

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5405

11 October 2024

## COMPETITION COMMISSION

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

VERNOTONE PROPRIETARY LIMITED

AND

THE LIQUID PLASTICS BUSINESS CARRIED ON BY NAMPAK PRODUCTS LIMITED

CASE NUMBER: 2024FEB0025

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:

**Transaction Background**

1. On 13 February 2024, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Vernotone (Pty) Ltd ("Vernotone") intends to acquire the Liquid Plastics Business ("Liquid Plastics") carried on by Nampak Products Limited ("Nampak"). Following completion of the proposed transaction, Vernotone will exercise sole control over Liquid Plastics.

**The parties and their activities**

2. The primary acquiring firm is Vernotone, a special purpose vehicle incorporated in South Africa. Vernotone is controlled by SLA Capital Proprietary Limited ("SLA"). SLA Capital is wholly controlled by Mr Johan Buys. SLA indirectly controls Oasis Water Holdings Proprietary Limited ("Oasis Water"). Vernotone and all the firms directly and indirectly controlling it will hereinafter, collectively be referred to as the "Acquiring Group". The Commission notes that the Acquiring Group does not have any Historically Disadvantaged Persons ("HDPs") shareholding pre-merger.
3. Vernotone is a special purpose vehicle and does not have any business activities. The Acquiring Group through SLA is an investment holding company. The activities that are relevant to the proposed transaction, are the Acquiring Group's refilling, bottling, packaging and distribution of purified water and related beverage products activities conducted through Oasis Water. Oasis Water supplies its products through 360 branded franchise shops and retail partners situated in South Africa, Namibia, Eswatini and Botswana.

4. The primary target firm is Liquid Plastics, a division of Nampak. Liquid Plastics comprises the business of manufacturing, selling and supplying high density polyethylene (HDPE) and polyethylene terephthalate (PET) bottles and jars. Nampak is an entity listed on the JSE Limited (Johannesburg Stock Exchange). The Commission notes that according to its Broad Based Black Economic Empowerment ("B-BBEE") certificate expiring on 30 November 2024, Nampak has HDP shareholding of 80.29%.

#### **Competition assessment**

5. There are no overlaps arising as a result of the proposed merger. Accordingly, 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**

6. The merging parties tendered commitments which the Commission considers will render the proposed merger justifiable on public interest grounds. These commitments are set out in **Annexure A**.

#### **Conclusion**

7. The Commission therefore approves the proposed transaction on the conditions attached in **"Annexure A"**.

**ANNEXURE A**  
**VERNOTONE PROPRIETARY LIMITED**  
**AND**  
**THE LIQUID PLASTICS BUSINESS CARRIED ON BY NAMPAK PRODUCTS LIMITED**  
**CASE NUMBER: 2024FEB0025**

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**CONDITION**

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**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 Vernotone (Pty) Ltd;
- 1.1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
- 1.1.3. **“Affected Employees”** means no more than 217 employees employed at the Liquid Plastic Business that are likely to be retrenched from the Baseline Workforce post-merger, after the implementation of the Turnaround Plan;
- 1.1.4. **“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);
- 1.1.5. **“Baseline Workforce”** means the total workforce of 417 within the Target Firm that the Merged Entity will commence with, after the Implementation Date;
- 1.1.6. **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.1.7. **“Conditions”** means the conditions set out herein;
- 1.1.8. **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.9. **“DTIC”** means Department of Trade, Industry and Competition;
- 1.1.10. **“Eligible Employees”** means persons who are permanently in the employ of

the Merging Parties;

- 1.1.11. **“Employees”** means any permanent employee (as contemplated under the Labour Relations Act, No. 66 of 1995) of the Merged Entity or of any subsidiary or associated entity of the Merged Entity in South Africa, but excluding top and senior management;
- 1.1.12. **“ESOP”** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.1.13. **“Implementation Date”** means date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.14. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.15. **“Merged Entity”** means Vernotone and the Liquid Plastic Business;
- 1.1.16. **“Merger”** means the acquisition by Vernotone of the Liquid Plastic Business;
- 1.1.17. **“Merging Parties”** means Vernotone and the Liquid Plastic Business;
- 1.1.18. **“Nampak”** means Nampak Products Limited;
- 1.1.19. **“South Africa”** means the Republic of South Africa;
- 1.1.20. **“Target Firm”** means the Liquid Plastics Business (“Liquid Plastics”) carried on by Nampak;
- 1.1.21. **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act; and
- 1.1.22. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.1.23. **“Turnaround Plan”** means the formal Section 189(A) restructuring process, which will include an evaluation of the Baseline Workforce and the implementation of alternative business turnaround plans by the Acquiring Firm.

## 2. ESOP

- 2.1. Within 36-months from the Implementation Date, the Acquiring Firm shall implement an ESOP within the Merged Entity of 5%, for the benefit of all Employees. The ESOP will be implemented in accordance with the design principles attached in **Annexure B**.

## 3. EMPLOYMENT

- 3.1. Other than the Affected Employees, the Merged Entity shall not retrench any Employees. For the avoidance of doubt, no Affected Employees can be retrenched prior to the

implementation of the Turnaround Plan.

- 3.2. For the sake of clarity, retrenchments for purposes of these Conditions, will 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; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.
- 3.3. For a period of 24 (twenty-four) months following the implementation of any retrenchment of the Affected Employees, the Merged Entity shall give first preference to the Affected Employees for any employment opportunities that may arise within the Merged Entity for which an Affected Employee/s is qualified.

#### **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. The parties shall also confirm the number of employees employed by the Merged Entity.
- 4.2. The Merging Parties shall circulate a copy of the Conditions to their employees and or their respective representatives including the relevant trade unions within 5 Days of the Approval Date.
- 4.3. As proof of compliance thereof, the Merging Parties shall within 10 Days of circulating the Conditions, provide the Commission with an affidavit by a director employed by each of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.4. 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, 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 2; and/or (ii) how the ESOP is being established in accordance with the underlying design principles set out in the 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 3 years (three years), provide to the Commission and the DTIC 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](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

**ANNEXURE B – Design Principles for the ESOP**

<b>Design Principle</b>	<b>Applicable Criteria</b>
<b>Structure</b>	<ul style="list-style-type: none"> <li>➤ The merging parties will establish an ESOP that will hold the equivalent of at least an effective 5% of the issued share capital of the Merged Entity.</li> <li>➤ The Merged Entity shall have full latitude to design appropriate transaction/s to give effect to the undertaking set out in paragraph 2 of the Conditions.</li> </ul>
<b>Cost to Workers</b>	<ul style="list-style-type: none"> <li>➤ No cost to workers: Workers must not be required to pay to participate in the ESOP.</li> </ul>
<b>Governance</b>	<ul style="list-style-type: none"> <li>➤ If there is a board of directors/trustees, the board must be balanced and workers must be represented on the board, e.g., 1 director/trustee appointed by the merged entity; 1 director/trustee appointed by workers; and 1 independent director/trustee.</li> <li>➤ Any costs associated with the operation of the board of directors/trustees will be borne by the merged entity.</li> <li>➤ The independent director/trustee will be recommended and appointed by the workers, subject to the candidate being acceptable to the merged entity.</li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>➤ Perpetual/evergreen to cater for changing workforce.</li> </ul>
<b>Participants</b>	<ul style="list-style-type: none"> <li>➤ All current and future workers (not limited to HDPs).</li> <li>➤ Eligibility criteria: permanent Employees of the Merged Entity with a minimum 2-years service period.</li> <li>➤ Maternity leave will have no adverse impact on qualifying criteria.</li> </ul>
<b>Participation Benefits</b>	<ul style="list-style-type: none"> <li>➤ 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.</li> <li>➤ Beneficiaries will cease to participate for bad leaver events: resignations and dismissals.</li> <li>➤ Death, retirement and retrenchment will not affect participation.</li> </ul>
<b>Value &amp; Funding</b>	<ul style="list-style-type: none"> <li>➤ Value of the shares will be based on the valuation of the Merged Entity by an independent valuer on the Implementation Date.</li> <li>➤ Merged entity must provide some vendor finance if required.</li> <li>➤ If there is Vendor financing, the merged entity shall be responsible for 50% of any interest charged.</li> <li>➤ Dividend policy can provide for a “trickle” dividend (in the ratio of 40:60), i.e., at least 40% of any dividends declared will flow to beneficiaries and at most 60% will be utilised to service the vendor financing.</li> </ul>