

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5377

4 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SPARROW JXB LIMITED

AND

OPTOMISE VOCO HOTEL PROPRIETARY LIMITED

CASE NUMBER: 2024APR0009

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 08 April 2024, the Competition Commission ("Commission") received notice of an intermediate merger whereby Sparrow JXB Ltd ("Sparrow") intends to acquire the entire issued share capital of Optomise Voco Hotel Proprietary Limited ("Optomise"). On completion of the proposed transaction, Sparrow will have sole control of Optomise.
2. The primary acquiring firm is Sparrow, a firm incorporated in Mauritius.
3. Sparrow, the firms controlled by Sparrow, and the firms controlling Sparrow will be referred to as the "Acquiring Group".
4. The Acquiring Group controls various firms in South Africa and abroad. Of relevance to this transaction are the activities of its subsidiaries (i) Cape Grace Hotel ("Cape Grace") and (ii) the Pullman Hotel
5. The Acquiring Group does not have any shareholding held by HDPs. However, the merging parties submit that the Acquiring Group will be implementing an HDP shareholder transaction within 18 to 24 months. The transaction entails the introduction of an HDP shareholder for **[CONFIDENTIAL]** % of the issued share capital in one of

the Acquiring Group's subsidiaries ("HDP Transaction"). This is as a result of a transaction that was previously considered by the Commission.

6. The Acquiring Group through Cape Grace and Stonehill owns two hotels in South Africa which are:
 - 6.1. The Cape Grace Hotel which is situated at the V&A 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 thereto such as fine dining, conference, and spa facilities; and
 - 6.2. The Pullman Hotel (owned by Stonehill) which is situated in the city centre of Cape Town. The Pullman is a 214 room, 4 star hotel which operates as a mixed-use occupancy property.
7. The primary target firm is Optomise. Optomise is ultimately controlled **[CONFIDENTIAL]** Optomise and the firms controlled by Optomise will be referred to as the "Target Group". The Target Group does not have any shareholding held by HDPs.
8. The Target Group is an investment holding company in South Africa and its only investment in South Africa is a building known as the Bank Building ("Target Property"). The Target Property is located in Rosebank, Gauteng and comprises of the Voco Hotel, which is a 4 star hotel which provides hotel accommodation as well as ancillary services thereto such as dining, conference, and fitness facilities, a restaurant trading and office space.
9. The Commission considered the activities of the merging parties and found that the proposed merger results in a horizontal overlap in that both the Acquiring Group and Target Group are active in the broad market for the provision of short term hotel accommodation, 4-star graded hotels.
10. However, the Commission found that there is no geographic overlap between the 4 star short-term hotel accommodation owned by the merging parties as the hotels owned by the parties are located in different provinces. This is consistent with the approach adopted by the Commission in previous matters.
11. Considering the above, the Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest assessment

Effect on employment

12. The merging parties submit that the transaction will have no adverse effect on employment. Furthermore, the merging parties submit that there will be no retrenchments as a result of the transaction.
13. To ensure that the transaction will not result in any retrenchments for the employees provided by a third party and who are directly involved in the day-to-day operations of the business of the Voco Hotel, the parties agreed to conditions set out in **Annexure A** herein.

Effect on promotion of a greater spread of ownership by historically disadvantaged persons and workers in firms in the market section 12A(3)(e)

14. The Commission considered the Acquiring Group's pending HDP Transaction which will result in the Acquiring Group having **[CONFIDENTIAL]**% shareholding held by HDPs. In this regard, the merging parties and the Commission have agreed to further remedies set out in **Annexure A** which includes a capex programme and procurement initiative.
15. There are no other public interest concerns arising.
16. The Commission approves the proposed transaction subject to conditions attached hereto as "**Annexure A**".

ANNEXURE A

**SPARROW JXB LIMITED
AND
OPTOMISE VOCO HOTEL PROPRIETARY LIMITED
CASE No: 2024APR0009**

CONDITIONS

1. DEFINITIONS

- 1.1 The following expressions shall bear the meaning assigned to them below and cognate expressions shall bear a corresponding meaning -
- 1.1. **"Acquiring Firm"** shall have the meaning ascribed thereto in section 1(1) of the Competition Act;
- 1.2. **"Approval Date"** - the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);
- 1.3. **"Capex Programme"** - the refurbishment and upgrade programme to be implemented by the Primary Acquiring Firm at the Target Hotel. The Capex Programme includes expenditure and/or investments on construction, electrical, mechanical, engineering and plumbing (MEP), furniture, fixtures and equipment (FF&E), marketing and associated expenses and all professional fees and services relating to the aforementioned;
- 1.4. **"Commission"** - the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5. **"Competition Act"** - the Competition Act, No. 89 of 1998, as amended;
- 1.6. **"Conditions"** - these merger conditions contained in this Annexure A, and **"Condition"** means, as the context may require, any of them;

- 1.7. **"Days"** - any calendar day other than a Saturday, a Sunday or an official public holiday in the Republic of South Africa;
- 1.8. **"HDPs"** - historically disadvantaged person/s as contemplated in section 3(2) of the Competition Act;
- 1.9. **"Implementation Date"** - the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10. **"Merged Entity"** - the Primary Target Firm subject to the control of the Primary Acquiring Firm following the Implementation Date;
- 1.11. **"Merging Parties"** - the Primary Acquiring Firm and the Primary Target Firm;
- 1.12. **"Merger"** - means the acquisition of 100% of the entire issued share capital of the Primary Target Firm by the Primary Acquiring Firm;
- 1.13. **"Primary Acquiring Firm"** - Sparrow JXB Limited (Mauritius) (GBC Number 204151);
- 1.14. **"Primary Target Firm"** - Optimise Voco Hotel Proprietary Limited (Registration Number 2019/465006/07);
- 1.15. **"SMME"** - either a small business or a medium-sized business, as those terms are defined in the Competition Act;
- 1.16. **"Target Hotel"** - the Voco Hotel, which is the main business of the Primary Target Firm;
- 1.17. **"Valor"** Valor Hospitality Partners Africa Proprietary Limited (Registration Number 2013/176188/07) and
- 1.18. **"Valor Employees"** - the employees of Valor who are directly involved in the day-to-day operations of the business of the Target Hotel. For the sake of clarity, a list of the employees of Valor who are involved in the day-to-day operations of the Target Hotel as at the Approval Date are reflected in **Schedule 1** hereto.

CONDITIONS

2. Capex Programme

- 2.1. The Primary Acquiring Firm undertakes to implement the Capex Programme in relation to the Target Hotel on the following basis –
- 2.1.1. the Primary Acquiring Firm will make a cumulative financial investment in the Target Hotel of not less than R[**CONFIDENTIAL**] within a period of [**CONFIDENTIAL**] months after the Implementation Date; and
 - 2.1.2. the Capex Programme will include expenditure and/or investments relating to construction, electrical, mechanical, engineering and plumbing (MEP) and furniture, fixtures and equipment (FF&E).

3. Employment

- 3.1. The Primary Acquiring Firm undertakes to employ the Valor Employees in the Primary Target Firm subject to the following conditions:
- 3.1.1. unless the Valor Employees are automatically transferred to the Primary Target Firm by operation of law, Valor consents in writing to the transfer of the Valor Employees to the Primary Target Firm on fair and reasonable commercial terms that are acceptable to the Primary Acquiring Firm; and
 - 3.1.2. Valor and the Primary Acquiring Firm reach written agreement on the commercial terms referred to in 3.1.1. within 3 months of the Implementation Date.
 - 3.1.3. For the sake of clarity, it is recorded and agreed that the Merging Parties will not be in breach of the Condition in 3.1. above if Valor and the Primary Acquiring Firm do not reach agreement on the commercial terms referred to in 3.1.1 by the date referred to in 3.1.2.
 - 3.1.4. Insofar as the Valor Employees are not employed by the Primary Target Firm in accordance with the provisions of 3.1 above, the Primary Target

Firm shall give preference to a Valor Employee who applies for a vacant position that may arise within the Merged Entity within a period of 12 (twelve) months from the Implementation Date, provided that the Valor Employee in question complies with the job requirements for the available vacant position.

4. Local Procurement

4.1. The Primary Acquiring Firm will use its reasonable commercial endeavours to procure products and services from SMME and/or HDP suppliers for purposes of the Capex Programme on condition that those SMME and/or HDP suppliers:

- 4.1.1. are able to supply readily available products required for the Capex Programme;
- 4.1.2. offer market related pricing; and
- 4.1.3. comply with the Acquiring Firm's service standards for workmanship, quality and response times.

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

5.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 Days of it becoming effective.

5.2. Within 20 Days of the Implementation Date, and on the first anniversary of the Implementation Date, if necessary, the Merged Entity shall provide the Commission with a report:

- 5.2.1. containing a description of the items on which funds have been spent as part of the Capex Programme;
- 5.2.2. the aggregated Rand value spent on the items referred to in 5.2.1; and

5.2.3. whether there have been any unforeseen delays or onerous approvals imposed by third parties which could affect the time period referred to in 2.1.1.

5.3. Any person including any employee 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.

5.4. The Commission may request additional information from the Merging Parties which is relevant for purposes of allowing the Commission to monitor the extent of compliance with these Conditions.

6. APPARENT BREACH

6.1. 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 Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

7. VARIATION

7.1. 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 and on notice to the Commission, for the Conditions to be waived, relaxed, modified and/or substituted.

8. GENERAL

8.1. All correspondence in relation to 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

Schedule 1

List of Valor Employees at the Approval Date [CONFIDENTIAL]