPRIETARY LIMITED**

**CASE NUMBER: 2022DEC0030**

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**CONDITIONS**

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**1. DEFINITIONS**

- 1.1 **"Acquiring Firm"** means NWK Limited, a wholly owned subsidiary of NWK Holdings 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 **"B-BBEE Act"** means the Board-based Black Economic Empowerment Act 53 of 2003;
- 1.5 **"B-BBEE Trust"** means a B-BBEE Act accredited trust which the Acquiring Firm will register to facilitate the HDP Transaction;
- 1.6 **"Commission"** means the Competition Commission of South Africa;
- 1.7 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Commission;
- 1.8 **"Conditions"** mean, collectively, the conditions referred to in this document;
- 1.9 **"Days"** mean business days, being any day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;
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- 1.10 “**Employees**” means all employees of the Merger Parties;
- 1.11 “**HDPs**” mean historically disadvantaged persons, as defined in section 3(2) of the Act, including Workers of the Merging Parties;
- 1.12 “**HDP Transaction**” means the Acquiring Firm’s commitment to register the B-BBEE Trust, which will hold not less than 25.1% of the issued share capital of Mogaladi Fuel, for the sole benefit of HDP beneficiaries, including HDP Workers of the Merger Parties, chosen at the trustee’s discretion in accordance with the trust deed;
- 1.13 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.14 “**Merger**” means the Acquiring Firm’s acquisition of the remaining 50% of the issued share capital of the Target Firm;
- 1.15 “**Merger Parties**” means the Acquiring Firm and the Target Firm;
- 1.16 “**Mogaladi Fuel**” means Mogaladi Fuel Proprietary Limited, a wholly owned subsidiary of the Acquiring Firm and the vehicle through which all of the Acquiring Firm’s future retail fuel licenses will be held for a period of at least five years from registration of the B-BBEE Trust;
- 1.17 “**SAQA**” means the South African Qualifications Authority in terms of section 18 of the Skills Development Act 97 of 1998, as amended;
- 1.18 “**South Africa**” means the Republic of South Africa;
- 1.19 “**Target Firm**” means Epko Oil Seed Crushing Proprietary Limited;
- 1.20 “**Tribunal**” means the Competition Tribunal of South Africa; and
- 1.21 “**Workers**” means 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.
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## **CONDITIONS**

### **2. EMPLOYMENT**

- 2.1 The Merger Parties undertake that they will not conduct any merger related retrenchments for a period of 24 months from the Implementation Date, including the period between the Approval Date and Implementation Date.
- 2.2 For the sake of clarity, merger-specific retrenchments do not include: (i) voluntary separation arrangements and/or voluntary retrenchments; (ii) voluntary early retirement; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including (but not limited to) terminations as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract or a fixed-term third party contract employee or contract with a third party.

### **3. HDP TRANSACTION**

- 3.1 The Acquiring Firm commits to apply for its future retail fuel licenses and hold all such licenses in the name of Mogaladi Fuel for a period of at least 5 years from registration of the B-BBEE Trust.
- 3.2 The Acquiring Firm shall implement the HDP Transaction within 24 months of the Implementation Date. In this regard, the Acquiring Firm will register the B-BBEE Trust which will be for the benefit of HDPs including HDP Workers of the Merger Parties, determined at the sole discretion of the trustees as outlined in terms of the corresponding trust deed.
- 3.3 **[Confidential].**
- 3.4 The Acquiring Firm will submit the applications to give effect to the above transfers within three months of the implementation of the HDP Transaction.
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- 3.5 This transfer and application for new fuel licenses will be subject to the necessary approvals by the relevant government department. If the license transfer is not approved then the licenses will default back to the Acquiring Firm.
- 3.6 The HDP Transaction will be established in accordance with the principles set out in Annexure B to these Conditions.
- 3.7 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 -
- 3.7.1 details of the number of retail fuel licenses held and/or applied for by Mogaladi Fuel;
  - 3.7.2 the structure of the HDP Transaction;
  - 3.7.3 the deed of the trust to be registered in terms of the HDP transaction;
  - 3.7.4 identities of the trustees and evidence of their HDP credentials (e.g., B-BBEE certificates) where applicable;
  - 3.7.5 the number of beneficiaries of the B-BBEE Trust, noting that for the beneficiaries who are Workers, the details of their age, sex and race must be provided; and
  - 3.7.6 confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.
- 3.8 For the avoidance of doubt, the information in clause 3.7 above, will be provided to the Commission to enable the Commission to assess the Acquiring Firm's compliance with the Conditions.
- 3.9 For the avoidance of further 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.
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3.10 For three years from the Implementation Date, the Acquiring Firm will inform the Commission in writing of any new fuel retail station acquired or established by Mogaladi Fuel, stating the location of the fuel station and its annual revenue for the year preceding the acquisition.

**4. INTERNSHIP PROGRAMME**

4.1 The Merger Parties undertake to implement an internship programme within 12 (twelve) months from the Implementation Date. The internship programme will benefit a maximum of 5 (five) HDP learners per year, for a period of 5 (five) years.

4.2 For avoidance of doubt, the internship programme will consist of a structured learning component, practical work and will lead to a SAQA registered / accredited qualification.

4.3 The value of each internship will be R1.2 million per annum.

**5. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

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

5.2 The Merging Parties shall circulate a copy of the employment conditions to the Employees, the relevant trade unions representatives and employee representatives within 5 (five) Days of the Approval Date.

5.3 As proof of compliance with clause 2, a senior executive of the Acquiring Group shall within 10 (ten) Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notices that were circulated to such Employees, trade union representatives and employee representatives.

5.4 As proof of compliance with clause 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 and providing the relevant details of the HDP Transaction as outlined in clause 3.7.

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5.5 As proof of compliance with clause 3.3, the Merging Parties will, within six months of the implementation of the HDP Transaction, lodge the relevant applications for the transfer of the fuel licenses from NWK to Mogaladi Fuel and provide these to the Commission within 10 business days of receipt of same.

5.6 As proof of compliance with clause 4, a senior executive of the Target Firm shall, within 12 months, and thereafter annually for 5 years, of implementing the learnership programme, submit an affidavit confirming compliance with the Conditions. The affidavit shall be accompanied by a report detailing, inter alia, the number of HDP learners that benefitted from the learnership programme and amount spent by the Merger Parties.

5.7 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.

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

7. **VARIATION**

7.1 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.

8. **GENERAL**

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

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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

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**ANNEXURE B**

<b>Design Principle</b>	<b>Applicable Criteria if fully funded by NWK</b>	<b>Applicable Criteria if debt funded</b>
<b>Structure</b>	<ul style="list-style-type: none"> <li>○ The Acquiring Firm will register a B-BBEE Trust which will acquire a 25.1% interest in Mogaladi Fuel for the benefit of HDPs individuals and Workers, determined at the sole discretion of the B-BBEE accredited trust's trustees as outlined in terms of the corresponding trust deed.</li> <li>○ B-BBEE Trust is entitled to use a maximum of 15% of any dividends its received to cover administrative and operational management costs.</li> <li>○ Where the B-BBEE Trust is fully funded by the Acquiring Firm, the B-BBEE Trust will distribute all dividends received, less administrative and administrative costs (Net Dividend).</li> </ul>	<ul style="list-style-type: none"> <li>○ The Acquiring Firm will register a B-BBEE Trust which will acquire a 25.1% interest in Mogaladi Fuel for the benefit of HDPs individuals and Workers, determined at the sole discretion of the B-BBEE accredited trust's trustees as outlined in terms of the corresponding trust deed.</li> <li>○ B-BBEE Trust is entitled to use a maximum of 15% of any dividends its received to cover administrative and operational management costs.</li> <li>○ The beneficiaries of the B-BBEE Trust will receive at least 35% of any Net Dividend, with the balance of the Net Dividend (i.e., 65%) being retained to repay any loan funding.</li> </ul>
<b>Cost to beneficiaries of the B-BBEE Trust</b>	<ul style="list-style-type: none"> <li>○ Beneficiaries of the B-BBEE accredited trust will participate in the HDP Transaction at no cost.</li> </ul>	<ul style="list-style-type: none"> <li>○ Beneficiaries of the B-BBEE accredited trust will participate in the HDP Transaction at no cost.</li> </ul>
<b>Governance</b>	<ul style="list-style-type: none"> <li>○ At least 50% of the trustees of the B-BBEE Trust will be HDPs, with at least one being a black woman as required by the B-BBEE Act.</li> </ul>	<ul style="list-style-type: none"> <li>○ At least 50% of the trustees of the B-BBEE Trust will be HDPs, with at least one being a black woman as required by the B-BBEE Act</li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>○ The B-BBEE Trust will endure until terminated by its trustees but will endure for at least 5 years post the Implementation Date</li> </ul>	<ul style="list-style-type: none"> <li>○ The B-BBEE Trust will endure until terminated by its trustees but will endure for at least 5 years post the Implementation Date</li> </ul>

<p><b>HDP Transaction beneficiaries</b></p>	<ul style="list-style-type: none"> <li>○ All HDP individuals living or working in the areas where the merging Parties conduct their businesses, including HDP Workers of the Merger Parties</li> </ul>	<ul style="list-style-type: none"> <li>○ All HDP individuals living or working in the areas where the merging Parties conduct their businesses, including HDP Workers of the Merger Parties</li> </ul>
<p><b>Participation Benefits</b></p>	<ul style="list-style-type: none"> <li>○ The B-BBEE Trust will be entitled to receive dividends declared by Mogaladi Fuel.</li> </ul>	<ul style="list-style-type: none"> <li>○ The B-BBEE Trust will be entitled to receive dividends declared by Mogaladi Fuel</li> </ul>

**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**ALCHEMY PROMOTIONS HOLDINGS LIMITED**

**AND**

**AMROD INVESTMENTS (PTY) LTD**

**CASE NUMBER: 2022DEC0032**

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

1. On 19 December 2022, the Competition Commission ("Commission") received a notice of an intermediate merger whereby Alchemy Promotions Holdings Limited ("Alchemy"), intends to acquire **[CONFIDENTIAL]** of the issued share capital of Amrod Investments (Pty) Ltd ("Amrod"). Upon implementation of the proposed transaction, Alchemy will acquire sole control of Amrod.

**Parties**

2. The primary acquiring firm is Alchemy, a company incorporated in terms of the laws of Mauritius. Alchemy is wholly controlled by OP Holdings Limited ("OP Holdings"). OP Holdings is in turn wholly controlled by Oppenheimer Partners Limited ("OP"). OP is a company incorporated in terms of the laws of the Isle of Man.
  3. OP, OP Holdings and its subsidiaries are hereinafter referred to as the Acquiring Group.
  4. The primary target firm is Amrod, a private company incorporated in terms of the laws of South Africa.
  5. Amrod wholly controls Amrod Holdings Pty Ltd ("Amrod Holdings"). Amrod Holdings in turn wholly controls Acorp Gifts Pty Ltd and Amrod Corporate Solutions (Pty) Ltd ("Amrod Corporate Solutions"). Amrod Corporate Solutions wholly controls a number of firms domiciled in Namibia, Botswana and Kenya.
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### **Activities**

6. Alchemy was established for purposes of the proposed transaction and as such, it does not have any business activities.
7. OP is an investment holding company with a focus on the fast-moving consumer goods, industrial and service sectors. OP has the following two investments that have operations in South Africa - ICON, which provides oncology-related clinical, administrative, infrastructure, operational and strategic business management services to aligned oncology practices in South Africa and across Africa and GZI SA, which manufactures premium quality, aluminium beverage cans that can be used to package carbonated soft drinks, certain alcoholic beverages, juices, energy drinks, iced teas etc.
8. Amrod is a wholesaler of branded promotional products, including gifting, apparel, display and workwear ranges. Amrod is a trade-only supplier (i.e., it sells to companies only) and does not sell directly to the public.

### **Competition analysis**

9. The Commission considered the activities of the merging parties and found that the proposed transaction does not raise a horizontal overlap as the merging parties do not provide services or products which are considered substitutable or interchangeable.
10. Therefore, 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 submit that the proposed transaction will not result in the retrenchment of any employee, and as such, the proposed transaction will not have a negative impact on employment in South Africa.
  12. The merging parties identified Mr. January as the employee representative of the Icon employees (forming part of the Acquiring Group). Mr. January indicated that there have been no
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retrenchments at Icon in the preceding 12 months. Moreover, no employees raised concerns in relation to the proposed transaction.

***The promotion of a greater spread of ownership by historically disadvantaged persons and workers***

13. The merging parties submit that the Acquiring Firm, Alchemy, does not have any shareholding held by historically disadvantaged persons (HDPs). However, HDPs hold approximately **[CONFIDENTIAL]** of the issued share capital of the Acquiring Group.
  14. The merging parties submit that the Target Firm, Amrod, does not have any HDP shareholders.
  15. The merging parties initially proposed to establish an employee share ownership scheme ("ESOP") to hold **[CONFIDENTIAL]** of the issued share capital in Amrod on behalf of Amrod's employees, the majority of whom are previously disadvantaged persons.
  16. The Commission advised the merging parties that the proposed **[CONFIDENTIAL]** ESOP was not sufficient and, in line with the majority of previous decisions, the ESOP should, at a minimum, hold 5% of the issued share capital of the Target Firm.
  17. The DTIC filed a Minister's Notice of Intention to Participate on 22 December 2022. The DTIC also submitted that an employee share ownership programme/scheme (ESOP) of at least 5% should be introduced in the target firm for the benefit of South African employees; and that the merged entity should implement specific initiatives to promote broad-based black economic empowerment in South Africa.
  18. Following several engagements, the merging parties agreed to an ESOP which will hold 5% of the issued share capital of Amrod. In addition, the merging parties made the following public interest commitments:
    - 18.1. the establishment of a new "female-owned reseller empowerment initiative", in terms of which Amrod will use its reasonable endeavours to approve at least 20 new black female reseller registrations on an annual basis for a period of three years from the date of approval of the transaction;
    - 18.2. the establishment of the "Amrod Promo Accelerator and Training Program", in terms of which Amrod will commit to the provision of financial and non-financial support for
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enterprise development for a period of three years from the date of approval of the transaction by i) providing **[CONFIDENTIAL]** per year towards the Program, ii) identifying up to fifty eligible small- and medium-sized reseller businesses which are owned by HDPs (of which at least twenty such businesses should be owned by black females), and iii) **[CONFIDENTIAL]**

- 18.3. Post-transaction, Amrod will also engage with the DTIC with a view to determining how best to promote localisation initiatives and committing a dedicated resource within Amrod to engage in regular discussions with the DTIC in order to achieve this objective.
19. The Commission accepts the 5% ESOP and other public interest commitments offered above as conditions to the approval of the proposed merger.

**Conclusion**

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

**ALCHEMY PROMOTIONS HOLDINGS LIMITED**

**AND**

**AMROD INVESTMENTS (PTY) LTD**

**CASE NUMBER: 2022DEC0032**

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**CONDITIONS**

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**1 DEFINITIONS**

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

- 1.1 **Alchemy** or the **Acquiring Firm** means Alchemy Promotions Holdings Limited, a company duly incorporated in accordance with the laws of Mauritius;
  - 1.2 **Amrod** or the **Target Firm** means Amrod Investments Proprietary Limited, a private company duly incorporated in accordance with the laws of South Africa;
  - 1.3 **Amrod ESOP** means the employee share ownership programme to be established by the Target Firm for the benefit of qualifying employees of the Target Firm;
  - 1.4 **Approval Date** means the date on which the Commission issues a Clearance Certificate (Notice CT10) in terms of the Competition Act;
  - 1.5 **Commission** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
  - 1.6 **Commission Rules** means the Rules for the Conduct of Proceedings in the Competition Commission issued in terms of section 21 of the Competition Act;
  - 1.7 **Competition Act** means the Competition Act No. 89 of 1998, as amended;
  - 1.8 **Conditions** means the merger conditions included in this Annexure A;
  - 1.9 **Days** means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
  - 1.10 **HDP** or **HDPs** mean historically disadvantaged person(s) within the meaning of the Competition Act;
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- 1.11 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.12 **“Labour Relations Act”** means the Labour Relations Act 66 of 1995 (as amended);
- 1.13 **“Merger”** means the acquisition of sole control over the Target Firm by the Acquiring Firm;
- 1.14 **“Merger Parties”** means the Acquiring Firm and the Target Firm;
- 1.15 **“NVF”** means notional vendor financing in the context of the Amrod ESOP;
- 1.16 **“South Africa”** means the Republic of South Africa;
- 1.17 **“SMMes”** means small- and medium-sized businesses as described in the Competition Act.

## **CONDITIONS TO THE APPROVAL OF THE MERGER**

### **2. GREATER SPREAD OF OWNERSHIP**

- 2.1. Amrod shall implement the Amrod ESOP within 90 Days of the Implementation Date.
- 2.2. The Amrod ESOP shall have the following principal features:
- 2.2.1. The ESOP will hold 5% of the issued share capital of Amrod.
- 2.2.2. Employees will not incur any costs in participating in the ESOP. The ESOP will be funded by way of a NVF loan.
- 2.2.3. The ESOP structure will be established on the basis of a trickle dividend of 40%.
- 2.2.4. Employee shareholders will receive at least an estimated 40% of the total dividends accruing on an annual basis, the remaining dividends being used to defray the cost of the NVF facility, it being agreed that the portion allocated for which a dividend is payable to employees may be increased by Amrod, but not be reduced.
- 2.2.5. An employee's participation in the ESOP is linked to the employee's employment of 2 years or more by the Target Firm, and the employee will cease to participate upon his/her resignation or dismissal.
- 2.2.6. The trustees of the ESOP will comprise a maximum of 4 persons, and Amrod will appoint two trustees, and two trustees will be appointed by the employees of Amrod.
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### **3. SKILLS DEVELOPMENT OF HDP-OWNED RESELLER SMMEs IN THE PROMOTIONAL PRODUCTS INDUSTRY IN SOUTH AFRICA**

- 3.1. Amrod undertakes to invest in the further development of resellers by establishing the Amrod Promo Accelerator and Training Program (“**the Program**”) within 90 Days of the Implementation Date.
- 3.2. The focus of the Program will be on the provision of training, support and financial assistance to participating HDP-owned reseller SMMEs.
- 3.3. Amrod shall spend at least **[CONFIDENTIAL]** per annum over a three-year period from the Implementation Date on the Program. Such expenditure shall not be redirected from any existing, planned or other expenditure and will constitute new funding.
- 3.4. Amrod shall identify up to 50 eligible HDP-owned reseller SMMEs (with the aim of identifying at least 20 eligible SMMEs which are owned or have been established by black females) in order to provide the participating resellers with comprehensive training in relation to industry-specific and general business skills.
- 3.5. Amrod shall monitor and evaluate the impact of the Program on an annual basis, in order to ensure that it is meeting its objective.

### **4. EMPOWERMENT OF BLACK FEMALE RESELLERS**

- 4.1. In terms of the proposed female-owned reseller empowerment initiative, Amrod will use its best endeavours to approve at least 20 new black female reseller registrations on an annual basis for a period of 3 (three) years from the date of approval of the transaction.
- 4.2. The approval of the registrations will be subject to Amrod's standard criteria for the approval of new customer registrations.

### **5. MONITORING COMPLIANCE WITH THE CONDITIONS**

- 5.1. The Merger Parties will each circulate a copy of the Conditions to their employees and the relevant employee representatives within five (5) Days of the Approval Date.
  - 5.2. As proof of compliance herewith, each Merger Party must, within five (5) Days of circulating the Conditions as required in paragraph 5.1, submit an affidavit by a senior official authorised by, and
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on behalf of, that Merger Party attesting to the circulation of the Conditions and provide written evidence of such circulation.

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

5.4. An affidavit and a compliance report will be submitted by the Merger Parties to the Commission:

5.4.1. Within 10 Days after the conditions in paragraphs 2.1 and 3.1 have been met;

5.4.2. on an annual basis within three (3) months after the anniversary of the Implementation Date for a period of three (3) years in respect of the conditions set out in paragraphs 3.3 and 4.1;

5.4.3. on an annual basis within three (3) months after the anniversary of the Implementation Date for a period of seven (7) years in respect of the conditions set out in paragraph 2;

5.5. The affidavits referred to in paragraph 6.4 above must be deposed to by a senior official of the Merger Parties.

5.6. Any person who believes that the Merging Parties have failed to comply with the Conditions may approach the Commission with their complaint.

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

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**6. APPARENT BREACH**

- 6.1. An apparent breach of these Conditions shall be dealt with in terms of Rule 39 of the Rules of the Conduct of Proceedings in the Commission.

**7. VARIATION OF THE CONDITION**

- 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 shall apply to the Tribunal, on good cause shown, for the conditions to be waived, relaxed, modified and/or substituted.

**8. GENERAL**

- 8.1. All correspondence in relation to these conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto: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

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**NON-CONFIDENTIAL**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**GMB LIQUIDITY CORPORATION PROPRIETARY LIMITED**

**AND**

**GRAND PARADE INVESTMENTS LIMITED**

**CASE NUMBER: 2022DEC0047**

1. On 22 December 2022, the Competition Commission ("Commission") received notice of an intermediate merger in terms of which GMB Liquidity Corporation Proprietary Limited ("GMB") intends to acquire control over Grand Parade Investments Limited ("GPI").
2. Pre-merger, GMB holds 48.97% of the issued share capital in GPI and will acquire additional shares which will result in GMB having sole control over GPI. The proposed transaction will be facilitated through a mandatory offer in terms of section 123(3) of the Companies Act No. 71 of 2008, wherein the current GPI shareholders will be entitled to accept or decline GMB's mandatory offer.
3. It is anticipated that as a result of the mandatory offer process, GMB's shareholding in GPI will increase from 48.97% to a majority of the shares as contemplated in section 12 (2)(a) of the Competition Act No. 89 of 1998. Consequently, it is anticipated that GMB will acquire sole control of GPI.

***The parties and their activities***

4. The primary acquiring firm is GMB, a company duly incorporated in South Africa. GMB is a wholly owned subsidiary of GMB Investments Proprietary Limited ("GMBI"). GMB, its subsidiaries, the firms controlling it and their subsidiaries will collectively be referred to as the "Acquiring Group".
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5. GMB is a private investment company. GMB currently has investments in the beauty, insurance, and residential real estate industries.
6. The Acquiring Group does not have any shareholding by historically disadvantaged persons (HDPs).
7. The primary target firm is GPI, a company duly incorporated in South Africa. GPI is listed on the Johannesburg Stock Exchange (JSE) and is not controlled by any single entity. The largest shareholders in GPI are: GMB (47.97%); Sun International (South Africa) Limited ("Sun International") (23.83%); and GPI Women's B-BBEE Empowerment Trust ("Empowerment Trust") (3.33%).
8. GPI is a gaming and hospitality investment holding company and owns two commercial properties in Cape Town. GPI's current interests in the gaming and hospitality industry consist of a non-controlling minority interest held in SunWest International Proprietary Limited ("SunWest International").

***Competition assessment***

9. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal overlaps.
10. It is thus unlikely that the proposed transaction will result in the substantial prevention or lessening of competition in any market.

***Public Interest Considerations***

***Effect on employment***

11. The Commission is of the view that the proposed merger is unlikely to raise any significant employment concerns as the merging parties have provided an unequivocal statement that the merger will not result in any retrenchments.

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

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12. The merging parties submit that the Acquiring Group does not have any shareholding by HDPs.
  13. The Commission requested the merging parties to remedy the dilution occasioned by the transaction by replacing the HDP shareholding and ensuring that the post-merger HDP shareholding in GPI remain the same as the pre-merger level. In this regard, the parties indicated that if GMB were to tender such a condition, there would effectively be no transaction as GMB would not be able to acquire de jure control over GPI. In addition, any significant allocation of an already small proportion of GPI's overall issued shares to HDPs would effectively undermine the attractiveness of the investment in GPI, which would negatively impact shareholder value.
  14. However, the merging parties agreed to a condition that they will implement a 5% HDP transaction within 12 months of the implementation of the proposed transaction. In addition, the merging parties proposed the following conditions: (i) increased procurement from HDPs; (ii) ensuring that a portion of GPI's third-party suppliers have a minimum B-BBEE Level 3 score; (iii) Establishing a two (2) year training and mentorship programme, for at least five (5) HDP students per year; (iv) ensuring that GPI improves its B-BBEE rating from the current level 8 to level 5 and (v) introducing an HDP individual at board or management level of GMB. See conditions attached hereto as "**Annexure A**".
  15. The proposed transaction does not raise any other public interest concerns.

**Conclusion**

16. Considering the above, the Commission approves the proposed transaction with conditions attached hereto as "**Annexure A**".
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**ANNEXURE A: CONDITIONS**

**GMB LIQUIDITY CORPORATION PROPRIETARY LIMITED**

**AND**

**GRAND PARADE INVESTMENTS LIMITED**

**CASE NUMBER: 2022DEC0047**

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**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 GMB, entities it controls and its controlling shareholders;
  - 1.2. **"Act"** means the Competition Act 89 of 1998, as amended;
  - 1.3. **"Approval Date"** means means the date referred to in the Commission's merger Clearance Certificate;
  - 1.4. **"B-BBEE"** means broad-based economic empowerment as defined in the B-BBEE Act;
  - 1.5. **"B-BBEE Act"** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended, and the Codes of Good Practice 2013, as amended;
  - 1.6. **"B-BBEE Initiatives"** means the initiatives that the Acquiring Group will implement in the Merged Entity in an effort to promote transformation and assist HDPs as set out in these Conditions;
  - 1.7. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
  - 1.8. **"Companies Act"** means the Companies Act 71 of 2008, as amended;
  - 1.9. **"Conditions"** means these conditions;
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- 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. "**Empowerment Trust**" means GPI Women's B-BBEE Empowerment Trust, which holds 3.33% of the total issued shares in the share capital of GPI;
- 1.12. "**GMB**" means GMB Liquidity Corporation Proprietary Limited;
- 1.13. "**GPI**" means Grand Parade Investments Limited, the target firm in this transaction;
- 1.14. "**HDP**" means Historically Disadvantaged Persons;
- 1.15. "**HDP Transaction**" means a transaction in terms of which up to 5% of the Target Firm's issued shares will be allocated to one or more HDP shareholder/s in accordance with paragraph 2.3 of the Conditions;
- 1.16. "**Historically Disadvantaged Persons**" means historically disadvantaged persons within the meaning of the Act;
- 1.17. "**Implementation Date**" means the date that the Merger becomes unconditional in accordance with its terms;
- 1.18. "**JSE**" means Johannesburg Stock Exchange;
- 1.19. "**LRA**" means the Labour Relations Act 66 of 1998, as amended;
- 1.20. "**Mandatory Offer**" means the offer by GMB in terms of section 123(3) of the Companies Act to acquire from GPI shareholders, on terms set out in the Combined Offer Circular to GPI Shareholders dated 15 December 2022, all or a part of their GPI shares for a cash consideration of R3.33 per mandatory offer share;
- 1.21. "**Merged Entity**" means the Target Firm subject to the control of GMB following implementation of the Merger;
- 1.22. "**Merger**" means the Acquiring Group's acquisition of sole control of the Target Firm;
- 1.23. "**Merging Parties**" means the Acquiring Group and the Target Firm;
- 1.24. "**Offeree Shareholders**" means GPI shareholders to whom the Mandatory Offer was
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made;

- 1.25. "**South Africa**" means the Republic of South Africa;
- 1.26. "**Target Firm**" means Grand Parade Investments Limited;
- 1.27. "**Target Remaining Employees**" means the 5 (five) employees (80% of whom are HDPs) that will remain in the employ of the Target Firm following the Merger; and
- 1.28. "**Tribunal**" means the Competition Tribunal of South Africa.

## 2. CONDITION TO THE MERGER

### B-BBEE Initiatives

- 2.1. Within 24 months of the Implementation Date, the Acquiring Group undertakes to:
  - 2.1.1. establish a training and mentorship programme, to run over a period of two years, in terms of which it will select, at its discretion, at least 5 (five) HDP students per calendar year who are enrolled in academic programmes at institutions of higher learning within the National Qualifications Framework to participate in a learning programme.;
  - 2.1.2. provide appropriate training and upskilling for the Target Remaining Employees, which will entail post-graduate study programmes and/or corporate development programmes aimed at enhancing the skills and qualifications of these employees in their respective fields of work);
  - 2.1.3. ensure that at least a portion of the Target Firm's third-party suppliers have a minimum B-BBEE Level 3 score, subject to fulfilling the Target Firm's compliance and due diligence requirements; and
  - 2.1.4. ensure that the Target Firm improves its B-BBEE rating to at least Level 5;
- 2.2. The implementation of the B-BBEE Initiatives will be subject to the Acquiring Group obtaining any necessary corporate and/or regulatory approvals.

### HDP Ownership

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- 2.3. Within 12 months of the Implementation Date, the Merging Parties shall implement the HDP Transaction.
  - 2.4. The execution of the HDP Transaction is subject to:
    - 2.4.1. the Acquiring Group obtaining and retaining control of the Target Firm as contemplated in section 12(2)(a) of the Act following acceptances of the Mandatory Offer by the Offeree Shareholders and clearance by the Commission; and
    - 2.4.2. necessary regulatory approvals in terms of the Companies Act and the JSE Listings Requirements being obtained, including shareholder approvals.
  - 2.5. The Acquiring Group will, in its sole discretion, determine the identity of the HDPs who will participate in the HDP Transaction, the proportion of shares that will be allotted to the HDPs as well as the commercial terms of the HDP Transaction.
  - 2.6. If the Acquiring Group identifies more than one HDP for purposes of the HDP Transaction, the HDP Transaction will be structured such that the HDPs' collective shareholdings are taken into account when calculating 5% of the issued shares in the Target Firm for purposes of paragraph 2.4.1 or 2.4.2 as the case may be, in whatever proportion is agreed between the Acquiring Group and the HDPs.
  - 2.7. Prior to the implementation of the HDP Transaction, the Acquiring Group will provide the Commission with details of the HDP Transaction in writing, for the Commission's approval. These details shall include, but not be limited to, the transaction structure, identities of prospective HDP Shareholder/s, documentary evidence that the prospective shareholders are HDP Shareholder/s, the proportion of shareholding that each prospective HDP Shareholder/s will receive, the number of board appointments each HDP Shareholder/s is entitled to and confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.
  - 2.8. Within (sixty) 60 Days of receipt of the details of the B-BBEE Transaction, the Commission shall provide its written approval, or any comments or queries to the HDP Transaction to the Acquiring Group, in writing.
  - 2.9. For the avoidance of doubt, to the extent that the B-BBEE Transaction constitutes a small, an 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
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Commission as a small, an intermediate or large merger as applicable, in terms of the Act and approved with or without conditions.

*Introduction of HDP individual at board or management level*

- 2.10. Within 12 months of the Implementation Date, GMB undertakes to use its best endeavours to procure that at least one HDP individual is introduced in the Merged Entity at a board or management level.
- 2.11. The undertaking in clause 2.12 above will be subject to the Acquiring Group: (i) obtaining and retaining control of the Target Firm as contemplated in section 12(2)(a) of the Act following acceptances of the Mandatory Offer by the Offeree Shareholders and clearance by the Commission; and (ii) necessary regulatory approvals in terms of the Companies Act and the JSE Listings Requirements being obtained, including shareholder approvals.

**3. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 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 Group shall, on each anniversary of the Implementation Date, submit to the Commission a report detailing, amongst other:
    - 3.2.1. the status of the implementation of the HDP Transaction; and
    - 3.2.2. the Acquiring Group's compliance with clauses 2.1 above for the duration of the Conditions.
  - 3.3. The report contemplated in clause 3.2 shall be accompanied by an affidavit, attested to by a director of GMB, confirming the accuracy of the report.
  - 3.4. The Acquiring Group shall inform the Commission in writing within 5 (five) Days after identifying a suitable HDP shareholder/s for the purposes of clause 2.8 above.
  - 3.5. 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.
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#### **4. DURATION OF THE CONDITIONS**

- 4.1. The Conditions will terminate upon fulfilment by the Merging Parties of their obligations contained herein.

#### **5. APPARENT BREACH**

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

#### **6. VARIATION**

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

#### **7. GENERAL**

- 7.1. All correspondence in relation these conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto: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

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