

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 4165****8 December 2023****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****KALI-UNION VERWALTUNGSGESELLSCHAFT MBH****AND****FERTIVA (PTY) LTD****CASE NUMBER 2023JAN0034**

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 27 January 2023, the Competition Commission (Commission) received notice of an intermediate merger between Kali-Union Verwaltungsgesellschaft mbH (Kali-Union), a firm ultimately controlled by K+S Aktiengesellschaft (K+S AG) and Fertiva (Pty) Ltd (Fertiva). Post-merger, Kali-Union will control Fertiva.
2. In South Africa, K+S AG is active in the supply of granular potassium (K) and Magnesium (Mg) based fertiliser inputs. In terms of the fertiliser value chain, K+S AG is active at the upstream level as an international exporter of fertiliser inputs which it supplies to wholesalers in various countries including South Africa. All K+S AG's fertiliser products in South Africa are sold through Industrial Commodities Holdings (Pty) Ltd (ICH), the seller in the current transaction.
3. Fertiva, the primary target firm, comprises of the unincorporated fertiliser division of ICH, which ICH has transferred to Fertiva for the purposes of this transaction.

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4. ICH has been an agent of K+S AG in South Africa for over 41 years. In terms of the Agency Agreement, ICH distributes all Kali-Union's fertiliser inputs in South Africa and Sub-Saharan Africa. In addition to distributing fertiliser products for Kali-Union, ICH also has supply agreements for the distribution of fertiliser products for other international firms. In terms of the fertiliser value chain, ICH is a wholesaler who markets and distributes fertiliser inputs to fertiliser manufacturers and bulk blenders who then on-sell to end customers (farmers).
 5. Both Kali-Union and Fertiva have no ownership by historically disadvantaged persons (HDPs) or workers, as defined in the Competition act No. 89 of 1998 (as amended) (the Act).
 6. The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition, in any relevant market.
 7. The Commission found that the merger triggers an obligation to increase a greater spread of ownership as contemplated by section 12A(3)(e) of the Act. The Department of Trade Industry and Competition (DTIC) raised similar concerns. To address the concerns raised, the merging parties, the DTIC and the Commission have agreed to the conditions set out in **Annexure A** hereto.
 8. Considering the above, the Commission approves the proposed transaction subject to the conditions attached as **Annexure A**.
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ANNEXURE A**KALI-UNION VERWALTUNGSGESELLSCHAFT MBH****AND****FERTIVA (PTY) LTD****CASE NUMBER:2023JAN0034**

1. DEFINITIONS

In this document, the expressions used above will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1. **"Act"** means the Competition Act 89 of 1998, as amended;
 - 1.2. **"Approval Date"** means the date on which the Proposed Transaction is approved in terms of the Act;
 - 1.3. **"Commission"** means the Competition Commission of South Africa;
 - 1.4. **"Commission rules"** means rules for the conduct of proceedings in the Competition Commission;
 - 1.5. **"Conditions"** mean the merger conditions included in this Annexure A;
 - 1.6. **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
 - 1.7. **"Fertiva"** means Fertiva (Pty) Ltd, a private company incorporated in terms of the laws of the Republic of South Africa, with registration number 2022/584947/07;
 - 1.8. **"HDP"** means historically disadvantaged persons as defined in section 3(2) of the Act;
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- 1.9. **"Implementation Date"** means the date that the Merger is implemented by the Merging Parties;
- 1.10. **"Kali-Union"** means Kali-Union Verwaltungsgesellschaft mbH a German private limited company, incorporated in terms of the laws of Germany having its office Bertha-von-Suttner-Strasse 7, 34131, Kassel, Germany;
- 1.11. **"LRA"** means the Labour Relations Act 66 of 1995, as amended;
- 1.12. **"Merger"** means Kali-Union's acquisition of Fertiva;
- 1.13. **"Merging Parties"** mean Kali-Union and Fertiva and any firm directly or indirectly controlled by the Merging Parties and/or any firm that has direct or indirect control over the Merging Parties;
- 1.14. **"South Africa"** means the Republic of South Africa;
- 1.15. **"Tribunal"** means the Competition Tribunal of South Africa.

2. EMPLOYMENT CONDITION

- 2.1. There shall, following the Approval Date, be no merger specific retrenchments arising from the proposed transaction.
- 2.2. For the sake of clarity, retrenchments do not include:
- (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;
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- (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; or
 - (vii) any decision not to renew or extend a contract of a contract worker.

2.3. Within 36 months from the Implementation Date:

- 2.3.1. Fertiva will bolster its current employment headcount of [Confidential] employees as at Implementation Date by an additional [Confidential] HDP employees at a total cost of [Confidential] including;
- 2.3.2. The appointment of a permanent HDP agronomist to promote transformation in this sector. This appointment will be made subject to suitably qualified candidates being identified.

3. EDUCATIONAL FUNDING AND SKILLS DEVELOPMENT

- 3.1. Fertiva will provide skills development training to upskill all employees being transferred to it; and
- 3.2. Fertiva will make an annual contribution of approximately [Confidential] for the next 5 (five) years to the Elsenburg Trust to provide university scholarships and/or bursaries to two HDP students, who wish to study to become agronomists. This amounts to a total value of [Confidential].
- 3.3. A six-month paid internship shall also be made available to these two qualified students to enable them to gain work experience at Fertiva in an effort to bolster their employment prospects. This amounts to a total cost of [Confidential].

4. OPEN DAYS AND BURSARY TO SELECTED CANDIDATES FROM SCHOOLS

- 4.1. Fertiva will implement an annual event for at least 5 (five) years, at two schools of its choice, to promote the agricultural sector and food security across public schools with the aim of creating awareness and possible career paths within the sector. These events will be complimented by way of open days and field trips. This is estimated to cost [Confidential].
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- 4.2. In addition to the contribution to the Elsenburg Trust as described above in 3.2, Fertiva shall commit to providing bursaries to two HDP candidates to a total value of [Confidential] student/per year for the next 5 (five) years. This amounts to a total cost of [Confidential] over 5 years.

5. SUPPORT OF SMALL SCALE AND/OR HDP FARMERS

- 5.1. For a period of 5 (five) years Fertiva undertakes to conduct promotional farm days for small-scale and /or HDP farmers valued at [Confidential] to provide education on effective use of fertilisers.

6. INDUSTRY SUPPORT

- 6.1. For a period of 5 (five) years from the Implementation Date:
- 6.1.1. To facilitate access to agronomic advice for small-scale and/ or HDP farmers, Fertiva will make available one of its leading international agronomists, currently based in Germany, at least once a year to provide training and advice to small-scale and/ or HDP farmers. This training session will be held annually for five years and will be held in geographic regions where the merging parties consider the greatest number of HDP farmers would likely benefit.
- 6.1.2. Fertiva will assist small-scale and/or HDP farmers by providing sustainable support mechanisms and facilitating access to fertiliser products and coordinating logistics support where feasible. In this regard, Fertiva will be facilitating the delivery of fertiliser to geographic locations that often cannot have fertiliser transported to the location due to logistic costs associated with ordering smaller quantities.
- 6.1.3. Fertiva will provide small-scale and /or HDP farmers access to Fertiva's local agronomists to assist in ensuring quality and standards of service and to facilitate the transfer of knowledge to support the achievement of optimal crop yields. Fertiva's local agronomists may also provide advisory support and training on best agricultural practices. Fertiva will identify geographic regions in South Africa where such assistance is to be provided.
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- 6.2. The above mentioned Industry Support initiatives in paragraphs 6.1.1, 6.1.2 and 6.1.3 will provide support to at least 40 farmers in the Free State, KwaZulu-Natal and the Western Cape. The total combined cost of these initiatives is estimated at [Confidential].

7. MONITORING

- 7.1. Within 10 (ten) Days of the Implementation Date, the Merging Parties shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, Fertiva shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 7.2. Within 5 (five) days after the Implementation Date, the Merging Parties shall notify the Commission in writing of the Implementation Date.
- 7.3. Within 10 (ten) Days of the anniversary of the Implementation Date and on each anniversary of the Implementation Date for a period of 3 (three) years, the Merging Parties shall provide the Commission with a report regarding its compliance with the Conditions.
- 7.4. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

8. APPARENT BREACH

- 8.1. 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.

9. VARIATION

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- 9.1. 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 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.

10. GENERAL

- 10.1. 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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****LEMKEN LANDTECHNIK GMBH****AND****EQUALIZER HOLDINGS (PTY) LTD AND EQUALIZER AG (PTY) LTD****CASE NUMBER 2023JAN0027**

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 20 January 2023, the Competition Commission ("Commission") received a notification of an intermediate merger whereby Lemken Landtechnik GmbH ("Lemken") intends to acquire the ordinary shares in Equalizer Holdings (Pty) Ltd ("Equalizer Holdings") and ultimately acquire control in Equalizer AG (Pty) Ltd ("Equalizer AG"), a subsidiary of Equalizer Holdings. Post-implementation of the proposed transaction, Lemken will exercise control over Equalizer Holdings and Equalizer AG.
2. The primary acquiring firm is Lemken, a limited liability company duly incorporated under the laws of the Federal Republic of Germany. Lemken is controlled by Lemken GmbH, a company incorporated under the laws of the Federal Republic of Germany. In South Africa, Lemken controls Lemken South Africa (Pty) Ltd ("Lemken South Africa"), a private company incorporated under the laws of the Republic of South Africa. Lemken GmbH and all the firms it directly or indirectly controls will be referred to as the "Lemken Group".
3. The Lemken Group designs, manufactures and sells agricultural machinery, services and spare parts for soil cultivation, planting/seeding technology and crop protection

worldwide. Lemken does not sell directly to end users (farmers). Instead, all products are distributed via independent dealerships. These dealerships typically carry one big tractor brand (e.g., John Deere, Case and Claas) and offer complimentary products such as implements for soil cultivation.

4. In South Africa, the Lemken Group operates as a sales, distribution, and service company relating to soil cultivation equipment.
 5. The primary target firms are Equalizer Holdings and Equalizer AG ("The Target Firms"). The Target Firms are incorporated under the laws of the Republic of South Africa. Equalizer AG is a wholly-owned subsidiary of Equalizer Holdings. Equalizer Holdings is in turn controlled by GS Jumaní (Pty) Ltd. The Target Firms do not control any firms.
 6. The Target Firms specialise in the design, manufacture and global distribution of planting and seeding equipment for grain production.
 7. The merging parties submitted that although the merging parties are both active in the broad market for the supply of planter and seeder equipment in South Africa, they do not directly compete. In this regard, the merging parties indicated that Lemken focuses on planter and seeder equipment for soil cultivation whereas the Equalizer Group focuses on planter and seeder equipment for grain production. As such, the merging parties offer different models/ categories of equipment within the planter and seeder market.
 8. The Commission contacted customers and competitors of the merging parties in South Africa to ascertain whether the soil cultivation equipment supplied by the Lemken Group are substitutable with grain production equipment supplied by the Target Firms. The Commission found that the grain equipment supplied by the Target Firms are not functionally substitutable with soil cultivation equipment supplied by the Lemken Group.
 9. Furthermore, the customers of the merging parties indicated that there are other alternative players in the respective markets and these include firms such as John Deere SA, Amazon, Piket and Rovic Leers. Competitors also submitted that they do not consider the merging parties to be competitors.
 10. Considering the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any market.
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Effect on employment

11. The merging parties submit that there will be no negative effect on employment as a result of the proposed transaction. In particular, no employees will be retrenched as a result of the proposed transaction. It is submitted by the merging parties that the proposed transaction is likely to lead to increased production of Equalizer products in South Africa, which will be exported to the rest of the world. Thus, new jobs will be created.
12. None of the employee representatives of the employees of the merging parties raised any concerns.
13. Given the above and the fact that the parties have made a firm statement on retrenchments, the Commission is of the view that the proposed transaction is unlikely to have a negative impact on employment.

Effect on greater spread of ownership

14. The proposed transaction does not result in any dilution of shareholding by HDPs as neither of the merging parties have any shareholding by HDPs or an ESOP.
15. Given that the merger does not promote greater spread of ownership by HDPs and workers in firms in the market, the Commission requested the merging parties to consider the following:
- 15.1. A post-merger transaction in terms of which a percentage of the merged entity's shareholding is sold to HDP/s, and/or
- 15.2. Introducing an ESOP in the merged entity.

Merging parties' response

16. The merging parties submitted that the introduction of an ESOP or HDP shareholder would not be possible. In this regard, the merging parties proposed the following conditions:
- 16.1. The merged entity will expand its operations and as a result employment at the
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Equalizer Group will be increased from [CONFIDENTIAL] employees to [CONFIDENTIAL] employees by 30 June 2026.

- 16.2. The merged Entity will invest an amount of [CONFIDENTIAL], by 30 June 2025, to expand the operations of the Equalizer Group

17. The Commission accepted the conditions proposed by the merging parties. The conditions are attached hereto as **Annexure A**.

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

Conclusion

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

ANNEXURE A

LEMKEN LANDTECHNIK GMBH

AND

**EQUALIZER HOLDINGS (PTY) LIMITED AND EQUALIZER AG (PTY) LIMITED
("EQUALIZER GROUP")**

CASE NUMBER: 2023JAN0027

CONDITIONS

1. DEFINITIONS

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

- 1.1 **"Approval Date"** means the date the Commission issues a Clearance Certificate (Notice CC15) in terms of the Competition Act;
 - 1.2 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.3 **"Competition Act"** means the Competition Act 89 of 1998, as amended;
 - 1.4 **"Conditions"** mean these conditions contained in this Annexure A, agreed to by the Merging Parties and the Commission;
 - 1.5 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
 - 1.6 **"Employee"** has the same meaning as in the LRA;
 - 1.7 **"Equalizer AG"** means Equalizer AG (Pty) Limited;
 - 1.8 **"Equalizer Group"** means Equalizer AG and Equalizer Holdings;
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- 1.9 “**Equalizer Holdings**” means Equalizer Holdings (Pty) Limited;
- 1.10 “**HDI**” means Historically Disadvantaged Individual;
- 1.11 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12 “**Lemken**” means Lemken Landtechnik GMBH;
- 1.13 “**LRA**” means the Labour Relations Act No. 66 of 1995, as amended;
- 1.14 “**Merged Entity**” means the Equalizer Group subject to the control of Lemken following the Implementation Date;
- 1.15 “**Merger**” means the acquisition of control by Lemken over the Equalizer Group; and
- 1.16 “**Merging parties**” means Lemken and the Equalizer Group.

2. RECORDAL

- 2.1 The merging parties provided a firm statement that the proposed merger will not result in any retrenchments or employment loss.

3. CONDITIONS

- 3.1 Following the Implementation Date, the Merged Entity intends to expand its operations and as a result employment at the Equalizer Group will be increased from [CONFIDENTIAL] employees to [CONFIDENTIAL] employees by 30 June 2026.
- 3.2 The Merged Entity will invest an amount of [CONFIDENTIAL], by 30 June 2025, to expand the operations of the Equalizer Group.
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4. MONITORING OF COMPLIANCE

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

4.2 For a period of 24 (twenty-four) months following the Implementation Date, the Merged Entity shall annually, within 30 (thirty) Days of each anniversary of the Implementation Date, submit to the Commission a report confirming compliance with the Condition as set out in clause 3.1 and the progress in achieving the Condition set out in clause 3.1.

4.3 The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

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

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

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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****ARB HOLDINGS PROPRIETARY LIMITED
AND
CFS INDUSTRIES PROPRIETARY LIMITED****CASE NUMBER: 2023FEB0006**

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 February 2023, the Competition Commission ("Commission") received notice of an intermediate merger wherein ARB Holdings Proprietary Limited ("ARB Holdings") intends to acquire control of the issued ordinary shares and shareholder loans in CFS Industries Proprietary Limited ("CFS Industries"). In addition, ARB Holdings also intends to acquire the business premises ("Business Premises") occupied by CFS Industries as a going concern. On completion of the proposed transaction, ARB Holdings will have sole control of CFS Industries and the Business Premises.
2. The Commission is of the view that the acquisition of CFS Industries and the Business Premises by ARB Holdings constitutes one indivisible transaction as both CFS Industries, and the Business Premises are being acquired from similar shareholders and the economic rationale is aligned as CFS Industries operates from the Business Premises.

Parties to the transaction

3. The primary acquiring firm is ARB Holdings. ARB Holdings is a company incorporated under the laws of South Africa. ARB Holdings and its subsidiaries will collectively be referred to as "the Acquiring Group".
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4. The primary target firm is CFS Industries and the Business Premises. CFS Industries is a company incorporated under the laws of South Africa. CFS Industries is controlled by CFS Holdings Proprietary Limited (CFS Holdings). CFS Industries and its subsidiaries will collectively be referred to as “the Target Group”.
 5. The Commission did not assess the acquisition of the Business Premises further as these are premises from which the Target Group operates, and no third parties operate from these premises.

Activities of the parties

6. The Acquiring Group is a wholesaler of electrical products (mainly power and instrumentation cable, overhead line equipment and general low-voltage products) as well as light fittings, lamps, and related accessories.
7. The Target Group is a value-added cable and networking systems distributor. It provides end-to-end copper and fibre connectivity solutions to data centre and telecommunications projects in the Information and Communications Technology (“ICT”) sector in all major regions in South Africa.

Competition analysis

8. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal overlaps. The Acquiring Group operates in the electrical sector whereas the Target Group operates in the ICT sector.
9. This was also confirmed by customers of the Target Group who submitted that the products of the Target Group are very specific to fibre network infrastructure (ICT products) and are not interchangeable with electrical products supplied by the Acquiring Group.
10. 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

Employment

11. The merging parties did not provide an unequivocal statement that the merger will not result in any retrenchments. In this regard, the Commission requested the merging parties
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to consider a moratorium of 3 (years) on merger specific retrenchments at the merged entity. The merging parties agreed to a moratorium of three years on merger specific retrenchments. A condition in this regard is attached as **annexure A**.

12. The proposed transaction does not raise any other public interest concern.

Conclusion

13. Considering the above, the Commission approves the proposed transaction subject to conditions attached as annexure A.

ANNEXURE A - CONDITIONS**ARB HOLDINGS PROPRIETARY LIMITED****AND****CFS INDUSTRIES PROPRIETARY LIMITED****CASE NUMBER: 2023FEB0006**

CONDITIONS

1. DEFINITIONS

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

- 1.1. **“Approval Date”** means the date referred to on the Commission’s Merger Clearance Certificate (Form CC 15);
 - 1.2. **“ARB Holdings”** means ARB Holdings Proprietary Limited and its subsidiaries;
 - 1.3. **“CFS Industries”** means CFS industries Proprietary Limited and its subsidiaries;
 - 1.4. **“Commission”** means the Competition Commission of South Africa;
 - 1.5. **“Conditions”** means these conditions;
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- 1.6. **“Days”** means any calendar day which is not a Saturday, Sunday, or official public holiday in South Africa;
- 1.7. **“Employees”** means the employees of ARB Holdings and CFS Industries;
- 1.8. **“Implementation Date”** means the date, occurring after the Approval Date, on which the last condition precedent to the transaction agreements are fulfilled or waived, as the case may be;
- 1.9. **“Labour Relations Act”** means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.10. **“Merger”** means the acquisition of control by ARB Holdings of CFS Industries;
- 1.11. **“Merging Parties”** means ARB Holdings and CFS Industries;

2. EMPLOYMENT

- 2.1. The Merging Parties shall not retrench any of Employees as a result of the Merger for a period of 36 months from the Approval Date of the Merger.
- 2.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (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.
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3. MONITORING OF COMPLIANCE WITH THE CONDITION

- 3.1. The Merging Parties shall circulate a copy of the Conditions to all employees and/or their respective representatives within 5 (five) Days of the Approval Date.
- 3.2. As proof of compliance thereof, the Merging Parties shall within 5 (five) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 3.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 3.4. The Merging Parties shall, for a period of 36 months from the Approval Date, submit a report on each anniversary of the Approval Date, detailing its compliance with clauses 2 of the Conditions.
- 3.5. Any person who believes that the Merging Parties have failed to comply with clauses 2 of the Conditions may approach the Commission with his/her complaint.

4. APPARENT BREACH

- 4.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
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5. VARIATION OF THE CONDITION

- 5.1. The Merging Parties shall be entitled, upon good cause shown, to apply to the Commission for the waiver, relaxation, modification and/or substitution of one or more of the Conditions.

6. GENERAL

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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****NIMBLE CREDIT FUND 1 (PTY) LTD****AND****MCG INDUSTRIES (PTY) LTD****CASE NUMBER 2023FEB0019**

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:

2. On 10 February 2023, the Competition Commission ("Commission") received notice of an intermediate merger wherein Nimble Credit Fund 1 (Pty) Ltd ("NCF1") intends to acquire the entire issued share capital of MCG Industries (Pty) Ltd ("MCG"), including the ceded security as defined in the Sale of Shares Agreement. Post-merger, NCF1 will have sole control over MCG. MCG is currently in business rescue.
 3. The primary acquiring firm is NCF1, a private company incorporated in accordance with the laws of South Africa. NCF1 is wholly owned by Nimble Group (Pty) Ltd ("Nimble"). Nimble is in turn controlled by Firefly Capital (Pty) Ltd ("Firefly") [Confidential].
 4. Firefly also controls Brickfield Group (Pty) Ltd [Confidential]. NCF1, its subsidiaries and all the firms directly and indirectly controlling it, will hereinafter be collectively referred to as the "Acquiring Group".
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5. The Acquiring Group does not have any shareholding by historically disadvantaged persons (“HDPs”).
 6. The Acquiring Group provides solutions to the credit industry in both the consumer and corporate markets. The Acquiring Group has developed its operations in the non-performing loan segment of the market. It focusses on four functional areas, namely, (i) Contingent debt collections; (ii) Business process outsourcing; (iii) Debt purchasing; and (iv) Fund management activities.
 7. The Acquiring Group, through NCF1, provides structured capital solutions to distressed corporates and assists lenders to: (i) manage their balance sheet exposures; (ii) improve disclosure requirements in order to evaluate liquidity risk arising from financial instruments and improve capital position; (iii) reduce volatility in reported income statement effects; (iv) improve outcomes in capital models; and (v) limit the significant investment in time and resources allocated to distressed situations.
 8. The primary target firm is MCG, a private company incorporated in accordance with the laws of South Africa. MCG is jointly controlled by Sasfin Private Equity Investments Holdings (Pty) Ltd (“Sasfin”) and Zungu Investments Company (Pty) Ltd (“Zungu Investments”).
 9. MCG controls the following firms in South Africa, all of which are currently dormant: (i) MCG Flexibles (Pty) Ltd; (ii) MCG Rigids Plastics (Pty) Ltd; (iii) MCG Rigids coastal (Pty) Ltd; (iv) MCG Rigids Solutions (Pty) Ltd; and (v) Main Street 1418 (Pty) Ltd.
 10. MCG and all its subsidiaries will hereinafter be referred to as the “Target Group”.
 11. The Target Group has shareholding by HDPs of [confidential].
 12. Prior to being placed under business rescue, the Target Group manufactured and supplied flexible packaging as well as injection moulding. However, due to years of financial difficulties, the Target Group has since closed its flexible packaging business and sold off the assets and currently only operates its injection moulds (“Rigids Business”). The Target Group’s Rigids Business entails the manufacture and supply of various kinds of injection
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moulded crates and containers, including containers for the packaging, storage and distribution of various fast-moving consumer goods.

Relationship between the parties/ products (horizontal / vertical)

13. The Commission considered the activities of the merging parties and found that the proposed transaction does not give rise to a horizontal overlap.
14. In addition, the proposed transaction does not result in any vertical relationship between the activities of the merging parties.
15. Given the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

Public Interest

Employment

16. The merging parties submitted that the proposed transaction will not have a negative impact on employment. On the contrary, the merger parties indicated that if the proposed transaction does not go ahead, MCG will likely be placed in liquidation, ultimately resulting in the closure of the MCG and the loss of 119 jobs.
17. However, the merging parties indicated that because of the Target Group's precarious financial situation, the business rescue practitioner engaged in pre-merger retrenchments which resulted in a total of 33 employees ("Affected Employees") being retrenched for operational reasons. The Commission also notes that the business rescue plan contemplates further retrenchments of approximately 43 employees.
18. Considering the above, the merging parties agreed to a condition that they will not conduct any merger related retrenchments for a period of 24 months from the implementation date, including the period between Approval Date and Implementation date. In addition, the parties agreed that for a period of 36 (thirty-six) months from the approval date, the merging parties shall offer any Affected Employees preferential consideration for re-
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employment should vacant positions become available at the Target Firm, provided their skills are suitable for the relevant positions. The conditions are attached as “**Annexure A**”.

19. The Commission accepted the condition proposed by the merging parties to safeguard employment.

Effect on the promotion of a greater spread of ownership, in particular to increase the levels of ownership of historically disadvantaged persons and workers in firms in the market

20. The merging parties submit that the Acquiring Group does not have any shareholding by HDPs. The Target Group has shareholding by HDPs.

21. Thus, the proposed merger results in a dilution of shareholding by HDPs of [confidential] percentage points. To remedy the dilution, the merging parties agreed to a condition that they will implement an HDP transaction in the Target Group within 24 months following the approval of the proposed transaction. The merging parties indicated that the HDP shareholdings will hold the same voting rights and economic interests as NCF1 in the Target Group. The conditions are attached here to as “**Annexure A**”.

22. The proposed transaction does not raise any other public interest issues.

Conclusion

23. The Commission approved the proposed transaction with conditions.

ANNEXURE A**NIMBLE CREDIT FUND 1 (PTY) LTD ("NCF1")****AND****MCG INDUSTRIES (PTY) LTD ("MCG") (IN BUSINESS RESCUE)****CASE NUMBER: 2023FEB0019**

CONDITIONS

1 DEFINITIONS

- 1.1 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings, namely:
- 1.1.1 **"Acquiring Firm"** means NCF 1;
- 1.1.2 **"Affected Employees"** means the 33 employees that were impacted by the headcount reduction instituted by the business rescue practitioners of MCG for operational reasons following MCG's financial distress and the company going into business rescue in March 2022.
- 1.1.3 **"Approval Date"** means the date referred to on the Commission's merger Clearance Certificate (Notice CC15) in terms of the Competition Act;
- 1.1.4 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.5 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.6 **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.1.7 **"Conditions"** means these conditions contained in this Annexure A, agreed to by the Merging Parties and the Commission;
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- 1.1.8** "Days" mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.9** "HDP/s" a historically disadvantaged person as contemplated in the Competition Act;
- 1.1.10** "HDP Transaction" means the Acquiring firm's commitment to introduce an HDP shareholder / HDP shareholders as contemplated in section 3(2) of the Act, that will hold not less than [confidential] of the issued share capital of the Target Firm.
- 1.1.11** "Implementation Date" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12** "LRA" means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.13** "Merger" means the acquisition of sole control of the Target Firm by the Acquiring Firm, which constitutes an intermediate merger;
- 1.1.14** "Merging Parties" means the Acquiring Firm and the Target Firm;
- 1.1.15** "Target Firm" means MCG; and
- 1.1.16** "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2 HDP TRANSACTION

- 2.1** Within 24 months from the Approval Date, the Merging Parties will implement an HDP transaction in terms of which an HDP, as contemplated in the Act, will acquire [confidential] of the shareholding in Target firm, and its shares will hold all of the same voting rights and economic interests as attached to the shareholding of the Acquiring Firm.
- 2.2** Prior to the implementation of the HDP Transaction, the Acquiring Firm will provide the Commission with details of the HDP Transaction in writing. These details shall include, but not be limited to-
- 2.2.1** the structure of the HDP Transaction;
- 2.2.2** the name of the HDP shareholder/s; and
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2.2.3 confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act;

2.3 For the avoidance of doubt, the information in clause 2.2 above, will be provided to the Commission to enable the Commission to assess the Acquiring Firm's compliance with the Conditions.

2.4 To the extent that the HDP Transaction constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP Transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.

3 Employment

3.1 The Merging Parties undertake that they will not conduct any merger related retrenchments for a period of 24 months from the implementation date, including the period between Approval Date and Implementation Date.

3.2 For the sake of 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; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance and (vii) any decision not to renew or extend a contract or a fixed-term third party contract employee or contract with a third party.

3.3 Further, for a period of 36 (thirty-six) months from the Approval Date, the Merging Parties shall offer any Affected Employees preferential consideration for re-employment should vacant position become available at the Target Firm, provided their skills are suitable for the relevant positions.

4 Monitoring compliance with the Conditions

- 4.1 The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2 The Target Firm shall circulate a copy of the Conditions (excluding clause 2 in its entirety) to all its employees in South Africa and their relevant trade unions or employee representatives within 5 (five) Days of the Approval Date.
- 4.3 As proof of compliance thereof, a director of the Target Firm shall within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions to its employees in South Africa and provide a copy of the notice that was sent to the employees.
- 4.4 The Target Firm shall, on each anniversary of the Approval Date for a period of 3 (three) years, submit a report confirming compliance with these conditions.
- 4.5 Each report submitted in terms of paragraph 4.4 shall be accompanied by an affidavit by a director of the Target Firm confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 4.6 The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
- 4.7 The Commission may request such additional information from the Merging Parties which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

5 Apparent breach

- 5.1 An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules.

6 Variation of the Condition

- 6.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the conditions to be waived, relaxed, modified and/or substituted. 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 waived, relaxed, modified and/or substituted.
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7 General

- 7.1 All correspondence in relation 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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****K2022444743 SOUTH AFRICA (PTY) LTD (TO BE RENAMED CRANE CPT (PTY) LTD)****AND****STONEHILL PROPERTY FUND (PTY) LTD****CASE NUMBER 2023FEB0047**

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 27 February 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby K2022444743 South Africa (Pty) Ltd (to be renamed Crane CPT (Pty) Ltd) ("Crane CPT") intends to acquire control over Stonehill Property Fund (Pty) Ltd ("Stonehill"). Following the completion of the proposed transaction, Crane CPT will exercise control over Stonehill.

The parties and their activities

2. The primary acquiring firm is Crane CPT, a company incorporated in accordance with the laws of South Africa. Crane CPT does not directly or indirectly control any firm. Kasada Hospitality Fund controls various South African firms including Cape Grace Hotel (Pty) Ltd ("Cape Grace").
 3. The Acquiring Group, Crane CPT, has been incorporated for the purpose of the proposed transaction. Therefore, Crane CPT does not own any assets, it does not generate any income and does not sell any products or provide any services. Of relevance to the proposed transaction, is the Cape Grace Hotel. The Acquiring Group
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owns the Cape Grace Hotel, and it is situated at Victoria & Alfred Waterfront in Cape Town. The Cape Grace Hotel is a 120-room, 5-star luxury hotel which provides hotel accommodation as well as ancillary services such as fine dining, conference and spa facilities.

4. The primary target firm is Stonehill Property Fund (Pty) Ltd ("Stonehill"), a company incorporated in accordance with the laws of South Africa. Stonehill is jointly controlled by James Harrison Rai Trust ("James Rai Trust") (49%) and KSK Trust ("KSK Trust") (51%). Stonehill wholly owns Radisson Blu Hotel & Residence ("Target Hotel"). James Rai Trust and KSK Trust will henceforth be referred to as the "Sellers".
5. The primary business activity of Stonehill is the ownership of the Target Hotel, a 214-room, 4-star Hotel located at 22 Riebeek Street within the central business district of Cape Town.

Competition assessment

6. The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the broad market for the provision of short-term hotel accommodation, as both the merging parties own hotels that are located in Cape Town. However, they each have a different hotel grading (or star-rating), and as such they are not close competitors as they do not typically target the same customers. The Cape Grace Hotel is a 5-star hotel, and the target is a 4-star hotel.
 7. Notwithstanding, the Commission considered the impact of the proposed transaction in the broad market for 4-star and 5-star hotels in Cape Town. There would be no overlap arising if the narrow star ratings are considered. The Commission found that the merged entity will have an estimated market share that is relatively low based on the number of rooms in the broad market for 4-star and 5-star hotels in Cape Town in 2022, post-merger, which suggests that they will remain a small player in the respective market. The Commission notes from the merging parties' submissions that the Target Hotel will continue to be operated as a 4-star hotel and the Cape Grace Hotel will continue to be operated as a 5-star hotel.
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8. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public Interest

Effect of the merger on employment

9. The merging parties submit that the proposed merger will not result in any retrenchments or job losses and, as such, will not have any adverse effects on employment. The proposed merger is likely to increase temporary job opportunities during its post-merger refurbishment. Furthermore, the Commission found that there were retrenchments that took place in the Target Hotel, which were due to operational reasons. The Commission found that this was due to financial difficulties resulting from the Covid-19 pandemic. The Commission notes that the Target Hotel followed the necessary retrenchment procedure. The Commission did not find any evidence suggesting that the retrenchments may be merger specific.
10. The Commission notes that the merging parties provided an unequivocal statement that the proposed transaction will not result in any retrenchments. The employees of the Acquiring Group are represented by employee representatives. The Commission engaged the relevant employee representatives who confirmed there are no concerns with the proposed transaction.
11. The employees of Target Hotel are represented by the Southern African Clothing and Textile Workers' Union ("SACTWU"). SACTWU submitted that the employees raised concerns regarding the following (i) how the Target Hotel employees' transfer to the Acquiring Group will be handled, (ii) requiring an unequivocal and explicit commitment that no job losses and there will not be any downward variation of their members' conditions of work, (iii) the ability and skills of Crane CPT to manage and operate the Target Hotel post-merger, and (iv) whether the merging parties have identified any potential opportunities for worker ownership, profit sharing or any other employee empowerment scheme for workers.
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12. The Commission informed the merging parties of the concerns raised by SACTWU and requested that they engaged with SACTWU directly. SACTWU informed the Commission that the merging parties addressed all their concerns, and they have no further concerns.

The promotion of a greater spread of ownership by HDPs and workers

13. The Commission found that the Acquiring Group does not have any Historically Disadvantaged Persons ("HDPs") as shareholders pre-merger, while shares in Stonehill are held by HDP shareholders. Therefore, there will be a dilution in HDP shareholding in the merged entity. The Commission thus requested that the merging parties consider introducing an HDP shareholder and/or creating an Employee Share Ownership Plan ("ESOP") in accordance with section 12A(3)(e) of the Competition Act, No. 89 of 1998 ("Competition Act").
14. The Commission requested the merging parties to introduce an HDP shareholder as a way to alleviate the impact of merger on HDP shareholding. In response, the merging parties submitted that they are willing to introduce an HDP shareholder for **[CONFIDENTIAL]** % within 18 to 24 months after completion of a proposed capex programme, which will be completed within 18 to 24 months after the implementation date, as a form of remedying the dilution resulting from the proposed transaction. The Commission accepted the merging parties' HDP transaction proposal as a remedy to the approval of the merger. Further, the Commission and the merging parties agreed that the proposed capex program would also be a condition of the merger.
15. The proposed transaction does not raise any other public interest concerns.

Conclusion

16. The Commission approves the proposed transaction with conditions attached in **"Annexure A"**.

ANNEXURE A

K2022444743 SOUTH AFRICA (PTY) LTD (TO BE RENAMED CRANE CPT (PTY) LTD)
AND
STONEHILL PROPERTY FUND (PTY) LTD
CASE NUMBER 2023FEB0047

1. DEFINITIONS

1.1. The following expressions shall bear the meaning assigned to them below and cognate expressions bear a corresponding meaning -

- 1.1.1. **“Acquiring Firm”** means K2022444743 (South Africa) Proprietary Limited, to be renamed Crane CPT Proprietary Limited;
 - 1.1.2. **“Approval Date”** means the date on which the Merger is approved by the Commission and as set out in the Commission’s clearance certificate (Notice CC 15);
 - 1.1.3. **“B-BBEE”** means Broad Based Black Economic Empowerment as defined in the B-BBEE Act;
 - 1.1.4. **“B-BBEE Act”** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended, and the Codes of Good Practice 2013, as amended;
 - 1.1.5. **“Capex Programme”** means the capital expenditure and refurbishment programme to be implemented by the Acquiring Firm in order to improve the standards at the Hotel and to reconfigure certain aspects of the Target Hotel.
 - 1.1.6. **“Capex Programme Period”** means the period in which the Capex Programme is likely to be completed, which is within 18 to 24 months after the Implementation Date;
 - 1.1.7. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
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- 1.1.8. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.9. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.1.10. **"Conditions"** means these conditions, and "Condition" means, as the context requires, any one of them;
- 1.1.11. **"Crane CPT"** means K2022444743 (South Africa) Proprietary Limited, to be renamed Crane CPT Proprietary Limited;
- 1.1.12. **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.13. **"HDPs"** means a Historically Disadvantaged Person/s as defined in section 3(2) of the Competition Act;
- 1.1.14. **"HDP shareholder(s)"** means an HDP to be identified by the Acquiring Firm to acquire shares in the Target Firm.
- 1.1.15. **"HDP Transaction"** means a transaction in terms of which an HDP shareholder(s) will acquire **[CONFIDENTIAL]** % of the issued shares in the Target Firm.
- 1.1.16. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.17. **"Merged Entities"** means the Target Firm subject to control of the Acquiring Firm following the Implementation Date;
- 1.1.18. **"Merging Parties"** means the Acquiring Firm and the Target Firms;
- 1.1.19. **"Merger"** means the acquisition of control over Stonehill by Crane CPT;
- 1.1.20. **"South Africa"** means the Republic of South Africa;
- 1.1.21. **"Stonehill"** means Stonehill Property Fund Proprietary Limited;
- 1.1.22. **"Target Firm"** means Stonehill.
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1.1.23. **"Target Hotel"** means the Radisson Blu Hotel and Residence;

2. CONDITIONS

2.1. Capex Programme

2.1.1. The Acquiring Firm undertakes to implement the Capex Programme in relation to the Target Hotel on the following basis –

2.1.1.1. The Acquiring Firm will make a cumulative financial investment in the Target Hotel within a period of 18 to 24 months after the Implementation Date.

2.2. Employment and skills development

2.2.1. The Acquiring Firm will employ an additional number of HDP employees at the Target Hotel within a period of 36 months after the Implementation Date.

2.2.2. For the period of 24 months after the Implementation Date, the Acquiring Firm will provide internal and external training for employees of the Target Hotel who are HDPs on the following basis:

2.2.2.1. provide access to global training platforms and programmes, which specifically look to promote capacity building and skills transfer; and

2.2.2.2. each employee will receive training during the first specified months period after the Implementation Date and training every quarter thereafter.

2.3. Local Procurement

2.3.1. The Acquiring Firm will allocate a specified amount to be used for the Capex Programme on local procurement from HDP suppliers over a period of 24 months after the Implementation Date.

3. B-BBEE SHAREHOLDING

- 3.1. The Merged Entity shall, within 18 to 24 months after the Capex Programme, implement the HDP Transaction. In this regard, the Acquiring Firm will, in its sole discretion, determine prospective HDP shareholder(s) that will participate in the HDP Transaction as well as the proportion of shares that will be allotted to each HDP shareholder(s).

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. The Merged Entity shall, annually following the completion of the Capex Programme until the HDP Transaction is implemented, provide to the Commission a report detailing the steps taken to introduce the HDP shareholder(s) and the progress made in that regard. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the accuracy of the report.
- 4.3. Prior to the implementation of the HDP Transaction, the Merged Entity will provide the Commission with details of the HDP Transaction in writing. These details shall include, but not be limited to (i) the identity of the HDP shareholder(s), (ii) evidence that the HDP shareholder(s) are HDPs, (iii) the proportion of shareholding in the Target Firm that the HDP shareholder(s) will acquire and (iv) confirmation of whether the HDP Transaction constitutes a merger in terms of the Act.
- 4.4. Within 60 (sixty) Days of receipt of the details of the HDP Transaction, the Commission shall review and provide the Merging Parties' representatives with any comments or queries in relation to the HDP Transaction in writing.
- 4.5. For avoidance of doubt, the HDP Transaction may not be implemented without the prior written approval of the Commission, which approval shall not be unreasonably withheld or delayed.
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- 4.6. To the extent that the HDP Transaction constitutes a merger as defined in the Act, and the thresholds for mandatory notification are met, the HDP Transaction can only be implemented after it has been notified to the Commission as a merger in the prescribed manner and form and approved by the Commission with or without conditions.
- 4.7. Any person including any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.
- 4.8. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

- 5.1. In the event of an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

6. VARIATION

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

7. GENERAL

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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****NJR STEEL HOLDINGS (PTY) LTD****AND****STAALBEER (PTY) LTD; SUBITRIX INVESTMENTS (PTY) LTD; UNIVERSAL PULSE TRADING 103 (PTY) LTD; CIVIFORCE (PTY) LTD; PORTIPIX (PTY) LTD; MARULELONG TRUSSES (PTY) LTD; AND COPPER SUNSET TRADING 153 (PTY) LTD****CASE NUMBER: 2023JAN0014**

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 9 January 2023, the Competition Commission ("the Commission") received notice of an intermediate merger wherein NJR Steel Holdings (Pty) Ltd ("NJR") intends to acquire the assets and liabilities of the following businesses, as a going concern:
 - 1.1. Subitrix Investments (Pty) Ltd;
 - 1.2. Universal Pulse Trading 103 (Pty) Ltd;
 - 1.3. Staalbeer (Pty) Ltd;
 - 1.4. Civiforce (Pty) Ltd; and
 - 1.5. Portipix (Pty) Ltd.
 2. In addition, NJR will purchase the entire issued share capital of the following entities:
 - 2.1. Marulelong Trusses (Pty) Ltd; and
 - 2.2. Copper Sunset Trading 153 (Pty) Ltd.
 3. After the implementation of the proposed transaction, the Acquiring Group will have sole control over the Target Firms.
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Parties to the transaction

4. The primary acquiring firm is NJR, a private company registered in accordance with the laws of the Republic of South Africa. NJR directly or indirectly controls a number of entities in South Africa. NJR, all the firms controlled by it and all the firms that control it are hereafter collectively referred to as the “Acquiring Group”.
5. The primary target firms include the following:
 - 5.1. Staalbeer (Pty) Ltd;
 - 5.2. Subitrix Investments (Pty) Ltd;
 - 5.3. Universal Pulse Trading 103 (Pty) Ltd;
 - 5.4. Civiforce (Pty) Ltd;
 - 5.5. Portipix (Pty) Ltd;
 - 5.6. Marulelong Trusses (Pty) Ltd; and
 - 5.7. Copper Sunset Trading 153 (Pty) Ltd.
6. All the target firms are controlled by common shareholders who are (i) Johan Roos Familie Trust IT 3112/02; (ii) LC Kleinhans Familie Trust IT 9292/02 and (iii) Johan Roos Beleggings Trust IT 4666/08.
7. None of the primary target firms have any subsidiaries. All the target firms are hereafter collectively referred to as the “Target Group” or the “Staalbeer Group”.

Relationship between the merging parties

8. The proposed transaction presents both a horizontal and vertical overlap. In terms of the horizontal overlap, the merging parties are both active in the following:
 - 8.1. steel merchanting – distribution and retail of steel products;
 - 8.2. manufacturing of palisade fencing panels; and
 - 8.3. value-added services.
 9. Although there is a horizontal overlap in the parties’ activities in relation to the provision of value-added services, the Commission notes that the merging parties’ value-added services are not substitutable from a demand-side perspective. Specifically, both the Acquiring Group and the Target Group offer value-added services strictly to their own customers at their respective retail outlets. The customers who purchase steel products from Staalbeer (or NJR) are unlikely to be able to purchase value-added services for
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those products from NJR (or Staalbeer). As such, the Commission is of the view that the merging parties are unlikely to constrain each other in terms of these value-added services and will not assess the provision of value-added services further.

10. In terms of the vertical overlap, the Commission notes that the Acquiring Group and the Target Group procure steel and related products from each other. However, both the Acquiring Group and the Target Group are merchants who primarily purchase their steel products from steel manufacturers rather than from other steel merchants. Steel merchants do not primarily rely on other steel merchants for steel supply such that steel merchants may be regarded to pose a competitive constraint on steel manufacturers. Rather, steel merchants may occasionally purchase steel from other merchants on an *ad hoc* basis.
11. The proportion of NJR's total steel supplies attributable to Staalbeer are below [CONFIDENTIAL]. On the other hand, the proportion of Staalbeer's total steel supplies attributable to NJR range between [CONFIDENTIAL] and [CONFIDENTIAL]. The purchases between the Acquiring Group and the Target Group are thus *ad hoc* commercial transactions rather than a sustained vertical overlap as they are primarily on the same level of the value chain. Therefore, the vertical overlap will not be assessed further.
12. The Commission assessed the competitive effects of the proposed transaction in the following markets:
 - 12.1. steel merchanting – distribution and retail of steel products; and
 - 12.2. manufacturing of palisade fencing panels.

Competition analysis

The national market for steel merchanting

13. The Commission was unable to obtain data to independently assess market shares for steel merchants. The reports that the Commission could find were related to total steel production including by steel manufacturers and not steel merchants only. Notably, the industry reports suggest that South Africa imported about 36% of its annual 8.5 million tonnes steel requirements in 2021. The Commission notes that the merging parties' combined market share would be less than [CONFIDENTIAL] based on the value of the
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total steel produced in South Africa of R89.1 billion in 2021, with an accretion of less than [CONFIDENTIAL].

14. A competitor to the merging parties submitted that the market for steel merchants is very competitive and is characterized by low barriers to entry. Further, customers can negotiate prices, thus showing that customers have some bargaining power against suppliers in this market.
15. Considering the above, the Commission is of the view that the proposed transaction is unlikely to result in the substantial lessening of competition in the national market for steel merchants.

The national market for the manufacturing of palisade fencing panels

16. The merged entity is likely to have approximately [CONFIDENTIAL] market share, post-merger. The Commission notes that the merged entity will continue to face competition from several players active in this relevant market.
17. A competitor to the merging parties submitted that this market is very competitive and there are very low barriers to entry. The minimum capital requirement ranges from R50 000 to R100 000 and there is easy access to raw materials. It was also submitted that due the intensity of competition in the market, customers have countervailing power over suppliers.
18. Considering the above, the Commission is of the view that the proposed transaction is unlikely to result in the substantial lessening of competition in any of the affected markets.

Public interest analysis

Effect on employment

19. The merging parties submitted that the proposed transaction will not result in any retrenchments.
 20. The employees of the Acquiring Group are represented by several trade unions including (i) National Union of Metalworkers of South Africa (NUMSA); (ii) The Metal and Electrical Workers' Union of South Africa (MEWUSA); (iii) South African Equity Workers Association (SAEWA); (iv) African Meat Industry & Allied Trade Union (AMITU); (v)
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United Association of South Africa (UASA); and (vi) Association of Mineworkers and Construction Union (AMCU). Of these trade unions, only AMCU responded to the Commission's correspondence.

21. The Commission notes that NJR has offered a commitment to preserve the employment of all the employees in the Potchefstroom, Vereeniging and Bothaville outlets for a period of 24 months (total headcount – 220), after the implementation of the proposed transaction. NJR estimates that the preservation of these jobs will cost approximately [CONFIDENTIAL] over 24 months, the full cost that NJR anticipates it will have to absorb should the industry underperform. Importantly, absent the merger, the target employees could be retrenched for operational reasons in the event of a steel industry downturn, therefore the proposed condition on employment seeks to preserve the 220 jobs even in the event of a downturn, a better outcome for the target employees than if the merger did not take place.
22. The Commission accepts the 2-year moratorium period as offered, and a condition that there will be no involuntary retrenchments for a period of 2 years post-merger.

Effect on a particular industrial sector or region

23. The proposed transaction is likely to have a positive effect in Potchefstroom, Vereeniging and Bothaville. NJR has committed that the three Staalbeer outlets will collectively undertake to spend at least [CONFIDENTIAL] per year for 2 years following implementation of the Proposed Transaction on enterprise development in the aforesaid areas. This commitment has been converted into a condition.

Impact on the ability of SMMEs to enter into, participate in or expand in the market

24. The Commission notes that the proposed transaction is likely to result in increased participation and expansion of SMMEs. More specifically, NJR has committed that the Staalbeer outlets will undertake to source products from SMMEs and HDP suppliers to the value of at least [CONFIDENTIAL] per year over the 24 months following the implementation of the proposed transaction, to the extent that this is reasonable and practical in the prevailing economic circumstances.

The promotion of a greater spread of ownership by historically disadvantaged persons and workers section 12A(3)(e)

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25. There are no direct HDP shareholdings in either the Primary Acquiring Firm or the Target Group. However, the merging parties submit that the proposed transaction will have a positive impact on the promotion of a greater spread of ownership because of the increased level of participation by HDPs. In this regard, the merging parties submit that the Target Group will be owned and controlled by NJR, whose subsidiaries have been rated in terms of the relevant empowerment legislation.

Submissions from the Department of Trade, Industry and Competition (DTIC)

26. The DTIC requested to the Commission to engage with the merger parties with a view to institute the following commitments/conditions to the merger –
- 26.1. The acquiring firm to implement an employee share ownership programme (ESOP) of at least five per cent in the target firm/merged entity, for the benefit of transferring workers of the target business; and
- 26.2. The acquiring firm to implement further specific initiatives to promote B-BBEE in the target firm / merged entity, post implementation of the merger.

Merging parties' response

27. The merging parties submitted that they were unable to establish an ESOP, at least in the context of the proposed transaction, because of the following reasons:
- 27.1. The implementation of an ESOP will impose an additional financial commitment on NJR which will fundamentally alter the economics of the proposed transaction, especially given that it is acquiring the target businesses at [CONFIDENTIAL] in order to finance this proposed transaction.
- 27.2. The short to medium term outlook for the South African Metals & Engineering ("M&E") sector is bleak, in particular, because of the fact that all of the sectors to which the M&E Sector supplies domestically (construction, automotive, mining and petrochemicals) have indicated that they face difficult years ahead;
- 27.3. The Steel and Engineering Industries Federation of SA (SEIFSA) expects production in the South African M&E sector as a whole to contract by 2.2 % in 2023. The best-case scenario estimates a contraction of 1.5% for the sector;
- 27.4. As the South African M&E sector has contracted, the margins of steel merchant businesses like NJR and Staalbeer have reduced, whilst costs (particularly
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electricity and diesel required for generators during the ongoing and worsening power cuts) have increased substantially; and

27.5. The real gross domestic fixed investment in the sector as a whole declined by 9.2% in 2022, thus reflecting an unattractive investment environment.

28. The merging parties nevertheless tendered the following conditions, further details of which are enclosed in Annexure A:

28.1. the merging parties will not effect any merger specific retrenchments;

28.2. the merging parties will not effect any involuntary retrenchments in terms of section 189 of the Labour Relations Act for a period of at least 2 (two) years;

28.3. The Staalbeer outlets shall source products from SMMEs and/or HDP suppliers to the value of at least [CONFIDENTIAL] per annum for 2 (two) years; and

28.4. The Staalbeer outlets shall spend at least [CONFIDENTIAL] per year for 2 (two) years on enterprise development.

Commission's view

29. The Commission takes the view that the empowerment ratings of subsidiaries within the NJR group do not qualify as increasing the HDP credentials of the Target Group. Further, the Commission notes the parties' reasons for the failure to implement an HDP and/or an ESOP which largely relate to challenges within the steel sector more broadly. The Commission does not accept such reasons as sufficient to dispel the merging parties' obligation to increase a greater spread of ownership by HDPs and workers. Nevertheless, in the circumstances of the case, the Commission considered whether the commitments may constitute equally weighty countervailing public interest benefits in light of this failure to promote a greater spread of ownership. The DTIC has also accepted the conditions.

30. Excluding the preservation of the 220 jobs which will cost approximately [CONFIDENTIAL] over two years, the commitments tendered by the merging parties' amount to [CONFIDENTIAL] over a 2-year period. Importantly, the [CONFIDENTIAL] over 2 years will be spent towards HDP suppliers, as contemplated in the Act, as well as a fund of [CONFIDENTIAL] over 2 years that will be directed towards enterprise development programs in the Vereeniging, Bothaville and Potchefstroom areas.

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31. Considering the transaction in totality, the Commission is of the view that the transaction can be justified on the conditions proposed.

Conclusion

32. The Commission approves the proposed merger with conditions in **Annexure A**.

ANNEXURE A

**NJR STEEL PROPRIETARY LIMITED
AND**

STAALBEER PROPRIETARY LIMITED**CASE NUMBER: 2023JAN0014**

1. DEFINITIONS

In this document, the expressions used below will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 1.1 **"B-BBEE"** means broad-based black economic empowerment as defined in the B-BEE Act;
 - 1.2 **"B-BBEE Act"** means the Broad- Based Black Economic Empowerment Act, 53 of 2003, as amended;
 - 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.4 **"Competition Act"** means the Competition Act, No. 89 of 1998;
 - 1.5 **"Conditions"** means the conditions set out herein;
 - 1.6 **"Days"** means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
 - 1.7 **"HDP"** means a historically disadvantaged person as defined in sections 3(2) of the Competition Act;
 - 1.8 **"Implementation Date"** means the date on which the Merger is implemented;
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- 1.9 **"HDP Suppliers"** means suppliers that are owned and controlled by historically disadvantaged person/s as contemplated in the Competition Act;
- 1.10 **"Labour Relations Act"** means the Labour Relations Act, No. 66 of 1995;
- 1.11 **"Merged Entity"** means Staalbeer subject to control of NJR following the implementation of the Merger;
- 1.12 **"Merger"** means the proposed transaction between the Merging Parties, and which constitutes an intermediate merger;
- 1.13 **"Merging Parties"** means NJR and Staalbeer;
- 1.14 **"NJR"** means NJR Proprietary Limited or its nominee (the acquiring firm);
- 1.15 **"SME"** means a small business or a medium-sized business, as defined in the Act;
- 1.16 **"Staalbeer"** means the steel merchant and other related business conducted by Subitrix Investments (Pty) Ltd, Universal Pulse Trading 103 (Pty) Ltd, Staalbeer (Pty) Ltd, Civiforce (Pty) Ltd and Poritipix (Pty) Ltd together with 100% of the shares in Marulelong Trussess (Pty) Ltd and Copper Sunset Trading (Pty) Ltd;
- 1.17 **"Staalbeer outlets"** means the retail outlets operated by Staalbeer in Vereeniging, Potchefstroom and Bothaville;
- 1.18 **"South Africa"** means the Republic of South Africa;
- 1.19 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and

2. EMPLOYMENT CONDITION

- 2.1 The Merged Entity shall not retrench any employees as a result of the Merger for a period of 2 (two) years from the Implementation Date as well as between the Approval Date and the Implementation Date.
- 2.2 In addition, the Merging Parties have voluntarily undertaken not to effect any involuntary retrenchments in terms of section 189 of the Labour Relations Act for a period of at least 2 (two) years following the Implementation Date as well as between the Approval Date and the Implementation Date.
- 2.3 For two years following the Implementation Date, as well as between the Approval Date and the Implementation Date, the Merging Parties shall maintain at least 220 jobs (in aggregate) in the Staalbeer outlets.

3. CONDITIONS TO ADDRESS B-BBEE PROCUREMENT AND ENTERPRISE DEVELOPMENT

- 3.1 The Staalbeer outlets shall source steel and steel-related products from HDP suppliers to the value of at least [CONFIDENTIAL] per year for a period of 2 (two) years following the Implementation Date.
- 3.2 The Staalbeer outlets shall spend at least [CONFIDENTIAL] per year for 2 (two) years following the Implementation Date on enterprise development, as defined in the B-BBEE Act, in Potchefstroom, Vereeniging and Bothaville.

4. B-BBEE CONDITIONS

- 4.1 For so long as NJR is entitled to do so, it shall appoint at least one HDP as a director on the board of directors of each company which operates the Staalbeer outlets after the Implementation Date.
- 4.2 NJR shall ensure that within 6 (six) months following the Implementation Date, each company which operates the Staalbeer outlets is independently rated and verified as contemplated in the B-BBEE Act.
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- 4.3 NJR shall maintain, and to the extent reasonably possible, endeavour to improve, the B-BBEE ratings of each company that operates the Staalbeer outlets for a period of at least 5 years following the Implementation Date.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 5.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within five Days of it becoming effective.
- 5.2 An affidavit and a compliance report will be submitted by the Merging Parties to the Commission on an annual basis within 3 (three) months after the anniversary of the Implementation Date:
- 5.2.1 for a period of 2 (two) years in respect of the conditions set out in paragraphs 2.1, 2.2, 2.3, 3.1, 3.2, 4.1 and 4.2; and
- 5.2.2 for a period of 5 (five) years in respect of the condition set out in paragraph 4.3.
- 5.2.3 the affidavit in 5.2 shall detail the identity of all the HDP suppliers contemplated in 2.1 which shall be firms contemplated as HDPs in terms of the Act.

6. APPARENT BREACH

- 6.1 An apparent breach by the Merged Entity of any of these Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

7. VARIATION OF CONDITIONS

- 7.1 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 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.
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8. GENERAL

- 8.1 All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****SANDOZ AG****AND****THE ACTIVE PHARMACEUTICAL INGREDIENT, MICAFUNGIN, OWNED BY ASTELLAS****PHARMA INC****CASE NUMBER 2023JAN0031**

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:

24. On 25 January 2023, the Competition Commission ("Commission") was notified of an intermediate merger wherein Sandoz Group AG wishes to acquire Astellas Pharma Inc's ("Astellas") global pharmaceutical product portfolio based on the Micafungin active pharmaceutical ingredient (API) including all associated intellectual property rights.
 25. Sandoz is a company incorporated in Switzerland and is controlled by Novartis International AG ("Novartis Group") which is a listed firm incorporated in Switzerland. Novartis is not controlled by any firm.
 26. The Novartis Group is a multinational pharmaceutical group which is active in the research, development, manufacturing, and marketing of healthcare products. Sandoz produces over-the-counter and prescription pharmaceutical products which can be classified in terms of the Anatomical Therapeutic Chemical Classification ("ATC") classification system. Of particular importance to this merger assessment are Novartis Group's *Terbinafine* and *Voriconazole* active pharmaceutical ingredients (APIs) which are used to treat fungal infections (i.e., antifungals). *Terbinafine* and *Voriconazole* are classified as anti-infectives
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for systemic use and fall under the ATC3 J2A sub category.

27. The Novartis Group does not have any shareholding held by historically disadvantaged persons (“HDPs”) or workers as defined in the Competition Act No. 89 of 1998 (as amended) (the “Act”).
 28. The primary target firm is Astellas Pharma Inc’s (“Astellas”) global pharmaceutical product portfolio based on the *Micafungin* API and used to produce and market the Mycamine and Funguard pharmaceutical brands including regulatory dossiers, patents, trademarks, domain names, know-how and all other intellectual property rights, medical information, marketing authorisations, saleable inventory and relevant data and information (the “Micafungin Portfolio”). The Micafungin Portfolio does not include any manufacturing facilities or employees. Astellas does not manufacture any of the Micafungin Portfolio’s pharmaceutical products in South Africa, but only imports and sells the same to the public and private healthcare sectors.
 29. The Micafungin Portfolio does not have any ownership by HDPs or workers.
 30. The Commission found that the merger is unlikely to result in a substantial prevention or lessening of competition in any relevant markets.
 31. The Commission found that the merger triggers an obligation to promote a greater spread of ownership as contemplated in section 12A(3)(e) of the Act. To address this obligation, the merging parties and the Commission have agreed to the conditions set out in **Annexure A** below.
 32. The merger does not raise any other public interest concerns.
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ANNEXURE A**SANDOZ AG****AND****THE ACTIVE PHARMACEUTICAL INGREDIENT MICAFUNGIN, OWNED BY ASTELLAS
PHARMA INC****CASE NUMBER: 2023JAN0031**

9. DEFINITIONS

In this document, the expressions used below will have the appropriate meanings assigned to them and the following and related expressions will bear the following meanings:

- 9.1 **"Act"** means the Competition Act, No. 89 of 1998, as amended;
 - 9.2 **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate (Notice CC 15);
 - 9.3 **"Astellas"** means Astellas Pharma Inc;
 - 9.4 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 9.5 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;
 - 9.6 **"Conditions"** means the conditions set out herein;
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- 9.7 **“Days”** means any day that is not a Saturday, Sunday or public holiday in South Africa;
- 9.8 **“Disabled Youth”** means individuals who are disabled and are HDPs;
- 9.9 **“HDPs”** means historically disadvantaged persons, as defined in section 3(2) of the Act;
- 9.10 **“Implementation Date”** means the date on which the Merger is implemented;
- 9.11 **“Merger”** means the proposed transaction between Sandoz and Astellas, and which constitutes an intermediate merger;
- 9.12 **“NQF”** means the National Qualifications Framework as overseen by SAQA;
- 9.13 **“Sandoz”** means Sandoz AG;
- 9.14 **“Sandoz SA”** means Sandoz South Africa Proprietary Limited, a subsidiary of Sandoz;
- 9.15 **“SAQA”** means the South African Qualifications Authority established in terms of section 18 of the Skills Development Act 97 of 1998, as amended;
- 9.16 **“South Africa”** means the Republic of South Africa;
- 9.17 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 9.18 **“Unemployed Youth”** means individuals who are HDPs, are unemployed and are 35 years of age and below.
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10. CONDITIONS

Training and Development of Unemployed and Disabled Youth

- 10.1 Sandoz SA will make an aggregate contribution of R 10 000 000.00 (ten million rand) over a period of three years (with a minimum contribution of R3 300 000 (three million three hundred thousand per annum)) from the Approval Date towards the following initiatives:
- 10.1.1 A learnership program for Unemployed Youth which will benefit at least 6 individuals and equip those individuals with theoretical and practical knowledge aimed at obtaining an NQF Level 5 qualification as medical sales representatives; and
- 10.1.2 A program for Disabled Youth which will benefit at least 8 individuals and enable the participants to obtain an NQF Level 3 qualification in business administration.
- 10.2 Sandoz further commits to consider any participants that successfully participate in the above-mentioned training and development initiatives, when suitable employment opportunities arise.

11. MONITORING

- 11.1 Sandoz shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of its occurrence.
- 11.2 Within 10 (ten) days of identifying the programs and learners referred to in paragraphs 10.1.1 and 10.1.2 Sandoz shall provide the Commission with the details of the program and list of learners that would form part of the respective programmes. Sandoz shall also provide the Commission with an affidavit from a senior official attesting to Sandoz' compliance with these conditions.
- 11.3 On each anniversary of the Approval Date, Sandoz shall provide the Commission with an affidavit from a senior official attesting to the compliance with clause 10.1 and 10.2 of the Conditions.
- 11.4 The Commission may request the Parties for any additional documents and information it requires to verify compliance with the Conditions.
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12. 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 Sandoz of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

13. VARIATION OF CONDITIONS

Sandoz 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, Sandoz shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

14. GENERAL

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.ov.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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****HUAXIN (HONG KONG) INTERNATIONAL HOLDINGS LIMITED****AND****NATAL PORTLAND CEMENT COMPANY PROPRIETARY LIMITED****CASE NUMBER: 2023JUL0038**

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 25 July 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Huaxin (Hong Kong) International Holdings Limited ("Huaxin") intends to acquire the entire share capital of Natal Portland Cement Company Proprietary Limited ("NPC"). Following completion of the proposed transaction, Huaxin will exercise sole control over NPC as envisaged by section 2(2) of the Competition Act No. 89 of 1998, as amended ("Act").

The parties and their activities

2. The primary acquiring firm is Huaxin, a private company incorporated in accordance with the laws of Hong Kong. Huaxin is wholly owned and controlled by Huaxin Cement Co. Limited ("Huaxin Cement"), a public company registered in accordance with the laws of the People's Republic of China ("China"). Huaxin Cement is listed on the Shanghai Stock Exchange and the Stock Exchange of Hong Kong and is not

controlled by any firm. Huaxin controls a number of firms, none of which are active in South Africa.

3. Huaxin produces a range of building materials including, inter alia, cement, ready-mixed concrete and aggregates, cement-based new building materials and is active in cement kiln co-processing of wastes, as well as engineering, procurement and construction for cement projects. It operates in China as well as in Zambia, Malawi, Tanzania, Tajikistan, Kyrgyzstan, Uzbekistan, Cambodia, Nepal and Oman. Huaxin is not active in South Africa.
4. The primary target firm is NPC, a private company incorporated in accordance with the laws of South Africa. NPC is wholly owned and controlled by InterCement Trading Inversiones, S.A.U. ("InterCement"), a joint-stock company incorporated under the laws of Spain. InterCement is wholly owned and controlled by InterCement Portugal S.A., a private company registered in accordance with the laws of Portugal. NPC controls the following firms in South Africa: Intercement South Africa Proprietary Limited; and NPC InterCement (RF) Proprietary Limited. NPC and all the firms directly and indirectly controlled by it will hereinafter collectively be referred to as the "NPC Group".
5. The NPC Group manufactures and distributes cement, ready-mixed concrete, aggregate products and concrete-products largely on the East Coast of South Africa.

Competition assessment

6. The Commission considered the activities of the merging parties and found that the proposed transaction results in a product overlap as both the merging parties manufacture and distribute building materials including, inter alia, cement, ready-mixed concrete and aggregates, amongst other products. However, there is no geographic overlap, as Huaxin does not operate or have interest in firms that operate in South Africa. Moreover, there are no existing vertical links between the merging parties in South Africa.
 7. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.
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Public Interest

8. The merging parties submitted an unequivocal statement that the proposed transaction will have no negative effect on employment and will not result in any merger-specific retrenchments or redundancies in South Africa.
9. It is submitted that neither of the merging parties have any HDP shareholding pre-merger. Both the Commission and the DTIC on multiple occasions requested the merging parties to introduce an HDP shareholder and/or create an Employee Share Ownership Plan ("ESOP") worth at least 5% within the merged entity.
10. The merging parties submit that the NPC Mining Entities, which include South Coast Stone Crushers Proprietary Limited ("SC Stone Crushers"), Sterkspruit Aggregates Proprietary Limited ("Sterkspruit Aggregates") and NPC InterCement (RF) Proprietary Limited ("NPC InterCement"), already have black ownership credentials, amounting to an aggregate of 26% of the NPC Mining Entities which are unaffected by the Proposed Transaction. The merging parties submit that they are willing to commit to a condition that they will dispose of a further 4% of NPC InterCement (a subsidiary of the NPC) to HDP shareholders to the value of approximately [CONFIDENTIAL]. Due to NPC InterCement's various shareholdings, the 4% will also indirectly comprise approximately 3% of SC Stone Crushers, approximately 3% of Sterkspruit Aggregates and 4% of NPC Concrete. The merging parties further agreed to grant first preference for the purchase of these shares to one or more of those HDP shareholders who are shareholders of the NPC Mining Entities as at the implementation date.
11. Further to the above, the merging parties have committed to introduce at least R600 million in capital expenditure at NPC over the next 5 years through InterCement South Africa (Pty) Ltd ("InterCement SA") (a subsidiary of NPC), following the implementation of the proposed transaction. This capital expenditure will result in increased cement production which will benefit the entire South African NPC Group.
12. The Commission accepted the merging parties' commitments as conditions to the approval of the merger.

Conclusion

13. The Commission therefore approves the proposed transaction with conditions attached in **“Annexure A”**.

ANNEXURE A**HUAXIN (HONG KONG) INTERNATIONAL HOLDINGS LIMITED****AND****NATAL PORTLAND CEMENT COMPANY PROPRIETARY LIMITED****CASE NUMBER: 2023JUL0038**

CONDITION

1. DEFINITIONS

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

1.1.1. **“Acquiring Firm”** means Huaxin (Hong Kong) International Holdings Limited;

1.1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);

1.1.3. **“Approval Date”** means the date on which the Merger is approved by the Commission and as set out in the Commission’s clearance certificate (Notice CC 15);

1.1.4. **“Capital Expenditure Investment”** means a capital investment - R600 million (six hundred million Rand) by Huaxin into NPC and/or firms controlled by NPC;

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

1.1.6. **“Conditions”** means the conditions set out herein;

1.1.7. **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

1.1.8. **“Disposal Period”** means a specified period of months from the Implementation Date;

1.1.9. **“Eligible Employees”** means persons who are permanently in the employ (as

contemplated under the Labour Relations Act, No. 66 of 1995) of NPC but excluding top and senior management;

- 1.1.10. **“ESOP”** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
 - 1.1.11. **“HDPs”** means a Historically Disadvantaged Person/s as contemplated in section 3(2) of the Competition Act;
 - 1.1.12. **“HDP shareholder”** means an HDP to be identified by the Merged Entity to acquire up to 4% of the issued shares in NPC InterCement;
 - 1.1.13. **“HDP Transaction”** means a transaction in terms of which an HDP shareholder will acquire, 4% of the issued shares in NPC InterCement.
 - 1.1.14. **“Huaxin”** means Huaxin (Hong Kong) International Holdings Limited;
 - 1.1.15. **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
 - 1.1.16. **“InterCement SA”** means InterCement South Africa Proprietary Limited;
 - 1.1.17. **“Merged Entity”** means Huaxin and NPC;
 - 1.1.18. **“Merger”** means the acquisition by Huaxin of the entire share capital of NPC;
 - 1.1.19. **“Merging Parties”** means Huaxin and NPC;
 - 1.1.20. **“NPC”** means Natal Portland Cement Company (Pty) Ltd;
 - 1.1.21. **“NPC InterCement”** means NPC InterCement (RF) (Pty) Ltd;
 - 1.1.22. **“NPC Mining Entities”** means NPC’s empowered subsidiaries which include South Coast Stone Crushers Proprietary Limited (**“SC Stone Crushers”**), Sterkspruit Aggregates Proprietary Limited (**“Sterkspruit Aggregates”**), and NPC InterCement;
 - 1.1.23. **“South Africa”** means the Republic of South Africa;
 - 1.1.24. **“Target Firm”** means Natal Portland Cement Company (Pty) Ltd;
 - 1.1.25. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body
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established in terms of section 26 of the Act; and

- 1.1.26. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

2. CAPITAL EXPENDITURE INVESTMENT

- 2.1. Within a period of 1 (one) to 5 (five) years after the Implementation Date, the Acquiring Firm shall invest R600 million (six hundred million Rand) into InterCement SA and/or firms controlled by NPC. The Acquiring Firm shall invest a lumpsum amount, to be determined in the discretion of the Acquiring Firm, within a period of 2 (two) years after the Implementation Date, followed by smaller amounts of capital expenditure thereafter, R600 million within a maximum period of 5 years.

3. DISPOSAL OF SHARES IN NPC INTERCEMENT TO HDP SHAREHOLDER/ ESOP

- 3.1. Within the Disposal Period, the Merged Entity shall dispose of 4% of NPC InterCement to HDP Shareholders or through an ESOP which 4% shareholding is valued at approximately [CONFIDENTIAL].
- 3.2. The Merged Entity shall grant first preference of the disposal of the 4% in NPC InterCement to one or more of those HDP Shareholders who are shareholders of the NPC Mining Entities as at the Implementation Date.
- 3.3. In the event that none of the existing HDP Shareholders are interested in the purchasing of the shares or that terms cannot be agreed with the existing HDP Shareholders, the Merged Entity shall dispose of the 4% to one or more external HDP Shareholder/s and/or form an ESOP.
- 3.4. The valuation of the NPC InterCement shall be performed by an independent and suitably qualified valuer, which will be appointed by the Acquiring Firm, after the Commission has approved that the proposed valuer is independent and suitably qualified.
- 3.5. In the event that the Merged Entity elects to comply with the Conditions in Clause 3.1 above through an ESOP, the introduction of the ESOP will be implemented in accordance with the design principles attached in **Annexure B**.
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4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
 - 4.2. Should the Merging Parties elect to implement an HDP Transaction, prior to the implementation of the HDP Transaction, the Merged Entity will provide the Commission with details of the HDP Transaction in writing. These details shall include, but not be limited to (i) the identity of the HDP shareholder, (ii) evidence that the HDP shareholder are HDPs, and (iii) the proportion of shareholding in NPC InterCement that the HDP shareholder will acquire.
 - 4.3. Within 60 (sixty) Days of receipt of the details of the HDP Transaction, the Commission shall review and provide the Merging Parties' representatives with any comments or queries in relation to the HDP Transaction in writing. For the avoidance of doubt, the HDP Transaction shall not be implemented without the Commission's written approval.
 - 4.4. Should the Merging Parties elect to implement an ESOP, prior to the implementation of the ESOP, the Merged Entity will provide the Commission with details of the ESOP in writing. These details shall include, but not be limited to (i) the details of the Eligible Employees to participate in the ESOP; (ii) the number of Eligible Employees that will benefit from the ESOP, and (iii) the demographics of the Eligible Employees including their race, gender and the number of Eligible Employees who are classified as youth.
 - 4.5. Within 60 (sixty) Days of receipt of the details of the ESOP, the Commission shall review and provide the Merging Parties' representatives with any comments or queries in relation to the ESOP in writing.
 - 4.6. Once every 6 (six) months during the Disposal Period, the Merged Entity shall provide the Commission with a written report, accompanied by an affidavit attested to by a senior official of the Merged Entity confirming the accuracy of the report, outlining: (i) the progress made towards the realisation of Clause 3; and/or (ii) if applicable, how the ESOP is being established in accordance with the underlying design principles set out in the
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attached **Annexure B**.

- 4.7. The Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 5 years (five years), or until such time as the Conditions in clauses 2 and 3 are fulfilled, whichever is the earlier, provide to the Commission a report detailing its compliance with clause 2 and 3 of the Conditions. This report shall be accompanied by an affidavit attested to by a director official of the Merged Entity, confirming the accuracy of the report.
- 4.8. Any person including any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.
- 4.9. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

- 5.1. 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 37 of the Rules for the Conduct of Proceedings in the Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

6. VARIATION

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

7. GENERAL

- 7.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.
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ANNEXURE B

Design Principle	Applicable Criteria
Structure	<ul style="list-style-type: none"> ○ The ESOP is a unitised structure, established for allocated shares.
Eligible Employees	<ul style="list-style-type: none"> ○ All persons who are in the permanent employment of NPC ("Employees").
Cost	<ul style="list-style-type: none"> ○ No cost to Employees: Employees must not be required to pay to participate in the ESOP, unless otherwise elected by the relevant Employees. ○ Firms must make provision for independent legal and financial experts to act on behalf of Employees in ESOP establishment negotiations. For the avoidance of doubt, any reasonable expenses incurred by the Employees and/or their employee representatives shall be paid for by the Merged Entity.
Governance	<ul style="list-style-type: none"> ○ If there is a board of trustees, the board must be balanced and Employees must be represented on the board, e.g., 1 trustee appointed by Merged Entity; 1 appointed by Employees and 1 independent. ○ The independent trustee will be recommended by the Employees, and appointed subject to the candidate being acceptable to the Merged Entity.
Participants	<ul style="list-style-type: none"> ○ All current and future Employees who are eligible. ○ Eligibility criteria: permanent Employees, a reasonable minimum years of service may be specified and/or participation can be from day 1 of permanent employment. ○ Maternity leave will have no adverse impact on qualifying criteria.
Participation Benefits	<ul style="list-style-type: none"> ○ Beneficiaries will be entitled to: (a) dividends and (b) capital growth/upside based on their participation rights calculated with reference to units allocated to beneficiaries. ○ Beneficiaries will cease to participate for bad leaver events: resignations and dismissals.
Value & Funding	<ul style="list-style-type: none"> ○ Value will be determined with reference to issued shares and valuation as at the month preceding the establishment and commencement of the ESOP. ○ Merged entity must provide some vendor finance if required ○ If there is Vendor financing, it should be interest-free.

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****VOX VENTURES B.V (“VOX VENTURES”)****AND****ROBERTSON & CAINE PROPRIETARY LIMITED AND ROBERTSON & CAINE****PROPERTIES PROPRIETARY LIMITED****CASE NUMBER 2023MAR0005**

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:

33. On 02 March 2023, Vox Ventures B.V (“Vox Ventures”) notified an intermediate merger in terms of which Vox Ventures will acquire sole control over Robertson & Caine Proprietary Limited (“R&C”) and Robertson & Caine Properties Proprietary Limited (“RCP”).
 34. The primary acquiring firm is Vox Ventures B.V (“Vox Ventures”). Vox Ventures does not control any firm in South Africa. Vox Ventures is wholly controlled by the PPF Group N.V. (“PPF Group”) which is in turn controlled by Renata Kellnerova and family as to 98.93%. The PPF Group does not control any firm in South Africa. The PPF Group and all the firms that it controls will be referred to as the Acquiring Group.
 35. Globally, the Acquiring Group operates as an investment management firm holding investments in various sectors, including financial services, telecommunications, media, biotechnology real-estate and public transport vehicle manufacturing. Of particular relevance to this merger notification is the Acquiring Group’s activities as a provider of
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sailing yachts and catamarans charter services. The Acquiring Group does not have any operations in South Africa.

36. The Acquiring Group does not have any ownership by Historically Disadvantaged Persons (HDPs) or workers as defined in the Competition Act No. 89 of 1998 (as amended) (the "Act").
 37. The primary target firms are Robertson & Caine Proprietary Limited ("R&C") and Robertson & Caine Properties Proprietary Limited ("RCP"). R&C and RCP are both private companies incorporated in South Africa. RCP does not control any other firm. R&C wholly-owns Robertson & Caine Inc. ("R&C USA"), a firm incorporated in the United States of America. R&C and RCP shall be collectively referred to as the Target Firms. The Target Firms are not controlled by any firm and they also do not control any firm/s in South Africa.
 38. R&C designs and manufactures catamarans. R&C is South Africa's largest builder of catamarans for the export market. R&C supplies its catamarans exclusively to a United States based distributor known as Travelopia Marine. Travelopia Marine is the exclusive distributor of R&C's catamarans globally. RCP is a property holding company which houses one of R&C's production facilities based in Woodstock, Cape Town. RCP does not lease out any properties to any other firms or individuals. The Target Firms have no HDP or worker ownership.
 39. The Commission found that the merger is unlikely to result in a substantial lessening or prevention of competition in any relevant market as the acquiring is not active in South Africa.
 40. The only applicable public interest consideration was the merger's impact on promoting a greater spread of ownership. In this regard, the parties have tendered a package of remedies including skills development for HDPs, supplier development and localisation with an aggregate value of R299 million, over a period of 5 years.
 41. The proposed merger does not raise any other public interest concerns.
 42. The Commission approves the proposed transaction subject to the conditions attached as **Annexure A** hereto.
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ANNEXURE A**VOX VENTURES B.V ("VOX VENTURES")****AND****ROBERTSON & CAINE PROPRIETARY LIMITED AND ROBERTSON & CAINE****PROPERTIES PROPRIETARY LIMITED****CASE NUMBER: 2023MAR0005**

1 DEFINITIONS

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

- 1.1 **"Acquiring Firm"** means Vox Ventures B.V.;
 - 1.2 **"Approval Date"** means the date referred to on the Commission's merger clearance certificate (Form CC15), being the date on which the Merger is approved in terms of the Competition Act;
 - 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.4 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;
 - 1.5 **"Conditions"** mean the conditions specified in this document;
 - 1.6 **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;
 - 1.7 **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa. A public holiday shall also include such days as may be declared by the President of South Africa in terms of the Public Holidays Act 36 of 1994;
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- 1.8 **"Employees"** means all the Employees of the Merging Parties, as defined in the LRA, employed as such on the Implementation Date;
- 1.9 **"HDP"** means a historically disadvantaged person as defined in the Competition Act;
- 1.10 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 **"Localisation"** means increasing the level of production or services within South Africa;
- 1.12 **"LRA"** means the Labour Relations Act 66 of 1995, as amended;
- 1.13 **"Merger"** means the proposed acquisition by the Acquiring Firm of the entire issued share capital of the Target Firms in terms of the sale of shares agreement dated 10 January 2023;
- 1.14 **"Merging Parties"** means collectively the Acquiring Firm and the Target Firms, and **"Merging Party"** means anyone of them, as the case may be;
- 1.15 **"Target Firms"** means the Target Operating Firm and Robertson & Caine Properties Proprietary Limited, subject to the Merger and following the Implementation Date;
- 1.16 **"Target Operating Firm"** means Robertson & Caine Proprietary Limited, subject to the Merger and following the Implementation Date; and
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2 INVESTMENT COMMITMENT

- 2.1 Subject to clauses 2.2 and 8 below, the Merging Parties shall invest a cumulative amount of R176 million (one hundred and seventy six million Rand) in skills development, supplier development and socio-economic development over a 5 (five) year period from the Implementation Date (the **"Investment"**). The Acquiring Firm anticipates that the Investment will be broken down as follows -
- 2.1.1 R28 million (twenty-eight million Rand) per year for the first and second years from the Implementation Date;
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- 2.1.2 R32 million (thirty-two million Rand) in the third year following the Implementation Date; and
- 2.1.3 R44 million (forty-four million Rand) per year in each of the fourth and fifth years following the Implementation Date.
- 2.2 The Target Firms shall be entitled to vary the allocation of the Investment between the anticipated annual spend set out in clauses 2.1.1 to 2.1.3 above where the demands or needs of the business or the Employees so require, provided that the aggregate amount of the Investment is achieved.
- 2.3 The Investment shall fund skills development initiatives such as:
- 2.3.1 Learnerships – in-house trainee/learnership programmes for recently qualified and unemployed matriculants who will be trained in composites, assembly, and systems. The course content is already accredited on the National Qualifications Framework as; a) National Certificate: Polymer Composite Fabrication (Level 2); and b) National Certificate: Yacht and Boat Building (Level 2). The Target Operating Firm will apply to become an accredited training service provider via the MERSETA, to present these courses/learnership programmes and to be able to provide the necessary certification to learners once the courses are successfully completed; and
- 2.3.2 Supervisory and Management Development (Manufacturing, Engineering and Related Services Sector Education and Training Authority (MERSETA) courses – accredited courses (NQF Level 4/5) aiming to benefit 100 HDP Employees over the course of the next 5 years who are identified to have potential at supervisory/management level but lack the requisite qualifications (e.g. national senior certificate). The levels of the Employees will vary depending on their respective roles. However, examples include individuals who sit below the level of Team Leader, Group Leader, and Manager and those who have been recently appointed to those positions.

3 CAPITAL COMMITMENT

- 3.1 Subject to clauses 3.2 and 8 below, the Merging Parties shall contribute not less than R95,000,000 (ninety-five million Rand) in aggregate capital expenditure to either or
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both Target Firms during the 5 (five) year period following the Implementation Date (the “**Aggregate Capex Amount**”), towards growth and sustainability. The Acquiring Firm anticipates that the Aggregate Capex Amount will be broken down as follows –

- 3.1.1 **[Confidential]** Rand towards supporting the development of alternative energy (e.g. electric propulsion); and
- 3.1.2 **[Confidential]** Rand towards two new catamaran models.
- 3.2 The Target Firms shall be entitled to vary the allocation of the Aggregate Capex Amount between the investment categories set out in clauses 3.1.1 to 3.1.2 above where the demands or needs of the business so require, provided that the aggregate amount of the Aggregate Capex Amount is achieved.
- 3.3 In line with its commitment to Localisation and enterprise/supplier development, the Acquiring Firm shall procure that the Target Firms contribute R20,000,000 (twenty million Rand) towards the formation of a majority HDP owned local supplier that specialises in upholstery.
- 3.4 In line with its commitment to socio-economic development, the Acquiring Firm shall procure that the Target Firms contribute a charitable donation of R8,000,000 towards funding higher education scholarships for the children of those HDP Employees engaged by the Target Firms. The higher education scholarships will aim to benefit 25 to 30 HDP Employees per annum over a 10-year period with an estimated average cost of R30 000 per course per annum.
- 3.5 The aggregate value of the capital commitments set out in this clause 3 is R123,000,000 (one hundred and twenty-three million Rand).

4 **EMPLOYMENT**

- 4.1 Subject to the provisions of clause 4.2 below, the Merging Parties shall not retrench any Employees of the Target Firms as a result of the Merger (“**Merger Specific Retrenchments**”) for a period of 3 (three) years from the Implementation Date (this includes the period between the Approval Date and the Implementation Date).
 - 4.2 For the sake of clarity, Merger Specific Retrenchments do not include: (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early
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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; and (vii) any decision not to renew or extend a contract of a fixed-term third party contract employee or contract with a third party.

5 REGISTERED OFFICE

- 5.1 Consistent with the Acquiring Firm's long-term commitment to invest in South Africa, the Target Firms shall for a period of 5 (five) years from the Implementation Date: (i) remain incorporated in South Africa, (ii) maintain their registered offices in South Africa ("**Registered Offices**"), and (iii) retain the manufacturing of the current models in South Africa, as they are currently manufactured as at the Approval Date.
- 5.2 The Registered Offices commitment is subject, at all times, to the Acquiring Firm maintaining control over the Target Firms as contemplated by the Competition Act and a shareholding in the Target Firms of at least 50.1%.

6 MONITORING

- 6.1 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 6.2 A Merging Party shall circulate a copy of the Conditions to all Employees, the Employee representatives and trade unions of the Target Firms (to the extent applicable) within 20 (twenty) Days following the Approval Date.
- 6.3 As proof of compliance with 6.2 above, a Merging Party shall within 20 (twenty) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Target Operating Firm attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 6.4 A Merging Party shall submit an annual report to the Commission indicating compliance with respect to these Conditions for a period of 5 (five) years. These reports must be lodged within 20 (twenty) Days after each anniversary of the
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Implementation Date for a period of 5 (five) years. This report shall be accompanied by an affidavit, attested to by a senior official of the Target Operating Firm, confirming the accuracy of the report.

7 APPARENT BREACH

If the Merging Parties appear to have breached the Conditions, or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

8 VARIATION OF THE CONDITIONS

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.

9 GENERAL

All correspondence in relation to the 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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****HUAXIN (HONG KONG) INTERNATIONAL HOLDINGS LIMITED****AND****NATAL PORTLAND CEMENT COMPANY PROPRIETARY LIMITED****CASE NUMBER: 2015Dec0694**

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 25 July 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Huaxin (Hong Kong) International Holdings Limited ("Huaxin") intends to acquire the entire share capital of Natal Portland Cement Company Proprietary Limited ("NPC"). Following completion of the proposed transaction, Huaxin will exercise sole control over NPC as envisaged by section 2(2) of the Competition Act No. 89 of 1998, as amended ("Act").

The parties and their activities

2. The primary acquiring firm is Huaxin, a private company incorporated in accordance with the laws of Hong Kong. Huaxin is wholly owned and controlled by Huaxin Cement Co. Limited ("Huaxin Cement"), a public company registered in accordance with the laws of the People's Republic of China ("China"). Huaxin Cement is listed on the Shanghai Stock Exchange and the Stock Exchange of Hong Kong and is not

controlled by any firm. Huaxin controls a number of firms, none of which are active in South Africa.

3. Huaxin produces a range of building materials including, inter alia, cement, ready-mixed concrete and aggregates, cement-based new building materials and is active in cement kiln co-processing of wastes, as well as engineering, procurement and construction for cement projects. It operates in China as well as in Zambia, Malawi, Tanzania, Tajikistan, Kyrgyzstan, Uzbekistan, Cambodia, Nepal and Oman. Huaxin is not active in South Africa.
4. The primary target firm is NPC, a private company incorporated in accordance with the laws of South Africa. NPC is wholly owned and controlled by InterCement Trading Inversiones, S.A.U. ("InterCement"), a joint-stock company incorporated under the laws of Spain. InterCement is wholly owned and controlled by InterCement Portugal S.A., a private company registered in accordance with the laws of Portugal. NPC controls the following firms in South Africa: Intercement South Africa Proprietary Limited; and NPC InterCement (RF) Proprietary Limited. NPC and all the firms directly and indirectly controlled by it will hereinafter collectively be referred to as the "NPC Group".
5. The NPC Group manufactures and distributes cement, ready-mixed concrete, aggregate products and concrete-products largely on the East Coast of South Africa.

Competition assessment

6. The Commission considered the activities of the merging parties and found that the proposed transaction results in a product overlap as both the merging parties manufacture and distribute building materials including, inter alia, cement, ready-mixed concrete and aggregates, amongst other products. However, there is no geographic overlap, as Huaxin does not operate or have interest in firms that operate in South Africa. Moreover, there are no existing vertical links between the merging parties in South Africa.
 7. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.
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Public Interest

8. The merging parties submitted an unequivocal statement that the proposed transaction will have no negative effect on employment and will not result in any merger-specific retrenchments or redundancies in South Africa.
9. It is submitted that neither of the merging parties have any HDP shareholding pre-merger. Both the Commission and the DTIC on multiple occasions requested the merging parties to introduce an HDP shareholder and/or create an Employee Share Ownership Plan ("ESOP") worth at least 5% within the merged entity.
10. The merging parties submit that the NPC Mining Entities, which include South Coast Stone Crushers Proprietary Limited ("SC Stone Crushers"), Sterkspruit Aggregates Proprietary Limited ("Sterkspruit Aggregates") and NPC InterCement (RF) Proprietary Limited ("NPC InterCement"), already have black ownership credentials, amounting to an aggregate of 26% of the NPC Mining Entities which are unaffected by the Proposed Transaction. The merging parties submit that they are willing to commit to a condition that they will dispose of a further 4% of NPC InterCement (a subsidiary of the NPC) to HDP shareholders to the value of approximately [CONFIDENTIAL]. Due to NPC InterCement's various shareholdings, the 4% will also indirectly comprise approximately 3% of SC Stone Crushers, approximately 3% of Sterkspruit Aggregates and 4% of NPC Concrete. The merging parties further agreed to grant first preference for the purchase of these shares to one or more of those HDP shareholders who are shareholders of the NPC Mining Entities as at the implementation date.
11. Further to the above, the merging parties have committed to introduce at least R600 million in capital expenditure at NPC over the next 5 years through InterCement South Africa (Pty) Ltd ("InterCement SA") (a subsidiary of NPC), following the implementation of the proposed transaction. This capital expenditure will result in increased cement production which will benefit the entire South African NPC Group.
12. The Commission accepted the merging parties' commitments as conditions to the approval of the merger.

Conclusion

13. The Commission therefore approves the proposed transaction with conditions attached in **“Annexure A”**.

ANNEXURE A**HUAXIN (HONG KONG) INTERNATIONAL HOLDINGS LIMITED****AND****NATAL PORTLAND CEMENT COMPANY PROPRIETARY LIMITED****CASE NUMBER: 2023JUL0038**

CONDITION

1. DEFINITIONS

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

- 1.1.1. **“Acquiring Firm”** means Huaxin (Hong Kong) International Holdings Limited;
 - 1.1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
 - 1.1.3. **“Approval Date”** means the date on which the Merger is approved by the Commission and as set out in the Commission’s clearance certificate (Notice CC 15);
 - 1.1.4. **“Capital Expenditure Investment”** means a capital investment - R600 million (six hundred million Rand) by Huaxin into NPC and/or firms controlled by NPC;
 - 1.1.5. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
 - 1.1.6. **“Conditions”** means the conditions set out herein;
 - 1.1.7. **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
 - 1.1.8. **“Disposal Period”** means a specified period of months from the Implementation Date;
 - 1.1.9. **“Eligible Employees”** means persons who are permanently in the employ (as
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contemplated under the Labour Relations Act, No. 66 of 1995) of NPC but excluding top and senior management;

- 1.1.10. **“ESOP”** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
 - 1.1.11. **“HDPs”** means a Historically Disadvantaged Person/s as contemplated in section 3(2) of the Competition Act;
 - 1.1.12. **“HDP shareholder”** means an HDP to be identified by the Merged Entity to acquire up to 4% of the issued shares in NPC InterCement;
 - 1.1.13. **“HDP Transaction”** means a transaction in terms of which an HDP shareholder will acquire, 4% of the issued shares in NPC InterCement.
 - 1.1.14. **“Huaxin”** means Huaxin (Hong Kong) International Holdings Limited;
 - 1.1.15. **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
 - 1.1.16. **“InterCement SA”** means InterCement South Africa Proprietary Limited;
 - 1.1.17. **“Merged Entity”** means Huaxin and NPC;
 - 1.1.18. **“Merger”** means the acquisition by Huaxin of the entire share capital of NPC;
 - 1.1.19. **“Merging Parties”** means Huaxin and NPC;
 - 1.1.20. **“NPC”** means Natal Portland Cement Company (Pty) Ltd;
 - 1.1.21. **“NPC InterCement”** means NPC InterCement (RF) (Pty) Ltd;
 - 1.1.22. **“NPC Mining Entities”** means NPC’s empowered subsidiaries which include South Coast Stone Crushers Proprietary Limited (**“SC Stone Crushers”**), Sterkspruit Aggregates Proprietary Limited (**“Sterkspruit Aggregates”**), and NPC InterCement;
 - 1.1.23. **“South Africa”** means the Republic of South Africa;
 - 1.1.24. **“Target Firm”** means Natal Portland Cement Company (Pty) Ltd;
 - 1.1.25. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body
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established in terms of section 26 of the Act; and

- 1.1.26. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

2. CAPITAL EXPENDITURE INVESTMENT

- 2.1. Within a period of 1 (one) to 5 (five) years after the Implementation Date, the Acquiring Firm shall invest R600 million (six hundred million Rand) into InterCement SA and/or firms controlled by NPC. The Acquiring Firm shall invest a lumpsum amount, to be determined in the discretion of the Acquiring Firm, within a period of 2 (two) years after the Implementation Date, followed by smaller amounts of capital expenditure thereafter, R600 million within a maximum period of 5 years.

3. DISPOSAL OF SHARES IN NPC INTERCEMENT TO HDP SHAREHOLDER/ ESOP

- 3.1. Within the Disposal Period, the Merged Entity shall dispose of 4% of NPC InterCement to HDP Shareholders or through an ESOP which 4% shareholding is valued at approximately [CONFIDENTIAL].
- 3.2. The Merged Entity shall grant first preference of the disposal of the 4% in NPC InterCement to one or more of those HDP Shareholders who are shareholders of the NPC Mining Entities as at the Implementation Date.
- 3.3. In the event that none of the existing HDP Shareholders are interested in the purchasing of the shares or that terms cannot be agreed with the existing HDP Shareholders, the Merged Entity shall dispose of the 4% to one or more external HDP Shareholder/s and/or form an ESOP.
- 3.4. The valuation of the NPC InterCement shall be performed by an independent and suitably qualified valuer, which will be appointed by the Acquiring Firm, after the Commission has approved that the proposed valuer is independent and suitably qualified.
- 3.5. In the event that the Merged Entity elects to comply with the Conditions in Clause 3.1 above through an ESOP, the introduction of the ESOP will be implemented in accordance with the design principles attached in **Annexure B**.
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4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
 - 4.2. Should the Merging Parties elect to implement an HDP Transaction, prior to the implementation of the HDP Transaction, the Merged Entity will provide the Commission with details of the HDP Transaction in writing. These details shall include, but not be limited to (i) the identity of the HDP shareholder, (ii) evidence that the HDP shareholder are HDPs, and (iii) the proportion of shareholding in NPC InterCement that the HDP shareholder will acquire.
 - 4.3. Within 60 (sixty) Days of receipt of the details of the HDP Transaction, the Commission shall review and provide the Merging Parties' representatives with any comments or queries in relation to the HDP Transaction in writing. For the avoidance of doubt, the HDP Transaction shall not be implemented without the Commission's written approval.
 - 4.4. Should the Merging Parties elect to implement an ESOP, prior to the implementation of the ESOP, the Merged Entity will provide the Commission with details of the ESOP in writing. These details shall include, but not be limited to (i) the details of the Eligible Employees to participate in the ESOP; (ii) the number of Eligible Employees that will benefit from the ESOP, and (iii) the demographics of the Eligible Employees including their race, gender and the number of Eligible Employees who are classified as youth.
 - 4.5. Within 60 (sixty) Days of receipt of the details of the ESOP, the Commission shall review and provide the Merging Parties' representatives with any comments or queries in relation to the ESOP in writing.
 - 4.6. Once every 6 (six) months during the Disposal Period, the Merged Entity shall provide the Commission with a written report, accompanied by an affidavit attested to by a senior official of the Merged Entity confirming the accuracy of the report, outlining: (i) the progress made towards the realisation of Clause 3; and/or (ii) if applicable, how the ESOP is being established in accordance with the underlying design principles set out in the
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attached **Annexure B**.

- 4.7. The Merged Entity shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 5 years (five years), or until such time as the Conditions in clauses 2 and 3 are fulfilled, whichever is the earlier, provide to the Commission a report detailing its compliance with clause 2 and 3 of the Conditions. This report shall be accompanied by an affidavit attested to by a director official of the Merged Entity, confirming the accuracy of the report.
- 4.8. Any person including any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.
- 4.9. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

- 5.1. 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 37 of the Rules for the Conduct of Proceedings in the Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

6. VARIATION

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

7. GENERAL

- 7.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.
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ANNEXURE B

Design Principle	Applicable Criteria
Structure	<ul style="list-style-type: none"> ○ The ESOP is a unitised structure, established for allocated shares.
Eligible Employees	<ul style="list-style-type: none"> ○ All persons who are in the permanent employment of NPC ("Employees").
Cost	<ul style="list-style-type: none"> ○ No cost to Employees: Employees must not be required to pay to participate in the ESOP, unless otherwise elected by the relevant Employees. ○ Firms must make provision for independent legal and financial experts to act on behalf of Employees in ESOP establishment negotiations. For the avoidance of doubt, any reasonable expenses incurred by the Employees and/or their employee representatives shall be paid for by the Merged Entity.
Governance	<ul style="list-style-type: none"> ○ If there is a board of trustees, the board must be balanced and Employees must be represented on the board, e.g., 1 trustee appointed by Merged Entity; 1 appointed by Employees and 1 independent. ○ The independent trustee will be recommended by the Employees, and appointed subject to the candidate being acceptable to the Merged Entity.
Participants	<ul style="list-style-type: none"> ○ All current and future Employees who are eligible. ○ Eligibility criteria: permanent Employees, a reasonable minimum years of service may be specified and/or participation can be from day 1 of permanent employment. ○ Maternity leave will have no adverse impact on qualifying criteria.
Participation Benefits	<ul style="list-style-type: none"> ○ Beneficiaries will be entitled to: (a) dividends and (b) capital growth/upside based on their participation rights calculated with reference to units allocated to beneficiaries. ○ Beneficiaries will cease to participate for bad leaver events: resignations and dismissals.
Value & Funding	<ul style="list-style-type: none"> ○ Value will be determined with reference to issued shares and valuation as at the month preceding the establishment and commencement of the ESOP. ○ Merged entity must provide some vendor finance if required ○ If there is Vendor financing, it should be interest-free.

Design Principle	Applicable Criteria
	<ul style="list-style-type: none">Dividend policy shall provide for a “trickle” dividend (in the ratio of 65:35), i.e. at least 35% of any dividends declared will flow to beneficiaries and at most 65% will be utilised to service the vendor financing
Duration	<ul style="list-style-type: none">Evergreen.

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****GIL INTERNATIONAL HOLDINGS V LIMITED****AND****JOHN MENZIES PLC****CASE NUMBER: 2022APR0042**

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 14 April 2022, the Competition Commission ("the Commission") received notice of an intermediate merger whereby GIL International Holdings V Limited ("GIL") intends to acquire 100% of the issued share capital of John Menzies plc ("Menzies"). Following the implementation of the proposed transaction, GIL will exercise sole control over Menzies.
2. The proposed merger is an international transaction notified to the Commission by virtue of the merging parties' activities in South Africa.
3. The primary acquiring firm is GIL, a private company incorporated in accordance with the laws of the United Arab Emirates. GIL is a subsidiary of Agility Public Warehousing Company K.S.C.P ("Agility"), a public company listed on the Boursa Kuwait and the Dubai Stock Exchange. Agility is not controlled by any firm or shareholder. Agility controls several firms globally. In South Africa, Agility indirectly controls NAS Colossal Aviation Services (Pty) Ltd ("NAS Colossal") by virtue of its [CONFIDENTIAL]% shareholding. The balance of the shares in NAS Colossal are held by Colossal Africa (Pty) Ltd and the Management of NAS Colossal. The Management shareholders are historically disadvantaged persons

(“HDPs”). Colossal Africa is 100% black owned. Agility and all its subsidiaries are collectively referred to as the “Acquiring Group”.

4. The primary acquiring firm, GIL, and its controller (Agility) do not have any HDP shareholding. However, NAS Colossal (a South African subsidiary of Agility) has an HDP shareholding of [CONFIDENTIAL]% of which [CONFIDENTIAL] percentage points are held by the Management of NAS Colossal who are HDPs in terms of the Competition Act, 89 of 1998 (as amended) (“Act”).
 5. The Acquiring Group is a private owner and developer of warehousing and light industrial parks in the Middle East, Africa and Asia, and provides ground handling and airport services across Africa, South Asia and the Middle East. Ground handling and airport services include ramp handling and passenger handling services, baggage handling services, cargo handling, lounge management, airport technologies, aviation training, travel solutions, meet-and-assist packages and other airport services. The Acquiring Group has a presence in more than 30 airports across the Middle East, Africa and South Asia.
 6. In South Africa, the Acquiring Group is active through its controlling interest in NAS Colossal (previously known as BidAir Services (Pty) Ltd (“BidAir”)) which is involved in providing ground handling services to airlines. NAS Colossal provides ground handling services in the following airports: (i) OR Tambo International Airport (Johannesburg); (ii) Cape Town International Airport (Cape Town); (iii) King Shaka International Airport (Durban); (iv) King Phalo Airport (East London); (v) George Airport (George); and (vi) Chief Dawid Stuurman International Airport (Gqeberha). These airports are managed by the Airports Company of South Africa SOC Limited (“ACSA”).
 7. The primary target firm is Menzies, a public company incorporated in accordance with the laws of Scotland. Menzies is listed on the London Stock Exchange and no single firm or shareholder controls it. Menzies has several subsidiaries globally. In South Africa, Menzies (directly or indirectly) controls the following firms: Air Menzies International (Cape) (Pty) Ltd (dormant); Air Menzies International SA (Pty) Ltd; Menzies Aviation (Africa) (Pty) Ltd; Menzies Aviation (Handling) (Pty) Ltd (“Menzies Aviation Handling”); Menzies Aviation
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(South Africa) (Cargo) (Pty) Ltd; and Menzies Aviation (South Africa) (Pty) Ltd (“Menzies Aviation SA”).

8. Menzies does not have any HDP shareholding. However, Menzies operates through two subsidiaries in South Africa, namely Menzies Aviation SA and Menzies Aviation Handling, which both have HDP shareholders. Menzies Aviation SA is a Level 2 B-BBEE contributor and has a [CONFIDENTIAL]% HDP shareholding held by Mozicap Investments (Pty) Ltd, a 100% black-owned firm. Menzies Aviation SA also holds a [CONFIDENTIAL]% share in Menzies Aviation Handling, which is the entity that provides ground handling services in South Africa. Menzies Aviation Handling also has a direct HDP shareholding of [CONFIDENTIAL]%. Thus, Menzies Aviation Handling has an effective HDP shareholding of [CONFIDENTIAL]% based on the indirect HDP shareholding of [CONFIDENTIAL]% by Menzies Aviation SA (which itself is [CONFIDENTIAL]% black-owned) and a direct shareholding of [CONFIDENTIAL]%. Menzies and its subsidiaries will be referred to as the “Target Group”.
9. The Target Group is a global aviation services business providing ground handling, cargo handling, cargo forwarding and fuel services. The Target Group’s portfolio of services includes ground handling services, fuel services, air cargo services and executive services (airport lounges). Globally, the Target Group operates at more than 200 airports in 37 countries across the world and its customers include Air Canada, Air France-KLM, American Airlines, Cathay Pacific, Qantas Group and Qatar Airways, amongst others.
10. In South Africa, the Target Group provides ground handling services at the following ACSA Managed Airports through its South African subsidiaries: (i) OR Tambo International Airport (Johannesburg); Cape Town International Airport (Cape Town); (ii) King Shaka International Airport (Durban); (iii) Chief Dawid Stuurman International Airport (Gqeberha); (iv) King Phalo Airport (East London); (v) George Airport (George).

Areas of overlap

11. The Commission considered the activities of the merging parties and found that the proposed merger results in both a horizontal overlap and a vertical overlap.
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12. A horizontal overlap occurs in that the merging parties are both active in the provision of ground handling services at ACSA Managed Airports in relation to the following airports, (i) OR Tambo International Airport (Johannesburg); (ii) Cape Town International Airport (Cape Town); (iii) King Shaka International Airport (Durban); (iv) Chief Dawid Stuurman International Airport (Gqeberha); (v) King Phalo Airport (East London); and (vi) George Airport (George).
13. A vertical overlap occurs in that the merging parties lease certain ground handling equipment from one another in South Africa on an arm's length basis. In this regard, the Commission notes that ground handlers operating at ACSA Managed Airports have reciprocal ground support equipment leasing agreements in place with each other to ensure that ground handling services to airlines are not compromised due to a specific ground handler's equipment being unavailable due to breakdowns and unserviceable equipment. The Commission notes that these arrangements will continue, on an arm's length basis, after the implementation of the proposed merger. The vertical overlap is accordingly not discussed further.

Competition Assessment

14. The Commission notes that in order to provide ground handling services at ACSA Managed Airports, service providers need to apply for a licence from ACSA. Ground handlers are appointed by ACSA through a competitive tender process. Pursuant to a 2008 tender process and prior to the recent tender concluded in May 2022, ACSA had appointed three (3) ground handlers, NAS Colossal (part of the Acquiring Group), Menzies (Target Group) and Swissport. Customers (i.e., airlines) then have the option of selecting and contracting with any one of these licensed service providers.
15. The merging parties submitted market share estimates based on the total number of flights handled in 2021 by both parties in respect of the provision of ground handling services in the overlapping ACSA Managed Airports. The Commission notes that prior to the finalisation of the recent tender by ACSA, the merging parties' combined market share was between 20% and 60% at the individual airport level for all overlapping ACSA Managed Airports other than George and King Shaka international airports.
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16. The Commission notes that following the finalisation of the recent tender by ACSA in May 2022, the parties will have a 100% market share in the provision of ground handling services for the period 1 October 2022 to 1 October 2027, meaning that this is a merger to monopoly.
17. Given that this is a tender market where prices are determined at the bidding stage, the Commission assessed whether or not the parties will have the ability to increase prices for airlines post-merger. The Commission has also considered (i) the closeness of competition between the merging parties; (ii) barriers to entry; (iii) countervailing power; and (iv) the removal of an effective competitor in its unilateral effects assessment.
18. The Commission undertook a tender analysis in order to assess the closeness of competition between the merging parties. The Commission relied on bidding information provided by ACSA for the period 2008-2021. The analysis shows that since 2008, only three (3) ground handlers (i.e., Swissport, NAS Colossal [previously BidAir] and Menzies) participated and were appointed to provide ground handling services at ACSA airports.
19. As indicated earlier, ACSA has recently run a new tender process (finalised in May 2022) in order to award ground handling licences for the next 5 years. This process resulted in ACSA only granting two (2) licences for the provision of ground handling services at ACSA Managed Airports. These licences were awarded to the merging parties. The Commission thus assessed the effect of the proposed merger on the market in its current state where the merging parties are the only ACSA-appointed ground handlers.
20. A pricing analysis shows that the merging parties are close competitors. Therefore, the Commission found that the merger is likely to result in unilateral price effects in that the merging parties will be able to significantly raise their prices post-merger. This is in line with ACSA's submission that the proposed transaction may create price instability and possible operational inefficiencies in the market.
21. Regarding countervailing power, the proposed merger weakens the ability of customers to bargain against the merged entity and places the merged entity in a very strong negotiation position with airlines.
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22. The Commission also found that the main barrier to entry is the license requirements imposed by ACSA. This is due to the limited licences issued by ACSA at the airports as well as the limited space available at ACSA airports for additional ground handlers. More importantly, there is no indication of a new entrant in the market since 2008.
23. Considering the above, the Commission is of the view that the proposed merger is likely to substantially prevent or lessen competition as it significantly reduces competition in the market for the provision of ground handling services at ACSA Managed Airports. The Commission also received concerns from several third parties about the negative effect of the proposed merger on competition.
24. The merging parties did not provide any submissions on efficiencies.
25. To remedy the competition concerns resulting from the proposed merger, the merging parties proposed a divestiture remedy. This is discussed below.

Remedies

26. As a remedy to the competition concern likely to result from the proposed merger, the merging parties proposed that Agility (the Acquirer) will divest its [CONFIDENTIAL]% shareholding interest in NAS Colossal and that the businesses will be operated independently (a so-called “hold separate” arrangement) until the divestiture is implemented.
27. The Commission engaged with market participants who expressed concerns about the proposed remedy.
28. Colossal Africa’s concerns on the divestiture relate primarily to the long period proposed for the divestiture and the (in)adequacy of the governance measures proposed by the Acquiring Group in order to ensure that competitively sensitive information of NAS Colossal is not exchanged with Menzies. The governance concern arises because NAS (as a technical partner to Colossal Africa in NAS Colossal) currently has access to a
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significant amount of commercially and competitively sensitive information relating to the current and future business operations of NAS Colossal.

29. In this regard, Colossal Africa has requested the Commission to ensure that appropriate measures be put in place (e.g., for the Acquiring Group's directors to recuse themselves with immediate effect from any discussions, negotiations and decisions that relate to NAS Colossal's business as well as the signing of non-disclosure agreements) to avoid the sharing of its commercially and competitively sensitive information. Further, Colossal Africa requests the Commission to shorten the divestiture period to allow the divestiture to take place as quickly as possible.
30. Another third party also expressed concern that the proposed remedy will allow its direct (and only) competitor, Menzies, to have access to their competitively sensitive information. The third party also expressed a concern that the proposed divestiture (including the divestiture period) will jeopardise the ability of NAS Colossal to continue competing effectively and growing in the market, including the divestiture period.
31. The Commission engaged the merging parties with the view of reducing the divestiture period to a more reasonable timeframe. In response, the merging parties have agreed to a revised condition that specifies that shortens the first divestiture period.
32. Following further engagements with Colossal Africa, the Commission understood that Colossal Africa remains concerned about certain costs and processes that will accompany the divestiture. The merged entity has submitted that NAS Colossal is committed to reaching an agreement with the Colossal Africa/HDP shareholders on the valuation of the NAS Colossal stake and creating a fully empowered ground handling firm in South Africa.
33. Regarding the systems in place, and in order to ensure that the divestiture business remains an effective competitor, the Acquiring Group will provide agreed services to the divestiture business for a specified period post-merger.
34. Further, in line with their commitment to supporting NAS Colossal during the transitional period, Agility agreed to allow NAS Colossal to use the NAS brand for the duration of the divestiture period and for a period of 12 (twelve) months thereafter. In this regard, the
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merging parties confirmed that the NAS brand will not be used by the Target Group or its subsidiaries in South Africa. This will ensure that there is no confusion among NAS Colossal's key stakeholders (e.g., customers, employees, etc.) during the divestiture period.

35. Regarding the management of the merged entity, the Commission and the merging parties have agreed to a "hold separate" arrangement until the implementation of the sale of NAS's stake in NAS Colossal. Effectively, NAS Colossal and Menzies will not be integrated until the sale of NAS's stake in NAS Colossal has been implemented. This will ensure that NAS Colossal remains independent during the sensitive pre- and post-divestiture period until the implementation of the divestiture.
 36. To address the concern regarding access to commercially sensitive information during the divestiture period, the merging parties have agreed that NAS shall remove any executive directors from the NAS Colossal board and will appoint directors who are not involved in commercial negotiations with airlines, within 5 days of the approval of the merger. The directors appointed to the board of NAS Colossal by the Acquiring Group will be subjected to a confidentiality regime that prevents them from sharing competitively sensitive information between the merger parties. The NAS appointees will be required to discharge their fiduciary duties in line with company law, which includes the requirement that they act in the best interests of NAS Colossal. In this regard, these directors will be required to sign confidentiality undertakings in their personal capacity, which obliges them not to disclose to Menzies, nor make use of, any confidential information gained through the performance of their duties in NAS Colossal for any other purpose.
 37. Further, no director appointed by the Acquiring Group or by Agility to the board of NAS Colossal shall be appointed to serve as a director or be employed by Menzies for a period of [CONFIDENTIAL] months after the divestiture period. These measures will ensure that the ground handling businesses carried out by NAS Colossal and Menzies are managed in the ordinary course of business, with reasonable care and skill, pursuant to good business practices. Further, this would address any possible concern about the Acquiring Group's directors using information acquired during their appointment in NAS Colossal pre-merger. The Acquiring Group confirmed that the South African ground handling
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businesses have been operated separately to date and they have not exchanged any competitively sensitive information.

Public Interest considerations

Employment

38. The merging parties submit that there will be no retrenchments as a result of the proposed transaction. The Commission accepts the merger parties' submissions in this regard.

Effect on the greater spread of ownership

39. The Commission found that the proposed merger is unlikely to have any negative impact on the promotion of a greater spread of ownership. The parties confirmed that the Target Group will remain empowered post-merger.

Effect on the ability of SMMEs or (HDPs), to effectively enter into, participate or expand within the relevant

40. The Commission was concerned that the proposed merger has a negative impact on the ability of SMMEs or firms owned by HDPs to enter into, participate and or expand in the market post-merger. As indicated above, Colossal Africa is a 100% black-owned company, with a majority of black women shareholding. The proposed merger raises the risk of NAS Colossal losing its ACSA license for ground handling services if the sale of the business is not effected promptly.
41. In this regard, the merging parties have agreed to conditions that: (i) affirms the pre-emptive right of the BEE shareholders, (ii) allow the HDP shareholders staggered payment of the purchase price, (iii) ensures that the board composition of NAS Colossal during the divestiture period minimises the risks of anticompetitive information exchange, and (iv) that they will provide transitional support on operational matters until NAS Colossal can implement its own procedures to the satisfaction of ACSA. The HDP shareholders raised two additional concerns that may affect their ability to compete effectively with Agility post-merger, being the risk that the Acquiring Group may poach key staff members and may actively pursue the existing clients of NAS Colossal post-merger.
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42. *The merging parties have subsequently agreed to a condition that they will not during a specific period approach existing customers of NAS Colossal and agreed to a non-solicitation clause in respect of key personnel of NAS Colossal.*

Conclusion

43. The Commission found that the proposed merger is likely to result in a substantial lessening and/or prevention of competition in the market for the provision of ground handling services in South Africa. Further, the proposed merger raises public interest concerns as it will negatively impact the ability of NAS Colossal and its HDP shareholders to participate in or expand in the market post-merger.
44. However, the Commission is of the view that the conditions agreed with the merging parties will remedy the competition concerns and the public interest concerns likely to result from the proposed merger.
45. Considering the above, the Commission therefore approves the proposed transaction subject to the conditions set out in **Annexure A** hereto. The merging parties have agreed to the conditions.

ANNEXURE A

**GIL INTERNATIONAL HOLDINGS V LIMITED, A SUBSIDIARY OF AGILITY PUBLIC
WAREHOUSING COMPANY K.S.C.P**

AND

JOHN MENZIES PLC

CASE NUMBER 2022Apr0042

CONDITIONS

1. DEFINITIONS

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

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

1.1.2. "**Acquiring Firm**" means GIL;

1.1.3. "**ACSA**" means Airports Company of South Africa SOC Limited;

1.1.4. "**Agility**" means Agility Public Warehousing Company K.S.C.P;

1.1.5. "**Approval Date**" means the date referred to in terms of Rule 38 (3)(c) of the Commission Rules;

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

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

1.1.8. "**Competitively Sensitive Information**" means competitively sensitive information and includes, but is not limited to, information relating to:

1.1.8.1. Pricing – including, but not limited to, prices/ discounts/ rebates offered to

specific clients and planned reductions or increases;

1.1.8.2. Margin information by service or client;

1.1.8.3. Cost information;

1.1.8.4. Information on specific clients and client strategy, including information with respect to the sales volumes of clients;

1.1.8.5. Marketing strategies;

1.1.8.6. Budgets and business plans; and

1.1.8.7. Agreements and other (non-standard) terms and conditions relating to the supply and distribution of the relevant product.

1.1.9. “**Conditions**” means the conditions set out in this Annexure A;

1.1.10. “**Customers**” means airlines who are customers of NAS Colossal in South Africa as at the Approval Date;

1.1.11. “**Day**” means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;

1.1.12. “**Divesting Entity**” means Agility;

1.1.13. “**Divestiture**” means the sale of the Divestiture Business by the Divesting Entity or the Divestiture Trustee to the Purchaser;

1.1.14. “**Divestiture Agreement**” means the agreement to be entered into between the Divesting Entity and the Purchaser, in terms of which the Purchaser agrees to purchase the Divestiture Business from the Divesting Entity. Implementation of the Divestiture Agreement is subject to, *inter alia*, completion of the Merger;

1.1.15. “**Divestiture Business**” means Agility’s shareholding in NAS Colossal or NAS Colossal’s South African ground handling business and assets;

1.1.16. “**Divestiture Trustee**” means one or more natural or legal person(s), independent of the Parties, who is appointed by the Merging Parties subject to the approval of the Commission, who shall, *inter alia*, have the exclusive mandate to sell the Divestiture Business following the expiry of the Merging Parties Divestiture Period;

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- 1.1.17. **"Existing Shareholders"** means [CONFIDENTIAL];
- 1.1.18. **"GIL"** means GIL International Holdings V Limited;
- 1.1.19. **"Implementation Date"** means the date on which the Merger is completed;
- 1.1.20. **"Key Personnel"** means executives and/or members of the management of NAS Colossal;
- 1.1.21. **"Mandate of the Divestiture Trustee"** means the duties of the Trustee as set out in **Annexure B**;
- 1.1.22. **"Menzies"** means John Menzies plc;
- 1.1.23. **"Merger"** means the proposed global transaction in which GIL will acquire control over Menzies, as notified to the Commission under case no. 2022Apr0042;
- 1.1.24. **"Merging Parties"** means GIL and Menzies;
- 1.1.25. **"Merging Parties Divestiture Period"** means the period of [CONFIDENTIAL] months from the Approval Date;
- 1.1.26. **"Monitoring Trustee"** means one or more natural or legal person(s), independent of the Parties, who is appointed by the Commission, who shall, *inter alia*, have the exclusive mandate to monitor the progress of the Merging Parties Divestiture, the Merging Parties compliance to the Conditions and provide regular reports to the Commission;
- 1.1.27. **"NAS Colossal"** means NAS Colossal Aviation Services Proprietary Limited;
- 1.1.28. **"NAS Brand"** means the brand "NAS" or any other name, group of letters, symbols, or combination thereof that include the name "NAS" as a significant part of the brand;
- 1.1.29. **"NAS Systems"** means [CONFIDENTIAL];
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1.1.30. "**NAS Trademark**" means [CONFIDENTIAL];

1.1.31. "**Purchaser**" means the acquirer of the Divestiture Business who shall be a firm that either:

1.1.31.1. is currently a shareholder in a ground handling business; or

1.1.31.2. any firm that has the necessary skills, expertise and capital required to take over the Divestiture Business, including with assistance from a suitable technical partner;

1.1.32. "**Purchase Closing**" means the transfer of the legal title to the Divestiture Business to the Purchaser;

1.1.33. "**Relevant Menzies South African Subsidiaries**" means:

1.1.33.1. [CONFIDENTIAL];

1.1.33.2. [CONFIDENTIAL]; and

1.1.33.3. [CONFIDENTIAL];

1.1.34. "**Shareholders Agreement**" means [CONFIDENTIAL];

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

1.1.36. "**Target Firm**" means Menzies;

1.1.37. "**Tender**" means the *Tender to Submit Proposals to be Issued a Licence to Provide Ground Handling Services at all Airports Company South Africa SOC Limited's Airports* (Tender Reference Number: COR6673/2021/RFP);

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

1.1.39. "**Trustee Divestiture Period**" means the period of [CONFIDENTIAL] months following the expiry of the Merging Parties Divestiture Period;

1.1.40. "**Trustee team**" means advisors, assistants and other personnel appointed by the Trustee to assist the Trustee in the execution of the Trustee's Mandate.

2. RECORDAL

- 2.1. On 14 April 2022, the Commission received notice of an intermediate merger involving a proposed global transaction in terms of which GIL, a subsidiary of Agility, intends to acquire control over Menzies.
- 2.2. Following its investigation of the impact of the Merger in South Africa, the Commission found that the Merger is likely to result in a substantial lessening and/or prevention of competition in respect of the provision of ground handling services in South Africa.
- 2.3. The Commission engaged with the Merging Parties to formulate a suitable remedy that would address the Commission's concerns in South Africa. The commitments include, *inter alia*, the disposal by the Merging Parties, acting through the relevant Divesting Entity, of the Divestiture Business.
- 2.4. The Merging Parties and the Commission have agreed to the Conditions.

3. MERGING PARTIES DIVESTITURE

- 3.1. The Existing Shareholders have a pre-emptive right in relation to the shareholding of [CONFIDENTIAL]% indirectly held by Agility [CONFIDENTIAL] in NAS Colossal [CONFIDENTIAL] and accordingly the Existing Shareholders shall dispose of the Divestiture Business to the Existing Shareholders during the first [CONFIDENTIAL] months of the Merging Parties Divestiture Period; or failing acceptance of such offer by the Existing Shareholders, [CONFIDENTIAL] shall dispose of the Divestiture Business to a Purchaser during the remaining [CONFIDENTIAL] months of the Merging Parties Divestiture Period [CONFIDENTIAL].
- 3.2. In the event that the Divestiture Business is sold to the Existing Shareholders, the purchase price shall be payable to NAS in such instalments as are acceptable to the Existing Shareholders, provided that the last instalment shall be payable by the Existing Shareholders to NAS no later than [CONFIDENTIAL] months after the date on which the sale agreement between NAS and the Existing Shareholders is concluded.
- 3.3. Agility shall inform the Commission:
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- 3.3.1. of the date on which the Merger is completed within 5 (five) Days of it becoming effective;
- 3.3.2. by the end of the first 2 months of the Merging Parties Divestiture Period, whether the Existing Shareholders are the proposed Purchaser(s) for the Divestiture Business.
- 3.4. If the Existing Shareholders elect not to exercise the pre-emptive right referred to in paragraph 3.1 of these Conditions, Agility shall obtain consent for the sale of the Divestiture Business to an entity/ies other than the Existing Shareholders from the board of directors of NAS Colossal, which consent shall not be unreasonably withheld.
- 3.5. In respect of any proposed Divestiture to be made during the Merging Parties Divestiture Period:
- 3.5.1. Agility shall, subject to any confidentiality restrictions or legal restrictions on Agility, submit, in writing, the name of any proposed Purchaser(s) together with any relevant documentation in respect of the proposed Purchaser(s) that the Commission may reasonably request, as well as a summary of the material terms of the proposed Divestiture Agreement for approval by the Commission, prior to concluding any such Divestiture Agreement with the proposed Purchaser(s);
- 3.5.2. Agility shall request that the proposed Purchaser(s) shall provide the Commission with an affidavit deposed to by a director or Chief Executive Officer of the proposed Purchaser(s) confirming the accuracy of all information provided by Agility to the Commission in terms of clause 3.5.1. relating to the proposed Purchaser and to the proposed Divestiture Agreement; and
- 3.5.3. in the event that the Divestiture meets the relevant financial thresholds, a merger notification will be submitted to the Commission in the requisite manner.

4. MERGING PARTIES OBLIGATIONS FROM APPROVAL DATE TO DIVESTITURE

- 4.1. From the Approval Date to the Purchase Closing, or until [CONFIDENTIAL] the Merging Parties shall ensure that the ground handling businesses carried out by each of NAS Colossal and the Relevant Menzies South African Subsidiaries are managed in the ordinary course of business, with reasonable care and skill, pursuant to good business
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practices and to ensure that these businesses are managed in the best interests of their respective ground handling businesses.

5. HOLD SEPARATE ARRANGEMENTS

5.1. The Merging Parties have confirmed to the Commission that to date, the South African ground handling businesses of NAS Colossal and the Relevant Menzies South African Subsidiaries have been operated separately and to date, no Competitively Sensitive Information has been shared between them.

5.2. From the Approval Date to the Purchase Closing, or until [CONFIDENTIAL]; the Merging Parties shall, subject to any terms or conditions agreed in the Divestiture Agreement, put in place hold-separate arrangements in respect of the Divestiture Business, so as to ensure that:

5.2.1. no Competitively Sensitive Information is shared between the businesses of the respective South African ground handling businesses of the Merging Parties except where strictly necessary to ensure the economic and competitive value of the businesses in accordance with good commercial practice or regulatory compliance and, in those circumstances, subject to appropriate non-disclosure arrangements to prevent inappropriate or disproportionate disclosure of competitively-sensitive information relating to the businesses.

5.2.2. within 5 days of the Approval Date, NAS shall remove the executive directors it has appointed to the board of NAS Colossal and appoint directors to the board of NAS Colossal who are not involved in commercial negotiation with airlines or pricing of ground handling services. The directors appointed to the NAS Colossal board of directors by Agility shall sign suitable confidentiality undertakings in their personal capacity, which obliges them not to disclose to the Relevant Menzies South African Subsidiaries or make use of any Competitively Sensitive Information gained through the performance of their duties for any other purpose, in line with clause 4.1 above.

5.2.3. the directors appointed by NAS to the board of NAS Colossal in accordance with clause 5.2.2 above shall not participate in any negotiations or discussions with new or existing airline customers of NAS Colossal, and shall recuse themselves

from any discussions or decisions by the NAS Colossal board of directors about:

5.2.3.1. NAS Colossal's ground handling agreements with existing or new airline customers; and

5.2.3.2. the strategy and positioning of NAS Colossal after the Merging Parties Divestiture Period.

5.2.4. no director appointed to the NAS Colossal board of directors by Agility shall be appointed to serve as a director or be employed by, any of the Relevant Menzies South African Subsidiaries for a period of [CONFIDENTIAL] months after the Divestiture.

5.2.5. there is no consolidation of the operations of the respective South African ground handling businesses of the Merging Parties.

5.3. NAS shall not communicate with any of NAS Colossal's employees or Customers during the Merging Parties Divestiture Period.

6. TECHNICAL AND OTHER TRANSITIONAL SUPPORT

6.1. For the duration of the Merging Parties Divestiture Period and for a period of [CONFIDENTIAL] months after the Divestiture, Agility shall provide to NAS Colossal, or cause to be provided, all such reasonable support, assistance and information as may be required by NAS Colossal to enable it to continue operating the NAS Colossal ground handling business in South Africa, to the extent that such support and assistance is consistent with the hold separate arrangements, and is requested by, and desirable to, NAS Colossal.

6.2. NAS Colossal shall have the right to use the NAS Brand and the NAS Trademark during the Merging Parties Divestiture Period and for a period of [CONFIDENTIAL] months after the Divestiture, at no cost.

6.3. During the Merging Parties Divestiture Period and for a period of [CONFIDENTIAL] months after the Divestiture, the Relevant Menzies Subsidiaries or any other newly incorporated Menzies subsidiary in South Africa shall not use the NAS Brand and the NAS Trademark in any business carried out in South Africa.

7. NAS COLOSSAL CUSTOMERS

7.1. For the duration of the Merging Parties Divestiture Period, Agility shall not to approach Customers of NAS Colossal in relation to the same scope of the work which is covered by the contracts which are in existence between NAS Colossal and those Customers as at the Approval Date. NAS Colossal shall, within 7 days of the Approval Date, provide the Commission with a list of Customers.

8. NON-SOLICITATION OF EMPLOYEES

8.1. The Merging Parties shall not solicit Key Personnel of NAS Colossal for a period of 6 months after the Merging Parties Divestiture Period.

9. APPOINTMENT AND FUNCTION OF THE MONITORING TRUSTEE

9.1. The Commission shall appoint the Monitoring Trustee within a reasonable time of the Approval Date (the **Appointment Date**).

9.2. The Monitoring Trustee shall be independent of the Merged Entity and the Merging Parties, possess the necessary qualifications to carry out his/her mandate and shall neither have, nor become exposed to, any conflict of interest (which shall be determined by the Commission, acting reasonably).

10. THE MANDATE OF MONITORING TRUSTEE

10.1. The Monitoring Trustee shall:

10.1.1. oversee the implementation of the Divestiture as contemplated by these Conditions and monitor the progress towards achieving the Divestiture by the Merging Parties during the Merging Parties Divestiture Period, and by the Trustee during the Trustee Divestiture Period (if applicable);

10.1.2. Monitor the merging parties' compliance with the Conditions (clauses 3, 4, 5, 6, 7, and 8) during the Merging Parties Divestiture Period, including compliance with the hold separate arrangements as set out in clause 5;

10.1.3. submit a report to the Commission once every two weeks during the Merging

Parties Divestiture Period and the Trustee Divestiture Period (if applicable), which describes:

- 10.1.3.1. the Merging Parties' compliance with clauses 3, 4, 5, 6, 7, and 8 of the Conditions;
 - 10.1.3.2. the Merging Parties' engagement with the Existing Shareholders in relation to the disposal of the Divestiture Business to the Existing Shareholders during the first 2 (two) months of the Merging Parties Divestiture Period (including any challenges experienced during this engagement); and
 - 10.1.3.3. engagements between the Merging Parties and any other Third-Party Purchaser, the progress made and any challenges experienced.
- 10.1.4. The Monitoring Trustee shall provide a copy of each such report to Agility, and a director of Agility shall confirm the accuracy thereof in an affidavit, which shall be submitted to the Commission within two (2) days of receipt of each such report from the Monitoring Trustee by Agility.
- 10.2. The Monitoring Trustee shall ensure that his/her reports are kept confidential and shall only disclose them to the Commission and Agility. Agility shall be entitled to file a confidentiality claim in terms of section 44 of the Competition Act in relation to each such report.
- 10.3. The Merging Parties shall promptly provide the Monitoring Trustee with all the relevant information and documents that he/she may require to enable him/her to discharge his/her mandate.
- 10.4. The Monitoring Trustee's mandate shall terminate upon the fulfilment of all of the Monitoring Trustee's obligations in terms of these Conditions, or as confirmed in writing by the Commission, whichever comes first.

11. TRUSTEE DIVESTITURE

- 11.1. If Agility fails to implement the Divestiture of the Divestiture Business within the Merging Parties Divestiture Period, the Trustee shall be entitled to dispose of the
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Divestiture Business within the Trustee Divestiture Period.

- 11.2. The Divestiture Trustee will have an exclusive mandate and a power of attorney to dispose of the Divestiture Business during the Trustee Divestiture Period at no minimum price.
- 11.3. Notwithstanding the provisions of clause 11.2 above, the Divestiture Trustee shall use all reasonable commercial endeavours to ensure that any disposal concluded in respect of the Divestiture shall be on the best achievable commercial terms.
- 11.4. Once a disposal has been concluded, Agility and the Purchaser must use their reasonable commercial endeavours to ensure that the disposal becomes unconditional and that it is implemented as soon as is practical after the expiry of the Trustee Divestiture Period. This requirement shall be included as a provision of the disposal.
- 11.5. The specific details of the Trustee Mandate are annexed hereto marked “**Annexure B**”.
- 11.6. Should the Divestiture Trustee fail to conclude a disposal in terms of clause 11.1 above, the Divestiture Trustee may apply to the Commission for a maximum of one (1) further period, which period shall not exceed 6 (six) months on good cause shown (such cause as may include the requirement for third party notifications or consents) to dispose of the Divestiture Business. The Commission’s consent to an extension may not be unreasonably withheld, delayed or conditioned.
- 11.7. In respect of any proposed Divestiture to be made during the Trustee Divestiture Period:
- 11.7.1. the Divestiture Trustees shall submit, in writing, the name of any proposed Purchaser(s) together with any relevant documentation in respect of the proposed Purchaser(s) that the Commission may reasonably request, as well as the terms of the proposed Divestiture Agreement for approval by the Commission, prior to concluding any Divestiture Agreement with the proposed Purchaser(s); and
- 11.7.2. the Divestiture Trustee shall require the proposed Purchaser(s) to provide the Commission with an affidavit deposed to by a director or Chief Executive Officer
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of the proposed Purchaser(s) confirming the accuracy of all information provided by the Divestiture Trustee to the Commission in terms of clause 11.7.1 relating to the proposed Purchaser and to the proposed Divestiture Agreement; and

11.7.3. in the event that the Divestiture meets the relevant financial thresholds, a merger notification will be submitted to the Commission in the requisite manner.

12. MONITORING

- 12.1. The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
 - 12.2. Each of the Merging Parties shall circulate a copy of the Conditions within 5 (five) Days of the Approval Date to their Employees and/or their employee representatives in South Africa, including relevant trade unions.
 - 12.3. As proof of compliance with clause 12.2, a director of the Acquiring Firm and the Target Firm in South Africa shall each, within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit attesting to the circulation of the Conditions and attach a copy of the notice that was sent to the employees, the relevant trade unions and/or employee representatives.
 - 12.4. The Merging Parties shall provide a copy of the consent contemplated in paragraph 3.4 above to the Commission with 5 (five) days after securing the consent.
 - 12.5. The Acquiring Firm shall submit a report within one month of the Merging Parties Divestiture Period or the Trustee Divestiture Period (if applicable), setting out its compliance with clauses 3.1, 3.2 and 11.1 (if applicable) of the Conditions. This report shall be accompanied by an affidavit, attested to by a director of the Acquiring Firm in South Africa, confirming the accuracy of the report.
 - 12.6. The Acquiring Firm shall inform the Commission of the Purchase Closing within 5 (five) Days of it becoming effective.
 - 12.7. The Commission is entitled to request any additional information or documentation from the Merging Parties that the Commission considers relevant for the purposes of monitoring the Conditions.
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13. COMPLAINTS

13.1. Any complaint received by the Commission alleging a breach of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules and Rule 37 of the Tribunal Rules.

14. THE APPOINTMENT OF THE DIVESTITURE TRUSTEE

14.1. If the Divestiture Business is not divested within the Merging Parties Divestiture Period, Agility shall, subject to the prior written approval of the Commission, appoint a Divestiture Trustee.

14.2. The Trustee shall be independent of the Merging Parties, shall possess the necessary qualifications to carry out his or her mandate (for example, but not limited to, an investment banker, consultant or auditor) and shall at the date of appointment not be exposed to a conflict of interest.

14.3. Agility shall propose a Trustee for the Commission's written approval within 15 (fifteen) Days of the expiry of the Merging Parties Divestiture Period.

14.4. The proposal shall contain sufficient information for the Commission to determine whether the proposed Trustee is suitable to execute the Trustee's Mandate **Annexure B** and shall include, *inter alia*, the proposed Trustee's contact details and employment history.

14.5. The Commission shall have the discretion to approve or reject the proposed Trustee in writing. Such approval shall not be unreasonably withheld. Should the Commission reject the proposed Trustee, the Commission must provide reasons explaining the rejection of the proposed Trustee.

14.6. Agility shall appoint the Divestiture Trustee within fifteen (15) Days of the Commission's approval of the proposed Trustee.

14.7. If the proposed Divestiture Trustee is rejected, Agility shall submit the names of at least two (2) more proposed Divestiture Trustees within ten (10) Days of being informed of the rejection.

14.8. If the Commission, acting reasonably and on good cause shown, rejects all further

proposed Trustees, the Commission shall nominate a Trustee, whom Agility shall appoint, or cause to be appointed, within ten (10) Days of being informed by the Commission of such Trustee's identity.

14.9. Agility shall pay the reasonable fees and expenses of the Divestiture Trustee and the Trustee team on the terms and conditions agreed upon in writing between Agility and the Trustee.

14.10. Agility shall provide the Divestiture Trustee with a comprehensive and duly executed power of attorney on the first day of the Trustee's appointment to enable the Trustee to give effect to the Divestiture.

14.11. A certified copy of the power of attorney shall be submitted to the Commission within ten (10) Days of the Trustee's appointment.

14.12. The power of attorney shall enable the Divestiture Trustee to perform actions, which the Divestiture Trustee considers strictly necessary or appropriate, including the power to appoint advisors and to execute the Trustee Mandate attached hereto.

14.13. The power of attorney granted to the Trustee shall expire on the earlier of the termination of the trustee mandate or the discharge of the Trustee.

15. THE ROLE OF THE DIVESTITURE TRUSTEE

15.1. The Divestiture Trustee shall have an exclusive mandate with the necessary power of attorney to cause a disposal in terms of clause 11.2 above in accordance with its mandate as set out in **Annexure B**.

15.2. Agility shall indemnify the Divestiture Trustee and the Trustee team and hold the Trustee and the Trustee team harmless against any liabilities arising directly from the performance of the Trustees' duties under the Trustee's Mandate, except to the extent that such liabilities result from or are increased as a result of, the fraud, fraudulent misrepresentation, wilful default, recklessness and/or negligence of the Trustee.

16. VARIATION AND TERMINATION

16.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be revised, lifted 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.

16.2. The Merging Parties may approach the Commission to vary, or if appropriate, terminate, the obligations in clause 3, clause 5, clause 12.5 and clause 12.6 in the event that:

16.2.1. [CONFIDENTIAL]; or

16.2.2. any order of court suspends the award of the licences as contemplated in the Tender.

17. GENERAL

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

ANNEXURE B

**GIL INTERNATIONAL HOLDINGS V LIMITED, A SUBSIDIARY OF AGILITY PUBLIC
WAREHOUSING COMPANY K.S.C.P**

AND

JOHN MENZIES PLC

CASE NUMBER 2022APR0042

DIVESTITURE TRUSTEE MANDATE

1. DUTIES OF THE DIVESTITURE TRUSTEE

- 1.1. The Divestiture Trustee shall dispose of the Divestiture Business in accordance with the provisions of **Annexure A** during the Trustee Divestiture Period.
- 1.2. The key objective of the appointed Divestiture Trustee is to ensure that he/she takes necessary steps to ensure the disposal of the Divestiture Business to a Purchaser(s) during the Trustee Divestiture Period who meet(s) the Commission's criteria in terms of **Annexure A**, should the sale of the Divestiture Business not be implemented during the Merging Parties Divestiture Period.
- 1.3. The Divestiture Trustee shall for the duration of the Trustee Divestiture Period or until termination of his/her Trustee Mandate, furnish the Commission with a report (i.e., every month) concerning his/her efforts to identify a suitable Purchaser(s) and the progress made in concluding the divestiture of the Divestiture Business within the Trustee Divestiture Period.
- 1.4. The Divestiture Trustee's duties set out above may not be extended or varied in any way by the Merging Parties, save with the express written consent of the Commission.

2. REPORTING OBLIGATIONS OF THE TRUSTEE

- 2.1. A detailed plan describing how the Divestiture Trustee intends to dispose of the Divestiture Business in accordance with the requirements set out in **Annexure A** will be drawn up by the Divestiture Trustee, in consultation with the Merging Parties, within 15 (fifteen) Days of the Trustee's appointment and copied to the Commission.
 - 2.2. Every month from the appointment of the Divestiture Trustee, the Divestiture Trustee shall submit a written progress report to the Commission, sending the Merging Parties a copy at the same time. This report shall be accompanied by a duly commissioned affidavit from a senior official of the Merging Parties attesting to the accuracy of the report.
 - 2.3. The report shall cover the Trustee's progress in the fulfillment of his or her obligations
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under the Trustee's Mandate.

3. ASSISTANCE BY THE MERGING PARTIES TO THE DIVESTITURE TRUSTEE

- 3.1. The Merging Parties shall provide to the Divestiture Trustee, or cause to be provided, all such reasonable assistance and information, as may be required by the Divestiture Trustee to enable him or her to carry out this mandate, by providing copies of all relevant documents and access to appropriate personnel.
- 3.2. The Merging Parties shall cover all of their own expenses arising from the provision of such assistance.
- 3.3. The Merging Parties shall provide the Commission, on receipt of a written request by the Commission, with an affidavit deposed to by a senior official of each of the Merging Parties confirming the accuracy of the information provided to the Divestiture Trustee.

4. DIVESTITURE PERIOD

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

5. CONFIDENTIALITY

- 5.1. The Divestiture Trustee's report and any other document generated by the Divestiture Trustee in relation to his/her mandate will be confidential and for the sole use of the Trustee, the Commission and GIL, Menzies or the Merging Parties (or the advisors of GIL, Menzies or the Merging Parties) and the relevant Divesting Entity.
 - 5.2. The Divestiture Trustee shall present the draft reports to the Merging Parties in advance of its submission of these reports to the Commission in order that the Merging Parties may review the factual content of the report and provide their comments.
 - 5.3. Any unresolved disagreement between the Divestiture Trustee and Merging Parties concerning the content of the draft report must be noted in the final report.
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6. ESTIMATED FEES AND EXPENSES

- 6.1. The Merging Parties shall pay the Divestiture Trustee reasonable fees and expenses, including any fees reasonably incurred as a direct result of any litigation concerning the enforcement of **Annexure A** except to the extent that such litigation results from the fraud, wilful default, recklessness and/or negligence of the Trustee. The Divestiture Trustee and the Merging Parties may, prior to or immediately following approval of the Trustee by the Commission, negotiate a reasonable rate of fees and expenses for the Trustee and in relation to the conduct of any litigation.

7. REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF THE DIVESTITURE TRUSTEE

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

8. TERMINATION OF THE MANDATE

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

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AVERDA HOLDINGS LIMITED

AND

AVERDA SOUTH AFRICA (PTY) LTD

CASE NUMBER 2023FEB0001

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 01 February 2023, the Competition Commission ("Commission") received a notice of an intermediate merger whereby Averda Holdings Limited ("Averda Holdings"), intends to acquire **[CONFIDENTIAL]** % of the issued share capital of Averda South Africa (Pty) Ltd ("Averda SA"). Currently Averda Holdings has joint control in Averda SA as to **[CONFIDENTIAL]** %. Upon implementation of the proposed transaction, Averda Holdings will acquire 100% sole control of Averda SA.

Parties

2. The primary acquiring firm is Averda Holdings, a company incorporated in terms of the laws of the Republic South Africa ("South Africa"). Averda Holdings is controlled by **[CONFIDENTIAL]**.
3. The acquiring firm, Averda Holdings has an interest in Averda South Africa (Pty) Ltd ("Averda SA"), a company incorporated in terms of the laws of South Africa, as to **[CONFIDENTIAL]** % Averda SA is the target firm in terms of the proposed transaction.
4. Averda SA has interests in a number of firms in South Africa and also currently controls a number of dormant entities and entities under liquidation.

Activities

5. Averda Holdings is the holding company of Averda SA. The Acquiring Group's business activities generally include waste management, management of a landfill site, landfills, the disposal of hazardous waste, operating processing plants, industrial cleaning, pollution rehabilitation and a private investment firm.
 6. Averda SA forms part of the Acquiring Group.
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Competition analysis

7. The proposed transaction contemplates Averda Holdings' change of control from joint control to sole control. There will therefore be no change in the structure of the affected markets given that Averda Holdings currently already controls Averda SA.
8. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest***Employment***

9. The merging parties submit that the proposed transaction will have no negative effect on employment in South Africa.
10. Apart from its interest in Averda SA, Averda Holdings does not conduct any other business in South Africa and therefore does not have any employees in South Africa.
11. The Commission has not uncovered any evidence which suggests that the transaction would have a negative effect on employment.

The promotion of a greater spread of ownership by historically disadvantaged persons and workers section 12A(3)(e)

12. The merging parties submit that Averda SA has **[CONFIDENTIAL]**% HDP shareholding.
 13. The merging parties submit that as a result of the proposed transaction, the HDP shareholder will dispose of its shareholding in Averda SA. Averda Holdings is, however, in the process of seeking a new shareholder (owned by HDPs) to acquire **[CONFIDENTIAL]**% of the shares in Averda SA and expects to give effect to that transaction within **[CONFIDENTIAL]** months of implementation of this proposed transaction.
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(a) Engagements with the Department of Trade, Industry and Competition (DTIC)

14. The DTIC filed a Minister's Notice of Intention to Participate on 17 February 2023. The DTIC raised the following concerns:

14.1. The proposed transaction will result in an effective dilution of ownership by a HDP in the merged entity.

14.2. The acquiring firm's commitment to introduce a new HDP shareholder to hold **[CONFIDENTIAL]**% in the merged entity does not constitute meaningful promotion of a greater spread of ownership, or broad-based black economic empowerment (B-BBEE).

15. The DTIC is of the view that the proposed transaction should be approved subject to the following conditions:

15.1. commit to implement an employee share ownership programme/scheme (ESOP) of at least 10% in the target firm / merged entity, post implementation of the merger and in addition to the introduction of the new HDP shareholder, and

15.2. commit to implement specific initiatives to promote B-BBEE in South Africa.

(b) The merging parties' views

Viability of an Employee Share Ownership Programme (ESOP)

16. The merging parties submit that the imposition of an ESOP in the proposed transaction is inapt on the basis that:

16.1. An ESOP by its nature primarily requires the merged entity to be consistently profitable so that a consistent dividend (or any dividend for that matter) can feasibly be declared year on year.

16.2. Any potential ESOP may need to be debt financed, meaning that a portion of the dividend (if any) would therefore be channelled to service the applicable loan. This would mean that any employee members of a potential ESOP would receive an even smaller benefit, if a dividend was in fact declared.

16.3. The implementation of an ESOP will be an undue burden (without the corresponding benefits for workers).

Proposed Conditions

17. The merging parties are however willing to consider committing to the following as conditions to the proposed transaction:

17.1. The merging parties shall commit that, within a period of **[CONFIDENTIAL]** months following the implementation of the proposed transaction by the merging parties (Implementation Date), the acquiring firm, Averda Holdings, will conclude an agreement on mutually acceptable commercial terms, with one or more HDP purchasers to acquire a minority shareholding of **[CONFIDENTIAL]**% of the ordinary share capital in the target firm, Averda SA (HDP Transaction).

17.2. The merging parties shall commit that the target firm will achieve a B-BBEE rating of at least Level 3 which will be achieved by the target firm not only through the HDP Transaction but also through one or more of the following initiatives:

17.2.1. Appointment of one or more black women as executive directors to the board of Averda SA;

17.2.2. Appointment of one or more black women as non- executive directors to the board of Averda SA;

17.2.3. Appointments of black women to positions within the management structure of Averda SA;

17.2.4. The provision of bursaries for higher education to HDP Averda staff;

17.2.5. Creation of apprenticeships at Averda SA for HDPs;

17.2.6. Making contributions towards enterprise development interest free loans and towards supplier development interest free loans;

17.2.7. Allocation of procurement spend at Averda SA's recycling facility plant located at Rosslyn, Tshwane to black-owned exempt micro enterprises (EMEs) and qualifying small enterprises (QSEs); or

17.2.8. Payment of healthcare contribution on behalf of black employees earning below a certain threshold amount.

(c) The Commission's views

18. The Commission accepts the conditions offered by the merging parties.

19. There are no other public interest issues arising.

Conclusion

20. The Commission approves the proposed transaction subject to conditions set out in **Annexure A** herein.

ANNEXURE A

AVERDA HOLDINGS SA (PTY) LIMITED

AND

AVERDA SOUTH AFRICA (PTY) LIMITED

CASE NUMBER: 2023FEB0001

CONDITIONS

1. DEFINITIONS

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

- 1.1. **“Acquiring Firm”** means Averda Holdings SA (Pty) Limited;
- 1.2. **“Approval Date”** means the date referred to on the Competition Commission’s merger clearance certificate;
- 1.3. **“B-BBEE”** means broad-based black economic empowerment;
- 1.4. **“Commission”** means the Competition Commission of South Africa;
- 1.5. **“Conditions”** means the conditions set out herein;
- 1.6. **“Days”** means any calendar day which is not a Saturday, a Sunday, or an official public holiday in South Africa;
- 1.7. **“First Certificate”** has the meaning given to it in paragraph 2.3;
- 1.8. **“HDP”** means a historically disadvantaged person as defined in section 3(2) of the Competition Act;
- 1.9. **“HDP Transaction”** has the meaning given to it in paragraph 2.1;
- 1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11. **“Merger”** means the acquisition by the Acquiring Firm through a number of inter-related steps of the remaining shares in Target Firm not already owned by Acquiring Firm;
- 1.12. **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.13. **“Second Anniversary Date”** means the second anniversary of the Implementation Date;
- 1.14. **“Target Firm”** means Averda South Africa (Pty) Limited; and
- 1.15. **“Tribunal”** means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1. The Merging Parties shall commit that, within a period of **[CONFIDENTIAL]** months following the Implementation Date, the Acquiring Firm will conclude an agreement on mutually acceptable commercial terms, with one or more HDP purchasers to acquire a
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minority shareholding of **[CONFIDENTIAL]**% of the ordinary share capital in the Target Firm (**HDP Transaction**).

- 2.2. If, at the end of the **[CONFIDENTIAL]** month period mentioned in paragraph 2.1 above, the Acquiring Firm has not secured the participation of one or more HDP purchasers to collectively acquire a minority shareholding of **[CONFIDENTIAL]**% of the ordinary share capital in the Target Firm, then the Merging Parties shall engage with the Commission in order to extend such period with the written consent of the Commission, which written consent shall not be unreasonably withheld.
- 2.3. The Merging Parties shall commit that the Target Firm will achieve a B-BBEE rating of at least Level 3 in terms of the B-BBEE certificate to be provided in respect of the next B-BBEE audit to be carried out following the Second Anniversary Date (the **“First Certificate”**).
- 2.4. The Merging Parties commit that a B-BBEE rating of at least Level 3 shall be maintained by the Target Firm for a period of at least two years from receipt of the First Certificate.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 10 (ten) Days of the Merger becoming effective.
 - 3.2. The Acquiring Firm shall submit a report to the Commission, within 10 (ten) Days of the conclusion of the agreement referred to in paragraph 2.1 above. This report shall be accompanied by an affidavit, attested to by a senior official of the Acquiring Firm confirming the accuracy of that report.
 - 3.3. The Acquiring Firm shall submit the Target Firm's B-BBEE certificate valid immediately prior to the Implementation Date, within 10 (ten) Days of the Merger becoming effective to the Commission.
 - 3.4. After that, The Acquiring Firm will submit, within 10 (ten) Days of its receipt, the Target Firm's then current B-BBEE certificate provided in respect of the first, second and third annual B-BBEE audit carried out following the Second Anniversary Date.
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4. BREACH

- 4.1. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of any of the above Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5. VARIATION

- 5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the waiver, relaxation, modification, variation and/or substitution of one or more of the Conditions. Should a dispute arise in relation to the variation of the conditions, the Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal, for the conditions to be lifted, revised or amended.

6. GENERAL

- 6.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.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

COMPETITION COMMISSION**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

A SCHOONIES TWEE PROPRIETARY LIMITED**AND****FPG HOLDINGS PROPRIETARY LIMITED IN RESPECT OF THE RENTAL ENTERPRISE KNOWN
AS STRAND SQUARE****CASE NUMBER: 2023MAY0044**

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:

43. On 19 May 2023, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Schoonies Twee Proprietary Limited ("Schoonies Twee") intends to acquire the rental enterprise known as Strand Square ("Target Property") from FPG Holdings Proprietary Limited ("FPG Holdings"). Upon the implementation of the proposed merger, the Target Property will be controlled by Schoonies Twee.
 44. The primary acquiring firm is Schoonies Twee. Schoonies Twee is controlled by Schoonhoven Enterprises Proprietary Limited ("Schoonhoven Enterprises"). Schoonhoven Enterprises is ultimately controlled by the Schoonies Family Trust ("Schoonies Trust"). **[CONFIDENTIAL]**.
 45. Schoonies Twee does not control any firm. Schoonies Twee, Schoonies Trust, and the firms controlled by Schoonies Trust will hereinafter be referred to as (the "Acquiring Group"). The Acquiring Group does not have any shareholding held by HDPs.
 46. The Acquiring Group is a property holding company which owns and manages commercial, industrial, hospitality, residential and retail properties in the KwaZulu-Natal.
 47. The primary target firm is a rentable retail property known as Strand Square. The Target Property is controlled by FPG Holdings. The Target Property does not control any single firm.
 48. The merging parties indicate that **[CONFIDENTIAL]**% shareholding in FPG Holdings is held by HDPs. Thus, through FPG Holdings the Target Property has **[CONFIDENTIAL]**% shareholdings by HDPs.
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49. The Target Property is a neighbourhood centre situated at the corner of Mills and Fagan Streets, Strand, Cape Town, Western Cape comprising 5,942 m² of rentable retail space.
50. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.
51. The proposed transaction does not raise employment concerns.

The promotion of a greater spread of ownership, in particular to increase the levels of ownership of historically disadvantaged persons and workers in firms in the market.

52. The Acquiring Group does not have any shareholding held by HDPs. The Target Property through FPG Holdings has [CONFIDENTIAL]% shareholding by HDPs. Thus, post-merger, the Target Property will no longer be controlled by a firm with shareholding held by HDPs.
53. To remedy the dilution, the Acquiring Group intends to enter into a contract for a duration of 3 (three) years with firms owned by HDPs relating to (i) the provision of cleaning services; (ii) security services; and (iii) maintenance services at the Target Property. The merging parties agreed to make these commitments conditions to the approval of the proposed merger (see "Annexure A").
54. In addition, the proposed transaction does not raise other public interest concerns.

Conclusion

55. In light of the above, the Commission approves the proposed merger with conditions. Conditions are attached hereto as "**Annexure A**".

ANNEXURE A**SCHOONIES TWEE PROPRIETARY LIMITED****AND****FPG HOLDINGS PROPRIETARY LIMITED IN RESPECT OF THE RENTAL ENTERPRISE
KNOWN AS STRAND SQUARE****CASE NUMBER: 2023MAY0044**

CONDITIONS

1. Definitions

The following terms have the meaning assigned to them below, and cognate expressions have corresponding meanings –

- 1.1. **“Acquiring Firm”** Schoonies Twee Proprietary Limited, a company incorporated in accordance with the laws of South Africa;
 - 1.2. **“Approval Date”** means the date on which the Commission issues a Clearance Certificate in terms of the Competition Act;
 - 1.3. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
 - 1.4. **“Commissioner”** means the Competition Commissioner of South Africa, appointed in terms of section 22 of the Competition Act;
 - 1.5. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission issued in terms of section 21 of the Competition Act;
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- 1.6. **"Competition Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.7. **"Conditions"** means these conditions;
- 1.8. **"Days"** means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.9. **"HDPs"** means historically disadvantaged persons as contemplated in the Competition Act;
- 1.10. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.11. **"Merger"** means the acquisition of sole control over the Target Property by the Acquiring Firm;
- 1.12. **"Merger Parties"** means the Acquiring Firm and the Target Firm;
- 1.13. **"SMME"** means small businesses and medium-sized businesses as described in the Competition Act;
- 1.14. **"Strand Square"** means the property located at the corner of Mills and Fagan Streets, Strand, Cape Town, Western Cape comprising 5,942 m² of rentable retail space. Strand Square is currently owned by FPG Holdings Proprietary Limited, a company incorporated in accordance with the laws of South Africa;
- 1.15. **"Service Providers"** means providers of cleaning, security, maintenance services, and other procurement of consumables and goods who have shareholders who are HDPs.
- 1.16. **"Target Property"** means Strand Square;
- 1.17. **"Tribunal"** means the Competition Tribunal of South Africa.

2. Conditions

HDP procurement spend

- 2.1. The Acquiring Firm undertakes to, within 12 months after the Implementation Date, enter into a 3 (three) year contract with companies which are owned and controlled by HDPs for cleaning, security, maintenance services, and other procurement of consumables and goods
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- at the Target Property. These contracts shall be subject to termination on one month's notice in the event of non-performance or other material breach of the contract. Any subsequent contract must be concluded with HDPs.
- 2.2. The Acquiring Firm commits to a procurement spend of a minimum of the following amounts in respect of each of the identified services to be provided by Service Providers:
- 2.2.1. cleaning costs of approximately R353,952.00 per annum;
 - 2.2.2. security costs of approximately R390,678.00 per annum; and
 - 2.2.3. repairs and maintenance costs of approximately R310,047.00 per annum.

3. Monitoring of compliance with conditions

- 3.1. The Acquiring Firm will notify the Commission of the Implementation Date of the Merger within 5 (five) business days of its occurrence.
- 3.2. The Acquiring Firm must facilitate the identification of Service Providers within 6 (six) Months following the Implementation Date.
- 3.3. The Acquiring Firm shall submit an affidavit on an annual basis to the Commission within 1 (one) month after the anniversary of the Implementation Date attesting to the compliance with these Conditions for a period of three years following the Implementation Date.
- 3.4. The Commission may request such additional information from the Acquiring Firm which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

4. Apparent breach

- 4.1. An apparent breach by the Acquiring Firm 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.

5. Variation

- 5.1. The Acquiring Firm 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.

6. General

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- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.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