

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION****NO. 5667****13 December 2024****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****SUN WORLD INTERNATIONAL, LLC****AND****SUBSIDIARIES OF BIOGOLD INTERNATIONAL PROPRIETARY LIMITED****CASE NUMBER: 2024APR0059**

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 29 April 2024, the Competition Commission (the "Commission") received a notice of an intermediate merger whereby Sun World International, LLC ("Sun World") intends to acquire all of the issued capital stock and other equity ownership interests in each of the subsidiaries of Biogold International Proprietary Limited ("Biogold") (the "Transferred Firms"). Following the implementation of the proposed transaction, Sun World will have sole control over the Transferred Firms.

**Parties**

2. The primary acquiring firm, Sun World, is a Delaware based limited liability company. Sun World is indirectly controlled by BP Veraison TopCo LP ("BP Veraison"), a limited partnership registered in accordance with the laws of the United States of America. BP Veraison is ultimately beneficially owned by the limited partnerships comprising the Bridgepoint Europe VI Fund and controlled by Bridgepoint Advisers Limited, whose ultimate parent is Bridgepoint Group plc ("Bridgepoint"). Bridgepoint is a public company listed on the Main Market of the London Stock Exchange. Bridgepoint is the ultimate parent of the wider Bridgepoint group (the "Bridgepoint Group").
3. The Bridgepoint Group comprises of numerous portfolio companies.

4. Sun World has the following direct subsidiaries: Sun World Europe s.r.l. (Italy), Sun World Chile SpA (Chile), Sun World Australasia Pty Ltd (Australia) and Sun World International LLC (South Africa). Sun World, its subsidiaries and its controlling firms are collectively referred to as the “Acquiring Group”).
5. Sun World is wholly foreign-owned and does not have any shareholding by historically disadvantaged persons (“HDPs”).
6. Prior to the implementation of the proposed transaction and as a result of an internal restructuring, the Transferred Firms will be controlled by ANB Investments Proprietary Limited (“ANB”). Prior to the internal restructuring, the Transferred Firms were held within Biogold and various subsidiaries of Biogold. Biogold is a wholly-owned subsidiary of ANB.
7. With the exception of Biogold Network EM SA, the Transferred firms do not control any other firm. However, since the Biogold Network EM SA does not control any firms in South Africa, its controlling interests are not relevant for the assessment of the proposed transaction.
8. The Transferred Firms have no direct shareholding by HDPs. ANB (i.e., the seller) has 21.53% HDP-ownership. Thus, the Transferred Firms have an indirect HDP shareholding of 21.53%.

#### **Activities**

9. The Acquiring Group (through Sun World/primary acquiring firm) is active in breeding new table grape and stonefruit varieties and licensing those varieties to table grape and stonefruit producers.
10. The primary business of the Transferred Firms is securing rights from citrus breeders to new proprietary fruit varieties and commercialising those rights with producers of those crops (referred to here as growers). Essentially, the Transferred Firms operate as plant breeder rights managers.

#### **Areas of overlap**

11. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap as the Acquiring Group (including Sun World) does not provide any services in direct competition with the Transferred Firms. In addition, the proposed transaction does not raise foreclosure concerns from the vertical overlap arising.
12. The Commission received concerns from a market participant which alleged that the merging parties are direct competitors and may exercise market power in the market for citrus fruit breeding and commercialisation of such rights with producers of those crops. However, the Commission found that the merging parties are not direct competitors, and the proposed transaction is unlikely confer market power onto the merged entity.
13. In all, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

#### **Public interest**

14. In relation to the employment issues arising, the merging parties committed to a 3-year moratorium and also to increase the number of employees of in South Africa within 5 years of the implementation date, with preference given to hiring female HDPs.
15. In order to promote a greater spread of ownership, the merging parties have made a suite of commitments including enterprise development, favourable financing terms and favourable payment terms for HDP fruit growers, amongst others.

#### **Conclusion**

16. The Commission approves the proposed transaction subject to conditions attached as **Annexure A**.

**MERGER CONDITIONS**  
**SUN WORLD INTERNATIONAL, LLC**  
**AND**  
**SUBSIDIARIES OF BIOGOLD INTERNATIONAL PROPRIETARY LIMITED**  
**CASE NUMBER: 2024APR0059**

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**CONDITIONS**

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**1. DEFINITIONS**

- 1.1 In these Conditions, the following words will, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) will bear corresponding meanings:
- 1.1.1 **"Acquirer"** means Sun World International, LLC, its controllers and all the firms that it controls;
- 1.1.2 **"Approval Date"** means the date the Commission issues a clearance certificate in terms of the Competition Act;
- 1.1.3 **"Business Day"** means any day which is not a Saturday, Sunday or an official public holiday in South Africa;
- 1.1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.1.5 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.6 **"Competition Act"** means the Competition Act 89 of 1998, as amended from time to time;
- 1.1.7 **"Community Owned Initiatives"** means the Serala Estate farm owned by the Mamahlola community and Maradadi farm owned by Batlhabene community, both established subsequent to the successful land restitution

process instituted by the communities which were forcefully removed from the land as a result of past discriminatory laws;

- 1.1.8 **"Conditions"** mean these conditions;
- 1.1.9 **"DTIC"** means the Department for Trade, Industry and Competition of the South African Government;
- 1.1.10 **"Employees"** means any person that is, in terms of South African labour law, an employee of Transferred Firms in South Africa, whether on a permanent or a fixed term basis,
- 1.1.11 **"HDPs"** means historically disadvantaged persons as contemplated in section 3(2) of the Competition Act;
- 1.1.12 **"HDP Growers"** means current or potential farmers or fruit producers who are classified as HDPs in terms of the Competition Act;
- 1.1.13 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented in accordance with its terms;
- 1.1.14 **"Initial Royalties"** means the payment which a grower or farmer is usually required to make on delivery or planting of the plant supplied by the Merger Parties;
- 1.1.15 **"Merged Entity"** means the Transferred Firms, subject to the control of the Acquirer;
- 1.1.16 **"Merger"** means the acquisition of control over the Transferred Firms by the Acquirer;
- 1.1.17 **"Merger Parties"** means the Acquirer and the Transferred Firms;
- 1.1.18 **"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;
- 1.1.19 **"Proposed Transaction"** means the merger between the Acquirer and the Transferred Firms;
- 1.1.20 **"Seller"** means ANB Investments Proprietary Limited;

- 1.1.21 **"SMME Growers"** means current or potential farmers or fruit producers who are classified as small businesses or medium sized businesses as defined in section 1 of the Competition Act;
- 1.1.22 **"Transferred Firms"** means Biogold Network EM S.A., Biogold North America, Inc., Biogold South America S.P.A., Biogold UK Limited, Citrogold Proprietary Limited and SunBio Proprietary Limited;
- 1.1.23 **"Tribunal"** means the Competition Tribunal of South Africa established in terms of section 26 of the Competition Act; and
- 1.1.24 **"Tribunal Rules"** means the means Rules for the Conduct of Proceedings in the Tribunal.
- 1.1.25 **"Year of Fruit Production"** means the period after the delivery of the plant to the grower in which fruit production for the specific plant would be expected (in the case of grapes no sooner than two years after delivery and in the case of citrus no sooner than four years after delivery).

## 2. EMPLOYMENT

- 2.1 The Merger Parties undertake –
- 2.1.1 that there will be no retrenchments as a result of the Proposed Transaction during the Moratorium Period;
- 2.1.2 to increase the total number of employees of the Merger Parties in South Africa by 25% (to no fewer than **(CONFIDENTIAL)** employees) within **(CONFIDENTIAL)** years of the Implementation Date – with a preference given to hiring female HDPs workers.
- 2.2 For the sake of clarity, 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 of 1995, as amended; (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. SELLER'S COMMUNITY INVOLVEMENT

- 3.1 The Seller shall continue with its current support of the defined Community Owned Initiatives, to the value of no less than **(CONFIDENTIAL)** per year for the next **(CONFIDENTIAL)** years (cumulatively no less than **(CONFIDENTIAL)**). The support will include technical support, transitioning from old to new fruit varieties, new developments, and assistance with farming practices and marketing.

### 4. INCREASED HDP ENTRY AND PARTICIPATION

- 4.1 The Merged Entity shall provide more favourable agreement terms to HDP Growers. In particular, HDP Growers will be offered deferred payment of no less than **(CONFIDENTIAL)** of Initial Royalties. Such payment will be deferred to the **(CONFIDENTIAL)**.
- 4.2 The Merger Parties will make available at least **(CONFIDENTIAL)** rand) in financing to encourage development of new hectares for grapes, citrus and stone fruit within **(CONFIDENTIAL)** years of the Implementation Date. **(CONFIDENTIAL)** **(CONFIDENTIAL)** of the committed amount will be made available within **(CONFIDENTIAL)** **(CONFIDENTIAL)** years of the Implementation Date. Preference will be provided to HDP Growers and SMME Growers when allocating spending. HDP Growers and SMME Growers will be offered lower interest rates than other growers.
- 4.3 The conditions set out in this clause (clause 4) will persist for **(CONFIDENTIAL)** from the Implementation Date.

### 5. ENTERPRISE DEVELOPMENT

- 5.1 The Merger Parties will contribute **(CONFIDENTIAL)** in enterprise development contributions within **(CONFIDENTIAL)** years of the Implementation Date, involving operating expenses support or technical support to HDPs that either have the potential to enter the Merger Parties' supply chain or that can participate within the broader value chain in which the Merger Parties operates.
- 5.2 The Seller will contribute **(CONFIDENTIAL)** in enterprise development contributions **(CONFIDENTIAL)** years of the Implementation Date, involving operating expenses support or technical support to HDPs that either have the potential to graduate into the Seller's supply chain or that can participate within the broader value chain in which the Seller operates.

**6. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 6.1 The Acquirer shall notify the Commission in writing of the Implementation Date within 5 (five) Business Days of the Implementation Date.
- 6.2 The Merged Entity shall circulate a copy of the employment conditions to the Merged Entity's employees and employee representatives within 5 (five) Business Days of the Implementation Date.
- 6.3 As proof of compliance with paragraph 6.2 a senior executive of the Merger Parties shall, within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notices that were circulated to the employees and their employee representatives.
- 6.4 Within 30 (thirty) Days of each anniversary of the Approval Date up until the fifth anniversary of the Implementation Date, the Merger Parties shall provide the Commission and the DTIC with an appropriately detailed report regarding the Merger Parties' compliance with the Conditions.
- 6.5 The report referred to in clause 6.4 shall be accompanied by an affidavit attested to by the chief executive officer of the Merger Parties confirming the accuracy of the annual report and full compliance of these Conditions in the year to which the reports relate.
- 6.6 The Commission may request any additional information from the Merger Parties that it may, from time to time, deem necessary to monitor the extent of compliance with these Conditions.

**7. VARIATION**

- 7.1 The Merger 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 Merger 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 regarding non-compliance with the above Conditions, or otherwise determine that there has been an apparent breach



of these Conditions by the Merger Parties, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

9. **GENERAL**

All correspondence in relation to the Conditions must be submitted to the following email 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