DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5659 **13 December 2024**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MANITOU CENTRES SA (PTY) LTD
AND
THE BUSINESS OF DEZZO EQUIPMENT (PTY) LTD

CASE NUMBER: 2024MAY0019

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 and parties

1. On 8 May 2024, the Competition Commission (the "Commission") received a notification of an intermediate merger wherein Manitou Centres SA (Pty) Ltd ("Manitou Centres") intends to acquire certain assets, employees and contracts of Dezzo Equipment (Pty) Ltd ("Dezzo Equipment"). Subsequent to the implementation of the proposed transaction, certain assets, employees and contracts of Dezzo Equipment will be owned / controlled by Manitou Centres.

2. The primary acquiring firm is Manitou Centres, a private company incorporated in South Africa. Manitou Centres is wholly controlled by Manitou Holdings Southern Africa (Pty) Ltd ("Manitou Holdings"), which is in turn wholly controlled by Manitou BF S.A, a company incorporated in France. In addition to Manitou Centres, Manitou Holdings wholly controls Manitou Southern Africa (Pty) Ltd ("Manitou Southern Africa").

3. Manitou Centres does not control any firm/s. Manitou BF S.A and all the firms controlled by it, will be collectively referred to as the "Manitou Group".

4. Manitou Centres does not have any ownership held by Historically Disadvantaged Persons

5. The Manitou Group specialises in the manufacturing and sale of high-end handling, lifting and earthmoving equipment for the mining, construction, agriculture and industrial sectors as well as related machine rental, service and maintenance, attachments and spare parts for such equipment.

6. In South Africa, the Manitou Group does not have any manufacturing activities. The products are manufactured outside of South Africa and then supplied by the Manitou Group either directly to end-customers or through the use of appointed dealers. In this regard, the Manitou Group appoints independent dealers to distribute their products and provide the necessary after-sales services in specific regions (territories). The appointed dealers exclusively distribute Manitou Group's products and there is usually one authorised dealer appointed per region. In regions where the Manitou Group is unable to find appropriate dealers, the Manitou Group distributes the products directly to end-customers.

7. Dezzo Equipment is one of Manitou Group's exclusive dealers for the supply of its products and after-sale services in Mpumalanga and Northern Cape. The Target Firm / Dezzo Equipment is also the Manitou Group's exclusive dealer in Eswatini.

8. The primary target firm involves certain assets, employees and contracts of Dezzo Equipment. Dezzo Equipment is owned by 3 (three) individuals. Dezzo Equipment controls one firm, namely, Dezzo Equipment Rentals (Pty) Ltd ("Dezzo Rentals").

9. Dezzo Equipment is 60% owned by HDPs which is attributable to 2 (two) individuals.

Competition analysis

10. The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa. However, the Commission's approval of the proposed transaction should not be construed as an endorsement of the practice of exclusive distribution arrangements.

Public Interest

11. The Commission assessed the merger's effect on the public interest, consistent with the framework set out in the Revised Public Interest Guidelines Relating to Merger Control.

The aspects of the public interest assessment of particular relevance to this merger assessment are set out below.

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

12. The Commission notes that pre-merger, Manitou Centres does not have any ownership held by HDPs. On the other hand, Dezzo Equipment is 60% owned by HDPs. As such, the proposed merger result in a significant dilution in shareholding held by HDPs. To remedy the dilution, the merging parties will establish an ESOP which will hold 26% of the issued share capital of Manitou Centres (see “Annexure A” attached hereto).

Conclusion

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

ANNEXURE A

MANITOU CENTRES SA (PTY) LTD AND DEZZO EQUIPMENT (PTY) LTD

CASE NUMBER 2024MAY0019

CONDITIONS

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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 **"Acquiring Group" or "Acquiring Firm"** means Manitou Centres, a subsidiary of Manitou Holdings (Pty) Ltd;

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

1.3 "**Approval Date**" means the date on which the Proposed Transaction is approved in terms of the Act;

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

1.5 "**Conditions**" means the merger conditions included in this Annexure A;

1.6 "**Days**" means any day that is not a Saturday, Sunday, or public holiday in South Africa;

1.7 **"ESOP"** means the Employee Share Ownership Programme to be established pursuant to these Conditions;

1.8 **"ESOP Establishment Period"** means 24 months from the Implementation Date;

1.9 "**HDPs**" means historically disadvantaged persons as contemplated in section 3(2) of the Act;

1.10 "**Implementation Date**" means the date on which the merger is implemented by the Merging Parties;

1.11 "**Manitou Centres**" means Manitou Centres SA (Pty) Ltd;

1.12 **"Manitou SA"** means Manitou Southern Africa (Pty) Ltd, a subsidiary of Manitou Holdings (Pty) Ltd;

1.13 "**Merger**" means the proposed acquisition of the Target Firm by Manitou Centres as notified to the Commission under Case No. 2024May0019;

1.14 "**Merged Entity**" means the combination of Manitou Centres and the business of Dezzo Equipment (Pty) Ltd;

1.15 "**Merging Parties**" means Manitou Centres (Pty) Ltd and the business of Dezzo Equipment (Pty) Ltd;

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

1.17 "**Target Firm**" means the business of Dezzo Equipment (Pty) Ltd;

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

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

1.20 **"Qualifying Workers"** means the Workers who have been employed by Dezzo Equipment (Pty) Ltd, Manitou SA and/or Manitou Centres for a minimum period of two (2) years; and

1.21 "**Worker**" means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESTABLISHMENT OF THE ESOP

2.1. By the end of the ESOP Establishment Period, Manitou Centres shall establish the ESOP for the benefit of Qualifying Workers. The ESOP shall hold 26% of the issued shares in Manitou Centres as at the Implementation Date, in accordance with the design principles set out in Annexure B.

2.2. If the vendor financing loan used to fund the establishment of the ESOP is not fully extinguished within 9 (nine) years following the establishment of the ESOP, the merging parties agree to write off any outstanding balance at no cost to Workers. The Merged Entity will also provide proof to the Commission on request that the loan has been written off and was not required to be settled by Workers.

3. MONITORING

3.1. Within 30 (thirty) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Merged Entity shall within 10 (ten) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.

3.2. Within 15 (fifteen) Days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.

3.3. The Merged Entity shall submit a compliance report (including a trust deed for the registration of the ESOP) within 30 (thirty) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of the Acquiring Group confirming the accuracy of the information contained in the report.

3.4. 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.

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 39 of the Commission Rules.

5. VARIATION

5.1. 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.

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

ANNEXURE B - CONFIDENTIAL