

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5376

4 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

**AGROBERRIES LIMITED
AND
BERRYWORLD GROUP HOLDINGS LIMITED**

CASE NUMBER: 2023JUN0028

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:

Background

1. On 21 June 2023, the Competition Commission ("Commission") received notice of an international transaction whereby Agroberreries Limited ("Agroberreries") intends to acquire (directly and/or indirectly), through several steps, [CONFIDENTIAL] of the entire issued share capital of BerryWorld Group Holdings Limited ("BerryWorld").
2. [CONFIDENTIAL]
3. The parties have requested that the Commission approve the acquisition [CONFIDENTIAL] of BerryWorld by Agroberreries. The Commission is of the view that that market conditions are unlikely to change significantly in the period between the acquisition of [CONFIDENTIAL]. As such, the Commission is amenable to the approval [CONFIDENTIAL] as sought by the merging parties.
4. The primary acquiring firm is Agroberreries, a firm based in the United Kingdom. Agroberreries is controlled by [CONFIDENTIAL], a company incorporated in terms of the laws of Panama. Agroberreries, together with their controlled affiliates, are referred to as the "Acquiring Group". The Acquiring Group does not directly or indirectly control any firms in South Africa.
5. The Acquiring Group does not have any activities in South Africa. Globally, Agroberreries is active in the fresh berry industry as a producer and marketer of berries, with offices in the United States of America and in the Netherlands. Agroberreries particularly specialises in blueberries, raspberries and blackberries. [CONFIDENTIAL]

6. The primary target firm is BerryWorld, a firm incorporated in the United Kingdom. BerryWorld directly or indirectly controls the following firms in South Africa: (i) BerryWorld SA Proprietary Limited (“BerryWorld SA”); and (ii) BerryWorld Local Proprietary Limited (“BerryWorld Local”).
7. BerryWorld is active in international berry breeding and marketing, with global operations in the United Kingdom, the Netherlands, Spain, France, South Africa, and Australia. BerryWorld SA markets and distributes blueberries for export to several countries.

Competition Assessment

8. The Commission considered the activities of the merging parties and found that no horizontal or vertical competition concerns arise because of the Proposed Transaction. This is due to Agroberries not having any activities in South Africa.
9. Considering the above, the Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

Public Interest

10. The merging parties have made an unequivocal statement that the proposed merger will not result in any job losses. To address other public interest concerns, the parties have tendered the following commitments which will be valid for 3 years:
 - 10.1. increasing their current one-year internship program to a two-year internship program, to be offered to a minimum of two persons per annum that qualify as Historically Disadvantaged Persons (“HDPs”) within the meaning of the Competition Act;
 - 10.2. increasing its annual sponsorship in relation to its partnership with the Signa Academy, such that a fourth HDP learner will obtain an NQF Level 3 Qualification in agricultural related industries.
 - 10.3. one bursary to be offered to an HDP student to attend an appropriate tertiary institution/ agricultural college, on an annual basis. For the avoidance of doubt, one student will be offered a bursary in each of the three years and the bursary will fund the student’s entire tuition and related costs for their entire period of study towards the relevant qualification provided the student satisfies the pass requirements for each year;
 - 10.4. upon completion of their qualifications, the HDP students who were awarded the bursaries above will be employed as graduates by the merging parties; and
 - 10.5. the creation of a training program with respect to blueberry farming techniques focusing on educating HDP students at the target firm’s trial site in the Western Cape.
11. The proposed transaction does not raise any other public interest concerns.

12. The Commission approves the proposed transaction with the public interest conditions attached in **Annexure A** hereto.

ANNEXURE A**AGROBERRIES LIMITED****AND****BERRYWORLD GROUP HOLDINGS LIMITED****CASE NO: 2023JUN0028**

CONDITIONS

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 Agroberreries Limited;
 - 1.1.2. **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);
 - 1.1.3. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
 - 1.1.4. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
 - 1.1.5. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
 - 1.1.6. **"Conditions"** means these conditions, and "Condition" means, as the context requires, any one of them;
 - 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. **“Graduate Program”** means a 24 month contract employment program which will be offered to the recipients of the Merging Parties’ bursaries upon completion of their qualifications, in order for them to gain work experience;
- 1.1.9. **“HDPs”** means historically disadvantaged persons as contemplated by the Competition Act No. 89 of 1998 (as amended);
- 1.1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.11. **“Internship Program”** means the Target Firm’s internship program offered to undergraduates which covers (i) grower and packhouse exposure (ii) international commercial understanding, (iii) career planning (iv) team collaboration, (v) work shadowing, (vi) mentorship and coaching and (vii) learning and development.
- 1.1.12. **“Merger”** means the acquisition of [CONFIDENTIAL] control of the Target Firm by the Acquiring Firm;
- 1.1.13. **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.1.14. **“NQF Level 3 Qualification”** means a qualification one receives after successfully completing Grade 11 or any other equivalent qualification.
- 1.1.15. **“South Africa”** means the Republic of South Africa;
- 1.1.16. **“SMME”** means a small, medium, or micro enterprise as contemplated in the National Small Enterprise Act, No. 102 of 1996;
- 1.1.17. **“Target Firm”** means BerryWorld Group Holdings Limited;
- 1.1.18. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.19. **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal.

2. CONDITIONS

- 2.1. The Merging Parties confirm that the Target Firm in South Africa shall commit to the following, for 3 (three) years following the Implementation Date:

- 2.1.1. increase its one-year Internship Program to a two-year Internship Program, to be offered to a minimum of 2 (two) HDPs per annum;
 - 2.1.2. increase its annual sponsorship, such that 1 (one) additional underprivileged HDP learner will obtain an NQF Level 3 Qualification in a study program related to the field of agriculture.;
 - 2.1.3. offer a total of 1 (one) bursary to HDP students to attend a tertiary institution/ agricultural college, on an annual basis. For the avoidance of doubt, one student will be offered a bursary in each of the three years, which will fund the student's entire tuition and related costs for their entire period of study towards the relevant qualification provided the student satisfies the pass requirements for each year;
 - 2.1.4. upon completion of their qualifications, the HDP students who were awarded the bursaries referred to in Clause 2.1.3. above will be included in the Graduate Program; and
 - 2.1.5. create of a training program with respect to blueberry farming techniques focusing on educating HDP students at the Target Firm's trial site in the Western Cape.
- 2.2. The total monetary amount committed to these programs shall be a minimum of R1 000 000 per annum over the three-year period or a minimum of R3 000 000 in total.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2. The Merger Entity shall, within 30 days of the Implementation Date, submit a report to the Commission confirming the details of the Target Firm's internship program and previous sponsorship of underprivileged HDP learners to obtain an NQF Level 3 Qualification. These submissions will serve of a benchmark for determining compliance with conditions 2.11 and 2.1.2.
- 3.3. The Merged Entity shall, on the first to third anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 2.
- 3.4. The Merged Entity shall, on the first to third anniversary of the Implementation Date, submit a report confirming compliance with the condition in clause 2.

- 3.5. Each report submitted in terms of paragraphs 3.2 to 3.3 shall be accompanied by an affidavit deposed to by a senior official of the Target Firms, confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 3.6. 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.

4. APPARENT BREACH

- 4.1. 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 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

5. VARIATION

- 5.1. The Merger Parties and/or the Commission may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, amended or relaxed. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

6. GENERAL

- 6.1. All correspondence in relation to 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