

NOTICE 205 OF 2015**COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****NOORDFED EIENDOMS BEPERK****AND****EMPANGENI MILLING PROPRIETARY LIMITED****CASE NUMBER: 2014OCT0605**

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

1. On 30 October 2014, the Commission received notification of an intermediate merger whereby Noordfed Eiendoms Beperk ("Noordfed"), intends to acquire the white maize milling business of Empangeni Milling Proprietary Limited ("Empangeni"). Post-merger, Noordfed will exercise control over Empangeni.
2. Noordfed is a private company incorporated in terms of the laws of South Africa.
3. Empangeni is a private company incorporated in terms of the laws of South Africa. Empangeni does not directly or indirectly control any firm.
4. Noordfed's primary activities are the production and distribution of white maize milling products, namely white maize meal, white maize rice and white maize samp.

5. Noordfed distributes its products in North West, Gauteng, and to a limited extent in Limpopo and KwaZulu-Natal ("KZN").
6. Empangeni is involved in the production and distribution of white milled maize products, namely white maize meal and white maize flour. Its production facility is in the Empangeni area, in KZN. Empangeni distributes its products in KZN, Eastern Cape and Angola.
7. The Commission identified a horizontal overlap in relation to the production and distribution of white milled maize products in the activities of the merging parties. There is also a vertical relationship between the merging parties as Noordfed rendered services Empangeni Milling.
8. In relation to the horizontal overlap, the Commission found that the estimated post-merger market share remains low. The Commission was therefore of the view that based on the market shares, the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the production and distribution of white milled maize products.
9. Further, the Commission found that there are various players that are active in the market for white milled maize products who will continue to compete with the merging parties post-merger.
10. In relation to the vertical overlap, the proposed merger is unlikely to result in the merged entity having the ability or incentive to engage in input and/or customer foreclosure, as services rendered by Noordfed to Empangeni are minimal.
11. The customers and competitors contacted by the Commission did not raise any concerns with the proposed transaction.
12. The case raises a public interest issue around employment in both the acquiring and the target firm. In this regard, the Commission approved the merger subject to a condition which limits merger specific retrenchments and the merging parties agreed to the imposition of this condition.

13. In approving the merger subjects to retrenchment condition the Commission considered the trouble state of the Empangeni business that Noordfed inherited, while at the same time offering enhanced protection to the remaining employees.
14. Therefore considering that the counterfactual would have been the retrenchment of all employees, the proposed transaction saves jobs.
15. A copy of the conditions is attached as Annexure A.
16. The proposed transaction does not raise any other public interest concerns.
17. 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. A copy of the conditions is attached as Annexure A.

ANNEXURE A**NOORDFED EIENDOMS BEPERK
AND
EMPANGENI MILLING PROPRIETARY LIMITED****CC CASE NUMBER: 2014OCT0605**

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 Noordfed Eiendoms Beperk;
- 1.2 **"Affected Employees"** means the employees identified by the merging parties as employees who may be retrenched if the merger is ultimately implemented in accordance with its terms, including: relevant positions within Noordfed categorised as or similar to Paterson Grade D; and relevant positions within Empangeni Milling categorised as or similar to the A to B range of the Paterson Grades;
- 1.3 **"Approval Date"** means the date referred to in the Competition Commission's clearance certificate (Form CC15);
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Conditions"** means these conditions;
- 1.6 **"Conversion Date"** means the date on which Empangeni Milling shall cease its production of white maize mill products at its mill in Empangeni;

- 1.7 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.8 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.9 **"Merger"** means the Acquiring Firm's acquisition of control over Empangeni Milling;
- 1.10 **"Merged Entity"** means the combined businesses of Noordfed and Empangeni Milling upon the approval and/or implementation of the Merger;
- 1.11 **"Merging Parties"** means Noordfed and Empangeni Milling;
- 1.12 **"Paterson Grades"** mean employee grades that comprise of grades A through to F based on an analytical method of job evaluation, used predominantly in South Africa; and
- 1.13 **"Target Firm"** means Empangeni Milling Proprietary Limited.

2. Recordal

- 2.1 The Commission finds that the proposed transaction is unlikely to raise significant competition concerns as the post-merger market shares in the production and distribution of milled white maize products is minimal. Further, there are other players in the market that compete with the merging parties which will be in a position to constrain any potential anti-competitive behaviour by the merging parties.
- 2.2 However, the proposed transaction is likely to have a negative impact on employment.
- 2.3 The Commission finds that the counterfactual to the possible employment losses is the greater employment loss likely to result if the merger does not go through, due to the trouble financial state the target and the acquiring firm. In order to limit job losses likely

to result from the proposed transaction, the Commission approves the proposed transaction subject to conditions discussed in 3 below.

- 2.4 The Merging Parties have submitted that Noordfed employees likely to be affected are employees in middle management positions, equivalent to Grade D of the Paterson Grades, and that Empangeni Milling's employees likely to be affected are employees in operational levels, equivalent to Grade A to Grade B of the Paterson Grades.
- 2.5 The Merging Parties have indicated that the likely retrenchment of the affected employees within Empangeni Milling is an indication of the "worst case scenario".
- 2.6 In order to limit the number of potential retrenchments, the Commission imposes these Conditions on the Merged Entity.

3. Conditions to the approval of the Merger

- 3.1. With the exception of the Affected Employees, the Merging Parties shall not retrench any employees as a result of this merger.
- 3.2. The merged entity undertakes not to retrench any of the Affected Employees until such time that it can prove to the satisfaction of the Commission that the Conversion Date has been achieved.
- 3.3. Once the merged entity has complied with clause 3.2. above, in respect of all potential retrenchments that may be effected at Empangeni Milling, the merged entity shall ensure compliance with the following procedures:
 - 3.3.1. The performance of a detailed skills audit to determine whether any of these employees can possibly be accommodated elsewhere within the merged company group ("the structures");

- 3.3.2. If these employees can be redeployed to available positions within the structures and accept redeployment and such redeployment involves relocation, the merged entity will ensure that:
- 3.3.3. The moving cost of the redeployed employee's household (based on the best of 3 quotes) is paid by the employer; and
- 3.3.4. The redeployed employee is paid one month's salary by the employer as a relocation allowance, in addition to his/ her normal monthly salary, in the relocation month.
- 3.4. In respect of all potential retrenchments that may be effected at Empangeni Milling, the merged entity shall ensure compliance with the following procedures to assist the affected employees:
- 3.4.1. Empangeni Milling approaches the recruitment agencies in the Empangeni and surrounding areas to investigate possible job opportunities for these retrenched employees;
- 3.4.2. Empangeni Milling assists these retrenched employees in preparing a detailed CV; and
- 3.4.3. Empangeni Milling assists these retrenched employees in submitting their CV's to companies in the Empangeni and surrounding areas with whom the Merging Parties have a business relationship.
- 3.5. For the sake of clarity in these Conditions, retrenchments do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; (iii) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (iv) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act.

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 business days of the Approval Date.
- 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 of the Merged Entity attesting to the circulation of the Conditions and attach a copy of the notice sent. The affidavit must comply with the South African legal standards.
- 4.3. The Merged Entity shall advise the Commission of the Implementation Date within 5 days of it becoming effective.
- 4.4. The Merged Entity shall advise the Commission of the Conversion Date, being the cessation by Empangeni Milling of its production of white maize mill products at its mill in Empangeni within 5 days thereof by way of an affidavit. The affidavit must comply with the South African legal standards.
- 4.5. The Merged Entity shall submit a report on an annual basis detailing the number of retrenchments that have occurred, the category of employees affected, the redeployment opportunities offered, those accepted and those that did not accept the offers, and compliance with all the procedures as set out in clause 3 above. The report shall be accompanied by an affidavit confirming the accuracy of the information contained in the report. The affidavit must comply with the South African legal standards.
- 4.6. The first report shall be submitted within a year of the Conversion Date and the final report a year thereafter.
- 4.7. 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.

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

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

5. Duration of the Condition

5.1. The Conditions shall remain in effect from the Approval Date until 2 years after the Conversion Date.

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.