

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5668

13 December 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SAFARI BIDCO SA PROPRIETARY LIMITED

AND

SYSPRO PROPRIETARY LIMITED

CASE NUMBER: 2024AUG0020

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

1. On 07 August 2024, the Competition Commission ("Commission") received notice of an intermediate merger whereby Safari Bidco Proprietary Limited ("Safari") seeks to acquire the entire issued share capital of SYSPRO Proprietary Limited ("SYSPRO").
2. The primary acquiring firm is Safari, a private company incorporated in South Africa which is ultimately controlled by Advent International L.P ("Advent").
3. Advent is a fund manager which is a limited partnership entity established under the laws of the State of Delaware in the United States of America. Private equity funds managed and/or advised by Advent and/or its affiliates hold shareholding in various portfolio entities worldwide. Advent is a global private equity investor that focuses on the acquisition of equity in companies and manages investment funds. In South Africa, Advent's investment portfolio comprises of various entities that are active in the aerospace and space markets across the communications, connectivity and advanced electronic systems sectors, identity-related security services, biometric identification products and related software to private companies and governments, SIM cards, bank cards and bank personalisation services, and the manufacturing, installation and maintenance of elevators and escalators.

4. Safari is a newly incorporated entity and thus does not conduct any activities. Safari, all the entities controlled by Safari, and the entities controlling Safari will be referred to as the “Acquiring Group”.
5. The Acquiring Group does not have any shareholding held by historically disadvantaged persons (“HDPs”) or workers.
6. The primary target firm is SYSPRO Proprietary Limited (“SYSPRO”), which is a private entity registered in South Africa. The shareholding in SYSPRO is held by **[CONFIDENTIAL]**. SYSPRO controls SYSPRO Uplift NPC, which is a non-profit entity registered in South Africa and SYSPRO Kenya Limited, which is an entity registered in Kenya. SYSPRO and the entities controlled by SYPRO will be referred to as the “Target Group”.
7. The Target Group supplies enterprise resource planning (“ERP”) software to customers in various sectors, particularly those that are involved in manufacturing and distribution services. The Target Group’s software automates and integrates their customers’ business processes by taking customer orders, scheduling operations, keeping inventory records and financial data amongst other aspects.
8. The Target Group does not have any shareholding held by HDPs.

Competition Analysis

9. The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market since there are no horizontal or vertical overlaps between the activities of the merging parties.

Public Interest considerations

10. The Commission assessed the merger’s effect on each of the public interests, consistent with the framework set out in the *Revised Public Interest Guidelines Relating to Merger Control*. The most relevant aspects of that assessment are set out below.
11. The Commission found that SYSPRO had retrenched some employees in the previous year and these retrenchments were not merger specific. However, to ensure that employees at both SYSPRO and the Acquiring Group are safeguarded from any merger specific retrenchments post-merger, the Commission considered implementing an employment moratorium of 2 years to which the merging parties agreed. The employment condition is included in **Annexure A**.

12. The Commission found that the proposed transaction does not promote a greater spread of ownership by HDPs and/or workers as contemplated in section 12A(3)(e) of the Act and requested the merging parties to consider appropriate remedies. The merging parties agreed to establish an employee share ownership programme (“**ESOP**”) within a period of 24 months which will hold 5% of the shareholding in SYSPRO. The condition is reflected in the conditions hereto in **Annexure A**.
13. The Commission did not find any other public interest concerns arising from the proposed transaction.
14. The Commission therefore conditionally approves the proposed transaction.

ANNEXURE A**SAFARI BIDCO SA PROPRIETARY LIMITED****AND****SYSPRO PROPRIETARY LIMITED****CASE NUMBER: 2024AUG0020**

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below, and related expressions bear corresponding meanings –

- 1.1 **"Act"** means the Competition Act, 89 of 1998, as amended;
- 1.2 **"Acquiring Firm"** means Safari Bidco SA Proprietary Limited;
- 1.3 **"Approval Date"** means the date on which the Merger is approved by the Commission as set out in the Commission's Merger Clearance Certificate (Notice CC 15);
- 1.4 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;
- 1.5 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.6 **"Conditions"** means these conditions set out herein;
- 1.7 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.8 **"ESOP"** means Employee Share Ownership Programme to be established pursuant to the Merger and these Conditions;
- 1.9 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;

- 1.10 **"Merger"** means the transaction in terms of which the Acquiring Firm will acquire 100% of the issued shares in the Target Firm;
- 1.11 **"Merger Parties"** means the Acquiring Firm and the Target Firm;
- 1.12 **"Labour Relations Act"** means the Labour Relations Act 66 of 1995 (as amended);
- 1.13 **"Participating Workers"** means all Workers employed at the Target Firm for an uninterrupted period of at least 12 (twelve) months, with the exclusion of Senior Management of the Target Firm;
- 1.14 **"Senior Management"** means the highest level of managers of the Target Firm, below the board of directors or executive management of the Target Firm or those employees in senior management positions who participate in other long-term, management or other incentive schemes;
- 1.15 **"Target Firm"** means SYSPRO Proprietary Limited;
- 1.16 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.17 **"Workers"** means permanent employees as contemplated in section 213 of Labour Relations Act and, in the context of ownership, refers to ownership by a broad base of Workers.

2. CONDITIONS

EMPLOYMENT

- 2.1 The Merger Parties shall not retrench any employees of the Target Firm as a result of the Merger (**"Merger specific retrenchments"**) for a period of 24 (twenty-four) months from the Implementation Date.
- 2.2 For the avoidance of doubt, 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 unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to dismissals as a result of

misconduct (including breaches of employment terms, conditions and guidelines, unlawful, inappropriate, criminal conduct or similar grounds 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.

ESTABLISHMENT OF AN ESOP

- 2.3 The Merger Parties shall, within a period of 24 (twenty-four) months from the Implementation Date, establish an ESOP for the benefit of Participating Workers, which will hold 5% (five per cent) of the issued share capital of the Target Firm.
- 2.4 The ESOP shall be established within the general parameters of the key design principles set out in **Annexure B** to the Conditions.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Merger Parties shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 The Merger Parties shall, within 10 (ten) Days of the Implementation Date, circulate a non-confidential version of the Conditions to the Workers of the Target Firm. As proof of compliance herewith, the Target Firm shall, within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit deposed to by a senior official of the Target Firm, attesting to such compliance.
- 3.3 Within 30 (thirty) days of each anniversary of the Implementation Date, for a period of 2 (two) years, the Merger Parties shall submit a detailed written report to the Commission confirming compliance with the Conditions. Such report shall be accompanied by an affidavit deposed to by a Director of the Target Firm attesting to the contents of the report.
- 3.4 The Commission may at any time request any other documentation or information it deems necessary to monitor compliance with the Conditions.

4. APPARENT BREACH

5. 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 OF CONDITIONS

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.

7. GENERAL

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.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**ESOP DESIGN PRINCIPLES**

Design Principle	Applicable Criteria
<i>Structure</i>	<ul style="list-style-type: none"> The Merger Parties shall establish an ESOP in the form of a trust, which will hold 5% (five per cent) of the issued share capital of the Target Firm.
<i>Cost to Workers</i>	<ul style="list-style-type: none"> No cost to Workers: Workers will not be required to pay to participate in the ESOP. The Merger Parties must make provision for independent legal and financial experts to act on behalf of Workers in ESOP establishment negotiations. Any reasonable expenses incurred by the Workers and/or their employee representatives shall be paid for by the Merger Parties.
<i>Governance</i>	<ul style="list-style-type: none"> The board of trustees must be balanced, and Workers must be represented on the board of trustees. For example, 1 (one) trustee appointed by the Merger Parties, 1 (one) appointed by the Workers and 1 (one) independent trustee. The independent trustee will be recommended and appointed by the Workers, subject to the candidate being acceptable to the Merger Parties.
<i>Duration</i>	<ul style="list-style-type: none"> The ESOP will be perpetual/evergreen (to cater for the changing workforce so as to benefit all current and future Workers).
<i>Participants</i>	<ul style="list-style-type: none"> All current and future Workers (not limited to historically disadvantaged persons). Eligibility criteria: permanent Workers of the Target Firm, subject to the definition of Participating Workers as defined in the Conditions. A reasonable minimum period of service may be stipulated. Maternity leave will have no adverse impact on qualifying criteria.
<i>Participation Benefits</i>	<ul style="list-style-type: none"> 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. Beneficiaries will cease to participate for certain leaver events, for example, resignations and dismissals. Death, retirement and retrenchment will not affect participation.
<i>Value & Funding</i>	<ul style="list-style-type: none"> The value of the ESOP and the consideration payable for the shares to be held by the ESOP ("ESOP Shares") will be the pro rata market value of the ESOP Shares (as a proportion of the total issued shares in the Target Firm) payable by arm's length purchaser (without any discount), with such valuation to be performed, and the ESOP value to be calculated, as at the

Design Principle	Applicable Criteria
	<p>month preceding the establishment and commencement of the ESOP.</p> <ul style="list-style-type: none">• The Merger Parties must provide vendor finance if required.• If Vendor financing is required, the loan must bear interest at not less than prime +½%.• 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 utilized to service the vendor financing.