DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2524 **23 September 2022**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

OBARO HANDEL (PTY) LTD & NEWCO 123 INVESTMENTS (PTY) LTD
AND
K2021701599 S.A (PTY) LTD & AFRIFERT (PTY) LTD

CASE NUMBER: 2021OCT0012

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 06 October 2021, the Competition Commission ("Commission") received notice of an intermediate merger wherein NewCo 123 Investments (Pty) Ltd ("NewCo 123 Investments") intends to acquire the assets relating to the fertiliser business of Afrifert (Pty) Ltd ("Afrifert"). Post-merger, the fertiliser business of Afrifert will be wholly owned and controlled by NewCo 123 Investments. NewCo 123 Investments is a newly incorporated entity, that will be ultimately jointly owned and controlled by Obaro Handel (Pty) Ltd ("Obaro Handel") and Koedoeskop Kunsmis (Vloeibaar) (Pty) Ltd ("KK"), each holding 50%.

Preceding internal restructuring

2. The proposed transaction is preceded by various internal steps. The Commission has concluded that these steps are indivisible as they take place immediately after each other and in the event that one of the steps fail to be implemented, none of the other steps will be implemented. This means that all the steps are interrelated and entirely dependent on each other.

Merging parties and their activities

3. NewCo 123 Investments does not have any activities or assets. Upon implementation of the proposed transaction, the business of NewCo 123 Investments will be that of Afrifert in relation to its fertiliser business.

4. Obaro Handel is an agricultural retail business in South Africa; and Obaro Financial Services provides production loans to farmers across South Africa. Obaro Handel sells a range of agricultural products to the South African market, one of which is fertiliser products. Obaro Handel purchases fertiliser products from various blenders which it holds as stock in its warehouses and sells to end-users (i.e., farmers and the general public). Obaro Handel has outlet stores in Gauteng, North-West, Limpopo, Mpumalanga and Northern Cape. In addition, Obaro Financial Services provides production loans to farmers to enable them to purchase various agricultural inputs.

5. KK is a blender and distributor of fertiliser products (mainly liquid fertiliser). KK sells its fertiliser to wholesale clients, retail clients as well as commercial clients, who are end-users of the product. KK has one plant located in Koedoeskop (between Brits and Thabazimbi), where it blends and distributes its fertiliser products.

6. The primary target firm is Afrifert, a firm incorporated in accordance with the laws of the Republic of South Africa. Afrifert is not controlled by any single shareholder. Afrifert has two divisions, a cotton ginning plant and, of relevance to the current transaction, it is a blender and distributor of fertiliser products (mainly dry fertiliser). Afrifert has one plant at which it blends fertiliser in Limpopo, Marblehall, from which it distributes its fertiliser products.

Competition assessment

7. The activities of KK and Afrifert result in a horizontal overlap in the market for the blending and supply of liquid and granular fertiliser. The proposed transaction also presents vertical aspects in that Obaro Handel operates as a retailer for various agricultural products including fertiliser, while Obaro Financial Services is a financial services provider, offering loans to fertiliser blenders such as KK and to farmers to fund the procurement of agricultural inputs.

8. In its assessment, the Commission found that there is limited substitutability between liquid and granular fertiliser. This is because there are material differences in the blending processes that require unique machinery for the wet versus dry blending. On the demand side, farmers use different machinery to dispense either formulation in the field. Farmers also use granular fertiliser and liquid fertiliser for different purposes and at different stages of the growing season. In certain instances, farmers may be able to use granular and liquid fertiliser interchangeably, but this is dependent on the farmer's application methods, equipment, and practices.

9. The Commission did not definitively conclude on the relevant geographic market but assessed the competition effects of the proposed transaction both nationally in relation to granular fertiliser and in the Limpopo province (where the merging parties' activities are concentrated) in relation to liquid fertiliser. The Commission found that there are unique factors that play a role in the logistics of transporting liquid fertiliser which imply that the market for the supply of liquid fertiliser is localised or regional at most. Competitors of the merging parties have indicated that because of its low concentration levels, liquid fertiliser is not usually transported for long distances (beyond 200km). This was corroborated by farmers who indicated that transporting liquid fertiliser beyond 50km is costly.

10. For purposes of the proposed transaction, the Commission assessed the competition effects of the proposed transaction in the following markets:
    10.1. The national market for the supply of granular NPK blended fertiliser; and
    10.2. The market for the supply of liquid NPK blended fertiliser in Limpopo.

11. The Commission understands that Obaro Handel has a retail/wholesale store format where it stocks various agricultural inputs required by farmers in their businesses. In this regard, Obaro Handel purchases fertiliser and other agricultural inputs from blenders such as KK, Yara and Kynoch amongst others and resells to farmers. Obaro Handel therefore makes its profit from the fertiliser sales it makes to farmers. However, the merging parties have indicated that Obaro Handel almost exclusively facilitates sales financed by Obaro Financial Services, rather than on-sells, liquid fertiliser. There is therefore no overlap between the activities of Obaro Handel and those of KK and Afrifert in respect of the retail market. However, Afrifert supplies

its fertiliser through various channels including retailers such as Obaro Handel. Accordingly, a vertical overlap arises between Afritert and KK regarding the supply of fertiliser to retailers/wholesalers in the downstream.

Market share assessment

12. Due to the unavailability of credible data/information on the size of the fertiliser market, the Commission was not able to calculate market shares. The Commission has faced similar challenges in a number of other mergers in these markets. However, the Commission consulted market participants to understand how competitors see the merging parties and to ascertain their position in the market.

13. The merging parties' competitors indicated that the merging parties are not significant players in the market. One competitor estimated that KK holds less than 10% market share nationally and regionally, in respect of liquid fertiliser. Competitors outlined the top 5 players in the northern region which generally includes Limpopo, Mpumalanga, North-West and Gauteng to be (i) Omnia; (ii) Sonskyn, (iii) Yara, (iv) Highfert; and (iv) VS Kunsmis. KK was estimated to follow VS Kunsmis at number 6. Omnia continues to be the market leader as found in previous investigations.

14. Notwithstanding the unavailability of market share data, the Commission is of the view that it has sufficient information on market dynamics and the workings of the fertiliser market to form a view on the possible effects of the proposed transaction on competition. In this regard, the Commission considered closeness of competition, barriers to entry and countervailing power, as well as a vertical assessment looking at the relationship between Obaro Financial Services and KK as well as Afrifert and downstream retailers of fertiliser

Is the proposed transaction likely to result in unilateral effects?

15. While the merging parties did not advance the argument that Afrifert and KK are not close competitors, the Commission's investigation showed the merging parties are not likely to be close competitors in the supply of blended fertilizer.

16. Geographically, the two businesses are also not likely to be close competitors. Although both Afrifert and KK's facilities are in Limpopo, they are 206 km apart. From the Commission's engagements with farmers, it is apparent that even a distance of 50km is considered costly by farmers in terms of the transport costs associated with liquid fertiliser. Furthermore, some competitors indicated that liquid fertiliser should not be transported beyond 150km. As such, there is likely to be limited overlap in the farmers served by KK and Afrifert for the provision of liquid fertiliser, except perhaps for the customers located in the 94 km wide overlapping area between KK and Afrifert.

Barriers to entry and expansion

17. The Commission is of the view that barriers to entry for the supply of granular blended fertiliser are surmountable but are likely to be higher for the supply of liquid blended fertiliser. The main barriers to entry identified by market participants are (i) licensing and regulatory compliance and (ii) access to capital.

17.1. *Licensing and regulatory compliance:* the Commission understands that fertiliser products need to be registered with the relevant regulatory authority and that blending facilities must be registered with the Department of Agriculture, Land Reform and Rural Development ("DALRRD"). Competitors submit that product registration can take up to 24 months to be approved. This suggests that new entry is unlikely to be timely.

17.2. *Capital:* The Commission understands that the capital outlay required to start supplying fertiliser is dependent on the type and size of the operation envisioned. The merging parties submit that absent license application fees, the capital expenditure required by a new entrant is estimated to range between R15 million and R50 million depending on the nature of the fertiliser. Other competitors indicate that a determining factor for the capital outlay required is the volumes that the business intends to supply and the degree of product specialisation. They estimate that a business would need R 100 million to start operating with an additional R 150 million to R 200 million required for working capital

and holding stock. For a large-scale operation, one competitor submitted that the capital requirements to establish a business of its size would be in excess of R 1 billion.

18. In 2017, the Commission published its impact assessment on the interventions by competition authorities in the nitrogenous fertiliser industry in 2009 and 2010. The assessment found that approximately 50 to 60 new fertiliser blenders had entered the market nationally between 2010 and 2015. However, in the last 3 (three) years, entry appears to have slowed down with there being only 2 (two) new entrants to the market: Winfert and Henlie.

Countervailing power

19. Beyond the competitive constraints exerted by actual competitors and potential entrants to the market, competitive pressure can also be exerted on the merged entity by customers.

20. The Commission consulted farmers as well as the competitors of the merging parties and found that farmers are able to shop around for fertiliser in order to find a supplier that can provide fertiliser at the right price. There is some evidence to suggest that customers can moderate their fertiliser needs by planting a different crop. Farmers are able to negotiate better prices for fertiliser by purchasing collectively through cooperatives, which are an important source of fertiliser sales in South Africa.

21. As such, the Commission is of the view that customers have some degree of countervailing power in the market for blended fertiliser.

Vertical assessment

22. Obaro Handel and KK are in a vertical relationship in that Obaro Financial Services provides funding / agricultural loans to blenders such as KK as well as to customers (such as farmers) for the purchase of agricultural inputs including fertiliser. This raises a possibility of customer foreclosure concerns. Specifically, Obaro Financial Services may provide credit to farmers conditional on purchasing fertiliser from the merged entity or otherwise incentivise purchases from the merged entity through better credit terms. In addition, there is a vertical relationship between Afrifert and Obaro Handel in that Afrifert supplies its fertiliser products through various channels, including wholesalers/retailers such as Obaro Handel. This relationship

raises a possibility of input foreclosure concerns in that post-merger, Afrifert may choose to utilise Obaro Handel as its sole and exclusive retailer or supply other retailers on unfair and discriminatory terms.

Customer foreclosure

23. The Commission's investigation found that agricultural credit is an important source of sales for firms that supply agricultural inputs. However, market participants stated that there are several avenues that farmers can pursue for credit. For example, a number of competitors to the merging parties offer credit facilities that can be used to purchase fertiliser. Production loans can also be obtained from the top 4 commercial banks as well as specialised lenders such as Land Bank. Each of these sources of credit is a disciplining factor on Obaro Financial Services.

24. In light of the above, the Commission does not consider it likely that the merged entity will be able foreclose rivals. Customers will continue to have several options for credit should they insist on purchasing fertiliser from the merged entity's rivals.

25. The merging parties also submit that Obaro Financial Services has funded liquid fertiliser purchases from several competitors of KK and by extension the merged entity. Competitors of the merging parties indicated that they could serve the granular and liquid fertiliser needs of Obaro Financial Services and the merged entity's customers. Although the Commission was unable to calculate market shares, there is sufficient evidence from third parties to indicate that KK is unlikely to be a dominant firm in the supply of liquid fertiliser.

26. The Commission also found that it is unlikely that the merged entity would refuse to finance purchases from KK's competitors as farmers would just as easily have their fertiliser and financing needs met by the merged entities' rivals. Furthermore, the Commission has not discovered instances in which Obaro Financial Services has tried to get customers to purchase agricultural inputs through Obaro Handel as a condition of credit.

Views of third parties

27. The Commission received a concern from a competitor of the merger parties. The competitor indicated that it was concerned about the possibility that Obaro may influence where the farmers it currently finances through Obaro Financial services, purchase their fertiliser going forward. In this regard, Obaro may start providing funding only to those who source their fertiliser from the merged entity (KK or Afrifert) or give preferential terms and conditions to customers buying from the merged entity. The competitor proposed that the merger be approved subject to a condition that Obaro continues to offer finance/credit to all farmers on non-discriminatory terms and conditions / criteria.

Merging parties' views on the concern

28. The Commission shared the concern with the merging parties and requested them to make submissions addressing the concern. In this regard, the merging parties submit that:

28.1. Obaro Financial Services is a registered credit provider with the National Credit Regulator. It is in the normal course of its business that Obaro Financial Services provides qualifying customers with credit facilities and / or production loans. Customers qualify subject to the terms and conditions of the National Credit Act, Act 34 of 2005 (the "Act") and/or other qualifying criteria. The concern raised by the competitor is not included in any criteria used or considered by Obaro Financial Services in granting credit facilities and/or production loans to its customers.

28.2. The merging parties emphasise that Obaro Financial Services does not stipulate where any existing / potential customer should purchase fertiliser products. Obaro Financial Services does not dictate any terms to its customers in this regard and such customers are at liberty to decide where to purchase fertiliser products.

28.3. The revenue generated by Obaro Financial Services is derived from interest and not fertiliser sales.

28.4. Therefore, it is not in the interest of Obaro Financial Services to require customers to purchase from a specific fertiliser blender as a precondition to granting credit facilities and/or production loans. The merging parties emphasise that the production loans granted by Obaro Financial Services are not only used to purchase fertiliser products but also to cover other input production costs.

29. The merging parties indicated that they are amenable to the proposed merger being approved subject to a condition that Obaro Financial Services will continue to provide credit to customers of all fertiliser companies including the newly formed companies, subject to the Act and other qualifying criteria required in the normal course of providing credit.

Commission views on the concern

30. The Commission engaged with other competitors and the merging parties' customers (farmers) to ascertain the validity of the concern raised by the competitor. As elaborated in the vertical assessment above, the Commission found that the concern is unlikely to materialise as various parties have confirmed the following:

30.1. the loans / financial assistance by Obaro Financial Services and other financers is generally for various agricultural inputs and not only fertiliser, thus it would be difficult for Obaro to make such loans conditional for the benefit of its fertiliser business.

30.2. there are other entities who offer finance to farmers and therefore compete with Obaro nationally and in Limpopo. These include AFGRI and NTK Landbou.

31. Farmers at the very least have two credit lines, a cooperative such as Obaro Financial Services and a commercial bank providing some credit line such as overdraft. The commercial banks will continue to impose a competitive constraint on Obaro Financial Services post-merger. This is confirmed by farmers who indicated that they have alternative options that they can use to finance their fertiliser purchases, including commercial banks. In addition, the Commission notes that in its 2019 annual report, the Land Bank estimated the total value of agricultural debt to be R168.5 billion as of December 2018, a year-on-year increase of 6%, of which Land Bank finances approximately 27% and commercial banks another 60%. Agricultural co-operations like Obaro would fall under the remaining 13%.

32. On this basis, the Commission concluded that it is unlikely that Obaro could engage in any successful foreclosure strategy. Accordingly, the Commission is of the view that the condition as proposed by the competitor is not necessary.

Input foreclosure

33. The Commission also received a concern from a customer of the Afrifert in relation to the continued supply of fertiliser by Newco 123 Investments post-merger. In particular, the customer submits that it is currently stocking and reselling Afrifert fertiliser and that it has limited options to distribute fertiliser from other blenders as the majority of blenders in the market are vertically integrated. The customer was concerned that a decision to stop supplying it by Newco 123 Investments would have a significant negative effect on its business. The customer has requested a commitment from the merging parties that Newco 123 Investments will continue supplying them on similar and non-discriminatory terms post-merger.

Merging parties' views on the concern

34. The merging parties have indicated that they have no intention to use Obaro Handel as their exclusive retailer/distributor. The merging parties submit that they will continue working with the various wholesalers, retailers, distributors that Afrifert was working with before the merger, on condition that such dealings proceed on, and in future keep to, commercial and market related terms acceptable in the fertiliser industry, taking into consideration tonnages, pricing, rebates, and discounts. The merging parties have agreed to making this commitment a condition of the approval of the merger.

Commission views

35. Following engagement with the concerned customers as well as the merging parties' submission on the concern, the Commission found that the merger remedy proposed by the merging parties addresses the concern raised by Afrifert's customer.

Public interest

36. The merging parties have indicated that there will be no adverse effect on the public interest factors set out in the Act. In particular, no retrenchments are envisaged by the merging parties as a direct result of the proposed transaction. It is submitted that the employees of Afrifert relating to the fertiliser business will be re-employed by the primary acquiring firm after the implementation of the proposed merger.

37. In addition, the Commission notes that the proposed transaction introduces historically disadvantaged individuals ("HDIs") as shareholders in the target business, which had zero HDI shareholding pre-merger.

38. In light of the above, the Commission is of the view that the proposed transaction is unlikely to result in any negative public interest concern.

Conclusion

39. Based on the above, the Commission approves the proposed merger subject to the condition that the merged entity will continue to supply the various wholesalers, retailers, distributors that that were working with Afrifert before the merger. The proposed condition is attached hereto as **Annexure A**

ANNEXURE A

OBARO HANDEL (PTY) LTD & NEWCO 123 INVESTMENTS (PTY) LTD

AND

K2021701599 S.A (PTY) LTD & AFRIFERT (PTY) LTD

CASE NO: 2021OCT0012

DEFINITIONS

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

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

1.2 **"Acquiring Firm"** means NewCo 123 Investments (Pty) Ltd with registration number: 2021/605477/07, a firm jointly owned by KK and Obaro Handel;

1.3 "**Afrifert**" means Afrifert (Pty) Ltd with registration number: 2005/012035/07;

1.4 **"Approval Date"** means the date referred to on the Commission's merger clearance certificate (Form CC15);

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 Commission;

1.7 "**Conditions**" means these conditions contained in this Annexure A, agreed to by the Merging Parties and the Commission;

1.8 "**Days**" means business days, being any day other than a Saturday, Sunday, or official public holiday in South Africa;

1.9 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.10 "**KK**" means Kodoeskop Kunsmis (Vloeibaar) (Pty) Ltd with registration number: 2003/029953/07;

1.11 "**Merger**" means the acquisition of the Target Business' assets by the Acquiring Firm;

1.12 "**Merging Parties**" means Newco 123 Investments, KK, Obaro Handel and the Target Business;

1.13 "**Merged Entity**" means the merged business operations of the Merging Parties;

1.14 "**Obaro Handel**" means Obaro Handel (Pty) Ltd with registration number: 1998/001675/07;

1.15 **"Target Business"** means the fertiliser business of Afrifert;

1.16 **"NewCo 123 Investments"** means NewCo 123 Investments (Pty) Ltd with registration number: 2021/605477/07;

1.17 **"Tribunal"** means the Competition Tribunal of South Africa; and

1.18 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

2. **RECORDAL**

2.1 On 06 October 2021, the Merging Parties filed the Merger. Following its investigation of the Merger, the Commission found that the Merger is unlikely to result in a substantial lessening and/or prevention of competition in any market in South Africa.

2.2 The Commission also found that the Merger does not raise any public interest concerns.

2.3 The Acquiring Firm is a newly incorporated entity that is owned by KK and Obaro Handel. The Acquiring Firm will acquire the assets relating to the fertiliser business of Afrifert and conduct business as a blender and supplier of fertiliser. Obaro Handel is a retailer of

various agricultural inputs including fertiliser products. Afrifert sold its fertiliser through various channels including retailers, such as Obaro Handel; distributors and/ or agents.

2.4 During the Merger investigation, a customer of the Target Business was concerned about whether the Merged Entity would continue to supply it with fertiliser post-Merger. To address this concern, the Merging Parties have agreed to the Conditions.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

Supply condition

3.1 The Acquiring Firm will not use Obaro Handel as its sole and exclusive retailer, wholesaler and/or distributor.

3.2 The Acquiring Firm undertakes to continue its dealings with all of the Target Business' current, and possible future, retailers, wholesalers and distributors on commercially reasonable and non-discriminatory terms taking into consideration tonnages, pricing, rebates, and discounts.

3.3 The conditions endure for as long as the Acquiring Firm controls the Target Business in terms of the Act.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

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

4.2 The Acquiring Firm shall, within 10 Days of the Implementation Date, share a copy of the Conditions with all the Target Business's customers and publish the Conditions on the Acquiring Firm and Target Business (or Merged Entity) website, for a period of 1 (one) year.

4.3 The Acquiring Firm shall within 5 (five) Days of publishing the Conditions, provide the Commission with an affidavit from a director (and any other information or documents

requested by the Commission), attesting the publication of the Conditions as contemplated in clause **4.2** above.

5. **APPARENT BREACH**

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.

6. **VARIATION**

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.

7. **GENERAL**

7.1. All correspondence in relation to these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and 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

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2525 23 September 2022

File Plan Ref Number: CM Project

competitioncommission
south africa

Guidelines on the Exchange of Competitively Sensitive Information between Competitors under the Competition Act No.89 of 1998 (as amended)

Draft

12 September 2022

Persons Responsible:

Maya Swart

Kriska-Leila Goolabjith

Korkoi Ayayee

Luke Rennie

1. PREFACE

1.1. These Guidelines have been prepared in terms of section 79(1) of the Competition Act No. 89 of 1998 (as amended) ("the Act") which, *inter alia*, empowers and authorises the Competition Commission ("Commission") to prepare and issue guidelines to indicate its policy approach on any matter falling within its jurisdiction in terms of the Act. These Guidelines are not binding on the Commission, the Competition Tribunal, or the Competition Appeal Court in the exercise of their respective discretions and of their interpretation of the Act.

1.2. The Commission identified a need to provide guidance to industry associations and both public and private stakeholders on the sharing of information between competitors. From time-to-time industry associations and other stakeholders request advisory opinions from the Commission on setting up information exchange systems and it is apparent that there is some uncertainty on what constitutes permissible and impermissible information exchange within the framework of the provisions of section 4 of the Act. In the circumstances there is clearly a need for the Commission to provide guidance to relevant stakeholders on the type of information exchange that may potentially be harmful to competition and the type that may enhance efficiencies.

1.3. The Guidelines present the general approach that the Commission will follow in determining whether information exchange between firms that are competitors amounts to a contravention of section 4 of the Act. The principles set out herein are not intended to be applied mechanically, as information exchange cases are evaluated on a case-by-case basis, depending on, amongst other things, the nature of the information sought to be exchanged, the purpose for which the information is being exchanged and the market characteristics and dynamics. The Commission may from time to time amend the Guidelines where necessary.

2. DEFINITIONS

Unless the context indicates otherwise, the following terms are applicable to these Guidelines-

2.1. **"The Act"** means the Competition Act No. 89 of 1998, as amended;

2.2. **"Agreement"** when used in relation to a prohibited practice, includes a contract, arrangement or understanding, whether or not legally enforceable;

2.3. **"Aggregated information"** means information where the recognition or identification of an individual firm's information is not possible;

2.4. **"Anti-competitive"** means an action and/or conduct by a firm that has adverse effects on local/regional/national/international competition (i.e., any relevant product or geographic market);

2.5. **"Competitively sensitive information"** means information that is important to rivalry between competing firms and likely to have an appreciable impact on one or more of the parameters of competition (for example price, output, product quality, product variety or innovation). Competitively sensitive information could include prices, customer lists, production costs, quantities, turnovers, sales, capacities, qualities, marketing plans, risks, investments, technologies, research and development programmes and their results;

2.6. **"The Commission"** means the Competition Commission, a juristic person established in terms of section 19 of the Act empowered to investigate, control, and evaluate competition matters in South Africa in accordance with the Act;

2.7. **"Competitors"** mean firms that are in the same line of business[1] in a particular market. This may include firms that actually compete with one another or have the potential to enter the relevant market and compete against one another. Competitors need not be in the same geographical market;

2.8. **"Concentration"** as used in reference to markets, refers to the number and relative size distribution of firms. The fewer competitors in a market, the more concentrated the market structure**;**

2.9. **"Concerted practice"** means cooperative or coordinated conduct between firms, achieved through direct or indirect contact, which replaces their independent action, but which does not amount to an agreement;

2.10. **"Disaggregated information"** means information that has been broken down into smaller units of information;

2.11. **"Efficiencies"** means a reduction in costs incurred by firms, reduction in search costs incurred by consumers, or other changes that result in fewer resources being used to produce and transact;

2.12. **"Firm"** includes a person (juristic or natural), partnership or a trust. This may include a combination of firms that form part of a single economic entity, a division and/or a business unit of a firm;

2.13. **"Guidelines"** mean these guidelines which have been prepared and issued in terms of section 79(1) of the Act;

2.14. "**Historical**" refers to Competitively Sensitive Information that relates to past activities that does not provide a meaningful indication of future intended pricing or other competitively significant factors. Whether information is historical is determined on a case-by-case basis.

[1] *The Competition Commission of SA, Anglo American Medical Scheme & others v United South African Pharmacies & others* Case No:04/CR/Jan02

2.15. **"Individualised"** refers to information from which a specific firm's information can be identified;

2.16. **"Pro-competitive gains"** refer to increases in the total surplus or value realised by firms and consumers arising from trade due to an action and/or conduct by a firm;

2.17. **"Trade association"** means an association established by firms that operate in a specific industry to promote the collective interests of its membership;

2.18. **"Trading condition"** means any condition which affects a transaction including, but not limited to, credit terms, delivery charges, delivery schedules, minimum quantities, and interest charges; and

2.19. **"Tribunal"** means the Competition Tribunal, a juristic person established in terms of section 26 of the Act empowered to adjudicate competition matters in accordance with the Act.

3. INTRODUCTION

3.1. These Guidelines concern the exchange of competitively sensitive information between competitors. These Guidelines do not concern the exchange of information which is not competitively sensitive information. These Guidelines deal mainly with exchanges of competitively sensitive information between competitors directly or through a third party such as a trade association, an accounting firm, or a private company that collects firms' information, processes it, and disseminates it among firms.

3.2. The Commission acknowledges that the sharing of information, which is competitively sensitive but historical and aggregated, among competitors, in appropriate circumstances, could have benefits for competition, including, but not limited to: improvement of investment decisions; improvement of product positioning; provision of organisational learning;

facilitation of entering an industry; benchmarking best practices; and general trends of market demand. Information exchanges which may benefit competitors without harming competition are, for example, exchanges on good governance practices and health and safety measures as well as nationally aggregated and historical information.

3.3. However, the exchange of competitively sensitive information could also be anti-competitive by increasing the likelihood of, establishing, or facilitating collusion or coordination among competitors. Furthermore, information exchange may also allow firms to achieve collusive or coordinated outcomes without concluding explicit agreements to co-operate.

3.4. The exchange of competitively sensitive information can be instrumental in performing two crucial tasks associated with collusion: coordination and monitoring. To avoid competition, firms will have to replace their competition with coordination by, for instance, setting prices at a level above what would otherwise be sustainable in a competitive market, or by agreeing to restricting output, or by sharing markets through an allocation of sales, territories, products, customers, or tenders. Having agreed to a particular price or market-sharing arrangement, firms will monitor for compliance to ensure that the participating firms are setting the collusive price and have sales consistent with the agreed-upon market allocation.

3.5. In some instances, the exchange of competitively sensitive information can result in foreclosure of new entrants by depriving them of access to the exchanged information and enabling the incumbent firms to observe and take steps to prevent or limit their entry into the market. This type of foreclosure is only possible if the information concerned is very important for competitive rivalry. The extent of the effect of the exchange of competitively sensitive information between competitors on competition within the relevant market will depend on the facts of each case. The strategic usefulness of the competitively sensitive information also depends on its aggregation and age, as well as market context and frequency of exchange.

3.6. These Guidelines describe those information exchanges that most often occur within the context of industry associations and that are likely to be subject to investigation and to form the subject of a prosecution by the Commission, because they facilitate or amount to collusion and may enable firms to achieve collusive or coordinated outcomes without the need to conclude explicit agreements to co-operate.

3.7. These Guidelines are general and are not market, sector, or industry specific.

4. OBJECTIVES

4.1. The primary objective of these Guidelines is to provide some measure of transparency regarding the types of information exchanges between competitors which the Commission considers likely to result in a contravention of section 4 of the Act and those types of information exchanges which are not covered by this provision.

4.2. These Guidelines are intended to assist firms, industry associations and other stakeholders to make informed decisions about the competition law consequences of the exchange of competitively sensitive information between competitors.

4.3. The principles outlined in these Guidelines are based on the Commission's experience through its investigations as well as guidance from other jurisdictions in relation to information exchange between competitors.

5. LEGAL FRAMEWORK

5.1. The legal framework for assessing the exchange of information between competitors and between competitors through a third party such as a trade association, is found in section 4(1) of the Act. Section 4(1) of the Act states as follows:

"4. Restrictive horizontal practices prohibited

(1) An agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if –

(a) It has the effect of substantially preventing, or lessening, competition in a market, unless a party to the agreement, concerted practice, or decision can prove that any technological efficiency or other pro-competitive gain resulting from it outweighs that effect; or

(b) it involves any of the following restrictive horizontal practices:

(i) directly or indirectly fixing a purchase or selling price or any other trading condition;

(ii) dividing markets by allocating customers, suppliers, territories, or specific types of goods or services; or

(iii) collusive tendering."

5.2. Section 4(1)(a) of the Act prohibits the exchange of information between competitors that has the effect of substantially preventing or lessening competition, unless a party to the information exchange can prove efficiency benefits that arise from the information exchanged. Such efficiency benefits will also have to be shown to outweigh the anti-competitive effect resulting from the information exchange.

5.3. Section 4(1)(b) of the Act prohibits outright information exchange that involves:

5.3.1. the direct or indirect fixing of a purchase or selling price or any other trading condition;

5.3.2. the dividing of markets by allocating customers, suppliers, territories, or specific types of goods or services; and

5.3.3. collusive tendering.

5.4. The main difference between section 4(1)(a) and section 4(1)(b) is the option given to parties in terms of section 4(1)(a) to put up an efficiency

justification in defence of allegations of anti-competitive exchange of information.

5.5. Section 4(1)(b) provides for an outright prohibition when information exchange results in the conduct listed under section 4(1)(b) and there is no opportunity for raising efficiency, pro-competitive or technological gains as a defence to the alleged anti-competitive conduct.

5.6. Both section 4(1)(a) and section 4(1)(b) require that an agreement between, or concerted practice by firms, or a decision by an association of firms, be established as part of the contravention.

5.7. There are number of factors used to determine the harm caused by the exchange of competitively sensitive information which is set out below.

6. THE HARM CAUSED BY INFORMATION EXCHANGE

6.1. Anti-competitive conduct causes harm to competition within the market and to consumers through, for example, increased prices, exclusion of competitors, and raising barriers to entry.

6.2. The harmful effects of information exchange between competitors depends, *inter alia,* on the nature and characteristics of the information exchanged. As per the definition of competitively sensitive information, the nature of the information exchanged relates to the rivalry between competing firms. Generally, information related to prices and quantities is most important for competitive rivalry between firms, followed by information about costs and demand. However, if, for example, firms compete on research and development, it is the technology information that may be the most important for competitive rivalry.

6.3. General factors taken into account in evaluating the harm caused by exchange of competitively sensitive information are the market characteristics, the availability of the information exchange, the

indispensability of the competitively sensitive information given the purpose of the exchange, and whether the competitively sensitive information is historical or relates to current or future activities.

6.3.1. **Market characteristics**

6.3.1.1. The particular features of a market wherein competitors operate is an important consideration when evaluating information exchange between competitors. The relevant features of a market which may be taken into consideration include but are not limited to the following: whether products are homogenous; the level of concentration; the transparency of information in the market; the symmetry and stability of the market shares of the competing firms; barriers to entry and the history of collusion within the market.

6.3.1.2. Generally, the higher the concentration and the lesser the degree of product differentiation in a specific market, the more likely it is that competitively sensitive information exchanged between competitors may facilitate coordinated outcomes in the market and the higher the risk of an infringement of the Act. The exchange of competitively sensitive information by competitors in an oligopolistic market (a market dominated by a small number of suppliers) has a high risk of infringing the Act.

6.3.1.3. The assessment of the market characteristics will be done on a case-by-case basis. It is important to note that the exchange of competitively sensitive information may facilitate a collusive outcome even in circumstances where one or more of the features indicated above are not present or considered to be relevant.

6.3.1.4. Future price intentions, communication of current prices, exchange of disaggregated and recent past competitively sensitive information will, for example, be considered by the

Commission as evidence of a likely contravention of the Act independent of the market features.

6.3.2. **Exchanging competitively sensitive information on non-historical current and future conduct**

6.3.2.1. As a general rule, a firm that provides competitively sensitive information to competitors about the future, such as its intentions regarding future conduct, or what it anticipates or expects regarding competitors' future conduct, is anti-competitive, because it could constitute or facilitate a collusive understanding among firms. Any exchange among competitors about their future prices is likely to be regarded by the Commission as giving rise to an anti-competitive price-fixing agreement or concerted practice in contravention of section 4(1)(b) of the Act.

6.3.2.2. Any exchange of competitively sensitive current or very recent information between competitors is likely to be regarded by the Commission as anti-competitive because it could constitute or facilitate a collusive understanding among firms as well as serve to monitor compliance with a collusive agreement. Any discussion among competitors about their current prices and/or trading terms is likely to be regarded by the Commission as giving rise to an anti-competitive price-fixing agreement in contravention of section 4(1)(b) of the Act.

6.3.2.3. The exchange of competitively sensitive past information between competitors can be anti-competitive because it allows colluding firms to monitor for compliance and thereby sustain a collusive arrangement or where such competitively sensitive information provides a meaningful indication of future intended pricing or other competitively significant factors.

6.3.2.4. The level of aggregation is critical to an evaluation of the sharing of past competitively sensitive information with regard to its potential for supporting anti-competitive behaviour. The more disaggregated the competitively sensitive information is with regard to firms, customers, geographic areas, products, and time, the more useful the information is for monitoring of a collusive arrangement, and thus the more likely it is to be anti-competitive. Competitively sensitive information that allows identification of the firm or the customer or a narrow product-geographic area will raise competition concerns.

6.3.2.5. The frequency of price re-negotiations in the relevant market will determine whether competitively sensitive information is considered not to be useful for supporting collusion or "historical". If the information is several times older than the average length of contracts in the relevant market, it could be considered to be historical.

6.3.2.6. It is generally accepted that the higher the frequency of information exchange, the more likely the increased market transparency will enable firms to effectively monitor each other's behaviour, resulting in a dampening of competition in the relevant market. When long-term contracts are concluded, punishment could be possible even where exchanges are infrequent, as long as the exchanges are detailed.

6.3.3. **Availability and mechanism**

6.3.3.1. Competitively sensitive information shared among competitors to the exclusion of the general public may be considered by the Commission as evidence of a likely contravention of the Act, since it enables participating firms to achieve coordinated outcomes to the detriment of consumers in that market. This does not mean that the sharing of competitively sensitive information among

competitors which is made public may not fall foul of the Act. The exclusion of the general public increases the likelihood of harm to competition and consumers.

6.3.3.2. Aggregated historical competitively sensitive information that is to be disseminated among industry players must be reasonably accessible to all the industry players simultaneously, whether or not they form part of a particular industry association. Such information could for example be made available to non-members of an association upon payment of a reasonable fee.

6.3.3.3. Sharing of competitively sensitive information that will be available exclusively to competitors or some competitors in a market, will raise competition concerns even though that information may be known to some customers or could be established by means of independent actions that require cost or effort, such as going to the business premises of the competitor.

6.3.3.4. In assessing the exchange of competitively sensitive information between competitors, the Commission will identify and consider the mechanism used – whether the exchange of information was carried out in terms of direct exchange between the competing firms themselves, or in terms of indirect exchange through the participation of a trade association or another entity acting on their behalf. The Commission is more likely to view direct communication of competitively sensitive information between competitors as evidence of a contravention of section 4 since depending on the facts, the involvement of an independent third party in the collection and dissemination of the information could act as a risk mitigating factor to prevent the disclosure of disaggregated non- historical information to competitors.

6.3.4. **Indispensability**

6.3.4.1. To the extent that a real need to share competitively sensitive information to achieve efficiency gains that will be beneficial to society is identified and a mechanism of exchange is created to achieve the objective, the type of information, the aggregation, age, and confidentiality thereof, as well as the frequency of the exchange must carry the lowest risks to competition and must be indispensable for creating any efficiency gains resulting from the exchange that may be claimed by firms.

6.3.4.2. The exchange of information must be limited to the information that is relevant and necessary for the attainment of the claimed efficiency gains or objective.

7. INDUSTRY ASSOCIATIONS AND GOVERNMENT POLICY MAKERS

7.1. In this section we discuss information exchanged through industry associations and exchanges required by government policy makers. It should, however, be noted that the forms of information exchange dealt with in these Guidelines are not exhaustive but are the most common ways in which information can be exchanged between competitors.

7.1.1. **Industry Associations**

7.1.1.1. Industry associations are bodies that are created by some or all the participants in a particular industry or sector to promote the interests of that industry or sector. The decisions of associations are specifically covered in section 4(1) of the Act as decisions of associations of firms. The promotion of the interests of a particular industry or sector is not prohibited by the Act. The exchange of information that is not competitively sensitive, such as information relating to health and safety matters could, for example, be beneficial to workers in an industry or sector.

7.1.1.2. However, decisions by industry associations can also constitute or facilitate anti-competitive practices. These associations also provide platforms for information sharing among competitors. Industry associations must take steps to ensure that information sharing between members of the association does not prevent or lessen competition.

7.1.1.3. Most industry associations are not truly independent of their members since representatives of the members often form the decision-making bodies of the association. Therefore, the collection of disaggregated competitively sensitive information from members, to be collated by associations before distribution to their members, is problematic. The Commission strongly advises that industry associations should appoint independent parties to collect and to collate the information.

7.1.1.4. Generally, if information is historical and aggregated nationally it will not be problematic, depending on the characteristics of the market. Disaggregation which would allow competitors to derive information by district, by customers, by individual firm or sub-product category, is usually highly problematic and will be considered by the Commission as evidence of a likely contravention of section 4 of the Act.

7.1.2. **Government policymakers or regulators**

7.1.2.1. Government policymakers usually require information, which may include competitively sensitive information, from market participants in order to formulate policy. Government regulators require information to allow them to regulate industries. It is perfectly legitimate from a competition perspective, for policymakers and regulators to collect and process information from market participants and for firms to provide the relevant information.

7.1.2.2. However, competition concerns arise when industry participants themselves collect and process the information.[2] The Commission therefore recommends that policymakers and regulators themselves collect and process the information or appoint an independent party to collect and process the information. In addition, once the information has been collected and processed, steps need to be taken to ensure that the disaggregated competitively sensitive information remains confidential and is not provided to competing firms. Market participants must only be entitled to view the aggregated information.

7.1.3. **General guidance**

7.1.3.1. The Commission provides the following general guidance to firms who are competitors participating in industry associations and engaging with policy makers or regulators who require the submission of competitively sensitive information:

7.1.3.1.1. The purpose or object for the information exchange must be clearly identified and stated by the industry association or policy makers or regulators.

7.1.3.1.2. All information shared among competitors must be limited to what is relevant and necessary to achieve the object of the initiative or purpose for which the information is being collected and must carry the lowest risk.

7.1.3.1.3. The Commission strongly advises that industry associations should appoint independent parties to collect and to collate the information.

[2] See *The UK Agricultural Tractor Registration Exchange* case

7.1.3.1.4. Government policymakers may obtain disaggregated competitively sensitive information directly from firms without harming competition as long as government itself collates the information or appoints an independent party to collate the information. In addition, once the information has been collated, adequate steps need to be taken to ensure that the disaggregated information remains confidential and to ensure that it is not provided to competing firms. Market participants may only view the information if it is historical and in an aggregated format.

7.1.3.1.5. All competitively sensitive information shared among competitors must be aggregated at least nationally, must be historical and it should not be possible for competitors to identify firm specific information. For example, if only two firms participated in the exchange each firm would be able to identify the other's information. This may also be possible where the exchange involves more firms, but the market is highly concentrated.

7.1.3.1.6. Firms must not share and discuss individualised competitively sensitive information with competitors. They can, however, discuss aggregated market trends, e.g., the historical aggregated national annual industry demand or supplier information, which do not identify individual company information.

7.1.3.1.7. Competitors may not discuss individualised information on capacity, production volumes and sales figures. However, competitors can discuss aggregated total annual national capacity, production volumes and sales figures which are historical and that are prepared

by an independent third party. The aggregated figures should not identify individual company information and should be prepared in such a way that it is not possible to extrapolate individual company information.

7.1.3.1.8. In this context customer information, marketing strategies, budgets, as well as business and investment plans, cannot be discussed by competitors either in an individualised or aggregated format.

8. CONCLUSION

8.1. These Guidelines present the general approach that the Commission will follow in assessing the exchange of competitively sensitive information. These Guidelines are not exhaustive and will not affect the discretion of the Commission and/or the Tribunal and courts to consider the exchange of information issues on a case-by-case basis, taking into account the market circumstances and the nature of the information exchanged.

8.2. Should market participants be uncertain as to whether the exchange of information may potentially contravene the Act, such market participants should approach the Commission for further guidance.

9. EFFECTIVE DATE AND AMENDMENTS

These Guidelines become effective on the date indicated in the Government Gazette and may be amended by the Commission from time to time.

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2526 **23 September 2022**

Draft Guidelines on the Exchange of Competitively Sensitive Information under the Competition Act

Explanatory note

On 14 July 2017 the Competition Commission published draft *Guidelines on the Exchange of Information between Competitors under the Competition Act*, inviting public comment. The guidelines were intentionally broad and attempted to deal with as many forms of information exchange as possible.

The Commission received extensive comments from various interested parties. The main concerns raised by stakeholders related to the following:

- The definition of "Commercially Sensitive Information";
- The lack of safe harbours;
- The need for more guidance on what information competitors may safely share;
- Industry specific concerns; and
- Public announcements.

There have been various internal iterations of the guidelines over time as the Commission tried to address the concerns raised by stakeholders. The Commission finally resolved to provide narrower, more focussed guidance to industry associations in particular because it is most often industry associations that contact the Commission seeking guidance on the issue.

The Commission retained a broad approach covering all markets and as a result the amended draft guidelines, like the previous draft, do not set out safe harbours. Any safe harbours would be dependent on the features of a particular market and can be more meaningfully determined on a case-by-case basis. The amended draft however does seek to provide more clarity on the type of exchanges of competitively sensitive information that is likely to fall foul of the Competition Act and *Commercially Sensitive Information* was replaced with *Competitively Sensitive Information*. The revised draft

guidelines only apply to the exchange of Competitively Sensitive Information between competitors. The revised guidelines no longer specifically deal with price signalling or public announcements, joint ventures, cross-directorship or cross-shareholding, customer requests for quotations, market studies and benchmarking since these topics are complex and better dealt with on a case-by-case basis.

Given that a long period of time has passed since the draft guidelines were initially published the Commission resolved to publish the amended draft *Guidelines on the Exchange of Competitively Sensitive Information under the Competition Act* for a further round of public comment.

Written comments are invited by the Commission from any interested person.

The *Draft Guidelines on the Exchange of Competitively Sensitive Information under the Competition Act* are attached hereto and can also be downloaded from www.compcom.co.za/guidelines/

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The closing date for the submission of comments is **4 November 2022**.

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2527 **23 September 2022**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

DIS-CHEM PHARMACIES LIMITED
AND
SUPERSTRIKE INVESTMENTS 56 PROPRIETARY LIMITED T/A "BABY BOOM"

CASE NUMBER: 2021SEP0006

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 03 September 2021 the Competition Commission ("Commission") received notice of an intermediate merger wherein Dis-Chem Pharmacies Limited ("Dis-Chem") intends to acquire 100% of the issued share capital of Superstrike Investments 56 Proprietary Limited t/a "Baby Boom". Following the implementation of the proposed transaction, Baby Boom will be wholly-owned and controlled by Dis-Chem.

2. The primary acquiring firm is Dis-Chem. Dis-Chem stores focus on the retailing of scheduled and unscheduled pharmaceutical products, as well as front shop goods. The majority of Dis-Chem's sales are dispensary, personal care and beauty, as well as healthcare and nutrition products. A minimal portion of Dis-Chem's sales relates to baby products and baby toy products.

3. In November 2020 Dis-Chem acquired Baby City which, like Baby Boom (the target firm in the current transaction), focuses exclusively on the sale of baby products. Baby City's product offering includes a full range of baby bathroom products, car seats, clothing, feeding

accessories, home and safety products, healthcare, maternity wear, nappies, nappy bags, nursery bedding and linen and many other products for infants and toddlers.

4. The primary target firm is Baby Boom. Baby Boom specialises in a comprehensive range of baby products, aimed at parents-to-be and parents of children up to the age of 3 (three) years. Similar to Baby City, the range of Baby Boom's products include the following: (i) Products used to transport babies - prams, strollers, car seats, baby carriers and travel systems; (ii) Baby feeding accessories - bottles, teats, cups, baby foods and nutritional formula; (iii) Baby bathing accessories - baby baths, baby shampoos, powders, creams, and lotions; (iv) Accessories for moms and moms to be - breast pumps, maternity underwear, pregnancy rolls and breast-feeding pillows; (v) Baby Toys, (vi) fast-moving consumer goods including baby nappies and wipes; (vii) Baby safety products - safety gates and bed guards; (viii) Baby Nursery accessories - mattresses, linen, duvet sets, camp cots and nursery furniture; and (ix) Baby clothing - mainly focused on christening clothes, caps and mittens.

Competition assessment

5. The Commission considered the activities of the merging parties and found that the proposed transaction raises an overlap in the retailing of baby and mother care products. The Commission has taken the view that baby and mother care retailers can be delineated into two types, namely, (i) specialist (i.e., Baby City and Baby Boom) and (ii) non-specialist (i.e., grocers, pharmacies and online platforms). As such, the market can be defined into the following segments: (i) the national market for the retail sale of non-specialised baby and mother care products, and (ii) the national market for the retail sale of specialised baby and mother care products.

6. In terms of the relevant geographic market, the Commission will consider the effects of this transaction based on the broad market for the national retail supply of baby and mother care products (specialist and non-specialist retailers). The Commission defined a national market because the merging parties and most of their rivals service customers across South Africa through their brick-and-mortar stores as well as their online platforms. Further, the merging parties and their competitors also seem to determine pricing at a national level.

7. Notwithstanding the national geographic market, the Commission considered the possible effects of the proposed merger at a local level focusing on the narrow markets where Baby City and Baby Boom stores are located. In this regard, the Commission found that where Baby Boom and Baby City have stores in the same provinces, their stores are not located close to each other. Baby Boom has three stores located in the Eastern Cape, while Baby City has one, and each has one store located in Port Elizabeth. Baby Boom's store in Port Elizabeth is located at Bay West Mall, while Baby City's store is located at "Moffett on Main" Lifestyle Centre. These stores are approximately 14.2km apart. The Commission also notes that the Baby Boom store in Port Elizabeth is one of the stores earmarked for closure post-merger. Further, in all areas where Baby Boom is based it faces competition from various retailers including Clicks, Checkers, Game and Pick 'n Pay. Baby Boom and Dis-Chem are currently located in the same shopping centre in one area, Springs Mall, where there are various other retailers including Checkers, Clicks, Dis-Chem, Game, Pick 'n Pay.

8. The Baby Boom and Baby City stores in Bloemfontein are relatively close to each other at just over 6 kilometres apart. However, there are other retailers including Clicks, Checkers and Pick 'n Pay who will compete with the merged entity post-merger. Babies R Us is also 7.7km from the Baby Boom store in Bloemfontein. The Commission is of the view that there are sufficient alternatives that will continue to constrain the merged entity in the local area after the merger.

Market share and concentration levels

9. In the national market for the retail of baby and mother care products, the Commission found that the merged entity will have a minimal combined market share with an insignificant accretion. The estimated market shares are based on sales revenue. There are several national retailers with larger market shares who will continue to compete with the merging parties post-merger.

10. Based on the market shares and accretion, the Commission was of the view that the transaction will not result in any significant changes in the prevailing market structure and competition dynamics in the national market.

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11. In addition to assessing market shares and market structure, the Commission conducted a closeness of competition analysis focusing on the similarities and differences between different categories of specialist stores as well as all specialists stores vis-à-vis mass retailers who also offer baby mother care products. In this regard, the Commission assessed several metrics (including the products and services offered by the merging parties as well as their customers) to determine whether the merging parties are close competitors.

Range of inventory and store size

12. The Commission found that the quantity and scope of inventory that can be stocked by a retailer is linked to the store size and the availability of shelf space. The availability and range of products offered by a retailer will, in turn, affect consumer footfall. Variety, and stock selection are thus some of the factors that drive footfall and/ revenue into baby stores.

13. The distribution of floor space in retail stores is another metric that can determine whether the merging parties focus on the same market segment. The Commission found that specialist and non-specialist stores carry varying products and product ranges. For instance, specialist baby and mother care stores stock an extensive range of baby products or product categories such as baby accessories, baby foods and baby personal care. The Commission found that there was a noticeable difference in the store sizes of Dis-Chem and Baby City retail stores average.

14. The Commission found that while retailers such as Baby Boom and Baby City are geared towards retailing of specialised baby and mother care products, the same cannot be said for pharmacies such as Dis-Chem and grocers where a greater portion of their floor and shelf space is dedicated to non-specialised products. Although the Commission did not definitively conclude on this aspect of competition, it appears that non-specialist retailers (pharmacies and grocers) may not be close competitors to specialist retailers such Baby Boom and Baby City at this stage of market development.

15. The Commission also compared the range of products offered by the merging parties. Baby City is a baby destination retail store, offering a wide range of premium product categories, together with sales staff trained on specific brands. Baby Boom does not carry a wide range of premium products and stocks products at a lower price point. Nonetheless, the Commission

notes from the merging parties' Joint Competitiveness Report as well as from desktop research that Baby City offers some overlapping product ranges to Baby Boom.

16. The Commission found that Baby Boom and Baby City sell comparable product ranges and thus, may be regarded as close competitors at a national level. At a local level, closeness of competition may be dependent on factors including, *inter alia*, types of products sought by the consumer, willingness of consumers to travel (i.e., convenience), availability of stock and the types of quality brands stocked (premium versus non-premium).

Revenue drivers

17. The Commission evaluated the revenue drivers in Baby Boom and Baby City retail stores for the 2020 financial year and concluded that the merging parties can be regarded as close competitors given that they appear to focus on the same specialised product offering and market segments.

18. However, the Commission's assessment indicated that there is some differentiation between the brands offered by Baby City and Baby Boom. Baby City's customers comprise of middle- to high-income consumers, whilst Baby Boom focuses largely on the low-income customers, with a smaller target market consisting of middle-income customers. This is confirmed by some global suppliers of baby care products who submit that Baby City sources a comprehensive basket of specialised premium baby products compared to Baby Boom. Further, Baby Boom stores are strategically located in outlying areas targeting predominantly the lower LSM consumers.

19. In light of the above, the Commission took the view that the merging parties, particularly Baby City and Baby Boom can be regarded as close competitors in relation to the specialist retail of baby and mother care products at a national level. This is because they render similar products and service offerings, as well as focus on the same broad market (i.e., mainly retailing of specialised baby and mother care products). However, Baby City does appear to stock more premium brands while Baby Boom focused on mass-market or less expensive brands.

20. The Commission also noted that barriers to entry into the specialist baby retail market appear to be surmountable as there have been several new entrants with brick-and-mortar stores as well as online stores in the last three years. This includes entry by specialist retailers such as Chelino Baby (2019); Clicks Baby (2021); Little Me by Checkers (2021), and Everyshop (2021).

21. Overall, the Commission found that the proposed transaction is unlikely to substantially lessen or prevent competition in any relevant market.

Third-party concerns

22. During the investigation, the Commission received concerns from some of the merging parties' competitors. One competitor submitted that it is concerned about Dis-Chem attaining significant market share as a result of the transaction thereby increasing its purchasing power with both local and international suppliers. Another competitor indicated that while it does not believe that this merger will have a significant impact on its business, it points out to the Commission that Dis-Chem's acquisition of Baby Boom (Dis-Chem having already acquired Baby City) significantly increases its buying power within this market including in portfolios such as nappies.

Merging parties' views on the concerns

23. In response to the concerns, the merging parties reiterated that Baby Boom's market share does not constitute a considerable portion of the market and that there will be no significant accretion of market shares as a result of the proposed transaction.

24. The merging parties submitted that the merged entity would continue to face competition from a number of competitors. In this regard, the merging parties submit that the primary competitive constraints facing the merging parties are exerted by other baby specialist stores, such as Babies-R-Us, Kids Emporium, Baby Fantasy, Chelino, A-Zee Baby's World and traders who trade from baby shows, and more recently, Clicks, Shoprite and Mr. Price. It is submitted that these retailers cater specifically for expectant mothers, newborn babies and toddlers.

25. Accordingly, the merging parties submitted that the third-party concerns set out above are misplaced, as there will be no material change in the market structure as a result of the proposed transaction.

Commission views on the concerns

26. Given that the concerns raised by third parties mainly relate to increased bargaining power, the Commission engaged with suppliers of the merging parties including those of FMCG products such as nappies and formula to establish their views on the transaction. While some of the suppliers derive a substantial portion of their business from Dis-Chem, they made it clear that they will not accept any unfavourable terms from Dis-Chem and that negotiations with Dis-Chem are always balanced.

27. Based on the information before it, the Commission was of the view that it is unlikely that the merged entity will, post-merger, have significant bargaining power against its suppliers.

Public interest

28. The proposed transaction raised public interest concerns in that the merging parties identified roles which may potentially be duplicated and become redundant, thereby resulting in retrenchments as a result of the proposed transaction. The merging parties submit that this is not substantial when viewed in the context of the entire staff complement of the merging parties. Further and for the sake of completeness, Baby Boom indicated that it had undertaken retrenchments based on operational requirements that were unrelated to the proposed transaction.

Are the retrenchments merger specific?

29. The merging parties accept that the possible future retrenchments identified above are merger specific. The merging parties have indicated that these potential retrenchments are not substantial when viewed in the context of the entire staff complement of the merging parties.

30. The Commission will first consider whether the pre-merger retrenchments and the retrenchments likely to result from the closures are merger specific and then consider whether the retrenchments in total, are substantial.

31. The Commission considered the merging parties' submissions and could not find any evidence to suggest that the employees retrenched before the merger and the envisaged store closures and resulting retrenchments are merger specific. The Commission was of the view that retrenchments that would result from the store closures were also unlikely to be merger specific.

Is the merger-specific retrenchment of employees substantial?

32. Following consideration of a number of factors, the Commission was also of the view that the total number of employees who may be retrenched because of duplications, all things considered, was not substantial.

DTIC Participation

33. The Department of Trade Industry and Competition ("DTIC") filed a notice of intention to participate in this matter. The DITC urged the acquiring firm to consider accepting the following conditions:

33.1. Suspend the decision to close any Baby Boom stores for a period of 24 months.

33.2. Workers who have been retrenched or who are in the process of being retrenched as well as workers who may lose their jobs in future should be offered employment opportunities when suitable positions become available within the Dis-Chem Group.

33.3. Baby Boom to retain and where possible improve on its level of local procurement including procurement from SMMEs and HDI-owned businesses.

34. The Commission shared the DTIC's submission with the merging parties. The merging parties' response to the proposals advanced by the DTIC is outlined below.

35. Regarding the suspension of the decision to close Baby Boom stores, the merging parties, *inter-alia,* submitted that the proposed transaction will not be commercially viable should the proposed transaction be approved subject to such a condition.

36. The merging parties agreed to the proposed transaction being approved subject to a condition obligating the merged entity to give preference to the retrenched employees for a period of 2 (two) years after the implementation of the merger, in order to address concerns relating to employment.

37. In relation to the local procurement commitment, the merging parties submitted that Baby Boom endeavours to procure some of its products locally.

Conclusion

38. For the above reasons, the Commission approved the proposed transaction subject to the condition obligating the merged entity to give preference to the retrenched employees for a period of 2 years after the implementation of the merger set out in **Annexure A** hereto

ANNEXURE A

DIS-CHEM PHARMACIES LIMITED

AND

SUPERSTRIKE INVESTMENTS 56 PROPRIETARY LIMITED T/A "BABY BOOM"

CASE NO: 2021SEP0006

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1. DEFINITIONS

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

1.1. **"Acquiring Firm"** means Dis-Chem;

1.2. **"Affected Employees"** means the employees occupying positions which may potentially be redundant as a result of the Merger, and which may form part of a potential retrenchment process.

1.3. **"Affected Stores"** means all of the identified loss-making stores of the Target Firm that have closed or are still to close soon after Implementation Date;

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

1.5. "**Baby Boom**" means Superstrike Investments 56 Proprietary Limited t/a "Baby Boom", being the Target Firm;

1.6. **"Commission"** means the Competition Commission of South Africa;

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

1.8. **"Conditions"** means these conditions;

1.9. **"Day"** means any calendar day which is not a Saturday, a Sunday or an official public

holiday in South Africa;

1.10. **"Dis-Chem"** means Dis-Chem Pharmacies Limited, being the Acquiring Firm;

1.11. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.12. **"Loss-Making Store Employees"** means all employees who have been subject to a retrenchment process or may be subject to a potential retrenchment process in the event that any of the Affected Stores are closed;

1.13. **"LRA"** means the Labour Relations Act 66 of 1995, as amended;

1.14. **"Merged Entity"** means the Acquiring Firm and Target Firm;

1.15. **"Merging Parties"** means the Acquiring Firm and the Target Firm;

1.16. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;

1.17. **"Target Firm"** means Baby Boom;

PUBLIC INTEREST CONDITIONS

2. EMPLOYMENT

2.1. The Merged Entity commits for a period of 2 (two) years after the Implementation Date, to give preference to the Affected Employees and the Loss-Making Store Employees provided they have the requisite qualifications, skills, know-how and experience should there be available vacancies at the Merged Entity.

2.2. The Merged Entity shall use its reasonable endeavours to communicate available vacancies at the Merged Entity to the Affected Employees and the Loss-Making Store Employees for a period of 2 (two) years after the Implementation Date.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1. The Merging Parties shall circulate a copy of the Conditions to the Affected Employees and Loss-Making Store Employees and/or their respective representatives within 10 (ten) Days of the Approval Date.

3.2. As proof of compliance with clause 3.1 above, the Merging Parties shall within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit from a director employed by the Merged Entity attesting to the circulation of the Conditions and attach copies of said notices.

3.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.

3.4. The Merged Entity shall submit a comprehensive annual compliance report to the Commission, setting out the extent of its compliance with clauses 2.1 and 2.2 of the Conditions for the duration of the Conditions.

3.5. The compliance report shall be accompanied by an affidavit (deposed to by a senior official of the Merged Entity) confirming the accuracy of the information contained in the compliance report.

3.6. Any Affected Employee or Loss-Making Store Employee who believes that his/her employment with the Merging Parties has been terminated in contravention of the Conditions may approach the Commission with his/her complaint.

4. APPARENT BREACH

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

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 concerning 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 these Conditions shall be sent to mergerconditions@compcom.co.za and 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

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2528 **23 September 2022**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

DPD LASER EXPRESS LOGISTICS (PTY) LTD

AND

FAST AND FURIOUS DISTRIBUTION (PTY) LTD

CASE NO: 2021JUL0064

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 as set out below:

1. On 30 July 2021, the Competition Commission (Commission) received a notice of an intermediate merger wherein DPD Laser Express Logistics (Pty) Ltd (DPD Laser) intends to acquire 100% of the issued share capital of Fast and Furious Distribution (Pty) Ltd (Fast and Furious). Post-merger, Fast and Furious will be solely controlled by DPD Laser.

Activities of the merging parties

2. DPD Laser is a private company incorporated in South Africa. DPD Laser controls the following (dormant) entities, namely DPD Laser Express Logistics (Namibia) (Pty) Ltd, Dawn Wing Express Distribution (Pty) Ltd (Dawn Wing) and Time Freight Express Distribution (Pty) Ltd. DPD Laser is jointly controlled by GeoPost SA and the Laser Group (Pty) Ltd (Laser). DPD Laser is part of an international delivery services network. In South Africa, DPD Laser provides express and standard parcel delivery services to businesses and consumers within South Africa through its Dawn Wing business.

3. Fast and Furious is a private company incorporated in South Africa. Fast and Furious owns 100% of the shares in FNF Fleet (Pty) Ltd and Air Pup (Pty) Ltd. Fast and Furious provides domestic standard parcel delivery services to businesses and consumers operating in South Africa.

Competition Assessment

4. The Commission found that there is a horizontal relationship between the activities of the merging parties in that both DPD Laser and Fast and Furious are involved in the provision of parcel delivery services in South Africa.

5. In terms of market shares, the Commission found that post-merger, the merged entity will have an estimated market of less than 10%, with a minimal market share accretion. The Commission's assessment identified numerous competing firms in the market that will continue to constrain the merged entity post-merger such as DSV South Africa (Pty) Ltd, Value Logistics (Pty) Ltd, City Couriers Logistics (Pty) Ltd, Aramex, Fedex Corporation, RAM Hand-to-Hand Courier, Skynet Worldwide Express and The Courier Guy, amongst others. Further, none of the competitors and customers of the merging parties have raised any concern regarding the proposed merger. Accordingly, the Commission concluded that the proposed merger is unlikely to substantially prevent or lessen competition in the market for the provision of courier services in South Africa.

Public interest considerations

6. The Commission notes that the proposed merger is likely to raise employment concerns. The merging parties submit that in a worst-case scenario, a total of 67 permanent employees are likely to be retrenched. Both parties have branches across South Africa (in areas such as Cape Town, Johannesburg and Durban) and anticipate that the integration of their operations will result in certain positions being duplicated, hence the need for retrenchments. The potential duplications are identified in the areas of management, operation, call centre, warehouse, fleet, sales and marketing and administration. This process is likely to affect employees employed in various branches across all job

categories. Further, concerns regarding the merger's impact on employment have been raised by the relevant trade unions and the Minister of Trade, Industry and Competition.

7. In order to ensure that the proposed transaction does not raise significant employment concerns post-merger, the Commission is of the view that it is necessary to impose conditions to alleviate any employment concerns that may arise as result of the proposed transaction. The merging parties have agreed to the conditions. Accordingly, the Commission imposed the conditions attached as **Annexure A** hereto.

8. Further, no other public interest issues arise as a result of the proposed transaction.

Conclusion

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

ANNEXURE A

DPD LASER EXPRESS LOGISTICS (PTY) LTD

AND

FAST AND FURIOUS DISTRIBUTION (PTY) LTD

CASE NUMBER: 2021JUL0064

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 **"Affected Employees"** means the 67 duplicated permanent employee roles at DPD Laser and Fast and Furious that will arise following the implementation of the Merger;

1.1.2 **"Alternative Positions"** means the 60 (sixty) available positions that will become available upon the expiry of the fixed-term contracts of temporary employees of the Merged Entity;

1.1.3 **"Approval Date"** means the date referred to on the Commission's merger Clearance Certificate;

1.1.4 "**Close Family member**" means the spouse, children, brother, sister, mother, father, sister's children and brother's children of the Affected Employee that may be dependent on the Affected Employee;

1.1.5 **"Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

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

1.1.7 "**Conditions**" means these conditions contained in this Annexure A, agreed to by the Merged Entity and the Commission;

1.1.8 **"DPD Laser"** means DPD Laser Express Logistics (Pty) Ltd;

1.1.9 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.1.10 **"Fund"** means an allocation of money to the value of R 25 000 for the Affected Employees for purposes of skills development;

1.1.11 **"Fast and Furious"** means Fast and Furious Distribution (Pty) Ltd

1.1.12 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.1.13 **"LRA"** means the Labour Relations Act No. 66 of 1995 (as amended);

1.1.14 **"Merged Entity"** means the combined firm resulting from the Merger between DPD Laser and Fast and Furious;

1.1.15 **"Merger"** means the acquisition of control over Fast and Furious by DPD Laser;

1.1.16 **"Merging Parties**" means Fast and Furious and DPD Laser;

1.1.17 **"Moratorium"** means the period between the Approval Date and the Implementation Date and, thereafter, a period of 2 (two) years from the Implementation Date;

1.1.18 **"Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;

1.1.19 **"SATAWU"** means the South African Transport and Allied Workers Union;

1.1.20 **South Africa**" means the Republic of South Africa;

1.1.21 **"Temporary Employees"** means the 60 (sixty) employees currently employed by the Merging Parties on fixed-term contracts; and

1.1.22 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. **RECORDAL**

2.1 On 30 July 2021, the Commission was notified of the Merger. Following its investigation of the Merger, the Commission is of the view that same is unlikely to substantially prevent or lessen competition in any market.

2.2 From a public interest perspective, the Merging Parties indicated that there could be a need for the involuntary retrenchment of the Affected Employees. Given concerns raised by the relevant trade unions and the Department of Trade, Industry and Competition, the Merging Parties and the Commission have agreed to the Conditions.

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

3.1 **EMPLOYMENT**

3.1.1 Except for the Affected Employees and Temporary Employees, the Merged Entity shall not retrench any employees as a result of the Merger subject to paragraphs 3.1.2 and 3.1.3.

3.1.2 The Merged Entity shall not retrench any Affected Employees in South Africa as a result of the Merger during the Moratorium period.

3.1.3 The Merged Entity shall not retrench any Temporary Employees in South Africa as a result of the Merger, for a period of 6 (six) months following the Implementation Date.

3.1.4 For the sake of further clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (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, dismissals as a result of misconduct or poor performance; (vii) any decision not to renew or extend a contract of a contract worker..

3.1.5 Upon the expiry of the Moratorium period, the Merged Entity shall –

3.1.5.1 In the first instance offer voluntary severance packages to all Affected Employees. In the event that the Affected Employee does not accept a voluntary severance package, offer an Alternative Position in lieu of retrenchment in the form of transfers to an alternative role at the Merged Entity.

3.1.5.2 In the event that the Affected Employee accept the Alternative Position, ensure that the Affected Employee is transferred on a permanent basis with uninterrupted service and assume the terms and responsibilities of the new role.

3.1.5.3 In the event the Affected Employee elects not to redeployed, offer a skills development award of R 25 000 to each of the Affected Employees.

3.1.5.4 Establish the Fund to re-skill or re-train the Affected Employees. The Fund shall be applied in accordance with the principles and conditions set out in Annexure A1 of these Conditions.

3.1.5.5 Maintain a database of the names and contact details of all Affected Employees and, should any vacancies arise within the broader DPD Laser business, undertake to inform such employees of relevant vacancies through their last known contact details such an email and/or cellphone numbers, amongst others.

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

4.1 The Merging Parties shall circulate a copy of the Conditions to all employees and/or their respective representatives, including but not limited to SATAWU within five (5) Days of the Approval Date.

4.2 As proof of compliance thereof, the Merging Parties shall within five (5) Days of circulating the Conditions, provide the Commission with an affidavit from a senior official of each of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.

4.3 The Merging Parties shall inform the Commission of the Implementation Date within five (5) Days of its occurrence.

4.4 The Merged Entity shall submit a list of the 60 (sixty) available positions within 10 (ten) Days of the expiry of the Moratorium period.

4.5 The Merged Entity shall submit written confirmation of offering these positions to Affected Employees within 20 Days after the expiry of the Moratorium Period.

4.6 The Merged Entity shall, for a period of 3 (three) years from the Implementation Date, submit a report on each anniversary of the Implementation Date, detailing its compliance with the Conditions.

4.7 Each report submitted in terms of paragraph 4.6 shall be accompanied by an affidavit of a director of the Merged Entity confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.

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

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 shall be sent to mergerconditions@compcom.co.za and 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 DPD Laser (Fund Manager) shall be appointed to control and manage all financial and accounting aspects of the Fund.

2. Each Affected Employee will be allocated a maximum of R25 000 for purposes of training or reskilling. For the sake of clarity, the Merged Entity cannot dedicate to the Affected Employee the type and form of reskilling training or programme that the Affected Employee requires.

3. Any Affected Employee wishing to make use of the designated Fund shall apply to the Fund Manager within 12 (twelve) months from the date of his/her retrenchment, for the allocation of all or a portion of the fees payable for the training. 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. DPD Laser will, upon request from any Affected Employee, assist or arrange for the assistance of any prospective applicant with the application process to the respective institution where the training programme is offered.

4. Should an application for the training be successful, DPD Laser shall make payment of the fees in question directly to the training institution in question.

5. DPD Laser shall not unreasonably refuse to disburse Fund to any Affected Employee who wishes to undertake any skills training or programme.

6. DPD Laser shall continue to offer funding to the Affected Employees or their Close Family Member for a period of 3 (three) years from the Implementation Date or until the Fund is exhausted, whichever occurs sooner.

7. If the funding is not taken up within 1 (one) year from the date of the retrenchment of the Affected Employee, it will be forfeited.

8. In the event that the Affected Employee does not opt for training or reskilling, the Affected Employee can request that the Fund be utilized by a nominated Close Family member for the purposes of paying school fees and/or any other expense related to the education of the nominated Close Family member.

9. Clause 4 above will also apply in instances where the Affected Employee nominate a Close Family member as a beneficiary.

10. Any portion of the amount allocated to the Fund that remains unclaimed by the Affected Employees will be retained by DPD Laser.

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2529 **23 September 2022**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

DEUTSCHE POST AG

AND

J.F. HILLEBRAND GROUP AG

CASE NUMBER: 2021SEP0009

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 as set out below:

1. On 06 September 2021, the Competition Commission ("Commission") received a notice of an intermediate merger whereby Deutsche Post AG ("DP AG") through its wholly owned subsidiary Deutsche Post Beteiligungen Holding GmbH ("DP BH"), intends to acquire J.F. Hillebrand Group AG ("Hillebrand AG"). Post-merger, DP AG will control the Hillebrand AG.

2. The primary acquiring firm is DP BH, a company incorporated in accordance with the laws of Germany. DP AG is a public company listed on the Frankfurt Stock Exchange and as such it is not controlled by any single shareholder. DP AG controls several firms including DHL Supply Chain (South Africa) (Pty) Ltd ("DHL Supply Chain") and DHL Global Forwarding SA (Pty) Ltd ("DHL Global Forwarding"). DP BH, DP AG and all the firms it controls directly or indirectly are collectively referred to as the "Acquiring Group" and/or the "Acquiring Group".

3. The primary target firm is Hillebrand AG, a company incorporated in accordance with the company laws of Belgium. Hillebrand AG is controlled by COBEPA S.A. Hillebrand AG

controls the following firms in South Africa, (i) Braid Logistics Africa (Pty) Ltd ("Braid Logistics"), (ii) JF Hillebrand South Africa (Pty) Ltd ("JF Hillebrand South Africa"), (iii) JFH Capital (Pty) Ltd and (iv)Trans Ocean Liquid Technologies (Pty) Ltd. Hillebrand AG and all the firms they control, shall be referred to as the "Target Group".

4. The Acquiring Group is a global logistics company that conducts its business through the following three segments in South Africa: (i) Express services, which entails the urgent transportation of documents and goods from door to door; (ii) Contract logistics, that includes warehousing and transport as well as value-added services such as service logistics and packaging solutions for strategic industrial sectors; and (iii) Freight forwarding services, which entails brokering transport services for goods between customers and freight carried using ocean, land and air transportation.

5. The Target Group is an international logistics group that provides various services of the freight forwarding industry, including airfreight, ocean freight, inland transport, warehousing, inventory management and the manufacturing and sales of flexitanks and insulation liners for ISO containers.

Relationship between the parties/ products (horizontal / vertical)

6. The Commission assessed the activities of the merging parties and found that the proposed transaction gives rise to a horizontal overlap as the merging parties are active in the provision of freight forwarding services in particular (i) ocean, (ii) land and (iii) air freight forwarding services in South Africa. The Commission did not conclude on the relevant market. However, the Commission assessed the horizontal overlap in the following markets:

   6.1. The broad market for freight forwarding services;
   6.2. The narrow market for air freight forwarding services;
   6.3. The narrow market for land freight forwarding services; and
   6.4. The narrow market for sea freight forwarding services.

Assessment of horizontal overlap in the broad market for freight forwarding services

7. The Commission found that the merged entity will have a low market share in the market for freight forwarding services, with minimal accretion. The merged entity will continue to be

constrained post-merger by alternative freight forwarding services such as Imperial Logistics Limited, Khuehne and Nagel, DB Schenker, Barloworld Limited and Value Logistics Limited. The Commission also notes that the market is fragmented with more than 900 players.

Assessment of the narrow markets

8. The Commission is not aware of publicly available data that could be used for calculating market shares relating to (i) air, (ii) land and (iii) sea freight forwarding services. In addition, the competitors of the merging parties did not provide information on the narrow markets. Thus, the Commission relied on the market share submissions by the merging parties and submissions from customers in determining the concentration levels in the affected narrow markets.

Assessment of air freight forwarding services

9. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in air freight forwarding services as the merging parties will have a low combined post-merger market share between 1% to 10% in the market for air freight forwarding service with several competitive alternatives in the market.

Assessment of the land freight forwarding services

10. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in land freight forwarding services as the merging parties will have a low combined post-merger market share (below 5%) in the market for land freight forwarding services with several competitive alternatives in the market.

Assessment of the sea freight forwarding services

11. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in sea freight forwarding services as the merging parties will have a low combined post-merger market share at below 5%. In addition, the customers of the merging parties who mainly uses ocean freight forwarding services have highlighted that there are a number of alternatives outside of the merging parties such as Nagel, Outsource Outsourced Industrial Logistics (Pty) Ltd, Inter-Sped (Gauteng) (Pty) Ltd, Bollore, Kuehne & Nagel, DSV and Megafreight Services (Pty) Ltd as alternatives.

12. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Public interest

Employment

13. The Commission found that the Acquiring Group engaged in pre-merger retrenchments ("Pre-merger Retrenchments") and that they also anticipate post-merger retrenchments ("Post-merger Retrenchments").

14. In terms of Pre-merger Retrenchments, the Commission did not find any evidence suggesting that the pre-merger retrenchments were triggered by the proposed merger. Instead, the pre-merger retrenchments appear to be triggered by a loss of several key contracts.

15. With respect to Post-merger Retrenchments, the Commission also found that these are likely linked to the loss of a particular client. As such, the Commission is of the view that it is likely that the Post-merger Retrenchments are operational in nature given the impact of Covid 19 on declining volumes of the customers of the Acquiring Group and consequently of the volumes of the Acquiring Group.

16. However, given that the Acquiring Group engaged in operational retrenchments pre-merger and anticipate further operational retrenchments, the merging parties have agreed to a condition to offer re-employment opportunities to suitably qualified employees, should opportunities arise within the Merged Entity in a 24-month period following the merger. In the 24-month period, preference will be given to the (i) retrenched employees, (ii) employees who have taken voluntary separation packages and (iii) those who will are likely to be retrenched post-merger. These conditions are attached as **Annexure A** hereto.

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

18. The Commission therefore approves the proposed transaction with conditions. The conditions are attached hereto as **Annexure A**.

ANNEXURE A

DEUTSCHE POST AG

AND

J.F. HILLEBRAND GROUP AG

CASE NUMBER: 2021SEP0009

CONDITIONS

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1. DEFINITIONS

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

1.1. **"Acquiring Firm"** means Deutsche Post AG, including its South African operations carried through, *inter alia*, the Relevant South African Subsidiaries;

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

1.3. **"Commission"** means the Competition Commission of South Africa;

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

1.5. **"Competition Tribunal"** means the Competition Tribunal of South Africa;

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

1.7. **"Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.8. **"Employee"** has the same meaning as in the LRA;

1.9. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.10. **"LRA"** means the Labour Relations Act 66 of 1995, as amended;

1.11. **"Merging Parties"** means the Acquiring Firm and the Target Firm;

1.12. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;

1.13. **"Relevant South African Subsidiaries"** means DHL Global Forwarding and DHL Supply Chain;

1.14. **"Retrenched Employees"** means the total of employees that have been retrenched for operational reasons by the Relevant South African Subsidiaries in South Africa, with the retrenchment process of such employees having commenced during the course of the 2020 calendar year;

1.15. **"Voluntary Separation Package Employees"** means the employees who concluded voluntarily separation packages with the Relevant South African Subsidiaries, during the period between December 2020 and January 2021;

1.16. **"Employees Likely To Be Retrenched"** means a total of employees that may be retrenched for operational reasons; and

1.17. **"Target Firm"** means J.F. Hillebrand Group AG, including its South African operations.

2. RECORDAL

2.1. On 06 September 2021, the Commission received notification of the Merger.

2.2. The Commission found that the Relevant South African Subsidiaries initiated non-merger specific pre-merger retrenchments and may possibly implement post-merger retrenchments of the Employees Likely to be Retrenched based on the decline in the sales volumes as well as a loss of key contracts stemming from June 2020. As a consequence, that led to Retrenched Employees and Voluntary Separation Package Employees opting for voluntary

separate packages.

2.3. Given that the Relevant South African Subsidiaries engaged in pre-merger retrenchments the Commission requested that the Merging Parties institute as a commitment/condition of the Merger that, when suitable employment opportunities become available, the Relevant South African Subsidiaries will make offers of employment to suitably qualified Retrenched Employees, Voluntary Separation Package Employees and Employees Likely To Be Retrenched.

2.4. In light of the above and following engagements between the Merging Parties and the Commission, the Merging Parties agreed to a commitment to offer the Conditions set out in clause **Error! Reference source not found.** below.

3. CONDITIONS

3.1. Should a vacancy arise at the Relevant South African Subsidiaries for a period of 2 (two) years from the Approval Date, the Relevant South African Subsidiary shall use its commercially reasonable endeavours to inform the Retrenched Employees and the Voluntary Separation Package Employees of the vacancy using the contact details on its records for the Retrenched employees.

3.2. In the event that the Employees Likely to Be Retrenched have been retrenched by the Implementation Date, the provisions of paragraph **Error! Reference source not found.** shall apply to such employees *mutatis mutandis*.

3.3. For the duration of the period referred to a paragraph **Error! Reference source not found.** above, and where a Retrenched Employee applies for a vacant position in South Africa and the Relevant South African Subsidiary is reasonably satisfied that the Retrenched Employee is suitable for that position, the Relevant South African Subsidiary shall give preference to such Retrenched Employee and Voluntary Separation Package Employees in the recruitment process.

3.4. The provisions of paragraph 2.3 shall apply *mutatis mutandis* in the event that the Employees Likely To Be Retrenched have been retrenched by the Implementation Date.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1. The Merging Parties shall circulate a copy of the Conditions to all Employees and/or their respective representatives in South Africa within 5 (five) Days of the Approval Date.

4.2. As proof of compliance with clause **Error! Reference source not found.**, each of the Merging Parties shall, within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit from a director employed by each of the Merging Parties attesting to the circulation of the Conditions and attach copies of said notices.

4.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.

4.4. The Merging Parties shall submit to the Commission a list of Retrenched Employees and Voluntary Separation Package Employees within 10 (ten) Days of the Approval Date.

4.5. In the event that the Employees Likely to Be Retrenched have been retrenched by the Implementation Date, the Merging Parties shall submit to the Commission a list of the Employees Likely to Be Retrenched within 10 (ten) Days of the Implementation Date.

4.6. As proof of compliance with clauses **Error! Reference source not found.** to **Error! Reference source not found.**, on the anniversary of the Approval Date, each of the Merging Parties shall submit an affidavit from a director employed by the relevant Merging Party, attesting to compliance with the Conditions.

5. APPARENT BREACH

5.1. In the event that the Commission receives a complaint in relation to non-compliance with the Conditions or discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

6. VARIATION

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

7 **GENERAL**

7.1. All correspondence in relation to these Conditions shall be sent to mergerconditions@compcom.co.za and 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

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2530 **23 September 2022**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

A2 INVESTMENT PARTNERS (PTY) LTD

AND

NOVUS HOLDINGS LIMITED

CASE NUMBER: 2021OCT0037

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 as set out below:

1. On 22 October 2021, the Competition Commission ("Commission") received a notice of an intermediate merger whereby A2 Investment Partners (Pty) Ltd ("A2 Investment") intends to acquire control over Novus Holdings Limited ("Novus").

2. The parties indicate that A2 Investment currently has 37.55% shareholding in Novus (comprising 18.92% directly together with 18.62% of the shares managed on behalf of Peresec Prime Brokers (Pty) Ltd ("Peresec"). Given that A2 Investment holds 37.55% of the voting rights in Novus a mandatory offer has been triggered in terms of the Companies Act, No. 71 of 2008 (as amended) in terms of which a cash offer will be made by A2 Investment to all Novus shareholders for the acquisition of additional shares in Novus.

3. In terms of the structure of the proposed transaction, A2 Investment intends to acquire additional shares and voting rights in excess of 50% in Novus. The merging parties indicate

that A2 Investment intends on acquiring additional shares in Novus through (i) a "Mandatory Offer" and/or (ii) an "Open Market Purchase" as described in detail below:

3.1. **Mandatory Offer**: A2 Investment will offer cash to the existing shareholders of Novus to acquire their respective shareholdings. Depending on how many Novus shareholders accept the cash offer, A2 Investment could acquire shares in excess of half the issued share capital in Novus, which may likely afford them *de facto* or *de jure* control. The Mandatory Offer is envisaged to close on 11 February 2022; and

3.2. **Open Market Purchase**: Given that the Mandatory Offer presents the possibility that A2 Investment may not acquire any additional shares in Novus, A2 Investment will proceed to acquire shares in Novus on the Open Market following the expiry of the Mandatory Offer. If this happens, A2 Investment will have control over Novus in terms of the Competition Act.

4. Upon the implementation of the proposed transaction, A2 Investment will control Novus. However, the Commission highlights that the Mandatory Offer is likely to close on 11 February 2022. However, the merging parties indicate that should A2 Investment fail to acquire control through the Mandatory Offer, this will trigger an Open Market Purchase which does not have any specified timeframes as to when control in Novus will be acquired. Given the uncertainly in terms of the time period for the change of control, the merging parties have agreed to a condition that: (i) Should A2 Investment acquire *de facto* and or *de jure* control over the Target Firm before 24 months of the approval date, A2 Investment shall inform the Commission of its acquisition within 20 (twenty) business days of establishing control clearly indicating whether A2 Investment acquired *de facto* or *de jure* control; and (ii) Should A2 Investment establish de jure and/or de facto control over Novus after 24 months of the approval date, A2 Investment shall notify the acquisition of the *de facto* and/or *de jure* control as separate mergers in terms of section 13A of the Competition Act, to the extent that the thresholds for an intermediate or large merger are met. The conditions are attached hereto as "**Annexure A**"

5. The primary acquiring firm is A2 Investment, a company incorporated in accordance with the laws of South Africa. A2 Investment is jointly controlled by Marble Head Investments (Pty) Ltd

(75%) ("Marble Investments") and Zariv Investments (Pty) Ltd (25%) ("Zariv Investments"). Marble Investments is in turn controlled by André van der Veen while Zariv Investments is controlled by Adrian Zetle. A2 Investment, and all firms directly and indirectly controlled by André van der Veen and Adrian Zetle shall be referred to as the "Acquiring Group". The Acquiring Group is an investment firm with a diversified portfolio in various industries such as sports betting, construction, agriculture and technology industries.

6. The primary target firm is Novus. Novus is not controlled by any individual shareholders. The following are its major shareholders Peresec Prime Brokers (Pty) Ltd ("Peresec")18.98%; A2 Investments (17.43%); Ninety-One (11.98%) and Value Capital Partners (10.41%). Novus controls in excess of 10 (ten) firms which includes amongst others Paarl Media Holdings (Pty) Ltd; Paarl Coldset (Pty) Ltd and Latiano 554 (Pty) Ltd. Novus and all the firms it directly or indirectly control shall be referred to as the "Target Group". The Target Group is a commercial printing, manufacturing and packaging business with eight specialised printing plants and a tissue plant in South Africa. The Target Group provides a range of printing and packaging services, as well as tissue production. These printing services include printing solutions for newspapers, magazines, retail inserts, commercial material, labels and books.

Relationship between the parties/ products (horizontal / vertical)

7. The Commission assessed the activities of the merging parties and found that the proposed transaction does not give rise to a horizontal overlap as the Acquiring Group does not provide products or services that are functionally substitutable with those of the Target Group. In addition, there is no vertical overlap between the activities of the merging parties as the merging parties currently do not supply any products and/or services to each other.

8. Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

9. The proposed transaction does not raise any public interest concerns.

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10. Considering the above, the Commission concludes that the proposed merger is unlikely to substantially prevent or lessen competition in any market. The Commission also found that the proposed merger is unlikely to raise public interest concerns.

11. Given the uncertainty in respect of the time period in relation to the acquisition of control over Novus by A2 Investment, the merging parties agreed to a condition that should A2 Investment establish de jure and/or de facto control over Novus after 24 months of the approval date, A2 Investment shall notify the acquisition of the *de facto* and/or *de jure* control as separate merger(s) in terms of section 13A of the Competition Act. The Commission therefore approves the proposed transaction with conditions. The conditions are attached hereto as **Annexure A**.

ANNEXURE A

A2 INVESTMENT PARTNERS (PTY) LTD

AND

NOVUS HOLDINGS LIMITED

CASE NUMBER: 2021OCT0037

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. **"Acquiring Firm"** means A2 Investment Partners (Pty) Ltd

1.2. **"Approval Date"** means the date referred to in the Commission's decision;

1.3. **"Business Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

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

1.5. **"Companies Act"** means Companies Act 71 of 2008 (as amended);

1.6. **"Competition Act"** means the Competition Act 89 of 1998 (as amended);

1.7. **"Conditions"** means these conditions;

1.8. **"Mandatory Offer"** means the mandatory offer in terms of section 123 of the Companies Act to purchase Novus shares from the current shareholders of Novus which is anticipated to expire on 11 February 2022;

CONTINUES ON PAGE 130 OF BOOK 2

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1.9. **"Merging Parties"** means the Acquiring Firm and the Target Firm;

1.10. **"Open Market Purchase"** means the purchase of the Novus shares in the open market following the expiry of the Mandatory Offer;

1.11. **"Target Firm"** means Novus Holdings Limited;

1.12. **"Tribunal"** means the Competition Tribunal of South Africa;

1.13. "**Tribunal Rules**" means the Rules for the Conduct of Proceedings in the Competition Tribunal.

2. RECORDAL

2.1. On 22 October 2021, the Commission received notice of an intermediate merger in terms of which the Acquiring Firm intends on acquiring control over the Target Firm.

2.2. The Commission notes that the Mandatory Offer could possibly provide the Acquiring Firm with de facto control over the Target Firm and fall short of de jure control over the Target Firm. Additionally, it is possible that the Acquiring Firm could move from de facto control to de jure control as a consequence of the Open Market Purchase which is not clear in terms of timing.

2.3. Given the uncertainty in terms of the time periods for the acquisition of control, the merging parties and the Commission agreed to a condition in clause 3 below

3. CONDITIONS

3.1. Should the Acquiring Firm acquire *de facto* and/or *de jure* control over the Target Firm within 24 (twenty-four) months of the Approval Date, the Acquiring Firm shall inform the Commission of its acquisition within 20 (twenty) business days of establishing control clearly indicating whether the Acquiring Firm acquired *de facto* or *de jure* control. For the sake of clarity, the Acquiring Firm is entitled to acquire both *de facto* and *de jure* control over the Target Firm within 24 (twenty-four) months after the Approval Date.

3.2. Should the Acquiring Firm fail to establish *de jure* and/or *de facto* control over the Target Firm within 24 (twenty-four) months of the Approval Date, the Acquiring Firm shall notify the acquisition of any subsequent acquisition of control as separate mergers in terms of section 13A of the Competition Act, to the extent that the thresholds for an intermediate or large merger are met.

4. MONITORING OF COMPLIANCE WITH THE CONDITION

4.1. The Acquiring Firm shall notify the Commission of the Implementation Date within 5 (five) Business Days.

4.2. The Acquiring Firm shall inform the Commission of the acquisition referred to in 3.1 by submitting an affidavit deposed to by the Chief Executive Officer.

4.3. Where applicable, the Acquiring Firm shall notify the Commission of the merger envisaged under 3.2 in the prescribed manner in terms of the Competition Act.

5. BREACH

5.1. If the Commission receives any complaint concerning non-compliance with the 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 read 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 lifted, revised or amended. Should a dispute arise concerning 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. All correspondence in relation to these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and 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

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2531 **23 September 2022**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

BRIDGESTONE MINING SOLUTIONS AUSTRALIA (PTY) LTD
AND
OTRACO INTERNATIONAL (PTY) LTD

CASE NUMBER: 2021JUL0039

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 16 July 2021, the Competition Commission (Commission) received a notice of an international intermediate merger wherein Bridgestone Mining Solutions Australia (Pty) Ltd (BMSA) intends to acquire 100% of the issued shares of Otraco International (Pty) Ltd. On completion of the proposed transaction, BMSA will own and control Otraco.

Parties to the transaction

2. The primary acquiring firm is BMSA. BMSA is a wholly owned subsidiary of the Bridgestone Corporation (Bridgestone). Bridgestone is a public company listed on the Tokyo Stock Exchange. Bridgestone's shares are widely held, and the company is not controlled by any single shareholder.

3. The primary target firm is Otraco. Otraco is a wholly owned subsidiary of Downer EDI Mining (Pty) Ltd (Downer Mining).

Activities

4. Bridgestone is a multinational corporation headquartered in Tokyo, Japan. Globally, Bridgestone develops, manufactures, and markets tyres for a number of applications. Of relevance to the proposed transaction are Bridgestone's supply of OTR ("off the road") tyres and related products and services to mining customers in South Africa. In this space, Bridgestone's main activities relate to the manufacture and supply of OTR tyres to mining customers. OTR tyres are supplied either to operators of the mines directly, or to third party service providers who then on-sell the tyres to the mines while also providing related tyre management services. Bridgestone also provides on-site OTR tyre management services to mining customers.

5. Otraco is a global provider of OTR and lights mobile equipment tyre management solutions to customers across the mining sector in Australia, New Zealand, Chile, and Southern Africa (South Africa, Botswana, and Namibia). These services are directed at increasing productivity and reducing the total cost of tyres and are generally provided to mining customers on-site. Otraco's core OTR tyre management services offering is supported by a proprietary computerised tyre management system, called Otracom. Recording real-time data from tyre sensors, Otracom tracks and manages tyres and rims from manufacture to disposal, providing essential performance data reporting at key stages. Otraco also delivers tyre pressure monitoring systems via software applications, which utilise live data feeds to monitor tyre life, issuing alerts when maintenance is required and producing performance data reporting. Otraco currently supplies Otracom (by way of a licence) to any third party at an agreed price when requested.

Relevant markets

6. Considering the above, the Commission identified the following markets relevant for the assessment of the proposed transaction:

    9.1. Upstream market for the supply of OTR tyres to the mining sector in South Africa;
    9.2. Broad market for the provision of OTR management services to the mining sector in South Africa;

9.3. Narrow market for the provision of open cast OTR management services to the mining sector in South Africa; and

9.4. Narrow market for the provision of underground OTR management services to the mining sector in South Africa.

Competition analysis

7. In the upstream market for the supply of OTR tyres to the mining sector in South Africa, the Commission found that Bridgestone is a significant player. Otraco is not active in this market. This market is considered for the purposes of the potential vertical assessment.

8. In the broad market for the provision of OTR management services to the mining sector in South Africa, the Commission found that Bridgestone is not a significant player in this market whereas Otraco appears to be a market leader in this market.

9. In the narrow market for the provision of open cast or surface OTR management services to the mining sector in South Africa, the Commission found that Bridgestone is not a significant player in this market. Otraco appears to be a market leader in this market.

10. In the narrow market for the provision of underground OTR management services to the mining sector in South Africa, the Commission found that Otraco currently does not generate revenue from this market. Bridgestone also does not appear to be a significant player in this market.

Theories of harm

11. The Commission considered the following theories of harm for the proposed transaction.

Unilateral effects - OTR management services to the mining sector in South Africa

12. The Commission found that the merging parties are not close competitors in the market for the provision OTR management services. The Commission notes that Bridgestone is not a significant player in this market. Further, the Commission found that customers of the merging parties (mines) appear to have some form of countervailing power (i.e., the ability to negotiate better prices and commercial terms). Mines generally procure OTR management services and/or tyres through a tender process. These are generally procured in separate tenders. For

surface mining, OTR tyre management services and OTR tyres are procured separately. Mines prefer to buy tyres directly from the OEMs as the tyres are expensive and not of normal size (i.e., large, and ultra-large). For underground mining, medium to small tyres are required and because these are generally available, some mines combine tenders for smaller tyres and tyre management services. However, even for small and medium tyres, not all mines combine the tenders with tyre management services. Prices and price adjustment mechanism are normally agreed at the tender stage. Mines generally enter into 3 (three) year OTR management services contracts with service providers. Thereafter, a similar tender process is followed.

13. Considering the above, the Commission is of the view that the proposed transaction is unlikely to result in substantial unilateral effects in the market for OTR management services to the mining sector in South Africa.

Potential vertical assessment

14. The Commission notes that there is a potential vertical overlap between the activities of the merging parties in South Africa as Bridgestone manufactures and supplies OTR tyres whereas Otraco is a provider of OTR tyre management services. Some OTR management companies purchase OTR tyres from manufacturers such as Bridgestone and on-sell to mines. Further, some tenders (mostly underground OTR management tenders) require a service provider to also provide tyres in addition to its service offering. In considering potential vertical concerns, the Commission considered whether the proposed transaction is likely to substantially result in input and customer foreclosure.

Input Foreclosure

15. In considering input foreclosure, the Commission considered whether the merged entity will have the ability and incentive to foreclosure downstream competitors of Otraco from accessing OTR tyres or raise the operating costs of such competitors by providing access on unreasonable terms. This concern was also raised by competitors of the merging parties.

16. The Commission found that in the upstream market for the supply of OTR tyres to the mining sector, Bridgestone is a significant player. Although it appears that Bridgestone might have

the ability to foreclose, the Commission is of the view that the merged entity is unlikely to have the incentives to foreclose. The Commission notes that in South Africa Bridgestone's main business is the manufacturing and supplying tyres (including OTR tyres). In the manufacturer and supply of OTR tyres, Bridgestone competes vigorously with Michelin and other OTR tyre manufacturers. Therefore, should Bridgestone engage in an input foreclosure strategy, it is likely to lose customers to other OTR tyre manufacturers. Further, the Commission notes that Bridgestone generates substantial revenue from the sale of tyres (including OTR tyres).

17. Considering the above, the Commission is of the view that it is unlikely that the merging parties will have the incentives to foreclose access to OTR tyres. As such, the Commission will not consider effects.

Customer Foreclosure

18. In considering customer foreclosure, the Commission considered whether Bridgestone is acquiring a significant customer of tyres to the extent that its upstream competitors will be foreclosed of a customer in the downstream market. The Commission found that the proposed transaction is unlikely to substantially result in any customer foreclosure concerns.

19. Considering the above, the Commission is of the view that the proposed transaction is unlikely to result in any potential foreclosure concerns.

Portfolio effect assessment

20. The Commission assessed whether, as a direct result of the proposed transaction, the merged entity will be able to leverage Otraco's dominance in either the Broad Market and/or the OTR Open Cast Market to the advantage of Bridgestone in the Upstream Market. Several third parties raised the concern that Otraco could use its dominant market position in the relevant markets to recommend to mines implicitly or explicitly, Bridgestone OTR tyres ahead of competing OEM OTR tyres.

21. The Commission however did not find any evidence to support the submissions that the merger would result in portfolio effects. In particular, the Commission found that the

procurement of OTR tyres by the mines is done independently of the OTR tyre management companies. The mines make decisions based on several factors including price, performance and the need to have security of supply. Given this feature of the market, the Commission found that the merger is not likely to result in portfolio effects.

Other concerns raised by third parties

Access to competitively sensitive information

22. The Commission received concerns that in rendering OTR tyre management services, Otraco has access to the performance data of third party OTR tyre suppliers. Post-merger, this information could be accessed by Bridgestone, giving the latter a competitive advantage over its rivals.

23. The merging parties submitted that third party concerns do not bear merit since Otraco only has access to technical as opposed to competitive information as regards competing for OEM OTR tyres. Lastly, any data collected by Otraco for OTR tyre management purposes is owned by the respective mines.

24. Notwithstanding the above the Commission and the merging parties agreed to conditions to mitigate any information exchange concerns. The conditions are attached as **Annexure A** hereto.

Public interest

25. The proposed transaction does not raise any public interest issues.

Conclusion

26. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets. Further, the proposed transaction does not raise public interest issues.

27. Therefore, the Commission approves the proposed transaction subject to conditions attached as **Annexure A**.

ANNEXURE A

BRIDGESTONE MINING SOLUTIONS AUSTRALIA (PTY) LTD
AND
OTRACO INTERNATIONAL (PTY) LTD
CASE NO: 2021JUL0039

DEFINITIONS

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 Bridgestone Mining Solutions Australia (Pty) Ltd;

1.2. **"Approval Date"** means the date referred to on the Commission's Clearance Certificate (Form CC15);

1.3. **"Bridgestone SA"** means Bridgestone South Africa (Pty) Ltd;

1.4. **"Bridgestone Corporation"** means Bridgestone Corporation, a public company listed on the Tokyo Stock Exchange;

1.5. **"Bridgestone Group"** means Bridgestone Corporation and all its subsidiaries worldwide, but excluding Otraco and Otraco SA;

1.6. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.7. **"Commission Rules"** means Rules for the Conduct of Proceedings in the Commission;

1.8. **"Competition Act"** means the Competition Act No 89 of 1998, as amended;

1.9. **"Conditions"** means these conditions contained in this Annexure A, agreed to by the

Merging Parties and the Commission;

1.10. **"Data"** means all tyre data, performance data, prices, and technical specifications of tyres that Otraco has access to in conducting its ordinary OTR tyre management services (including historic data and data on R&D products not currently available in the market);

1.11. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.12. **"Merger"** means the acquisition of control over Otraco by the Acquiring Firm;

1.13. **"Merging Parties"** means Bridgestone Corporation, the Acquiring Firm, and Otraco;

1.14. **"Otraco"** means Otraco International (Pty) Ltd, and/or the business currently held by it;

1.15. **"Otraco SA"** means Otraco South Africa (Pty) Ltd, and/or or the business currently held by it;

1.16. **"OTR tyres"** means all sizes of Off-the-Road tyres generally used in mining industry;

1.17. **"South Africa"** means the Republic of South Africa;

1.18. **"Tribunal"** means the Competition Tribunal of South Africa; and

1.19. **"Tribunal Rules"** means Rules for the Conduct of Proceedings in the Tribunal.

2. RECORDAL

2.1. Bridgestone SA is engaged, among other things, the supply of OTR tyres in South Africa. OTR tyres may also be supplied into South Africa by Bridgestone Corporation or other entities directly or indirectly controlled by Bridgestone Corporation.

2.2. Otraco SA provides OTR tyre management services in South Africa. In the ordinary course of business, Otraco SA may have access to Data (excluding prices) concerning OTR tyres

supplied to its customers (mines) by various tyre manufacturers. Although gathered and managed by Otraco SA, this Data belongs to the customer who operates the site at which the relevant tyres have been used.

2.3. Notwithstanding the above and given that competitors of Bridgestone in the market for the manufacture and supply of OTR tyres were concerned that post-merger Bridgestone might have access to this Data which might give Bridgestone some form of competitive advantage, the Commission and the Merging Parties agreed on the following conditions.

3. CONDITIONS TO THE MERGER

3.1. For as long as the Bridgestone Group directly or indirectly controls Otraco, Otraco and Otraco SA shall not directly or indirectly share Data concerning OTR tyre brands of manufacturers other than the Bridgestone Group with the Bridgestone Group in South Africa, unless the customer who owns the data directs Otraco and/or Otraco SA to do so.

3.2. Otraco and Otraco SA employees who may be associated with, or seconded to, the Bridgestone Group in future, shall be prohibited from disclosing any Data within the Bridgestone Group in South Africa, subject to the requirements of clause 3.1 above.

3.3. The Merging Parties shall ensure that Data will not be available to any representative of the Bridgestone Group that is also a director at Otraco or Otraco SA, subject to the requirements of clause 3.1 above.

3.4. In furtherance of clause 3.1 above, the Merging Parties shall establish suitable and appropriate information barriers to regulate the flow of Data between Otraco or Otraco SA (or those individuals for whom access to such information is necessary in the course of conducting the business currently held by Otraco or Otraco SA) and Bridgestone Group employees in South Africa, accordingly.

4. MONITORING COMPLIANCE WITH THE CONDITIONS

4.1. The Merging Parties shall inform the Commission of the Implementation Date within five (5) days of it becoming effective.

4.2. Within three (3) months of the Implementation Date, the Merging Parties shall develop and provide the Commission with a copy of the appropriate confidential information and information exchange policy to regulate the flow of Data between Otraco or Otraco SA and the Bridgestone Group employees and directors in South Africa for the Commission's approval.

4.3. The Merging Parties shall submit to the Commission an affidavit deposed to by an executive director within 20 (twenty) days of the first three anniversaries of the Implementation Date confirming compliance with the Conditions provided that the Bridgestone Group directly or indirectly holds shares in Otraco during this period.

4.4. The Commission may request additional information from the Merging Parties which is relevant and necessary for the monitoring of compliance with these Conditions.

4.5. Any person/s who believe that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission with a complaint.

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 Rules read together with Rule 37 of the Tribunal Rules.

6. VARIATION

6.1. The Merging Parties may at any time, and on good cause shown, to apply to the Commission for any of the Conditions to waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merging Parties' application to the Commission, the Merging Parties may apply to the Tribunal for appropriate relief.

7. GENERAL

7.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and 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

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 2532 **23 September 2022**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

CLICKS RETAILERS (PROPRIETARY) LIMITED
AND
THE RETAIL PHARMACY BUSINESSES CARRIED ON BY PICK N PAY RETAILERS (PTY) LTD

CASE NUMBER: 2021JUL0018

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. The Competition Commission of South Africa ("Commission") has been notified of a proposed intermediate merger whereby Clicks Retailers (Pty) Ltd ("Clicks") intends to acquire the retail pharmacy businesses carried on by Pick n Pay Retailers (Pty) Ltd ("Pick n Pay Retailers") under the name of Pick n Pay Pharmacies. There are 25 Pick n Pay pharmacies that will ultimately be acquired by Clicks ("Pick n Pay Pharmacies").

2. Clicks is ultimately owned and controlled by Clicks Group Limited ("Clicks Group"). Clicks Group controls a number of firms. Of relevance to the proposed transaction, the Clicks Group includes United Pharmaceutical Distributors ("UPD"), Unicorn Pharmaceuticals ("Unicorn") and Clicks Direct Medicines ("CDM").

3. Pick n Pay Retailers is a wholly owned subsidiary of Pick n Pay Stores Limited ("Pick n Pay"). The Pick n Pay Pharmacies do not control any firms in South Africa.

4. In terms of the Sale of Business Agreement, Clicks will acquire the Pick n Pay Pharmacies including the pharmacy licences, data, dispensary stock and the transfer of all pharmacy business staff. Following the implementation of the transaction, the Pick n Pay Pharmacies will be controlled by Clicks.

Activities of the merging parties

Clicks

5. The Clicks Group comprises a range of specialist health and beauty retail outlets. Clicks has approximately 620 retail pharmacies in South Africa. UPD holds a wholesale pharmacy licence and operates as a full range pharmaceutical wholesaler and distributor. UPD is the preferred supplier to the Clicks retail store network. CDM is a courier pharmacy service provider. Unicorn is a marketer of generic pharmaceutical products. Unicorn does not perform any manufacturing functions itself but rather has contract manufacturing arrangements with several local and global manufacturers., Unicorn supplies pharmaceutical products to Clicks.

6. The 'Link Pharmacies' brand is owned by New Clicks South Africa (Pty) Ltd on behalf of UPD which licenses this brand to third party pharmacies. There are approximately 141 Link Pharmacies which operate on a nationwide basis. The merging parties submit that these pharmacies operate independently from Clicks pharmacies and Clicks has no control over the prices at which these pharmacies sell products.

Pick n Pay Pharmacies

7. The Pick n Pay Pharmacies operate a dispensary and an over-the-counter ("OTC") business. The general front-shop business that is conducted by a typical retail pharmacy which includes the supply of toiletries, beauty and related products will continue to be part

of Pick n Pay's wider retail offering and does not form part of the pharmacy business which is to be transferred to Clicks.

8. There are currently 33 Pick n Pay pharmacies, 25 of which are the subject of the proposed transaction.

Areas of overlap

9. Both the merging parties operate retail pharmacies. The activities of the merging parties overlap in relation to the retail of scheduled pharmaceutical products.

10. The proposed transaction also presents a vertical overlap in that Clicks, through UPD, is also active in the wholesaling of pharmaceutical products. Unicorn is also an upstream manufacturer of pharmaceutical products.

Relevant markets

11. Based on case precedent and submissions by market participants, the Commission considered the following relevant markets:
    11.1. The national upstream market for the manufacture and supply of pharmaceutical products.
    11.2. The national upstream market for the wholesale distribution of pharmaceutical products.
    11.3. The national downstream market for the retail of scheduled pharmaceutical products (schedules 1 to 8).
    11.4. The local downstream market (0 to 5km) for the retail of scheduled pharmaceutical products.

Competitive assessment

Upstream national market for the manufacture of pharmaceutical products

12. The Commission did not estimate market share estimates for Unicorn in the upstream market for the manufacture of pharmaceutical products as Unicorn does not supply any third-party pharmacy retailers (i.e., Unicorn branded products are only sold in Clicks stores).

Therefore, the transaction will not result in any input foreclosure. The Commission notes however that Unicorn faces competition from several pharmaceutical products manufacturers including Aspen, Adcock, Cipla, Sandoz, Novartis, and Sanofi, among others.

Upstream market for the wholesale distribution of pharmaceutical products (scheduled and unscheduled)

13. UPD will have an estimated national market share in the wholesale distribution of pharmaceutical products of between 19% to 29% based on revenue submitted by UPD and the competitors engaged. UPD faces competition from a number of other wholesale distributors such as Alphapharm, Ring Pharm, Transpharm, Pharma Dynamics, Qestmed, Topmed, and Pharmed among others.

Downstream national market for the retail of scheduled pharmaceutical products

14. The Commission relied on the total annual retail revenue generated and obtained from third parties for the year 2020 as the total market size for the schedule 1 to 8 retail pharmaceutical market. The Commission notes however this is not a total representation of the market as the Commission could not obtain revenue figures from all retail pharmacies in South Africa.

15. At a national level, taking into account national chains and independent groups (with 50 stores and above), the merged entity will have an estimated national market shares of between 32% and 42% in the retail of scheduled pharmaceutical products with a small market share accretion. The merged entity will continue to face competition from Dis-Chem (which includes PPH and TLC), Medirite, Spar, and Arrie Nel. The vertically integrated players in the retail pharmaceutical market include Dis-Chem (CJ Pharmaceuticals), Spar (S Buys), Medirite (Transpharm) and Clicks (UPD and Unicorn).

16. The Commission also considered national market shares which include the smaller independent pharmacy stores that submitted information. Taking into account the local independents, who place a competitive constraint on national chains at the local level, the

merged entity will have estimated national market shares in the retail of scheduled pharmaceutical products of between 30% to 40%, with a small market share accretion.

17. The Commission found that Clicks is the largest corporate group in terms of the number of retail stores in South Africa with a market share of between 12% to 22% (620 stores) followed by Dis-Chem (including PPH and TLC), Shoprite-Medirite and Spar. Pick n Pay accounts for a small share.

18. The Commission also isolated local markets (within 5km radius) where there were either 10 or fewer competitors (excluding Clicks) and markets where there were fewer than 10 independents. The areas considered are Northgate Pick n Pay, Promenade Pick n Pay, Somerset Mall Pick n Pay, Table Bay Mall Pick n Pay, South Coast Pick n Pay, Montana Pick n Pay, Witbank Pick n Pay, Plattekloof Pick n Pay and Pick n Pay Ottery Pick n Pay.

19. In these local markets, the Commission found that there are 1 or 2 competing Dis-Chem pharmacies, as well as 2 or more other corporate competitors. There is also the presence of 4 or more independent pharmacies in each local market. Therefore, there appear to be alternative community pharmacies even in the narrowest local markets.

20. The Commission further considered whether the merged entity would be in a position to materially influence competitive parameters in the retail pharmacy industry. In this regard, the Commission considered factors such as price effects, bargaining dynamics, dispensing fees, barriers to entry, profitability and creeping merger effects that arise as a result of the proposed merger.

Unilateral effects assessment

Price effects assessment

21. To assess the level of price competition between the merging parties and its competitors, the Commission used the final price paid by both cash-paying and medical scheme customers on a sample of top selling and low turnover pharmaceutical products. The Commission carried out price comparisons of the dispensing fee that the merging parties

charge to cash and medical scheme members against competing pharmacies. Based on the data set analysed, there is no discernible pattern that can be deduced and where there are differences, these do not appear to be substantial.

Non-price factors

22. In a regulated market such as retail pharmaceuticals, non-price factors may be particularly important when assessing competition in the market. In the pharmacy market, each group competes on key factors that are unique to their service offering. The corporate and independent pharmacies differ in terms of the product range offered to customers with the corporate pharmacies offering a wider range of products. The corporate pharmacies also tend to be in the urban areas while the independent pharmacies are in the less densely populated areas. Corporate pharmacies tend to compete on offering a wider range of services while in-store pharmacies in retail stores tend to rely on the customers that shop in their stores for groceries.

23. Independent pharmacies, on the other hand place an emphasis on personal service that builds a relationship with clients. This is especially important in the healthcare market where customers may require a more individualised service. The role and importance of independent pharmacies can therefore never be overemphasized especially given the personal and sensitive nature of healthcare. This further accentuates the importance of ensuring the long-term sustainability of independent pharmacies in the market.

Barriers to entry

24. The Commission is of the view that the retail pharmaceutical market is characterized by high barriers to entry and expansion and this is evidenced by the lack of sufficient and timely entry at levels that can compete with the established national corporate players, Clicks and Dis-Chem.

Countervailing power

25. The Commission found that it is unlikely that the proposed transaction will significantly shift the bargaining dynamics in future negotiations against healthcare funders due to the small market share accretion from this transaction.

26. In relation to the cash-paying customers, the acquisition of the Pick n Pay pharmacies by Clicks reduces the alternatives available in the market for such customers. However, the Commission notes that there are sufficient alternatives that consist of both corporate and independents pharmacies within 5km of the merging parties' pharmacies where overlaps arise as a result of the proposed merger.

Removal of an effective competitor

27. Although the Pick n Pay pharmacies are smaller in size, the Commission is of the view that both the merging parties operate corporate retail pharmacies and offer scheduled pharmaceutical products and other clinic services in direct competition against one another. However, Pick n Pay is unlikely an effective competitor given its small footprint and limited focus on its pharmacy business.

Creeping mergers assessment

28. The Commission's investigation found that Clicks has embarked and/or is embarking on a concerted acquisition strategy to acquire small pharmacies. The Commission assessed this proposed merger in the context of the cumulative effect of the many acquisitions over the past five years, the majority of which were not notified to the Commission.

29. The Commission also received concerns about the fact that Clicks, which is vertically integrated, is continuously enlarging its footprint at the retail level. The buyer power of UPD and the ability to drive sales through the increasing retail footprint (from the concerted creeping acquisitions) provides advantages that raise barriers to entry and expansion of other players in the market, especially for small and/or independent pharmacies.

30. Although Clicks has embarked on a creeping merger strategy, the Commission has not, at this stage, uncovered sufficient evidence to suggest that it has been able to exercise market

power from its creeping mergers strategy. There also do not appear to be recognisable price effects from this creeping strategy at present.

31. The Commission nevertheless remains concerned about Clicks' creeping merger strategy and whether it may afford Clicks market power in future. The Commission is therefore imposing a condition that requires Clicks to inform it of all future acquisitions of retail pharmacies.

Vertical assessment

32. With respect to the input foreclosure, the Commission found that the merged entity will unlikely have market power in the upstream market for the manufacture and wholesale of pharmaceutical products that would give it the ability to foreclose downstream market participants with significant anticompetitive effect. The Commission notes that there are several viable alternative players in both the manufacturing and wholesale market segments who can supply pharmaceutical products to downstream retail pharmacies who compete with the merged entity in the downstream retail market.

33. The Commission also found that Pick n Pay Pharmacies account for small market shares in the downstream market for the retailing of pharmaceutical products. Therefore, Pick n Pay does not appear to be a significant customer of any upstream rivals. The Commission is therefore of the view that the proposed transaction is unlikely to result in a substantial customer foreclosure in the market for the wholesale of pharmaceutical products. The lack of customer foreclosure also applies for the upstream manufacture of pharmaceutical products given Pick n Pay's small market share.

Failing firm assessment

34. Although the merging parties have not made a formal failing firm defence, the Commission also considered the financial performance of Pick n Pay.

Counterfactual

35. The Commission takes the view that a pharmacy licence is a valuable and tradeable asset. The Pick n Pay pharmacy licences are particularly valuable as the licences are inside shopping centres that have high footfall. Third parties have indicated that these licences are sought-after due to their lucrative locations. The Commission notes that the license is also a tradeable asset in that if a pharmacy is closed or acquired, the licence hardly exits the market, but is reallocated to a new owner (provided all the necessary requirements are met).

Views of third parties

36. The Commission received concerns from third parties relating to potential exercise of market power by Clicks, an anti-competitive creeping merger strategy that removes a number of independent pharmacies from the market and other public interest concerns as discussed below.

Public interest

Impact on employment

37. Given the uncertainty brought about the transfer of licenses and potential continued trading within the Pick n Pay pharmacies at Pick n Pay stores, the Commission requested the merging parties to provide a moratorium on retrenchments for a period of 3 years. Trade Unions also raised concerns regarding these uncertainties. The merging parties have agreed to this condition.

Impact on ability of SMMEs to compete

38. The Commission also assessed the impact of the proposed merger on the ability of small to medium independent pharmacies (SMMEs) to compete and expand in the retail pharmaceutical market. The Commission took into account the prior acquisitions by Clicks, together with the proposed acquisition of 25 pharmacies in order to determine whether it generates a substantial negative impact on such SMME pharmacies.

39. Part of the concerns received from third parties is that the community pharmacy space is being consolidated by the larger corporate pharmacy chains and this consolidation has a

negative impact on SMMEs pharmacies who often cannot compete effectively. It is submitted that if Clicks is allowed to purchase the additional pharmacies in this transaction, the preferential contracts between Clicks and medical aids schemes will only further cripple the independent pharmacies' ability to compete effectively. This proposed merger will allow Clicks easy access to additional customers via the Pick n Pay footfall. This will draw more clients/patients away from independents. The transaction will result in more small independent pharmacies being squeezed out of the market and closing down.

40. For instance, it is submitted by a third party that this merger is not in the public interest since the merging parties 'cherry pick' the best locations and operate from the main shopping centres and shopping malls in urban areas. Independents are forced to operate in under-serviced and lower income areas. The third party submits that mergers such as the present one further limit the number of profitable sites available to independents. The proposed merger also does not have any positive public interest effect on expanding pharmaceutical services in previously disadvantaged areas.

41. The Commission has noted that Clicks' strategy of buying up small independent pharmacies effectively impedes such SMME pharmacies from participating effectively in the market. The small independent pharmacies currently constrain large corporate players in the market, especially on non-price factors. Because most of the corporates are vertically integrated, the continuous growth by Clicks at the retail layer through acquisitions has the effect of heightening entry barriers and expansion, thereby restricting entry, growth and expansion of SMMEs and their participation in adjacent sectors such as wholesale and distribution of pharmaceuticals.

42. While noting the above negative effects, the proposed transaction in itself does not result in substantial negative public interest effects. The 25 Pick n Pay pharmacies are corporate pharmacies and not independent pharmacies. The stores only add a relatively small position to its existing size, such that the negative effect directly from the proposed merger is unlikely to meet the substantiality test.

Remedies

43. The Commission invited the parties to make submissions regarding the competition concerns and public interest concerns arising as a result of the proposed merger. The merging parties have since agreed to the following conditions:

43.1. To not restrict competition between the front shop business of Pick n Pay and Clicks within the Pick n Pay stores where Clicks will operate the dispensaries. This essentially addresses the market allocation concern and will endure as long as Clicks operates a pharmacy within a Pick n Pay store.

43.2. To notify all future acquisitions by Clicks within the retail of pharmaceutical products market.

43.3. A 3-year moratorium on merger-specific retrenchments

44. The Commission is of the view that the above conditions alleviate the concerns that are brought about by the merger.

Conclusion

45. The Commission approves the proposed merger subject to conditions in Annexure A.

ANNEXURE A

CLICKS RETAILERS (PROPRIETARY) LIMITED

AND

THE RETAIL PHARMACY BUSINESSES CARRIED ON BY PICK N PAY RETAILERS (PTY) LTD

CASE NUMBER: 2021JUL0018

DEFINITIONS

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

1.1 "**Acquiring Firm**" means Clicks;

1.2 "**Approval Date**" means the date referred to on the Commission's merger Clearance Certificate;

1.3 "**Clicks**" means Clicks Retailers (Proprietary) Limited;

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 "**Commission Rules**" mean Rules for the Conduct of Proceedings in the Commission;

1.7 "**Conditions**" mean, collectively, the conditions referred to in this document;

1.8 "**Days**" mean any day other than a Saturday, Sunday or official public holiday in the South Africa;

1.9 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.10 "**LRA**" means the Labour Relations Act 66 of 1995 as amended;

1.11 "**Merger**" means the acquisition of the business of the Target Firm by the Acquiring Firm;

1.12 "**Merged Entity**" means the Acquiring Firm and the Target Firm following the Merger;

1.13 "**Merging Parties**" means the Acquiring Group, the Target Firm and the Seller;

1.14 **"Pharmaceutical Market"** means the retail pharmacy store market for the provision of scheduled, unscheduled and front shop products;

1.15 "**Pick n Pay Retailers**" means Pick n Pay Retailers (Pty) Ltd;

1.16 **"Seller"** means Pick n Pay Retailers;

1.17 "**Small Merger"** means a proposed merger, in the Pharmaceutical Market, that would fall within section 11(5)(a) of the Competition Act;

1.18 "**South Africa**" means the Republic of South Africa;

1.19 "**Target Firm**" means the retail pharmacy businesses carried on by Pick n Pay Retailers;

1.20 "**Tribunal**" means the Competition Tribunal of South Africa; and

1.21 "**Tribunal Rules**" mean Rules for the Conduct of Proceedings in the Tribunal.

CONDITIONS TO THE APPROVAL OF THE MERGER

2. **Employment**

2.1 The Merging Parties shall not retrench any employees as a result of the Merger for a period of 3 (three) years from the Implementation Date as well as the period between the Approval Date and the Implementation Date.

2.2 For the sake of clarity, retrenchments exclude (i) voluntary separation arrangements; (ii) voluntary early retirement packages, (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, excluding but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

3. **Commitment to inform the Commission of future pharmacy acquisitions**

3.1 The Acquiring Firm undertakes to inform the Commission in writing (the Notice), for a 5 (five) year period from the Implementation Date, of any Small Merger in terms of which it may directly or indirectly acquire another entity in the Pharmaceutical Market.

3.2 For the avoidance of doubt, the Acquiring Firm's obligation set out in clause 3.1 above, will not automatically trigger the provisions of sections 13(2) and (3) of the Competition Act. In this regard, the Commission will exercise its powers in terms of section 13(3) in the ordinary cause upon receipt of the Notice.

3.3 The obligation in clause 3.1 above shall not in any way affect the notification requirements provided for in the Competition Act for transactions that meet the requirements of the Competition Act for merger notification.

4. **No restraint**

4.1 The Merging Parties shall not enter into any agreements between them which limits Clicks from selling any products in the pharmacies which Clicks acquires from Pick n Pay in terms of this Merger; including front shop items such as schedule 0 medications. The condition shall apply as long as Clicks leases dispensary space within a Pick n Pay store.

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

5.1 The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.

5.2 The Merging Parties shall each circulate a copy of the Conditions to their employees, recognised trade unions and employee representatives of the Target and Acquiring firm within 5 (five) Days of the Approval Date.

5.3 As proof of compliance with 5.2 above, a director of each Merger Party 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 notice that was sent to the employees in that regard.

5.4 The Acquiring Firm shall, on each anniversary of the Approval Date submit an affidavit confirming compliance with the conditions set out at 2.1 and 2.2.

5.5 The Merged Entity shall submit a comprehensive annual compliance report to the Commission, setting out the extent of its compliance with clauses 3 and 4 of the Conditions for the duration of the Conditions.

6. **APPARENT BREACH**

6.1 In the event that the Commission receives 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 read together with Rule 37 of the Competition Tribunal Rules.

7. **VARIATION**

7.1 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.

8. **GENERAL**

8.1 All correspondence in relation these conditions must be submitted to the following email address: mergerconditions@compcom.co.za and 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

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 2533 **23 September 2022**

EXEMPTION FROM SECTION 11(1)(I) OF THE MEAT SAFETY ACT, 2000 (ACT NO. 40 OF 2000) FOR THE SLAUGHTER OF GAME ANIMALS

The Minister of Agriculture, Land Reform and Rural Development intends, in terms of section 11(3) of the Meat Safety Act, 2000 (Act No. 40 of 2000), in consultation with members of the Executive Council responsible for abattoirs to exempt game animals from a portion of the provisions of section 11(1)(i) of the Meat Safety Act, 2000 (Act No. 40 of 2000).

In terms of section 11(1)(i), no dead animal or animal suffering from a condition that may render the meat unsafe for human and animal consumption may be presented at an abattoir for slaughter;

The proposed exemption is to allow game animals that have been shot outside an abattoir ("dead animals") to be presented at an abattoir for dressing in compliance with all other provisions of the Meat Safety Act, 2000.

Interested persons are invited to submit comments on the proposed exemption within 60 days of publication of this notice to the Director of Veterinary Public Health at:

Private Bag x138, Pretoria, 0001; or e-mail VPH@dalrrd.gov.za.

Enquiries: 012 319 7688

MS A T DIDIZA
MINISTER FOR AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT
Date: 2022 - 07 - 02

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 1294 OF 2022

STANDARDS ACT, 2008
STANDARDS MATTERS

In terms of the Standards Act, 2008 (Act No. 8 of 2008), the Board of the South African Bureau of Standards has acted in regard to standards in the manner set out in the Schedules to this notice.

SECTION A: DRAFTS FOR COMMENTS

The following draft standards are hereby issued for public comments in compliance with the norm for the development of the South Africa National standards in terms of section 23(2)(a) (ii) of the Standards Act.

Draft Standard No. and Edition	Title, scope and purport	Closing Date
SATR 61850-90-6 Ed 1	*Communication networks and systems for power utility automation -Part 90-6: Use of IEC 61850 for Distribution Automation Systems*. Defines use cases for typical DA applications that require information exchange between two or more components/systems.	2022-11-06
SATR 61850-7-5 Ed 1	*Communication networks and systems for power utility automation -Part 7-5: IEC 61850 Modelling concepts*. Establishes modelling concepts that help the user to understand how to apply the models defined in IEC 61850-7-4 and IEC 61850-7-3 to implement practical applications.	2022-11-06
SATR 62681 Ed 2	*Electromagnetic performance of high voltage direct current (HVDC) overhead transmission lines*. Provides general guidance on the electromagnetic environment issues of HVDC overhead transmission lines.	2022-11-06
SATS 62344 Ed 2	*Design of earth electrode stations for high-voltage direct current (HVDC) links - General guidelines*. Applies to the design of earth electrode stations for high-voltage direct current (HVDC) links.	2022-11-06
SANS 60601-2-31 Ed 1	*Medical electrical equipment -Part 2-31: Particular requirements for the basic safety and essential performance of external cardiac pacemakers with internal power source*. Applies to the basic safety and essential performance of external pacemakers powered by an internal electrical power source, hereafter referred to as me equipment.	2022-11-06
SANS 61010-2-101 Ed 3	*Safety requirements for electrical equipment for measurement, control and laboratory use Part 2-101: Particular requirements for in vitro diagnostic (IVD) medical equipment*. Applies to equipment intended for in vitro diagnostic (IVD) medical purposes, including self-test IVD medical purposes.	2022-11-06
SANS 1676-1 Ed 2	*Acoustics - Laboratory measurement of sound insulation of building elements - Part 1: Application rules for specific products*. Specifies test requirements for the laboratory measurement of the sound insulation of building elements and products, including detailed requirements for the preparation and mounting of the test elements, and for the operating and test conditions.	2022-11-06
SANS 60601-2-35 Ed 1	*Medical electrical equipment -Part 2-35: Particular requirements for the basic safety and essential performance of heating devices using blankets, pads or mattresses and intended for heating in medical use*. Applies to the basic safety and essential performance of heating devices using blankets, pads or mattresses in medical use, also referred to as me equipment.	2022-11-06
SANS 12402-3 Ed 3	*Personal flotation devices Part 3: Lifejackets, performance level 150 - Safety requirements.* This document specifies the safety requirements for lifejackets, performance level 150. It is applicable to lifejackets used by adults, children and infants, for general, offshore or rough water use, or when the users are fully clothed.	2022-11-13

SCHEDULE A.1: AMENDMENT OF EXISTING STANDARDS

The following draft amendments are hereby issued for public comments in compliance with the norm for the development of the South African National Standards in terms of section 23(2)(a) (ii) of the Standards Act.

Draft Standard No. and Edition	Title	Scope of amendment	Closing Date
SANS 1350 Ed 1.3	*Guardrails for roads - W-section*	mended to update to update the requirements on materials, the table on tensile properties, and the requirements on dimensions, to update drawings and remove notes to purchasers	2022-11-10
SANS 1585 Ed 2.2	*Coated fabrics for shelters and rainwear.*	Amended to delete the annex on notes to purchasers and advice to manufacturers and buying authorities concerning the type and method of application of seam-sealing tape(s) for coated fabrics for rainwear.	2022-11-13
SANS 1365 Ed 3.3	*Solvent degreasers that contain chlorinated hydrocarbons.*	Amended to delete notes to purchasers.	2022-11-13
SANS 750 Ed 4.2	*Interlock fabric*	Amended to the delete annex on notes to purchasers.	2022-11-13

SCHEDULE A.2: WITHDRAWAL OF THE SOUTH AFRICAN NATIONAL STANDARDS

In terms of section 24(1)(C) of the Standards Act, the following published standards are issued for comments with regard to the intention by the South African Bureau of Standards to withdrawn them.

Draft Standard No. and Edition	Title	Reason for withdrawal	Closing Date
CKS 456:2009 Ed 1.1	*Medical forceps (other than tooth-extracting forceps)*	The redefinition and clarification of the SABS' mandate by the introduction of the Standards Act, Act 8 of 2008 makes the development of CKSs fall outside of the mandate of the SABS.	2022-09-30
CKS 587:1983 Ed 1	*Trichloroisocyanurate tablets*	The redefinition and clarification of the SABS' mandate by the introduction of the Standards Act, Act 8 of 2008 makes the development of CKSs fall outside of the mandate of the SABS.	2022-09-30
CKS 613:2009 Ed 2.1	*Bed tilting devices.*	The standard is obsolete.	2022-11-13

SCHEDULE A.3: WITHDRAWAL OF INFORMATIVE AND NORMATIVE DOCUMENTS

In terms of section 24(5) of the Standards Act, the following documents are being considered for withdrawal.

Draft Standard No. and Edition	Title	Reason for withdrawal	Closing Date

SECTION B: ISSUING OF THE SOUTH AFRICAN NATIONAL STANDARDS

SCHEDULE B.1: NEW STANDARDS

The following standards have been issued in terms of section 24(1)(a) of the Standards Act.

Standard No. and year	Title, scope and purport

SCHEDULE B.2: AMENDED STANDARDS

The following standards have been amended in terms of section 24(1)(a) of the Standards Act.

Standard No. and year	Title, scope and purport
SANS 98:2022 Ed 5.2	Ingredient labelling of cosmetic products. *Consolidated edition incorporating amendment No.2.*
SANS 1522:2022 Ed 2.2	Fire extinguishing powders. *Consolidated edition incorporating amendment No.2.* Amended to update referenced standards, the clause on requirements, and the clause on inspection and methods of test, to delete the annex on notes to purchasers, and to add the annex on alternate testing for mono ammonium phosphate content.
SANS 1647:2022 Ed 1.1	Approved market names for South African fish and related seafood species. *Consolidated edition incorporating amendment No.1. Amended to update the scientific name in the annex on invertebrates and plants.*

SCHEDULE B.3: WITHDRAWN STANDARDS

In terms of section 24(1)(C) of the Standards Act, the following standards have been withdrawn.

Standard No. and year	Title
CKS 221:1974 Ed 2	*Rubber bungs.*

SCHEDULE B4: ESTABLISHMENT OF TECHNICAL COMMITTEES

Committee No.	Title	Scope

If your organization is interested in participating in these committees, please send an e-mail to Dsscomments@sabs.co.za for more information.

SCHEDULE 5: ADDRESS OF THE SOUTH AFRICAN BUREAU OF STANDARDS HEAD OFFICE

Copies of the standards mentioned in this notice can be obtained from the Head Office of the South African Bureau of Standards at 1 Dr Lategan Road, Groenkloof, Private Bag X191, Pretoria 0001.

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 1295 OF 2022

INTERNATIONAL TRADE ADMINISTRATION COMMISSION

CUSTOMS TARIFF APPLICATIONS

LIST 09/2022

The International Trade Administration Commission (herein after referred to as ITAC or the Commission) has received the following application concerning the Customs Tariff. Any objection to or comment on this representation should be submitted to the Chief Commissioner, ITAC, Private Bag X753, Pretoria, 0001. Attention is drawn to the fact that the rate of duty mentioned in this application is that requested by the applicant and that the Commission may, depending on its findings, recommend a lower or higher rate of duty.

CONFIDENTIAL INFORMATION

The submission of confidential information to the Commission in connection with customs tariff applications is governed by section 3 of the Tariff Investigations Regulations, which regulations can be found on ITAC's website at http://www.itac.org.za/documents/R.397.pdf.
These regulations require that if any information is considered to be confidential, then a non-confidential version of the information must be submitted, simultaneously with the confidential version. In submitting a non-confidential version the regulations are strictly applicable and require parties to indicate:

- *Each instance where confidential information has been omitted and the reasons for confidentiality;*
- *A summary of the confidential information which permits other interested parties a reasonable understanding of the substance of the confidential information; and*
- *In exceptional cases, where information is not susceptible to summary, reasons must be submitted to this effect.*

This rule applies to all parties and to all correspondence with and submissions to the Commission, which unless clearly indicated to be confidential, will be made available to other interested parties.

The Commission will disregard any information indicated to be confidential that is not accompanied by a proper non-confidential summary or the aforementioned reasons.
If a party considers that any document of another party, on which that party is submitting representations, does not comply with the above rules and that such deficiency affects that party's ability to make meaningful representations, the details of the deficiency and the reasons why that party's rights are so affected must be submitted to the commission in writing forthwith (and at the latest 14 days prior to the date on which that party's submission is due).
Failure to do so timeously will seriously hamper the proper administration of the investigation, and such party will not be able to subsequently claim an inability to make meaningful representations on the basis of the failure of such other party to meet the requirements.

1. INCREASE IN THE GENERAL RATE OF CUSTOMS DUTY ON:

Rock drilling or earth boring tools, including parts thereof, classifiable under tariff subheadings 8207.13 and 8207.19, from free of duty and 15% *ad valorem* to the WTO bound of 20% *ad valorem,* as follows:

- An increase in the rate of customs duty on bits, classifiable under tariff subheading 8207.13.25, from 15% *ad valorem* to the WTO bound of 20% *ad valorem*;

- An increase in the rate of customs duty on parts of bits, classifiable under tariff subheading 8207.19.10, from 15% *ad valorem* to the WTO bound of 20% *ad valorem*;

- An increase in the rate of customs duty on "Other" tools, classifiable under tariff subheading 8207.13.90, from free of duty to the WTO bound of 20% *ad valorem*;

- An increase in the rate of customs duty on "Other" parts, classifiable under tariff subheading 8207.19.90, from free of duty to the WTO bound of 20% *ad valorem*;

- By way of creating an additional 8-digit tariff subheading for "Conical shaped cutter picks, with tungsten carbide", classifiable under tariff subheading 8207.13.30, from free of duty to the WTO bound of 20% *ad valorem*; and

- By way of creating an additional 8-digit tariff subheading for "Conical shaped cutter picks, without tungsten carbide tips inserts", classifiable under tariff subheading 8207.19.20, from free of duty to the WTO bound of 20% *ad valorem.*

APPLICANT:

Daltron Forge (Pty) Ltd
52 Paul Smit Street
Anderbolt
BOKSBURG
1508

Enquiries: ITAC Ref: **06/2022**. Mr. Njabulo Mahlalela/ Mr. Pfarelo Phaswana. Tel: 012 394 3684/3628 or email nmahlalela@itac.org.za/pphaswana@itac.org.za.

REASONS FOR THE APPLICATION:

As reasons for the application, the applicant cited, amongst others, the following:

- The downstream steel industry has been under distress for some time, largely due to low priced import competition experienced from China and other Asian countries;

- An increase in duty on the subject product will not only be essential to substantially improve the domestic industry's price-competitive position in the face of fierce lower-priced competition from abroad, but it would go a long way in ensuring that current employment levels in the industry are retained; and

- Increasing the duty will assist in resolving the duty anomaly wherein the imported finished product carries no import duty whereas the imported steel raw material carries a 10% import duty.

PUBLICATION PERIOD:

Representations should be made within **four (4) weeks** of the date of notice.

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 1296 OF 2022

COMPETITION TRIBUNAL

NOTIFICATION OF COMPLAINT REFERRAL

The Competition Tribunal gives notice in terms of Section 51(3) & (4) of the Competition Act 89 of 1998 as amended, that it received the c COVCR074Jul20omplaint referrals listed below. The complaint(s) alleges that the respondent(s) engaged in a prohibited practice in contravention of the Competition Act 89 of 1998.

Case No.	Complainant	Respondent	Date received	Sections of the Act
CR079Aug22	Competition Commission	Fraser Alexander (Pty) Ltd	04/08/2022	4(1)(b)(iii)

The Chairperson
Competition Tribunal

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 1297 OF 2022

COMPETITION TRIBUNAL
NOTIFICATION OF DECISION TO APPROVE MERGER

The Competition Tribunal gives notice in terms of rules 34(b)(ii) and 35(5)(b)(ii) of the "Rules for the conduct of proceedings in the Competition Tribunal" as published in Government Gazette No. 22025 of 01 February 2001 that it approved the following mergers:

Case No.	Acquiring Firm	Target Firm	Date of Order	Decision
LM048Jun22	Bidvest Commercial Products (Pty) Ltd	A Square Forklift; A Square Equpment; A Square Solutions	01/08/2022	Approved
LM022May22	JF Mouton Familietrus	PSG Group Ltd	02/08/2022	Approved Subject to Conditions
LM047May22	Futuregrowth Assets Management (Pty) Ltd	Fruitone Holdings (Pty) Ltd	02/08/2022	Approved
LM023May22	Strategic Fuel Fund Association NPC	BP Southern Africa	03/08/2022	Approved
LM187Mar22	ARM Bokoni Mining Consortium (Pty) Ltd	Bokoni Platinum Mines (Pty) Ltd	11/08/2022	Approved Subject to Conditions
LM070Jul22	Redefine Properties Ltd	Setso Property Fund	17/08/2022	Approved
LM007Apr22	Alexander Forbes Financial Services	Sanlam Life Insurance	18/08/2022	Approved Subject to Conditions
LM075Jul22	Salic International Investment Company	Olam Agri Holdings	30/08/2022	Approved
LM064Jul22	Reunert Ltd	Etion Create (Pty) Ltd	06/09/2022	Approved
LM063Jul22	Sandvik AB (PUBL)	Schenck Process Africa (Pty) Ltd	07/09/2022	Approved Subject to Conditions

The Chairperson
Competition Tribunal

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 1298 OF 2022

COMPETITION TRIBUNAL
NOTIFICATION OF DECISION TO APPROVE MERGER

The Competition Tribunal gives notice in terms of rules 34(b)(ii) and 35(5)(b)(ii) of the "Rules for the conduct of proceedings in the Competition Tribunal" as published in Government Gazette No. 22025 of 01 February 2001 that it approved the following mergers:

Case No.	Acquiring Firm	Target Firm	Date of Order	Decision
LM024May22	Namane Resources (Pty) Ltd	Ledjadja Coal (Pty) Ltd	07/07/2022	Approved
LM012Apr22	MSC Mediterranean Shipping Company S.A	Ballore Africa Logistics SAS	15/07/2022	Approved
LM039May22	Sibanye Rustenburg Platinum Mines (Pty) Ltd	50 Percent Participation Interest in the PGM	15/07/2022	Approved
LM011Apr22	Mr Price Group Ltd	Blue Falcon 188 Trading (Pty) Ltd	19/07/2022	Approved
LM165Jan22	Digital Titan (Pty) Ltd	TDE Investments (Pty) Ltd	20/07/2022	Approved Subject to Conditions
LM010Apr22	CTP Ltd	Amcor Flexibles SA	21/07/2022	Approved
LM013Apr22	K2022341645 (Pty) Ltd	Five Properties	21/07/2022	Approved
LM049Jun22	Corvest 13 (PtY) Ltd	Wrapsa Investment Holdings (Pty) Ltd	21/07/2022	Approved
LM190Mar22	Sanlam Investment Holdings	ABSA Group Ltd	21/07/2022	Approved Subject to Conditions
LM192Mar22	Foschini Group Ltd	Tapestry Home Brands (Pty) Ltd	26/07/2022	Approved Subject to Conditions
LM191Mar22	K2021134577	Emerald Safari Resort	27/07/2022	Approved Subject to Conditions
LM050Jun22	Sasol Pension Fund	Luvon Investments (Pty) Ltd	29/07/2022	Approved Subject to Conditions

The Chairperson
Competition Tribunal

DEPARTMENT OF TRANSPORT

NOTICE 1299 OF 2022

AIR SERVICE LICENSING ACT, 1990 (ACT NO.115 OF 1990) APPLICATION FOR THE GRANT OR AMENDMENT OF DOMESTIC AIR SERVICE LICENCE

Pursuant to the provisions of section 15 (1) (b) of Act No. 115 of 1990 and Regulation 8 of the Domestic Air Regulations,1991, it is hereby notified for general information that the application detail of which appear in the appendix, will be considered by the Air Service Licensing Council. Representation in accordance with section 15 (3) of the Act No.115 of 1990 in support of, or in position, an application, should reach the Air Service Licensing Council. Private Box X 193, Pretoria, 0001, within 21 days of date of the publication thereof.

APPENDIX I

(A) Full name and trade name of the applicant. (B) Full business or residential address of the applicant. (C) Class of licence applied for. (D) Type of air service to which application applies. (E) Category of aircraft to which application applies.

(A) Autonosky (Pty) Ltd. (B) 11 Mount Pleasant Road, Rondebosch, Cape Town, 7700. (C) Class III. (D) Type G3, G4 &G16 (RPAS). (E) Category A4 & H1.

(A) Airshare Cargo (Pty) Ltd. Airshare Cargo. (B) 54 Kloof Avenue, Silveroaks, Kuilsriver, Western Cape, 7580. (C) Class II. (D) Type N1 & N2. (E) Category A1.

(A) Neoheights (Pty) Ltd. Fly Up. (B) 314 Zone A, Lebowakgomo, Limpopo, Gauteng, 0737. (C) Class I. (D) Type S1 & S2. (E) Category A1.

(A) JLB Airways (Pty) Ltd. Air Du Cap. (B) Hangar B4, Cape Winelands Airport, Lichtenburg Road, Durbanville. (C) Class II. (D) Type N1 & N2. (E) Category A4.

APPENDIX II

(A) Full Name and trade name of the applicant. (B) Full business or residential address the applicant. (C) The Class and number of licenses in respect of which the amendment is sought (D) Type of air service and the amendment thereto which is being applied for (E) Category of aircraft and the amendment thereto which is being applied for. (F) Amendment referred to in section 14(2) (b) to I.

(A) Cape Town Helicopters (Pty) Ltd. (B) 220 Est Pier Road, V & A Waterfront, Cape Town. (C) Class II & III;N1266D G1163D. (D) Type N1, N2, G2, G3, G4, G8, G15 & G16 (Ship-to-shore). (E) Category H1 & H2. (F) **Changes to the MP:** Mr Ivor Robert Eden replaces Mr Neil Glynn Warren as the RP: Flight Operations and Mr Bruce Newman replaces Mr Achmat Levy as the RP: Aircraft.

(A) Abeod (Pty) Ltd. (B) 480 Frances Street, Bon Accord AH, Pretoria, 0009. (C) Class III;G1430D. (D) Type G3, G4 & G16 (RPAS). (E) Category H1. (F) **Addition** of Type G5 & G13 with Category A4.

(A) South African Airways (SOC) Ltd. South African Airways. (B) Airways Park Jones Road, OR Tambo International Airport, 1627. (C) Class I, II & III; S552D, S553D & G554D. (D) Type S1, S2, N1, N2 & G2. (E) Category A1, A2 & A3. (F) **Changes to the MP:** Mr Maleselo John Lamola as the interim CEO.

(A) Heli-X Charters (Pty) Ltd. Heli-X Charters. (B) Signature Building, General Aviation Area, Cape Town International Airport, Cape Town, 7525. (C) Class II & III; N1189D & G1190D. (D) Type N1, N2, G2, G3, G4, G5, G10, G11 & G16 (RPAS). (E) Category A3, A4, H1 & H2. (F) **Changes to the MP:** ***For the Flight Operations Section:*** CEO/ Accountable Manager : Roderick Frederick Howat, Quality Assurance Manager: Karen Mare, RP:Aircraft: Roderick Frederick Howat, RP:Flight Operations: Johannes Felix Bosman, Air Services Safety Officer: Karen Mare**.** ***For the part 101 Section:*** CEO/Accountable Manager: Robert Stephen Britz, Quality Assurance Manager: Karen Mare, RP:Aircraft: Robert Stephen Britz, RP:Aircraft: Robert Stephen Britz, Air Services Safety Officer: Karen Mare.

AIR SERVICE LICENSING ACT, 1990 (ACT NO.115 OF 1990)
APPLICATION FOR THE GRANT OR AMENDMENT OF DOMESTIC AIR SERVICE LICENCE

Pursuant to the provisions of section 15 (1) (b) of Act No. 115 of 1990 and Regulation 8 of the Domestic Air Regulations,1991, it is hereby notified for general information that the application detail of which appear in the appendix, will be considered by the Air Service Licensing Council. Representation in accordance with section 15 (3) of the Act No.115 of 1990 in support of, or in position, an application, should reach the Air Service Licensing Council. Private Box X 193, Pretoria, 0001, within 21 days of date of the publication thereof.

APPENDIX I

(A) Full name and trade name of the applicant. (B) Full business or residential address of the applicant. (C) Class of licence applied for. (D) Type of air service to which application applies. (E) Category of aircraft to which application applies.

(A) Ballito Microlight Academy (Pty) Ltd. Ballito Microlights. (B) 71 Beverley Hills Estate, 77 Leonara Drive, Ballito, 4399, KZN. (C) Class III. (D) Type G3, G4, G5, G10 & G16 (Microlight & LSA "Flipping"). (E) Category A4.

APPENDIX II

(A) Full Name and trade name of the applicant. (B) Full business or residential address the applicant. (C) The Class and number of licenses in respect of which the amendment is sought (D) Type of air service and the amendment thereto which is being applied for (E) Category of aircraft and the amendment thereto which is being applied for. (F) Amendment referred to in section 14(2) (b) to I.

(A) Ghaap Aviation (Pty) Ltd. Ghaap Air (Pty) Ltd. (B) Hangar 24, Lanseria International Airport, Johannesburg, 1739. (C) Class II & III; N884D & G885D. (D) Type N1, N2, G3, G8 & G11. (E) Category A3 & A4. (F) **Addition** of Category A1 & A2.

(A) UAV & Drone Solutions (Pty) Ltd. (B) 2 bompas West, Dunkeld West, Randburg, 2196. (C) Class III. (D) Type G3 & G4. (E) Category A4, H1 & H2. (F) **Changes to the MP:** Jurie Van Loggerenberg is appointed as the RPA.

(A) Neo Precision (Pty) Ltd. (B) 3 Saddle Drive, Woodmead Office Park, Woodmead, Gauteng, 2191. (C) Class III; G1413D. (D) Type G3, G4 & G16(RPAS). (E) Category H1. (F) **Changes to Postholders:** Nastasha Bantjes as the Quality Manager. **Addition of Type** G5, G13 & G15.

(A) UAV Industries (Pty) Ltd. UAVI. (B) 47 Sesmylspruit Street, Sunderland Ridge, Centurion, 0149. (C) Class III; G1221D. (D) Type G3, G4 & G16 (RPAS). (E) Category A4, H1 & H2. (F) **Addition of Type** G2, G5, G8, G9, G10, G11, G12, G13 & G15.

(A) Air Ambulance Health Services (Pty) Ltd. Air Ambulance Health Services. (B) Hangar 1 Gate II, Bram Fisher Int'l Airport, Bloemfontein 9301 SA. (C) Class III; G1491D. (D) Type G7. (E) Category A3 & A4. (F) Addition of Type G4, G8, G10, G15 & G16 (RPAS) and Category H2.

(A) Savannah Helicopters (Pty) Ltd. (B) Hangar 9, George Airport, George, 6530. (C) Class II & III; N882D & G883D. (D) Type N1, G3, G4, G5, G8, G10, G13, G15 & G16 (Offshore Operations). (E) Category A3 & H2. (F) **Changes to the MP**.

(A) Maverick Air Charters (Pty) Ltd. (B) Hangar 10 Wonderboom Airport, Linvelt Road, Doornpoort, 0017. (C) Class II; N856D. (D) Type N1 & N2. (E) Category A3 & A4. (F) **Changes to the MP:** Andrew Skelton replaces E. Beukes as the Accountable Manager. Lourens Petrus Human replaces C. Clark as the responsible Person: Flight Operations.

(A) RPAS Consulting (Pty) Ltd. (B) 16 Selati River Avenue, Cashan X4, Rustenberg, 0300. (C) Class III;G1377D. (D) Type G3, G4 & G16 (RPAS). (E) Category A4 & H1. (F) **Addition** of Type G5.

AIR SERVICE LICENSING ACT, 1990 (ACT NO.115 OF 1990)
APPLICATION FOR THE GRANT OR AMENDMENT OF DOMESTIC AIR SERVICE LICENCE

Pursuant to the provisions of section 15 (1) (b) of Act No. 115 of 1990 and Regulation 8 of the Domestic Air Regulations,1991, it is hereby notified for general information that the application detail of which appear in the appendix, will be considered by the Air Service Licensing Council. Representation in accordance with section 15 (3) of the Act No.115 of 1990 in support of, or in position, an application, should reach the Air Service Licensing Council. Private Box X 193, Pretoria, 0001, within 21 days of date of the publication thereof.

APPENDIX I

(A) Full name and trade name of the applicant. (B) Full business or residential address of the applicant. (C) Class of licence applied for. (D) Type of air service to which application applies. (E) Category of aircraft to which application applies.

APPENDIX II

(A) Full Name and trade name of the applicant. (B) Full business or residential address the applicant. (C) The Class and number of licenses in respect of which the amendment is sought (D) Type of air service and the amendment thereto which is being applied for (E) Category of aircraft and the amendment thereto which is being applied for. (F) Amendment referred to in section 14(2) (b) to I.

(A) Terzin Trading 3 CC. Simola Air. (B) Hangar 5, Convair Road, General Aviation Area, Cape Town International Airport. (C) Class II & III; N1013 & G1014. (D) Type N1, N2 G3 & G8. (E) Category H2. (F) **Changes of address**: from 1 Old Cape Road, Knysna to Cape Town International Airport. **Changes to the Membership:** Mr A.P Loumouamou is the sole member of the CC. **Changes to the MP:** A.P. Loumouamou replaces A.D. Kaschula as the CEO, G.P. Jonsson replaces R. Rudansky as the RP: Flight Operations and RP: Aircraft. B.J. Rothman replaces A. Davidson as the Air Service Safety Officer.

(A) Cortac (Pty) Ltd. (B) 1 River Street, Houghton Estate, Johannesburg, 2198. (C) Class III;G1440D. (D) Type G2, G3, G4, G6, G7, G8, G10, G13, G14, G15 & G16. (E) Category H1. (F) **Changes to the MP:** Sean James Franck replaces Willem Albertus Koch as the Person Responsible Aircraft; Sean James Franck replaces Willem Albertus as the Flight Operations Manager and the **Addition** of Category A1.

INTERNATIONAL AIR SERVICE ACT, (ACT NO.60 OF 1993)
GRANT /AMENDMENT OF INTERNATIONAL AIR SERVICE LICENSE

Pursuant to the provisions of section 17 (12) of Act No.60 of 1993 and Regulation 15 (1) and 15 (2) of the International Air Regulations,1994, it is hereby notified for general information that the applications, detail of which appear in the Schedules hereto, will be considered by the International Air Services Council (Council) representation in accordance with section 16(3) of the Act No. 60 of 1993 and regulation 25(1) of International Air Services Regulation, 1994, against or in favour of an application, should reach the Chairman of the International Air Services Council at Department of Transport, Private Bag X 193, Pretoria, 0001,within 28 days of the publication hereof.It must be stated whether the party or parties making such representation is / are prepared to be represent or represented at the possible hearing of the application.

APPENDIX I

(A) Full name, surname and trade name of the applicant. (B) Full business or residential address of the applicant. (C) Class of licence applied for. (D) Type of International Air Service to which application pertains. (E) Category or kind of aircraft to which application pertains. (F) Airport from and the airport to which flights will be undertaken. (G) Area to be served. (H) Frequency of flight.

(A) Ghaap Aviation (Pty) Ltd. Ghaap Air (Pty) Ltd. (B) Hangar 24, Lanseria International Airport, Johannesburg, 1739. (C) Class I ,II & III. (D) Type S2, N2, G3, G8 & G11. (E) Category A1, A2, A3 & A4. (F) OR Tambo International - Lilongwe International, Eros Airport & Maputo International Airport. (G) South Africa & SADC Region.

(A) Airshare Cargo (Pty) Ltd. Airshare Cargo. (B) 54 Kloof Avenue, Silveroaks, Kuilsriver, Western Cape, 7580. (C) Class II. (D) Type N1 & N2. (E) Category A1. (F) (G) South Africa, Europe, Madagascar & Mauritius.

(A) Neoheights (Pty) Ltd. Fly Up. (B) 314 Zone A, Lebowakgomo, Limpopo, Gauteng, 0737. (C) Class I. (D) Type S1 & S2. (E) Category A1. (F) (G) (H)

Gateway International Airport – Zimbabwe - OR Tambo International Airport
OR Tambo International Airport - Bloemfontein International Airport - Lesotho International Airport - OR Tambo International Airport.
OR Tambo International Airport – Zanzibar - OR Tambo International Airport
OR Tambo International Airport - King mswati (III) International Airport- OR Tambo International Airport.

APPENDIX II

(A) Full name, surname and trade name of the applicant. (B) Full business or residential address of the applicant. (C) Class and number of license in which the amendment is made . (D) Type of International Air Service in respect of which the amendment was made. (E) Category or kind of aircraft to which license was made. (F) Airport in respect of which the amendment was made. (G) Area to be served. (H) Frequency of flight.

(A) CemAir (Pty) Ltd. CemAir. (B) Hanger 6 Eastern Precinct, OR Tambo International Airport, Bonaero Park, 1622.(C) Class I; I/S231. (D) Type S1 & S2. (E) Category A1 & A2. (F) OR Tambo International Airport. (G) (H) **Addition of:**

Johannesburg – Lubumbashi, DRC – 7 flights per week
Johannesburg – Dar Es Salaam, Tanzania – 7 flights per week
Johannesburg – Kinshasa, DRC – 7 flights per week
Johannesburg – Victoria Falls, Zimbabwe- 7 flights per week

INTERNATIONAL AIR SERVICE ACT, (ACT NO.60 OF 1993)
GRANT /AMENDMENT OF INTERNATIONAL AIR SERVICE LICENSE

Pursuant to the provisions of section 17 (12) of Act No.60 of 1993 and Regulation 15 (1) and 15 (2) of the International Air Regulations,1994, it is hereby notified for general information that the applications, detail of which appear in the Schedules hereto, will be considered by the International Air Services Council (Council) representation in accordance with section 16(3) of the Act No. 60 of 1993 and regulation 25(1) of International Air Services Regulation, 1994, against or in favour of an application, should reach the Chairman of the International Air Services Council at Department of Transport, Private Bag X 193, Pretoria, 0001,within 28 days of the publication hereof.It must be stated whether the party or parties making such representation is / are prepared to be represent or represented at the possible hearing of the application.

APPENDIX I

(A) Full name, surname and trade name of the applicant. (B) Full business or residential address of the applicant. (C) Class of licence applied for. (D) Type of International Air Service to which application pertains. (E) Category or kind of aircraft to which application pertains. (F) Airport from and the airport to which flights will be undertaken. (G) Area to be served. (H) Frequency of flight.

APPENDIX II

(A) Full name, surname and trade name of the applicant. (B) Full business or residential address of the applicant. (C) Class and number of license in which the amendment is made . (D) Type of International Air Service in respect of which the amendment was made. (E) Category or kind of aircraft to which license was made. (F) Airport in respect of which the amendment was made. (G) Area to be served. (H) Frequency of flight.

(A) Savannah Helicopters (Pty) Ltd. (B) Hangar 9, George Airport, George, 6530. (C) Class II & III. (D) Type N1, N4, G3, G4, G5, G8, G10, G15 & G16 (Offshore Operations). (E) Category A3 & H1. (F)(G)(H) **Changes to the MP.**

(A) Air Ambulance Health Services (Pty) Ltd. Air Ambulance Health Services. (B) Hangar 1 Gate II, Bram Fisher Int'l Airport, Bloemfontein, Freestate, 9301. (C) Class II; I/N404. (D) Type N1 & N2. Category A3. (F) (G) World Wide. (H) **Addition** of Category H2.

(A) South African Airways (SOC) Ltd. South African Airways. (B) Airways Park Jones Road, OR Tambo International Airport, 1627. (C) Class I & II; I/S094 & I/N095. (D) Type S1, S2, N1, N2, N3 & N4. (E) Category A1 & A2. (F) (G) (H) **Changes to the MP:** Mr Maleselo John Lamola as the interim CEO.

(A) CemAir (Pty) Ltd. CemAir/ FlyCemAir. (B) Hanger 6 Eastern Precinct, OR Tambo International Airport, Bonaero Park, 1622. (C) Class I & II; I/S231 & I/N189. (D) Type S1, S2, N1 & N2. (E) Category A1, A2 & A3. (F) OR Tambo International Airport, Cape Town International Airport & King Shaka International Airport. (G) World Wide. (H) **Changes to the Managerial Personnel and the addition of:**

Johannesburg - Windhoek, Namibia - 14 flights per week
Johannesburg - Pemba, Mozambique - 7 flights per week
Johannesburg - Vilanculos, Mozambique - 7 flights per week
Cape Town - Maputo, Mozambique -7 flights per week
Durban - Maputo, Mozambique - 7 flights per week
Johannesburg - Mauritius- 7 flights per week

BOARD NOTICE 326 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 20 April 2022, into alleged improper conduct of the registered person.

Name of Person: Tshifhiwa E. Singo

Registration Number: D2978

Nature of the offence

Guilty of the contravention of Rule 3.4 of the Code of Conduct for registered persons promulgated under Board Notice 7 OF 2021 Government Gazette No 44190 of 19 February 2021.

Sanction:

- Mr. Tshifhiwa E. Singo is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R10 000.00 (ten thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 327 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 30 May 2022, into alleged improper conduct of the registered person.

Name of Person: Thato M. Mokhahlane

Registration Number: D1549

Nature of the offence

Guilty of contravention of Rule 1.1(1.1.2) and 4.1 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Thato M. Mokhahlane is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R7 000 (seven thousand Rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 328 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 09 July 2022, into alleged improper conduct of the registered person.

Name of Person: Rudolf L. Keudel-Schaffer

Registration Number: T1385

Nature of the offence

Guilty of contravention of Rule 1.1(1.1.2) and 4.1 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Rudolf L. Keudel-Schaffer is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R8 000 (eight thousand Rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 329 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 19 July 2022, into alleged improper conduct of the registered person.

Name of Person: Ravi Ruthenavelu

Registration Number: T0075

Nature of the offence

Guilty of the contravention of Rule 1.1(1.1.2) and 4.1 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Ravi Ruthenavelu is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R10 000.00 (ten thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 330 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the Tribunal order signed on 13 April 2022, into alleged improper conduct of the registered person.

Name of Person: Pieter Steenberg

Registration Number: CANT20964

Nature of the offence

Guilty of contravention of Rule 5.1 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Pieter Steenberg is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R10 000 (ten thousand Rand) in terms of section 32 (3) (a) (ii) of the Act .

BOARD NOTICE 331 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 30 June 2022, into alleged improper conduct of the registered person.

Name of Person: Phillipus R. Botha

Registration Number: PrAch24751089

Nature of the offence

Guilty of the contravention of Rule 1.1(1.1.2), 1.1 (1.1.3), 3.5 and 4.1 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Phillipus R. Botha is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R10 000.00 (ten thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 332 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 22 April 2022, into alleged improper conduct of the registered person.

Name of Person: Nduduzo C. Kunene

Registration Number: CAD68209384

Nature of the offence

Guilty of the contravention of section 18(2) read with section 26(3) of the Act.

Sanction:

- Mr. Nduduzo C. Kunene is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R7500.00 (seven thousand five hundred rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 333 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 31 May 2022, into alleged improper conduct of the registered person.

Name of Person: Mthokozisi E. Mbatha

Registration Number: PAD20523

Nature of the offence

Guilty of the contravention of Rule 1.1(1.1.2), 4.1 and 5.1 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Mthokozisi E. Mbatha is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R10 000.00 (ten thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 334 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 31 May 2022, into alleged improper conduct of the registered person.

Name of Person: Margueretha-Ann Bekker

Registration Number: D1260

Nature of the offence

Guilty of the contravention of Rule 1.1(1.1.2), 4.1 and 5.10 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Ms. Margueretha-Ann Bekker is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R10 000.00 (ten thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 335 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 21 April 2022, into alleged improper conduct of the registered person.

Name of Person: Hatlane W. Maloka

Registration Number: CAD20830

Nature of the offence

Guilty of the contravention of Rule 2.3, 4.1 and 5.10 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Hatlane W. Maloka is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R12 500.00 (twelve thousand five hundred rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 336 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 22 April 2022, into alleged improper conduct of the registered person.

Name of Person: Gareth Jefferies

Registration Number: D2050

Nature of the offence

Guilty of the contravention of Rule 4.1 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Gareth Jefferies is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R7000.00 (seven thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 337 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 09 June 2022, into alleged improper conduct of the registered person.

Name of Person: Fred Van Heerden

Registration Number: D1071

Nature of the offence

Guilty of the contravention of Rule 1.1(1.1.2),4.1,4.3 and 5.9 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Fred Van Heerden is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R12 000.00 (twelve thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 338 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 22 June 2022, into alleged improper conduct of the registered person.

Name of Person: Fred J. Muller

Registration Number: CAT073

Nature of the offence

Guilty of the contravention of Rule 3.1, and 5.4 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Fred J. Muller is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R10 000.00 (ten thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 339 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 26 April 2022, into alleged improper conduct of the registered person.

Name of Person: Edward M. Makhubu

Registration Number: D1181

Nature of the offence

Guilty of the contravention of Rule 5.4 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009 and section 18(2) read with section 26(3) of the Act.

Sanction:

- Mr. Edward M. Makhubu is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R15 000.00 (fifteen thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 340 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 30 April 2022, into alleged improper conduct of the registered person.

Name of Person: Douglas J. Carr

Registration Number: ST1563

Nature of the offence

Guilty of the contravention of Rule 5.4 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009 .

Sanction:

- Mr. Douglas J. Carr is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R7000.00 (Seven thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 341 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 20 April 2022, into alleged improper conduct of the registered person.

Name of Person: David H. Shibambu

Registration Number: D1707

Nature of the offence

Guilty of the contravention of Rule 1.1(1.1.2),4.1,5.1,5.9 and 5.10 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. David H. Shibambu is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R17 500.00 (seventeen thousand five hundred rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 342 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance of the Tribunal order signed on 21 July 2022, into alleged improper conduct of the registered person.

Name of Person: Bryan W. Wessels

Registration Number: D2192

Nature of the offence

Guilty of contravention of Rule 4.1 and 4.6 of the Code of Conduct for registered persons promulgated under Board Notice 07 of 2021 Government Gazette No 44190 of 19 February 2021.

Sanction:

- Mr. Bryan W. Wessels is fined R5 000 (five thousand rand) in terms of section 32 (3) (a) (ii) of the Act.

BOARD NOTICE 343 OF 2022

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No. 44 of 2000 ("The Act") of the finding and sanction imposed in accordance with the settlement agreement signed on 21 April 2022, into alleged improper conduct of the registered person.

Name of Person: Abram R. Mazibuko

Registration Number: D1171

Nature of the offence

Guilty of the contravention of Rule 1.1(1.1.2) and 4.1 of the Code of Professional Conduct for registered persons promulgated under Board Notice 154 of 2009 Government Gazette No 32731 of 27 November 2009.

Sanction:

- Mr. Abram R. Mazibuko is reprimanded in terms of section 32 (3) (a) (i) of the Act and fined R12 500.00 (twelve thousand five hundred rand) in terms of section 32 (3) (a) (ii) of the Act.

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