NOTICE 292 OF 2013

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

TECSA PROPRIETARY LIMITED ("TECSA")

AND

RECO, A DIVISION OF AFRICAN OXYGEN LIMITED ("RECO")

2012NOV0667

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

On 8 November 2012, the Competition Commission of South Africa (the Commission) received a merger notification in terms of which Tecsa (Pty) Ltd (Tecsa) would acquire Reco from Afrox Oxygen Limited (Afrox). Reco is a division of Afrox. Upon completion of the proposed transaction Reco would become a wholly-owned subsidiary of Tecsa. Reco does not directly or indirectly control any other firms.

The activities of the merging parties overlap horizontally in respect of the importing and wholesaling of the following products: refrigeration components and spares parts; air conditioners and air conditioning components; and refrigerant gases.

The Commission concludes that the following markets are relevant for purposes of analysing the proposed transaction:

- Regional market for the importation and wholesale distribution of refrigeration components and spares for the commercial market;
- Regional market for the importation and wholesale distribution of refrigeration components and spare parts for the domestic market;

- Regional market for the importation and wholesale distribution of air conditioners and air conditioning components; and
- Regional market for the importation and wholesale distribution of refrigerant gases.

The following constitute the relevant regions: Gauteng region; KwaZulu-Natal region; Western Cape region; Eastern Cape region; Mpumalanga region; Limpopo region; and Free State region as these are the narrowest separate geographic markets that are likely to be affected by the proposed merger.

The Commission's investigation finds no serious competition concerns in respect of the identified markets.

The Commission is however concerned that the proposed merger will raise significant public interest concern in that 16 semi-skilled employees would be retrenched. In order to address this employment concern, the Commission is imposing the following employment conditions.

1. DEFINITIONS:

In this document the following words shall have the following meanings ascribed to it:

1.1 '**Affected areas**' shall refer to the following areas: Cape Town; Pietermaritzburg; Nelspruit; Randburg; George; and Bloemfontein.

1.2 '**Affected employees**' mean the semi-skilled employees and 11 skilled employees.

1.3 '**Effective Date**' shall mean the date of approval of the merger by the Competition Commission';

1.4 '**employees**' or '**employee**' shall mean a person or people in the permanent employ of Tecsa and Reco, a division of Afrox;

1.5 '**Merged entity**' shall mean Tecsa (Pty) Ltd ("Tecsa") and Reco, a division of African Oxygen Limited ("Reco")

1.6 '**Moratorium period**' shall mean 2 calendar years from the Effective Date;

1.7 '**Semi-skilled employees**' shall include employees without any formal qualification and those currently occupying the following titles:

(a) Fork lift drivers;

(b) Warehouse foreman;

(c) Filing Clerks;

(d) Call centre Operators; and

(e) Other drivers.

These shall exclude all Branch Managers, Purchasing Managers, Credit Controllers, Claims Administrators, Accounting Clerks, and Telesales Operators;

1.8 **"Skilled employees" mean** employees with formal education and training and those occupying the following positions: Branch Managers, Purchasing Managers, Credit Controllers, Claims Administrators, Accounting Clerks, and Telesales Operators.

2. RECORDAL

The Commission finds that the proposed transaction is unlikely to raise significant competition concerns as there are other competitors in the market which will constraint the merging parties from unilaterally increasing their prices in all the affected markets. Further, the barriers to entry and / or expansion in all the affected markets are relatively low.

However, the proposed transaction is likely to have a negative impact on employment since the merging parties are intending to combine certain branches and close down certain branches that are adjacent to each other. This is likely to result in approximately 27 employees losing their jobs of which 16 is semi-skilled employees and 11 is skilled employees as defined in the Employment Equity Act, No. 55 of 1998, EEA 9, Annexure 2: Occupational levels. The Commission is concerned that this transaction is likely to raise significant public interest concerns as it affects approximately 16 semi-skilled employees who are unlikely to find employment in the near future. In order to alley the job losses resulting from the proposed transaction, the Commission approves the proposed transaction subject to conditions discussed in 3 (three) below.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

3.1 The merged entity shall not retrench any semi-skilled employee during the moratorium period as a result of the merger. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements (ii) voluntary early retirement packages; and (iii) refusals to be redeployed whether on reasonable or unreasonable grounds.

3.2 The merged entity shall not retrench more than 11 skilled employees as a result of the merger;

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1. The merging entity shall circulate a copy of the conditions to their respective employees, including the relevant trade unions, within 7 days of the Effective Date of the transaction. As proof of compliance hereof, the merging parties shall within 5 days of circulating the conditions, provide an affidavit by a senior official attesting to the circulation of the conditions and provide a copy of the notice that was sent to the employees.

4.2. The merged entity shall on a six monthly basis submit an affidavit to the Commission confirming that no retrenchments of semi-skilled employees has occurred as a result of the merger. Where employees are retrenched due to other reasons, the merged entity will indicate the number and reasons for these retrenchments occurring. In the affidavit, the merged entity shall also indicate the number of skilled employees retrenched and the reasons or these occurring.

4.3. The first report shall be submitted on the 5th of August 2013. All correspondences with respect to clause 4 must be forwarded to the following email address: mergerconditions@compcom.co.za.

5. DURATION OF THE CONDITIONS

5.1. The conditions shall apply for a period of 2 years from the date of the approval of the merger.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.