

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 6027

20 March 2025

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

IMPOFU CLUSTER INVESTMENTS SPV (RF) (PTY) LTD

AND

RED CAP IMPOFU EAST (PTY) LTD; RED CAP IMPOFU NORTH (PTY) LTD; RED CAP  
IMPOFU WEST (PTY) LTD

CASE NUMBER: 2024AUG0001

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 01 August 2023, the Competition Commission ("Commission") received a notification of an intermediate merger wherein Impofu Cluster Investments SPV (RF) (Pty) Ltd ("Impofu Cluster") intends to acquire a 100% interest in Red Cap Impofu East (Pty) Ltd ("Impofu East"); Red Cap Impofu North (Pty) Ltd ("Impofu North"); and Red Cap Impofu West (Pty) Ltd ("Impofu West") ("collectively called the Target Firms"). Upon implementation of the proposed transaction, Impofu Cluster will exercise sole control over the Target Firms.
2. The primary acquiring firm is Impofu Cluster, a South African firm. Impofu Cluster is a special purpose vehicle wholly owned by Enel Green Power RSA (Pty) Ltd ("EGP RSA"). EGP RSA is jointly controlled by Enel Green Power SPA ("EGP") (the seller) as to 50%, and Al Rayyan Holdings LLC ("Al Rayyan") as to 50%. EGP and Al Rayyan operate through an entity named EGP Matimba NewCo 1 S.r.l. (the "Matimba JV").
3. EGP is a wholly owned subsidiary of Enel SPA ("Enel"). Enel is a former Italian state-owned company which is listed on the Borsa Italiana, the Italian stock exchange. Enel is not controlled by any one shareholder. Al Rayyan is wholly owned by and operates as an investment division of the Qatar Investment Authority ("QIA").
4. QIA is involved in numerous projects in the renewable energy sector. In South Africa, QIA manages a group of wind farms established in numerous regions in South Africa. These are

the ACED Renewables Hidden Valley (RF) Proprietary Limited (the “Karusa Project Company”); the Garob Wind Farm (RF) Proprietary Limited (the “Garob Project Company”); the Nxuba Wind Farm (RF) Proprietary Limited (the “Nxuba Project Company”); the Oyster Bay Wind Farm (RF) Proprietary Limited (the “Oyster Bay Project Company”); and the Soetwater Wind Farm (RF) Proprietary Limited (the “Soetwater Project Company”) (collectively, the “R4 Project Companies”). The R4 Project Companies are jointly owned and controlled by EGP and QIA.

5. The primary target firms are Impofu East, Impofu North and Impofu West which are South African firms, collectively referred to as the Target Firms. The Target Firms are wholly controlled by EGP.
6. EGP is a global energy company which is active in the development and operation of renewables across the world, particularly in Europe, America, Asia, Arica and Oceania.

#### **Competition assessment**

7. The Commission considered the activities of the merging parties and found that there is a notional horizontal overlap between the activities of the merging parties. As noted above, EGP and QIA jointly control the R4 Project Companies. Post-merger, EGP and QIA will have joint control in the Target Firms. There is therefore a notional overlap between QIA’s ownership of the R4 Project Companies and the Target Firms. The Commission however finds that the proposed transaction is not likely to result in a substantial lessening of competition for two main reasons.

7.1. Firstly, the Target Firms are not yet operational, which means there was no pre-merger competitive constraint between the R4 Project Companies and the Target Firms.

7.2. Secondly, once the Target Firms become operational, they will not compete with the R4 Project Companies. The Target Firms have completed Purchase Power Agreements (“PPAs”) with (**CONFIDENTIAL**). These two companies will acquire all of the electricity to be generated by these Target Firms for (**CONFIDENTIAL**) from the time they become operational. The R4 Project Companies form part of South Africa’s Renewable Energy Independent Power Producer Procurement Programme (“REIPPPP”) and have already signed PPAs with *Eskom*.

#### **Public interest consideration**

8. The merging parties submit that the Acquiring Firm plans to implement an HDP Transaction as well as a Local Community Trust in each of the Target Firms. Following engagements

between the Commission and the merging parties, the merging parties submitted that they are willing to agree to a condition which will see them dispose of at least (**CONFIDENTIAL**) percentage of the shareholding in Impofu Cluster to an HDP shareholder. Further, the merging parties will dispose of at least (**CONFIDENTIAL**) percentage in each Target Firm to a Local Community Trust. The Commission accepted these conditions.

9. The proposed transaction does not raise any public interest concerns.

### **Conclusion**

10. For the above reasons, the Commission approves the proposed transaction subject to the conditions attached as **Annexure A**.

---

**CONDITIONS**

---

**IMPOFU CLUSTER INVESTMENTS SPV (RF) (PTY) LTD****AND****RED CAP IMPOFU EAST (PTY) LTD****RED CAP IMPOFU (PTY) LTD****RED CAP IMPOFU WEST (PTY) LTD****CASE NUMBER: 2024AUG0001**

---

**1. DEFINITIONS**

The following expressions shall bear the meaning assigned to them hereunder, and cognate expressions shall have corresponding meanings, namely:

- 1.1. **“Act”** means the Competition Act 89 of 1998, as amended;
- 1.2. **“Approval Date”** means the date the Commission issues a Clearance;
- 1.3. **“Acquiring Firm”** means Impofu Cluster, as defined hereunder;
- 1.4. **“Acquiring Group”** means the Acquiring Firm and all firms it controls, all firms controlling the Acquiring Firm and all firms controlled by those firms;
- 1.5. **“Commission”** means the Competition Commission of South Africa;
- 1.6. **“Conditions”** means these conditions;
- 1.7. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.8. **“Day”** means any business day, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.9. **“HDPs”** means historically disadvantaged persons, as contemplated in section 3(2) of the Act;
- 1.10. **“HDP shareholder(s)”** means an HDP owned and controlled firm, being either Perpetua or another HDP owned and controlled firm to be identified by the Acquiring Firm to acquire a percentage of not less than 30% in Impofu Cluster and resultantly a direct/indirect interest in the Target Firms;

- 1.11. **“HDP Transaction”** means the transaction in terms of which an HDP shareholder(s) will acquire a percentage of not less than 30% in Impofu Cluster and resultantly a direct/indirect interest in the Target Firms;
- 1.12. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.13. **“Impofu Cluster”** means Impofu Cluster Investments SPV (RF) (Pty) Ltd, a private company incorporated in accordance with the laws of South Africa and having its registered address at 5<sup>th</sup> Floor Block B, 102 Rivonia Road, Sandton, Gauteng, 2196, under registration number 2023/772646/07;
- 1.14. **“Impofu East”** means Red Cap Impofu East (Pty) Ltd, a private company incorporated in South Africa, having its registered office at Unit B2 Mainstream Centre, Main Road, Hout Bay, 7806, Western Cape, South Africa, under registration number 2017/118197/07;
- 1.15. **“Impofu North”** means Red Cap Impofu (Pty) Ltd, a private company incorporated in South Africa, having its registered office at Unit B2 Mainstream Centre, Main Road, Hout Bay, 7806, Western Cape, South Africa, under registration number 2016/366818/07;
- 1.16. **“Impofu West”** means Red Cap Impofu West (Pty) Ltd, a private company incorporated in South Africa, having its registered office at Unit B2 Mainstream Centre, Main Road, Hout Bay, 7806, Western Cape, South Africa, under registration number 2017/169918/07;
- 1.17. **“Local Community Trust”** means the community trust to be established for the benefit of the community surrounding the Target Firms, which shall hold a direct or indirect equity interest of 3% in each of the Target Firms;
- 1.18. **“Merger”** means Impofu Cluster’s acquisition of Impofu East, Impofu North and Impofu West, which acquisition was notified with the Commission on 29 July 2023;
- 1.19. **“Merging Parties”** means Impofu Cluster, Impofu East, Impofu North and Impofu West;
- 1.20. **“Perpetua”** means Perpetua Investment Managers (Pty) Ltd, a private company incorporated in South Africa, having its registered office at 5<sup>th</sup> Floor, the Citadel, 15 Cavendish Street, Claremont, 7708, Western Cape, South Africa, under registration number;
- 1.21. **“South Africa”** means the Republic of South Africa;

1.22. **“Target Firms”** means Impofu East, Impofu West and Impofu North, as defined above;

1.23. **“Tribunal”** means the Competition Tribunal of South Africa; and

1.24. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.

## 2. **CONDITIONS TO THE APPROVAL OF THE MERGER**

2.1. The Acquiring Group shall, within 24 (twenty-four) months of the Implementation Date, implement the HDP Transaction and establish the Local Community Trust. In this regard, the Acquiring Group will, at its sole discretion, determine the identity of the HDP shareholder(s) that will participate in the HDP Transaction as well as the proportion of shares that will be allotted to the HDP shareholder(s). The Acquiring Group will also determine the identity of Local Community Trust at its sole discretion.

2.2. For the avoidance of doubt, if the Acquiring Group identifies more than one HDP shareholder, the HDP Transaction will be structured such that the HDP shareholder(s) hold direct/indirect interests in the Acquiring Firm and Target Firms, in whatever proportion is agreed between the Acquiring Group and HDP shareholders, subject to the aggregate shareholding held by the HDP shareholders being a minimum of 30% of the shareholding in Impofu Cluster.

2.3. Prior to the implementation of the HDP Transaction and the Local Community Trust, the Acquiring Group will provide the Commission with details of the HDP Transaction in writing. These details shall include (i) the identity of the HDP shareholder(s); (ii) evidence that the HDP shareholder(s) are HDPs; and (iii) the proportion of shareholding in the Acquiring Firm and Target Firms that the HDP shareholder(s) will acquire. The HDP Transaction and the Local Community Trust shall not be implemented without the Commission's written approval.

## 3. **MONITORING**

3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of its occurrence.

3.2. The Acquiring Firm shall, within 10 (ten) Days of the date of implementation of the HDP Transaction, submit an affidavit from a director of the Acquiring Firm, confirming compliance with the Conditions.

3.3. The Commission may request the Merging Parties for any other documentation it deems necessary to monitor compliance with the Conditions.

**4. APPARENT BREACH**

- 4.1. 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 read together with Rule 39 of the Commission Rules.

**5. VARIATION**

- 5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended.
- 5.2. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

**6. GENERAL**

- 6.1. All correspondences in relation to the Conditions must be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).
7. 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.