

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5661

13 December 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

USHUKELA HOLDINGS PROPRIETARY LIMITED

AND

GLEDHOW SUGAR COMPANY PROPRIETARY LIMITED (IN BUSINESS RESCUE)

CASE NUMBER: 2024MAY0006

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 May 2024, the Competition Commission ("Commission") received an intermediate merger notification wherein Ushukela Holdings Proprietary Limited ("Ushukela Holdings") intends on acquiring Gledhow Sugar Company Proprietary Limited ("Gledhow").
2. Gledhow is in business rescue.
3. The acquiring firm, Ushukela Holdings has undertaken to provide capital investment and secure Gledhow's current debts and liabilities following the successful implementation of this proposed merger.
4. Post-merger, Gledhow will be solely controlled by Ushukela Holdings.
5. The primary acquiring firm is Ushukela Holdings. Ushukela Holdings is controlled by Sokhela Sugar Proprietary Limited ("Sokhela") (26.1%) and Maroochi Investments Limited ("Maroochi") (73.9%), a Mauritian company. Sokhela is controlled by the Siyakhula Trust with registration number IT158/2008/PMB (100%). Maroochi is controlled by Mr Raghbir Singh Chatte ("Mr Chatte"), a Kenyan citizen.
6. All the beneficiaries of the Siyakhula Trust are historically disadvantaged persons ("HDPs") as contemplated in the Competition Act no 89 of 1998 (as amended) ("the Act") and, accordingly, 26.1% of Ushukela Holdings is owned by HDPs.

7. Ushukela Holdings is a special purpose vehicle established for the proposed acquisition and has no other business. Sokhela does not control any firms other than Ushukela Holdings. Siyakhula Trust controls a company which owns a property in KwaZulu-Natal on which it hosts events. The Sokehla family (through various structures, namely, [CONFIDENTIAL], which the Sokhela family are the trustees and beneficiaries of) owns approximately [CONFIDENTIAL] hectares of cane farmland in KwaZulu-Natal. This land is leased to four different cane growers who produce sugar cane which is supplied to Gledhow. The only other business interest of the Sokhela family is in a high-performance sports centre at the Moses Mabhida stadium.
8. Maroochi controls Muell Estates which owns and operates a macadamia farm in Mpumalanga. Mr Chatte and his family have business interests in the sugar industry and certain properties in Kenya.
9. The primary target firm is Gledhow. Gledhow's shareholders are Ushukela Milling (Pty) Ltd ("Ushukela Milling") (34.9%); Illovo Sugar (South Africa) (Pty) Ltd ("Illovo") (30%); Gledhow Growers Share Trust ("GGST") (25.1%); and SAPPI Southern Africa Limited ("Sappi") (10%). The Sokhela Family Trusts (whose beneficiaries are the same as those of the Siyakhula Trust) holds 33% of the shares in Ushukela Milling.
10. Gledhow owns and operates a sugar mill and refinery based in KwaDukuza in KwaZulu-Natal. It mills sugar cane received from surrounding cane growers and produces brown and refined (white) sugar for sale locally and, to a lesser extent, for export through S.A. Sugar Export Corporation (Pty) Limited. Gledhow also sells molasses and bagasse.
11. Gledhow is 61% owned by HDPs.

Competition assessment

12. The Commission considered the activities of the merging parties and found that there are no horizontal or vertical overlaps between their activities in South Africa.
13. The Commission found that the merger is unlikely to result in a substantial prevention or lessening of competition in any market.

Public interest

14. The merging parties tendered commitments which the Commission considers will render the merger justifiable on public interest grounds.

Conclusion

15. Considering the above, the Commission approves the proposed transaction subject to the conditions attached in **Annexure A** hereto.

ANNEXURE A
USHUKELA HOLDINGS PROPRIETARY LIMITED
AND
GLEDHOW SUGAR COMPANY PROPRIETARY LIMITED (IN BUSINESS RESCUE)
CASE NO:2024MAY0006

CONDITIONS

1. DEFINITIONS

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

- 1.1 **"Acquiring Firm"** means Ushukela Holdings Proprietary Limited and all of its direct and indirect controllers;
- 1.2 **"Act"** means the Competition Act 89 of 1998, as amended;
- 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);
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.6 **"Conditions"** means, collectively, the conditions referred to in this document;
- 1.7 **"Days"** means business days, being any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.8 **"Gledhow"** means Gledhow Sugar Company Proprietary Limited (in business rescue);
- 1.9 **"HDP"** means a historically disadvantaged person as contemplated in section 3(2) of the 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 **"Merged Entity"** means the entity that will exist after the implementation of the Merger;
- 1.12 **"Merger"** means the acquisition of Gledhow's entire issued share capital by the Acquiring Firm;
- 1.13 **"South Africa"** means the Republic of South Africa;
- 1.14 **"Tribunal"** means the Competition Tribunal of South Africa; and
- 1.15 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

2. **CONDITIONS**

- 2.1 There will be no merger-specific retrenchments as a result of the Merger.
- 2.1.1 For the sake of clarity, merger-specific retrenchments (i.e., retrenchments as a result of the merger) do not include (i) voluntary retrenchment and/or voluntary separation arrangements; or (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; and (vii) any decision not to renew or extend a contract of a fixed-term employee (including a fixed-term third party contract employee) or contract with a third party.
- 2.2 The Acquiring Firm shall, for a period of 3 (three) years from the Implementation Date, ensure that Gledhow's procurement of its cane requirements from small scale farmers and HDP cane growers remains substantially in line with Gledhow's Pre-Merger volumes.
- 2.2.1 For clarity, pre-Merger Gledhow purchases a total of approximately 500 000 tonnes of cane per annum from small scale and HDP growers.
- 2.2.2 For the sake of further clarity, it is recognised that the volume of cane which Gledhow purchases from small scale and HDP growers will depend on (i) the ability and willingness of small scale and HDP

growers to supply cane of satisfactory quality to Gledhow, and (ii) applicable growers being registered with SASA to supply the Gledhow mill with sugar cane.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Acquiring Firm will circulate a copy of the relevant Conditions to Gledhow's employees, the trade unions and employee representatives within five (5) Days of the Approval Date.
- 3.2 The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.3 The Acquiring Firm shall, within 30 (thirty) Days of each anniversary of the Implementation Date and for a period of 3 (three) years, provide the Commission with a report detailing their compliance with clause 2.1 and 2.2 of the Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Acquiring Firm.
- 3.4 The Commission may request such additional information from the Merging Parties that 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 In the event that the Commission receives 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, that apparent breach shall be dealt with in terms of Rule 39 of the Rules read together with Rule 37 of the Tribunal Rules.
- 4.2 Any person who believes that the Acquiring Firm has failed to comply with the Conditions may approach the Commission with their complaint.

5. VARIATION

6. 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.

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