

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5664

13 December 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

VREDENHOF BELEGGINGS PROPRIETARY LIMITED

AND

THE FRUIT FARMING BUSINESS KNOWN AS 'APPLETHWAITE FARM'

CASE NUMBER: 2024JUL0027

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 18 July 2024, the Competition Commission (the "Commission") received notice of an intermediate merger wherein Vredenhof Beleggings Eiendoms Beperk ("Vredenhof") intends to acquire the fruit farming business known as Applethwaite Farm (the "Target Business") as a going concern. Post implementation of the proposed transaction, Vredenhof will have sole control over the Target Business.

Parties and activities

2. The primary acquiring firm, Vredenhof, is wholly owned by the Sass en Emme Trust (the "SE Trust"), a family trust. Apart from Vredenhof, the SE Trust does not control any other firms. The Trustees of the SE Trust are also the Trustees of the Dennegeur Trust, a family trust. The Dennegeur Trust, in turn, wholly owns: JS Beukes Eiendoms Beperk trading as Dennegeur ("Dennegeur"), a private company incorporated in South Africa; and Gembok Boerdery Eiendoms Beperk a private company incorporated in South Africa.
3. Vredenhof, all the firms controlling it and all the firms controlled by those firms are collectively referred to as the "Acquiring Group".

4. The Acquiring Group's activities are comprised of property investments and pome fruit production. The Acquiring Group's pome fruit production, packing and exporting activities are of relevance to this merger assessment. These activities are conducted from the Grabouw region in the Western Cape. The Acquiring Group also provides packing and storage services for their inhouse pome fruit production operations and provides these services to a limited number of external pome fruit producers from the Grabouw region.
5. The Target Business is currently wholly owned by Capespan Agri Proprietary Limited ("Capespan Agri"). The Target Business is a pome fruit farm near Grabouw in Caledon district, Western Cape Province. The Target Business supplies its pome fruit locally to South African traders, retailers and wholesalers.

Competition analysis

6. The Commission found that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in any relevant market.

Public Interest considerations

7. To address public interest concerns, the parties have tendered the commitments set out in **Annexure A**.
8. The Commission therefore conditionally approves the proposed transaction.

ANNEXURE A
VREDENHOF BELEGGINGS PROPRIETARY LIMITED
AND
THE FRUIT FARMING BUSINESS KNOWN AS 'APPLETHWAITE FARM'
CASE NUMBER: 2024JUL0027

CONDITIONS

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 Vredenhof Beleggings Eiendoms Beperk;

1.1.2 **"Acquiring Group"** means the Acquiring Firm, its direct and indirect controllers and all firms directly and indirectly controlled by the aforesaid firms;

1.1.3 **"Approval Date"** means the date referred to on the Commission's merger clearance certificate (Notice CC 15), being the date on which the Merger is approved in terms of the Competition Act;

1.1.4 **"Capespan Agri"** means Capespan Agri Proprietary Limited, the seller of the Target Business;

1.1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.1.6 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;

1.1.7 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;

1.1.8 **"Conditions"** means these conditions;

- 1.1.9 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.10 **"Dennegeur Foundation"** means the not-for-profit company and registered public benefit organisation (registration number 930067228) established by the Acquiring Group for the benefit of its farm workers and the surrounding farm communities;
- 1.1.11 **"Guesthouse Business"** means the Elgin Country Lodge currently owned and operated as a profit-making guest house business by the Acquiring Firm;
- 1.1.12 **"HDP"** means a historically disadvantaged person as contemplated in the Competition Act;
- 1.1.13 **"HDP-owned Farmers"** means farmers owned as to, at least, 50% plus 1 share by HDP(s);
- 1.1.14 **"Hortgro"** means Hortgro Pome, a South African pome industry association and a registered not-for-profit company with registration number 2002/008690/08;
- 1.1.15 **"Implementation Date"** means the date occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;
- 1.1.16 **"Merged Entity"** means the Target Business subject to the control of the Acquiring Group following the Implementation Date;
- 1.1.17 **"Merger"** means the proposed acquisition by the Acquiring Firm of the Target Business as a going concern;
- 1.1.18 **"Merging Parties"** means the Acquiring Group and the Target Business;
- 1.1.19 **"Moratorium Period"** means a period of 3 (three) years from the Implementation Date and includes the period between the Approval Date and the Implementation Date;
- 1.1.20 **"South Africa"** means the Republic of South Africa;

1.1.21 **"Target Business"** means the fruit farming business known as 'Applethwaite Farm' owned, pre-Merger, by Capespan Agri; and

1.1.22 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. SOCIAL DEVELOPMENT INITIATIVES

2.1 Within 12 (twelve) months of the Implementation Date, the Acquiring Group shall transfer full ownership of its Guesthouse Business to the Dennegeur Foundation. For the avoidance of doubt, the transfer of the Guesthouse Business to the Dennegeur Foundation shall be for no consideration.

2.2 Dennegeur Foundation will be required to redeploy realised profits from the Guesthouse Business solely to the benefit of the employees of the Acquiring Group (including the employees of the Target Business) and the surrounding farm communities (which includes that of the Target Business).

2.3 For the avoidance of any doubt, all the employees of the Target Business and relevant communities will become beneficiaries of and share equally in the benefits of the Dennegeur Foundation upon the Implementation Date.

3. DEVELOPMENT OF HDP-OWNED FARMERS AND SKILLS DEVELOPMENT INITIATIVES

3.1 On an annual basis for the next 3 (three) financial years, commencing 30 June 2025, the Acquiring Firm shall contribute 5 (five) days to Hortgro's transformation capacity building programme aimed at addressing the need for management skills and training for HDP-owned Farmers in the pome industry.

3.2 The Acquiring Firm shall provide the following services: financial coaching (budget planning, record keeping and operational management) as well as technical mentorship and coaching (resource management, productivity, tailored technical support, networking and relationship building).

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4. CAPITAL EXPENDITURE

- 4.1 The Acquiring Group shall ensure that over the next 3 (three) financial years commencing on 30 June 2025 and in respect of the Target Business it will incur in aggregate no less than R10,000,000 (ten million rand) in capital expenditure on the Target Business's existing non-bearing hectares and on repairs and maintenance.

5. EMPLOYMENT

- 5.1 Subject to the provisions of clause 5.1 below, the Merged Entity shall not retrench any permanent or fixed-term contract employees as a result of the Merger during the Moratorium Period.
- 5.2 The undertaking provided in clause 5.15.1 above means that no retrenchments will result as a consequence of the implementation of the Merger. For the sake of clarity, Merger specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (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 (for the purposes of the Labour Relations Act) 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 third party contract employee or contract with a third party.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 6.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 6.2 The Merged Entity shall, within 30 (thirty) Days of the end of the Acquiring Firm's financial year-end, for its next 2 (two) financial years commencing 30 June 2025, provide to the Commission a report detailing its progress regarding the compliance with the Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the report's accuracy.

6.3 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary to monitor the extent of compliance with the Conditions.

6.4 Any person who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission with their complaint. If the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, the matter shall be dealt with in terms of clause 8 below.

7. VARIATION OF THE CONDITIONS

7.1 The Merging Parties may at any time, 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 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. APPARENT BREACH

8.1 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.

9. GENERAL

9.1 All correspondence concerning 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