

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 6025

20 March 2025

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

DUTOIT AGRI PROPRIETARY LIMITED

AND

THE BUSINESS NOVO FRUIT PACKERS OWNED BY CAPESPAN AGRI PROPRIETARY
LIMITED

CASE NUMBER: 2024AUG0019

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 7 August 2024, the Competition Commission ("Commission") was notified of an intermediate merger wherein Dutoit Group (Pty) Ltd ("Dutoit Group"), through Dutoit Agri (Pty) Ltd ("Dutoit Agri"), intends to acquire the packhouse and cooling facility business known as "Novo Fruit Packers" ("Target Business") from Capespan Agri (Pty) Ltd ("Capespan") as a going concern. On completion of the proposed transaction, Dutoit Agri will have sole control over the Target Business.

Parties to the transaction

2. The primary acquiring firm is Dutoit Agri. Dutoit Agri is wholly owned subsidiary of Dutoit Group. Dutoit Group is a wholly owned subsidiary of Dutoit Beherend (Pty) Ltd ("Dutoit Beherend"). Dutoit Beherend is controlled by the DuToit family.
3. The DuToit family and their subsidiaries will collectively be referred to as the Acquiring Group.
4. The Acquiring Group does not have any of its shareholding held by historically disadvantaged persons ("HDPs").

5. The primary target firm is the Target Business. The Target Business is owned and controlled by Capespan Agri (Pty) Ltd ("Capespan"). The Target Business does not control any other firm.
6. Capespan is controlled by Zeder Pome Investments (Pty) Ltd ("Zeder Pome"). The merging parties confirmed that Capespan has an indirect HDP shareholding of 0.367% through Petropoulos Trust which holds a 0.367% shareholding in Zeder Pome. All the trustees and beneficiaries of the Petropoulos Trust are HDPs.

Activities of the parties

7. The Acquiring Group owns almost 4,000 hectares of farmland in the Western Cape and Eastern Cape provinces. The Acquiring Group farms apples, pears, stone fruit and vegetables. The Acquiring Group also owns and operates fruit and vegetable packing and cold storage facilities in the same provinces.
8. In the Western Cape, the Acquiring Group uses packhouses and cooling facilities internally for its own agricultural production activities and does not offer packhouse and cooling facilities to any external party. The Acquiring Group's current packing capacity in the Western Cape is a total of **(Confidential)** of fruit.
9. In the Eastern Cape, the Acquiring Group's current packing capacity is a total of **(Confidential)** of fruit. The Acquiring Group provides **(Confidential)** capacity of packing, storage and marketing services to Misgund-Oos Kleinboere Trust, a 100% owned HDP farming business. The services provided to the Misgund-Oos Kleinboere Trust gives the Misgund Trust full access to the fresh fruit value chain.
10. The Target Business is a fruit packhouse and cooling facility known as "Novo Fruit Packers" located at Erf 26928, Distillery Street, Dal Josafat, Paarl, 7646. The Target Business provides fruit storage facilities and packing services of fresh fruit, particularly pome fruit (apples and pears).
11. The Target Business has capacity to handle a throughput of approximately 100 000 bins per season. The Target Business also has 23 atmosphere-controlled rooms with a total holding capacity of 26 000 bins.

12. The Target Business is currently utilised in two-ways; (i) internally by Capespan (seller), and (ii) it offers its packhouse and cooling facility packhouse to third parties. The parties submit that 85% of Target Business's capacity was used inhouse by Capespan in the 2024 season. The remaining 15% was offered to third parties.
13. The Target Business does not have or own any farms. The seller, Capespan, owns three fruit farms. The seller is in the process of selling all three farms and has concluded agreements with purchasers for all three farms which have all been signed and are in the process of being implemented.

Competition analysis

14. The Commission considered the activities of the merging parties and found that the proposed transaction presents both a horizontal overlap and a vertical overlap.

Horizontal assessment

15. The Commission found that there is a horizontal overlap between the activities of the merging parties in the market for the supply of fruit packhouse/storage and cooling facilities within a 100km radius of the Target Business. However, the Acquiring Group utilises its packhouse and cooling facilities internally, meaning that its capacity does not form part of any contestable market. The transaction will thus not lead to any change in market structure in the Western Cape.
16. There is no overlap between the activities of the merging parties in the Eastern Cape.

Vertical assessment

17. The Commission was concerned that the transaction may result in farmers of fruit being foreclosed from a packhouse/storage and cooling facility that they have access to pre-merger. In order to address the foreclosure concern, the merging parties agreed to a condition that will ensure that the 15% Capacity of the Target Business that was offered to third parties pre-merger will continue to be offered post-merger for a period of three years post-merger.

Public interest analysis

18. The Commission assessed the effect of the merger 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.

Effect of the merger on the greater spread of ownership, in particular to increase the levels of ownership by Historically Disadvantaged Persons and Workers in firms in the market

19. The merging parties submit that the Acquiring Group is a family-owned business and is not owned directly or indirectly by any HDPs. The owner of the Target Business does not have any direct HDP ownership.
20. To address greater spread of ownership issues arising, the Acquiring Group is committed to the following:
- 20.1. The Acquiring group shall advance a loan to the Crispy Group (51% owned by HDPs) up to a maximum of R5 million, which funds can be used for either of the following initiatives:
- 20.1.1. the development of 6 hectares of apple and pear orchards with the latest new cultivars.
- 20.1.2. the purchasing of a 17-hectare farm (currently for sale adjacent to the Crispy Group's existing farming operations), comprising of 12 hectares of pear orchards.
- 20.2. The Acquiring Group will provide loan terms to the Crispy Group that are more favourable than those which Crispy Group would ordinarily be able to obtain from a regular commercial bank.

Conclusion

21. The Commission approves the proposed transaction with conditions attached as **Annexure A**.

ANNEXURE A

**DUTOIT AGRI PROPRIETARY LIMITED
AND
THE BUSINESS OF NOVO FRUIT PACKERS
OWNED BY CAPESPAN AGRI PROPRIETARY LIMITED**

CASE NO.: 2024AUG0019

CONDITIONS

1. DEFINITIONS

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

- 1.1 **"Acquiring Group"** means Dutoit Agri 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 referred to on the Competition Commission's merger clearance certificate;
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.6 **"Conditions"** mean, collectively, the conditions referred to in this document;
- 1.7 **"Crispy Group"** means Crispy Group Proprietary Limited, a firm which is 51% owned by HDPs;
- 1.8 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

- 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 Acquiring Group's acquisition of the business of Novo Fruit Packers as a going concern;
- 1.13 **"Merging Parties"** means the Acquiring Group and the business of Novo Fruit Packers;
- 1.14 **"Novo Fruit Packers"** means the business of Novo Fruit Packers owned by Capespan Agri Proprietary Limited;
- 1.15 **"Seller"** means Capespan Agri Proprietary Limited;
- 1.16 **"South Africa"** means the Republic of South Africa;
- 1.17 **"Target Firm"** means the business of Novo Fruit Packers;

2. **CONDITIONS**

2.1 **Access Condition**

- 2.1.1 For a period of 3 years from the Implementation Date, the Acquiring Group shall reserve 15% of the Target Firm's existing dayshift packing and cooling facilities ("**Packhouse Facilities**") for utilisation by 3rd parties on reasonable, market-related terms. For the avoidance of doubt, the reservation of 15% of Packhouse Facilities will not include such capacity which has already been contractually committed to by the Seller of the Target Firm.
- 2.1.2 Should any 3rd parties not utilise the full 15% of reserved Packhouse Facilities within a particular season, the Acquiring Group shall be free to utilise the unused reserved Packhouse Facilities capacity as it chooses.

2.2 Emerging Farmers

- 2.2.1 The Acquiring Group shall, within 12 months of the Implementation Date, advance a loan up to a maximum of R5 million, to Crispy Group in order to assist with -
- 2.2.1.1 the development of apple and pear orchards with the latest cultivars; and/or
- 2.2.1.2 acquiring land which can be utilised for apple or pear farming.
- 2.2.2 The Acquiring Group will provide loan terms to Crispy Group that are more favourable than would ordinarily be offered by a regular commercial bank to Crispy Group.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Acquiring Group shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 For a period of 3 (three) years from the Implementation Date, the Acquiring Group shall submit an annual report accompanied by an affidavit deposed to by a senior executive from the Acquiring Group to the Commission, on the anniversary of the Implementation Date, detailing its compliance with clauses 2.1 and 2.2 of the Conditions.
- 3.3 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

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, the breach shall be dealt with in terms of Rule 39 of the Commission's Rules.

5. VARIATION

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 concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za

6.2 Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3200.