NOTICE 245 OF 2014

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AFGATE PROPERTIES (PIETERSBURG) PROPRIETARY LIMITED

AND

MURRAY & ROBERTS LIMITED'S HALL LONGMORE BUSINESS

2013DEC0589

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 05 December 2013, the Competition Commission (the "Commission") received a notice of an intermediate merger whereby the primary acquiring firm, Afgate Properties (Pietersburg) Proprietary Limited ("Afgate") intends to acquire, as a going concern, the business operation of Murray & Roberts Limited's Hall Longmore business (the "Hall Longmore business"). On completion of the proposed transaction, Afgate will wholly-own Hall Longmore business.

There is a horizontal overlap in the activities of the merging parties in the market for the manufacturing and supply of ERW 219 mm and 273 mm diameter steel pipes.

The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the manufacturing and supply of ERW 219 mm diameter steel pipes as there are alternative players in the market that compete with the merging parties who will be in a position to constrain the merged entity.

With respect to ERW 273 mm diameter steel pipes, although the market is concentrated and post-merger market shares are high, the Commission finds that imports constrain the local market. Furthermore, Capital Star Steel, a competitor based in Mozambique has the capacity to increase its production and absorb an increase in demand, and thus constrain the post-merger entity. The Commission also finds that the proposed transaction does not result in the removal of an effective competitor as the merging parties are not each other's closest competitors. The Commission further finds that customers make purchasing decisions based on price, and therefore the merged entity would lose sales volumes to imports and Capital Star Steel if they were to increase prices. Given that the market for the manufacture of ERW 273mm diameter steel pipes is also a high volume, low margin business, such a pricing strategy would have a negative impact on the merging parties' production costs. Furthermore, the Commission finds that imports constrain the local market. The Commission is therefore of the view that the proposed transaction is unlikely to result in unilateral effects conduct.

In relation to public interest issues, the proposed transaction results in the loss of 95 jobs. In the analysis of possible effects on employment, the Commission ascertained that the job losses will not be as a result of duplication of roles but rather due to the fact that the target firm is ailing and has been making losses for the past three years. The Commission found that irrespective of the proposed transaction, job losses were going to take place as about 285 employees were already served with retrenchment letters. The Commission engaged with the merging parties on the employment effects of the proposed transaction and the merging parties subsequently reduced the number of retrenchments to 95. Considering the counterfactual, the proposed transaction will effectively save 190 jobs. The merging parties agreed to a condition limiting the retrenchments to not more than 95 employees. A copy of the condition is attached as **Annexure A.**

The Commission therefore approves the merger with conditions in terms of section 14(1)(b)(ii) of the Competition Act no. 89 of 1998, as amended.

CONDITIONS

1. Definitions

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

1.1 **"Acquiring Firm"** means Afgate Properties (Pietersburg) Proprietary Limited;

1.2 **"Afgate"** means Afgate Properties (Pietersburg) Proprietary Limited;

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

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

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

1.6 **"Conditions"** means these conditions;

1.7 **"Effective Date"** means the first day of the calendar month following the month in which the Fulfilment Date occurs;

1.8 **"Fulfilment Date"** means the date upon which the last of the conditions precedent is fulfilled;

1.9 **"Hall Longmore business"** means Murray & Roberts Limited's Hall Longmore business;

1.10 **"Merger"** means the acquisition of control by Afgate over Hall Longmore business;

1.11 **"Merging Parties"** means the Afgate Group of companies and Hall Longmore business;

1.12 **"Semi-skilled Employees"** means pipe makers, Office Assistants, Assistant Accountant, Machine Operators, Executive Secretary, Data Capturer, Grinders, Crane Drivers, Millwright, Stock Controller, Forklift Driver, Maintenance Planner, Export Controller, Electrician, Boiler marker and Inspectors;

1.13 **"Skilled employees"** means Training specialist, Supervisors, IT Programmer, Team Leader, IT Manager, Instrumentation Technician, Artisan Welder and Trainee Electrical Engineer;

1.14 **"Target firm"** means Hall Longmore business; and

1.15 **"Unskilled Employees"** mean general labourers.

2. Recordal

The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the manufacturing and supply of ERW 219 mm diameter pipes, as there are alternative players in the market that compete with the merging parties and who will be in a position to constrain the merged entity post-merger. With respect to manufacturing and supply of ERW 273 mm diameter pipes, although the post-merger market shares are high, the Commission finds that imports constrain the local market. The Commission is therefore of the view that the proposed transaction is unlikely to result in unilateral effects conduct. However, the proposed transaction is likely to have a negative impact on employment since it is likely to result in job losses of about 178 employees due to the Target firm's poor financial performance over the past 3 (three) years. The Commission engaged with the trade unions representing the employees of the target firm and the merging parties in order to reduce the number of retrenchments. The merging parties agreed to reduce the number of retrenchments from 178 to 95 employees being 7 unskilled, 65 sem-skilled and 23 skilled employees. The Commission therefore imposes a condition on the merged entity not to retrench more than 95 employees.

3. Conditions to the approval of the merger

3.1. The Merging parties and their respective direct and indirect subsidiaries shall, subject to the consultation requirements of section 189 of the Labour Relations Act, 1995, as amended ("LRA"), ensure that the number of retrenchments do not exceed 95 (ninety five) as a result of the merger.

3.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA.

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3.3. These Retrenchments shall only be effected after 3 (three) months following the approval date.

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4. Monitoring of compliance with the conditions

4.1. The Merging Parties shall circulate a copy of these Conditions to their employees/and or their respective representatives, within 7 days of the merger clearance.

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4.2. As proof of compliance thereof, the merging parties shall within 5 business days of circulating the conditions, provide the Commission with an affidavit by a senior official attesting to the circulation of the conditions and attach a copy of the notice sent.

4.3. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.

4.4. Afgate shall provide a report to the Commission on the following respective dates: 31 August 2014, 28 February 2015, 31 August 2015 and 28 February 2016 reflecting the retrenchments effected within the previous 6 month period as a result of the merger. The report must be accompanied by an affidavit deposed to by a senior official confirming the accuracy of the report.

4.5. All correspondences in relation to these conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.6. An apparent breach by the merging parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

5. Duration of the Condition

5.1. The Conditions contained herein shall be effective for a period of 2 years commencing from the effective date.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.