

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 2261

8 July 2022

## COMPETITION COMMISSION

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AFRICAN PIONEER FOODS (PTY) LTD

AND

SUN ORANGE FARMS (PTY) LTD

CASE NUMBER: 2021JUL0022

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 12 July 2021, the Competition Commission (the Commission) received a notification of an intermediate merger wherein a black-owned investment management firm, African Pioneer Foods (Pty) Ltd (AP Foods) intends to acquire shares in Sun Orange Farms (Pty) Ltd (Sun Orange Farms) from the Sun Orange Workers Trust (Trust), a farmworkers' trust. Post-merger, the Trust and the Industrial Development Corporation Limited (IDC) will each hold a [CONFIDENTIAL] shareholding in Sun Orange Farms. African Pioneer Group (Pty) Ltd (APG) (the holding company of AP Foods) will become a majority shareholder in Sun Orange Farms.
2. The primary acquiring firm is AP Foods, a company incorporated in South Africa. AP Foods is a wholly owned subsidiary of APG. Dondolo Family Enterprises (Pty) Ltd (DFE) owns shares in APG. Apart from AP Foods, APG wholly controls the following entities: African Pioneer Marine (Pty) Ltd (APM), African Pioneer Energy (Pty) Ltd (AP Energy), and African Pioneer Gaming (Pty) Ltd (AP Gaming).
3. APG and AP Foods directly and indirectly hold shares in various entities. Of relevance to the proposed transaction is AP Foods' shareholding in EC Citrus Investments (Pty) Ltd (EC Citrus), which in turn holds shares in Thudana Holdings (Pty) Ltd (Thudana Holdings).

Thudana Citrus BEE Trust, a trust established for the benefit of workers in the entire Thudana Group, holds the balance of the shares in Thudana Holdings.

4. AP Foods is a food and beverage investment holding company and is wholly owned by APG, which is a black-owned investment holding company. APG's business operations consist of investments in a diverse range of markets, including fishing (held by APM), gaming (held by AP Gaming), energy (held by AP Energy), and the food and beverage industry (held by AP Foods). AP Foods is currently only indirectly involved in the agricultural market with investments in the dairy industry and the citrus industry through EC Citrus, which indirectly owns shares in Sun Orange Farms. EC Citrus is jointly controlled by AP Foods and San Miguel Fruits South Africa (Pty) Ltd (San Miguel). San Miguel provides sales and marketing support to EC Citrus and manages sales of citrus locally and globally. EC Citrus sells all its citrus production to San Miguel who distributes citrus fruit products, the majority of which is sold in the export market.
5. The primary target firm is Sun Orange Farms, a private company incorporated in South Africa. Sun Orange Farms is controlled by the following shareholders: IDC, Sontule Investment, Sun Orange Farm Investment and the Trust. Post-merger, APG will be the majority shareholder of Sun Orange Farms while the Trust and the IDC will each hold shares in Sun Orange Farms.
6. Sun Orange Farms operates a citrus fruit farming business in Sunland, Eastern Cape province. It grows and supplies various species of citrus fruit in both local and international markets. It relies on the relationship with San Miguel to market and sell its fruit.

### **Competition Assessment**

7. The Commission considered the activities of the merging parties and found that the proposed merger does not result in a horizontal overlap given that no firm within the APG Group has controlling interests in any firm that provides services and/or products that can be deemed interchangeable or substitutable with those of Sun Orange Farms. Further, it bears mention that pre-merger, AP Foods (through its subsidiaries, Sun Orange Farms Investment and Sontule Investments) already has an indirect shareholding in Sun Orange Farms. Therefore, the Commission found that the merger is unlikely to change the structure of any market as there is no accretion in market share as a result of the merger. In light of the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.

### **Public interest considerations**

***Employment***

8. The merging parties have provided an unequivocal statement that there will be no retrenchments as a result of the merger. Further, the Commission did not find any evidence to suggest that the merging parties intend retrenching employees as a result of the merger. As such, the Commission concludes that the proposed merger is unlikely to raise any employment concerns.

***Promotion of a greater spread of ownership in the market***

9. The Commission found that the proposed transaction will result in a significant reduction of shareholding by workers in the merged entity, post-merger. This will lead to a negative effect in terms of the public interest provision aimed at the promotion of a greater spread of ownership, in particular increasing the levels of ownership by historically disadvantaged persons (HDPs) *and workers* in firms in the market. Further, there were concerns received by the Commission from the Minister of Trade, Industry and Competition (the “Minister”) and the Department of Agriculture, Land Reform and Rural Development (DALRRD) in this regard. Although the DTIC’s concerns have since partly been assuaged by the fact that an employee share ownership program (“ESOP”) (i.e., Thudana Citrus BEE Trust) linked to the acquiring firm will be established post-merger, the DALRRD and the DTIC remain concerned about whether the purchase price is for the benefit of the farmworkers, who are the beneficiaries of the Trust.
10. Considering the negative effect of the merger on ownership by workers, the Commission engaged the merging parties to establish if there are any positive public interest outcomes that are likely to arise from the proposed merger.
11. APG has agreed to set up (i) a bursary fund and (ii) a community enterprise development fund post-merger. APG has also agreed to appoint an independent financial adviser/consultant to provide independent financial advice to the farmworkers (who are beneficiaries of the Trust) regarding investment and saving opportunities that may be available to them after the conclusion of the transaction. Moreover, the Acquiring Firm has committed to change the current Trust Deed and replace it with an ESOP post-merger. It appears from the merging parties’ submissions that there are benefits that will accrue from this change. In addition, APG will offer corporate governance training to the new trustee directors of the ESOP, by allowing them to spend time with senior executives, attending all group board committee meetings, attending training on how to interpret financial documents etc. These training courses and programmes will enable the workers’ trustees

to improve their skills in general, especially should they wish to start their own businesses in the future.

12. The Commission therefore approves the proposed transaction subject to the conditions set out in **Annexure A** hereto, which the merging parties have agreed to.

13. In addition, there are no other public interest concerns likely to arise from the proposed transaction.

**ANNEXURE A****AFRICAN PIONEER FOOD (PTY) LTD****AND****SUN ORANGE FARMS (PTY) LTD****CASE NUMBER: 2021JUL0022**

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**CONDITIONS**

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**1. DEFINITIONS AND INTERPRETATION**

1.1 In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —

1.1.1 **“AP Foods”** means African Pioneer Foods (Pty) Ltd;

1.1.2 **“APG”** means African Pioneer Group (Pty) Ltd;

1.1.3 **“APG Conversion Period”** means a period of 12 (twelve) months from the Implementation Date in terms of which APG is required to undertake the conversion process;

1.1.4 **“Approval Date”** means the date referred to on the Commission’s merger Clearance Certificate;

1.1.5 **“Beneficiaries”** means the farmworkers who collectively own **[confidential]** %shares in Sun Orange Farms, this being the shares that AP Foods seek to acquire through the proposed transaction;

1.1.6 **“Black-owned Business”** means a business directly or indirectly controlled by Black Persons;

1.1.7 **“Bursary Fund”** means funding made available by either of the Merging Parties or the Merged Entity to the children or dependents of the Beneficiaries of the Trust or nominated needy children in the local

community where the farm/s of Sun Orange Farms is/are located, to the value of R 4000 000.00 (four million rand) over a 5 (five) year period following the Implementation Date;

- 1.1.8        **“Close Family member”** means the spouse, children, brother, sister, mother, father, sister’s children and brother’s children of the Beneficiaries of the Trust that may be dependent on him or her;
- 1.1.9        **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.10       **“Commission Rules”** mean the Rules for the Conduct of Proceedings in the Commission;
- 1.1.11       **“Community based enterprise development program”** means a development programme offered by either the Merging Parties or the Merged Entity to the local community of the Eastern Cape province, and which is intended to help local businesses with training and start-up funding as well as affording them the maximum opportunity to participate in providing products and services to the Merged Entity, to the value of R400 000.00 (four million rand) over a 5 (five) year period following the Implementation Date;
- 1.1.12       **“Competition Act”** means the Competition Act, 89 of 1998, as amended;
- 1.1.13       **“Conditions”** means these conditions contained in this Annexure A, agreed to by the Merged Entity and the Commission;
- 1.1.14       **“Conversion”** means the process whereby APG shall at its own cost convert the Beneficiaries’ post-merger shareholding in Sun Orange Farms into an ESOP for an effective direct shareholding into Sun Orange Farms, pursuant to paragraph 3.10 of the Conditions and in accordance with the design principles set out in Annexure A2 hereto. This may also include the conversion process undertaken by the Trustee;
- 1.1.15       **“Corporate governance training”** means a corporate governance-related training offered by either the Merging Parties or the Merged Entity to the new trustee directors of Sun Orange Farms;

- 1.1.16        **“Days”** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.17        **“DTIC”** means the Department of Trade, Industry and Competition of South Africa;
- 1.1.18        **“ESOP”** means the ESOP contemplated in paragraph 3.10 of the Conditions;
- 1.1.19        **“Financial advisory services”** means training offered to Beneficiaries of the Sun Orange Workers Trust by an independent financial advisor/consultant appointed by either the Merging Parties or the Merged Entity in order to assist with the investment and saving opportunities available;
- 1.1.20        **“HDPs”** mean historically disadvantaged person, as defined in section 3(2) (a) to (e) of the Competition Act;
- 1.1.21        **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.22        **“Merged Entity”** means the combined firm resulting from the Merger between AP Foods and Sun Orange Farms;
- 1.1.23        **“Merger”** means the acquisition of 50% shares of Sun Orange Farms by AP Foods;
- 1.1.24        **“Merging Parties”** means AP Foods and Sun Orange Farms;
- 1.1.25        **“SMMes”** means Small Medium and Micro Enterprises;
- 1.1.26        **“South Africa”** means the Republic of South Africa;
- 1.1.27        **“Sun Orange Farms”** mean Sun Orange Farms (Pty) Ltd;
- 1.1.28        **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.1.29        **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal;
- 1.1.30        **“Trust”** means the Sun Orange Workers Trust;

- 1.1.31 “**Trustee**” means one or more natural or legal person(s), independent of the Merging Parties, who is/are appointed by APG in accordance with the provisions of these Conditions;
- 1.1.32 “**Trustee Conversion Period**” means a period of 6 (six) months following the expiry of the APG Conversion Period;
- 1.1.33 “**Trustee’s Mandate**” means the duties of the Trustee as set out in Annexure B to these conditions; and
- 1.1.34 “**Workers**” means employees as defined in the Labour Relations Act, and in the context of ownership, refers to ownership of a broad base of workers.

## 2. CONDITIONS TO THE APPROVAL OF THE MERGER

### EDUCATIONAL FUNDING AND SKILLS DEVELOPMENT

- 2.1 Within 2 (two) months of the Implementation Date, APG shall set up a Bursary Fund, the purpose of which is to assist with the provision of funding for education for the children or dependents of the Beneficiaries of the Trust or nominated needy children in the local community in which the farm/s of Sun Orange Farms is located.
- 2.2 APG shall ensure that the Bursary Fund makes available an annual contribution of R 800 000.00 (eight hundred thousand rand) each year for a 5 (five) year period from the Implementation Date towards the objectives set out in paragraph 2.1 above.
- 2.3 APG shall ensure that the Bursary Fund is managed in accordance with the principles and conditions set out in Annexure A1 of these Conditions.
- 2.4 Within 1 (one) month of the Implementation Date, APG shall appoint at its own expense an independent financial consultant/advisor for the purpose of offering financial advisory services to the Beneficiaries of the Trust.
- 2.5 Within 2 (two) months of the Implementation Date, APG shall ensure that the appointed independent financial consultant/advisor provides financial advisory services to the Beneficiaries of the Trust.
- 2.6 For a period of 5 (five) years from the Implementation Date, APG shall ensure that it offers corporate governance training to the new trustee directors of the Trust.



This training shall include amongst others ensuring that the trustee directors of Trust spend time with senior executives (including auditors and legal counsel), attend all group board committee meetings, and attend training on how to interpret financial statements.

#### **COMMUNITY-BASED ENTERPRISE DEVELOPMENT PROGRAMME**

- 2.7 Within 3 (three) months of the Implementation Date, the Merged Entity shall develop a Community-based Enterprise Development Program in order to help and offer training and start-up funding to local SMMEs and Black-Owned Businesses. This program shall be aimed at developing and providing support to SMMEs and Black-Owned Businesses and other initiatives aimed at supporting and developing particularly small-scale businesses of historically disadvantaged persons in the local community of the Eastern Cape province.
- 2.8 APG shall set R 4 000 000.00 (four million rand) for purposes of the Community-based Enterprise Development Program.
- 2.9 In order to achieve the objectives, set out in clauses 2.7 and 2.8, APG shall ensure that R 800 000.00 (eight hundred thousand rand) is spent for its intended purpose each year for a period of 5 (five) years following the Implementation Date. The administration and management of this program shall vest with APG. APG shall design and implement projects and identify beneficiaries in line with the objectives of this program and consistent with the principles of this Condition.

#### **EMPLOYEE SHARE OWNERSHIP PROGRAM**

- 2.10 Within 12 (twelve) months of the Implementation Date, APG shall at its own cost convert the Beneficiaries' post-merger shareholding in Sun Orange Farms into an ESOP for an effective direct shareholding into Sun Orange Farms, in accordance

with the design principles set out in Annexure A2 hereto. It is specifically noted the Beneficiaries of the Trust must approve in favour of same.

- 2.11 Within 20 days of the Approval Date, APG must appoint an independent advisor who will represent the Trust and Trustees to protect their interest in the conversion process. The advisor must be independent of APG and agreed to by the trustees.
- 2.12 If APG fails to conclude and implement the Conversion within the APG Conversion period, APG shall appoint a Trustee at its own cost to oversee the conversion process.
- 2.13 The Trustee will have an exclusive mandate and power of attorney to conclude the Conversion within the Trustee Conversion Period.
- 2.14 The salient provisions of the Trustee's Mandate are annexed hereto as Annexure B.
- 2.15 In the event that the Trustee is unable to conclude the Conversion within the Trustee Conversion Period, the Trustee will apply to the Commission, in writing and on good cause shown, for consent to extend the Trustee Conversion Period by a further 6 (six) months after completion of the Trustee Conversion Period, which consent may not unreasonably be withheld.

### **3. APPOINTMENT AND ROLE OF THE TRUSTEE**

- 3.1 APG shall propose in writing a nominee to be appointed as Trustee, for the Commission to consider, within fifteen (15) Days from the expiry the APG Conversion Period.
- 3.2 The Trustee shall possess the necessary qualifications to carry out its mandate, for example by an auditor, consultant or investment banker, and shall, at the date of appointment, not be exposed to a conflict of interest.
- 3.3 The proposal shall contain such information as is necessary for the Commission to determine whether the proposed Trustee is suitable to execute the Trustee's

Mandate and shall include, inter alia, the proposed Trustees' contact details and curriculum vitae.

- 3.4 Should the Commission reject the proposed Trustee, the Commission must provide detailed written reasons explaining the rejection of the proposed Trustee.
- 3.5 APG shall appoint the Trustee within 15 (fifteen) Days of the Commission's approval of the proposed Trustee, *inter alia*, on the terms contained in the Trustee's Mandate.
- 3.6 If the proposed Trustee is rejected, APG shall submit the names of at least two (2) more proposed Trustees within ten (10) Days of obtaining the detailed reasons explaining the rejection.
- 3.7 If the Commission, acting reasonably and on good cause shown, rejects all further proposed Trustees, the Commission shall nominate a Trustee, whom APG shall appoint within ten (10) Days of being informed by the Commission.
- 3.8 APG shall pay the reasonable fees and expenses of the Trustee on the terms and conditions agreed upon in writing between APG and the Trustee.
- 3.9 APG shall provide the Trustee with a comprehensive and duly executed power of attorney within 5 (five) Days of the Trustee's appointment.
- 3.10 This power of attorney shall take effect on the first day of the Trustee Conversion Period.
- 3.11 A certified copy of the power of attorney shall be submitted to the Commission within ten (10) Business Days of the Trustee's appointment.
- 3.12 The power of attorney shall enable the Trustee to perform actions which the Trustee considers strictly necessary or appropriate for purposes of the discharge of his or her mandate, including the power to appoint advisors and to execute the Trustee's Mandate.
- 3.13 The power of attorney granted to the Trustee shall expire on the earlier of the termination of the Trustee's Mandate or the discharge of the Trustee.
- 3.14 The key objective of the appointed Trustee is to ensure that he or she takes relevant steps to conclude the conversion of the Trust to an ESOP during the

Trustee Conversion Period in terms of these Conditions and the Trustee's Mandate.

- 3.15 APG shall indemnify the Trustee and hold the Trustee harmless against any liabilities arising from the performance of the Trustee's duties under the Trustee's Mandate, except to the extent that such liabilities result from the wilful default, recklessness and/or negligence of the Trustee.

#### **4. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 4.1 The Merging Parties shall inform the Commission of the Implementation Date of the Merger within 5 (five) Days of its occurrence.
- 4.2 APG shall circulate a copy of the Conditions to the Beneficiaries of the Trust within 5 (five) Days of the Approval Date.
- 4.3 As proof of compliance thereof, APG shall within 10 Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of APG attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.4 For purposes of paragraph 2.1 above, APG shall provide the Commission with the names and employee numbers of the Beneficiaries of the Trust at least 1 (one) month after the Approval Date.
- 4.5 Within 4 (four) months from the Implementation Date, APG shall provide the Commission with a written report outlining the progress made in relation to paragraph 2.1, 2.4, 2.5 and 2.7 above.
- 4.6 APG shall inform the Commission of the commencement date of the ESOP contemplated in clause 2.10 above, within 5 (five) Days of its occurrence.
- 4.7 APG shall submit a detailed written report to the Commission and the DTIC within 15 (fifteen) Days after the anniversary of the Implementation Date and for a period of 5 (five) years, setting out its compliance with the Conditions. This report shall be

accompanied by an affidavit, attested to by a director and/or Chief Executive Officer of the Merged Entity in South Africa confirming the accuracy of the report.

4.8 Any of the Beneficiaries or any person/s who believe that the Merged Entity has not complied with or have acted in breach of the Conditions may approach the Commission with a complaint.

4.9 The Commission may request such additional information from the Merging Parties which the Commission from time to time regards as necessary for the monitoring 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 OF THE CONDITION**

6.1 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.

## **7. GENERAL**

7.1 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 Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

**ANNEXURE A1**

1. The Chief Financial Officer or any appointed Finance or Human Resources Manager in the employment of APG (Fund Manager) shall be appointed to control and manage all financial and accounting aspects of the Bursary Fund.
2. Any beneficiary of the Trust wishing to make use of the designated fund allocated for the Bursary Fund shall apply to the Fund Manager for the duration of the Fund. The application shall be fully motivated and shall include details (on accredited document of the training facility in question) of the cost of the training programme, the material covered in the course and the certification or other accreditation conferred on participants upon successful completion of the training programme. APG will, upon request from any beneficiary of the Trust, assist or arrange for the assistance of any prospective applicant with the application process to respective institution where the training programme is offered.
3. Should an application for the bursary be successful, APG shall make payment of the fees in question directly to the training institution in question.
4. APG shall not unreasonably refuse to disburse funds to any Close Family Member of the Beneficiaries of the Trust who wishes to undertake any skills training or programme.
5. APG shall continue to offer funding to the Close Family Members of the Beneficiaries of the Trust for a period of 5 (five) years from the Implementation Date.
6. In the event that any of the Close Family Member of the Beneficiary of the Trust does not opt for training or bursary, the Beneficiary of the Trust can request that the fund allocated be utilized by a needy child/ren in the local community for the purposes of paying school fees and/or any other expense related to the education of a needy child/ren in the local community.
7. Any portion of the amount allocated to the Bursary Fund that remains unclaimed by the Beneficiaries of the Trust will be retained by APG.

8. For the sake of clarity, any contribution that APG will make to the Bursary Fund and the Community-based enterprise development program shall be separate from any other contribution associated with the provision of independent financial advisory services and any corporate governance training offered to the Beneficiaries of the Trust.

**ANNEXURE A2****KEY DESIGN PRINCIPLES OF THE PROPOSED EMPLOYEE SHARE OWNERSHIP PROGRAMME  
FOR THE BENEFIT OF THE BENEFICIARIES**

| <b>Design Principle</b>       | <b>Applicable Criteria</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Structure</b>              | <ul style="list-style-type: none"> <li>➤ Within 12 (twelve) months of the Implementation Date, APG to convert the Trust to an ESOP for an effective direct shareholding into the Merged Entity.</li> <li>➤ Unitised employee share ownership trust to be registered.</li> </ul>                                                                                                                                                                                                                                                                                  |
| <b>Cost to Workers</b>        | <ul style="list-style-type: none"> <li>➤ Workers are not required to pay to participate in the ESOP.</li> <li>➤ No cost to Workers/Beneficiaries of converting the stake into an ESOP.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                |
| <b>Governance</b>             | <ul style="list-style-type: none"> <li>➤ APG to appoint at its own cost an advisor or legal representative to represent the interests of the Trust in the conversion of the Trust to an ESOP.</li> <li>➤ In the event that APG fails to conclude the conversion process within 12 (twelve) months of the Implementation Date, APG shall appoint a Trustee at its own cost for purposes of overseeing the finalisation of the conversion process.</li> </ul>                                                                                                      |
| <b>Duration</b>               | <ul style="list-style-type: none"> <li>➤ Perpetual/evergreen to cater for changing workforce.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Participation</b>          | <ul style="list-style-type: none"> <li>➤ All current and future Workers.</li> <li>➤ Eligibility criteria: All permanent employees employed for at least certain months.</li> <li>➤ Maternity leave will have no adverse impact on qualifying criteria.</li> </ul>                                                                                                                                                                                                                                                                                                |
| <b>Participation Benefits</b> | <ul style="list-style-type: none"> <li>➤ All Beneficiaries will be entitled to: (a) dividends from day 1 (if declared and paid) and (b) capital growth/upside (upon sale of Sun Orange Farms), based on their participation rights calculated with reference to units allocated to beneficiaries.</li> <li>➤ All Beneficiaries will benefit equally from an ESOP.</li> <li>➤ Beneficiaries will cease to participate for bad leaver events: resignations and dismissals.</li> <li>➤ Death, retirement and retrenchment will not affect participation.</li> </ul> |
| <b>Value and Funding</b>      | <ul style="list-style-type: none"> <li>➤ Value of the Beneficiaries' post-merger shareholding in the Merged Entity will be determined with reference to issued shares and valuation as at the closing of the transaction.</li> <li>➤ No vendor financing involved as AP Foods is required to convert into an ESOP the existing shares held by the Trust in Sun Orange Farms.</li> </ul>                                                                                                                                                                          |



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**ANNEXURE B**

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**TRUSTEE MANDATE**

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**1. DUTIES OF THE TRUSTEE**

- 1.1. The key objective of the appointed Trustee is to ensure that he/she takes relevant steps to conclude and implement the Conversion in the interests of the Trust and in accordance with the principles set out in Annexure A2 hereto during the Trustee Conversion Period, should APG fail to do so during the APG Conversion Period.
- 1.2. The Trustee's duties set out above may not be extended or varied in any way by APG or Sun Orange Farms or any other party, save with the express written consent of the Commission.

**2. REPORTING OBLIGATIONS OF THE TRUSTEE**

- 2.1. The Trustee shall for the duration of the Trustee Conversion Period or from the commencement of the Trustee Conversion Period until termination of his/her mandate, furnish the Commission with a quarterly written report (i.e., every 3 (three) months from the Trustee's date of appointment) concerning his/her efforts to conclude the Conversion taking into account the principles set out in Annexure A2 hereto, and the progress made in concluding the Conversion within the Trustee Conversion Period.
- 2.2. The Trustee shall present the draft report to APG in advance of its submission of the report to the Commission so that APG may review the factual content of the report and provide its comments.
- 2.3. Any unresolved disagreement between the Trustee and APG concerning the content of the draft report must be noted in the final report.

**3. ASSISTANCE BY THE ACQUIRING FIRM TO THE TRUSTEE**

- 3.1. APG shall provide to the Trustee, or cause to be provided, all such reasonable assistance and information as may be required by the Trustee to enable him or her to carry out this mandate, by providing copies of all relevant documents and access to appropriate personnel.

- 3.2. APG shall cover all of its own expenses arising from the provision of such assistance.
- 3.3. APG shall provide the Commission, on receipt of a written request by the Commission, with an affidavit deposed to by a senior official of APG confirming the accuracy of the information provided to the Trustee.

#### **4. CONVERSION PERIOD**

- 4.1. For purposes of this Trustee's Mandate, the APG Conversion Period and the Trustee Conversion Period shall be the applicable time period specified in **Annexure A**.
- 4.2. In the event that APG has not concluded the Conversion within the APG Conversion Period in accordance with **Annexure A**, then the Trustee shall execute his/her mandate in accordance with the power of attorney referred to in **Annexure A**.

#### **5. CONFIDENTIALITY**

- 5.1. The Trustee's report and any other document generated by the Trustee in relation to his/her mandate will be confidential and for the sole use of the Trustee, the Commission and the Merging Parties.

#### **6. ESTIMATED FEES AND EXPENSES**

- 6.1. APG shall pay the Trustee's reasonable fees and expenses. The Trustee and APG may, prior to or immediately following approval of the Trustee by the Commission, negotiate a reasonable rate of fees and expenses for the Trustee.

#### **7. REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF TRUSTEE**

- 7.1. The Commission may at any time, after consultation with the Trustee, order APG to remove the Trustee, if the Trustee has not acted in accordance with the Trustee's Mandate.
- 7.2. The new Trustee shall be appointed in accordance with the procedure referred to in **Annexure A**.

#### **8. TERMINATION OF THE MANDATE**

- 8.1. The Trustee's Mandate will automatically terminate upon completion by the Trustee of his or her obligations under this mandate subject to written confirmation from the Commission.