



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 652

17 October 2019
Oktober

No. 42776

N.B. The Government Printing Works will not be held responsible for the quality of "Hard Copies" or "Electronic Files" submitted for publication purposes

ISSN 1682-5843



9 771682 584003

42776



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

IMPORTANT NOTICE:

THE GOVERNMENT PRINTING WORKS WILL NOT BE HELD RESPONSIBLE FOR ANY ERRORS THAT MIGHT OCCUR DUE TO THE SUBMISSION OF INCOMPLETE / INCORRECT / ILLEGIBLE COPY.

No FUTURE QUERIES WILL BE HANDLED IN CONNECTION WITH THE ABOVE.

Contents

<i>No.</i>		<i>Gazette No.</i>	<i>Page No.</i>
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS			
Economic Development, Department of/ Ekonomiese Ontwikkeling, Departement van			
1350	Competition Commission: Summary for Publication (01 October 2018- 31 March 2019)	42776	4
1351	Competition Commission: Notification to approve with conditions the transaction involving: Skyblu Technologies Proprietary Limited and Altech UEC South Africa Proprietary Limited	42776	8
1352	Competition Commission: Notification to approve with conditions the transaction involving: Country Bird Holdings (Pty) Ltd and Opti Agri (Pty) Ltd	42776	11
1353	Competition Commission: Notification to approve with conditions the transaction involving: Neopak Proprietary Limited and APL Cartons (Pty) Ltd	42776	21
1354	Competition Commission: Notification to approve with conditions the transaction involving: Subtropico Limited and KKK Landbou Limited	42776	25
1355	Competition Commission: Notification to prohibit the transaction involving: Rebel Packaging (Pty) Ltd and Seyfert Corrugated Western Cape (Pty) Ltd	42776	32
1356	Competition Commission: Notification to approve with conditions the transaction involving: MMC Treasury Holdings (UK) Limited and Jardine Lloyd Thompson Group PLC	42776	36
1357	Competition Commission: Notification to approve with conditions the transaction involving: Ekapa Mining Proprietary Limited and Crown Resources Proprietary Limited	42776	45

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1350

17 OCTOBER 2019

COMPETITION COMMISSION**NOTIFICATION OF CLOSED CONDITIONAL MERGER APPROVALS****1 OCTOBER 2018 – 31 MARCH 2019****1. CASE NO. 2015JUL0421 MPACT LIMITED AND REMADE HOLDINGS (PTY) LTD AND THE PROPERTY COMPANIES**

The Commission imposed a condition that required the merging parties to comply with the terms of the supply agreements it concluded with certain suppliers. In addition, the conditions required the merging parties to not retrench any employees for a period of 2 years from the implementation date. The compliance affidavits submitted by the merging parties indicated their compliance with the conditions. The Commission was thus satisfied with the merging parties' compliance and therefore terminated the conditions.

2. CASE NO. 2018MAR0049 SERELI HOLDINGS PROPRIETARY LIMITED, FREESTATE PETROLEUM DISTRIBUTORS PROPRIETARY LIMITED AND METABIS PROPERTIES PROPRIETARY LIMITED

The conditions required the acquiring group to divest of petroleum retail licences (Divestment Business) within 12 months of the approval date but prior to the implementation of the merger. The compliance reports submitted by the merging parties confirmed that the acquiring group disposed of the Divestment Business to an independent third party within 12 months of the approval date. The merging parties further submitted the signed disposal agreement to the Commission. The Commission was thus satisfied with the merging parties' compliance and therefore terminated the conditions.

3. CASE NO. 2017MAY0009 PEUGEOT S.A AND GENERAL MOTORS LLC IN RESPECT OF THE OPEL BUSINESS

The Commission had imposed a condition that required the merging parties to notify the acquisition by Isuzu Truck South Africa of the Isuzu light commercial vehicle business conducted by GMSA and the acquisition by Peugeot SA of indirect control of the General Motors business. In addition, the conditions prohibited any retrenchments related to these transactions until the transactions were notified and approved by the Commission. The merging parties notified the Isuzu transaction on 22 August 2017 and the Peugeot SA

transaction was notified on 30 August 2017. The Commission approved these transactions on 22 November 2018. The merging parties further complied with the condition not to effect any retrenchments. The Commission was thus satisfied with the merging parties' compliance with the conditions and therefore terminated the conditions.

4. CASE NO. 2017JUL0016 SCHMITZ CARGOBULL AG AND GRW HOLDINGS (PTY) LTD AND GRW SALES (PTY) LTD

The Commission imposed a condition that required the merging parties to allocate at least 30% of their post-merger procurement spend to local suppliers for a period of twelve (12) months on reasonable commercial terms. The compliance affidavit submitted by the merging parties to the Commission confirmed the merging parties' compliance with the condition. The Commission therefore terminated the conditions.

5. CASE NO. 2015DEC0687 SUPER GROUP TRADING (PTY) LTD AND CORSAIR LOGISTICS (PTY) LTD

The Commission imposed a condition requiring Corsair to continue using the services of certain small and medium sized enterprises (SMMEs) in its freight forwarding and clearing services. On 27 September 2018, the merging parties' legal representatives informed the Commission that the merger had not been implemented and submitted Form CC 6, *Notice of Abandoned Merger* to formally abandon the merger. As such, the Commission found that the conditions are not applicable or legally enforceable as the merger was never implemented. Consequently, the conditions were terminated.

6. CASE NO. 2016FEB0052 AFGRI OPERATIONS LIMITED AND PRIDE MILLING COMPANY (PTY) LTD

The conditions required the merging parties to notify the Commission of the acquisition of sole control over Pride Milling by 1 April 2018. On 14 May 2018, the merging parties' legal representatives informed the Commission that AFGRI did not implement the merger in its entirety and as such submitted the Form CC 6 *Notice of Abandoned Merger* to formally abandon the merger. As such, the Commission found that the conditions are not applicable or legally enforceable as the merger was never implemented and was formally abandoned. Consequently, the conditions have been terminated.

7. CASE NO. 2015MAR0109 HEBEI IRON & STEEL GROUP CO. LTD AND DURFECO INTERNATIONAL TRADING HOLDING S.A.

The Commission imposed a condition requiring that Hebei not retrench any employees as a result of the merger and a condition to continued investment in its local steel plant. The various compliance reports submitted by the merging parties confirmed Hebei's compliance with the

conditions. The Commission was thus satisfied with the merging parties' compliance and therefore terminated the conditions.

8. CASE NO. 2018JUN0035 ROBOR (PTY) LTD AND MACSTEEL SERVICE CENTRES SA (PTY) LTD AND THE TUBE AND PIPE BUSINESSES OF MACSTEEL SERVICE CENTRES SA (PTY) LTD AND ROBOR (PTY) LTD

The Tribunal imposed a condition requiring the merging parties to restrict the number of retrenchments arising from the merger. In addition, the conditions required the merging parties to offer retrenched employees any positions that become available within the merged entity. The merging parties' legal representatives informed the Commission that the merging parties took a decision not to proceed with the implementation of the proposed transaction and filed Form CC 6 *Notice of Abandoned Merger* to formally abandon the merger. Consequently, the Commission terminated the conditions.

9. CASE NO. 2010NOV5445 WAL-MART INC. AND MASSMART HOLDINGS LIMITED

The conditions imposed by the Competition Appeal Court required the merged entity to commission a study relating to the empowerment of local South African suppliers and in particular small and medium sized suppliers. The study was to be completed by June 2012. In addition, the conditions required Massmart to re-employ employees that were retrenched between 2009-2010 as a result of the merger. The merged entity finalised the study on 9 October 2012 and was required to establish a Supplier Development Fund (SDF) to, broadly, allow for micro, small and medium sized producers/suppliers to have access to the merged entity's supply chain. The merged entity was required to provide the SDF with maximum amount of R200 million over a five-year duration. The various SDF compliance reports submitted by Massmart indicate that Massmart did establish a SDF with an investment in excess of the required R200 million, which has benefited approximately 33 SDP participants. In addition, the compliance reports submitted by the merged entity confirmed that Massmart re-employed all the employees who were retrenched between 2009-2010. As such, the Commission is of the view that Massmart has substantially complied with the conditions, based on the compliance reports submitted. Consequently, the Commission has terminated the conditions.

10. CASE NO. 2011FEB5670 MEDIA 24 LTD, PAARL COLDSET (PTY) LTD AND NATAL WITNESS PRINTING AND PUBLISHING COMPANY (PTY) LTD

The conditions required the KwaZulu-Natal and Northern Cape community publishing businesses within the Media24 group or its representatives to, *inter alia*, have no influence over operational and/or strategic decisions at Africa Web and to notify the Commission of all future small mergers between Media24, or any other entity controlled by it, and a target firm

which is a Small Independent Publisher. This condition was to apply for as long as Media 24 and Paarl Coldset (the Acquiring Firms) controlled Africa Web. On 13 June 2013, the Acquiring Firms concluded a Sale of Shares Agreement in terms of which they undertook to dispose of their entire shareholding in Africa Web to Mr. Haresh Ouderajh. On 27 August 2013, the Commission approved the merger and on or about 01 September 2013, the merger was implemented by the parties. Consequently, the conditions have lapsed and are of no legal force or effect since Africa Web is no longer controlled by the Acquiring Firms.

11. CASE NO. 2017SEP0021 CTP LIMITED AND PRIVATE PROPERTY SOUTH AFRICA (PTY) LTD

The conditions required ooba (Pty) Ltd and Betterlife (Pty) Ltd (as competitors) to not nominate the same individuals who serve on their respective board of directors to the board of Private Property. The merging parties brought an application to the Competition Tribunal (Tribunal) to review and set aside the conditions imposed by the Commission as part of its approval of the merger. In the alternative, the merging parties requested the Tribunal to amend the conditions to allow board members of ooba and to be board members of Private Property (Pty) Ltd. The Tribunal considered the application brought by the merging parties and set aside the conditions imposed by the Commission. Consequently, the conditions become of no legal force or effect as the Tribunal set them aside. As such, the Commission has removed the conditions from its monitoring list.

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1351

17 OCTOBER 2019

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SKYBLU TECHNOLOGIES PROPRIETARY LIMITED

AND

ALTECH UEC SOUTH AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2018OCT0049

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 above-mentioned firms subject to conditions as set out below:

1. On 23 October 2018, the Competition Commission (the Commission) received notice of an intermediate merger whereby Skyblu Technologies (Pty) Ltd (Skyblu) intends to acquire the set top box (STB) business of Altech UEC South Africa (Pty) Ltd (Altech). Upon the implementation of the proposed transaction, Skyblu will have sole control of Altech.

Parties and their activities

2. The primary acquiring firm is Skyblu, a firm incorporated according to the company laws of the Republic of South Africa (South Africa). Skyblu is controlled by Smart Choice Store Company Limited (Smart Choice), a firm incorporated in Hong Kong, China. Smart Choice is in turn controlled by Shenzhen Skyworth Digital Technology Company Limited (Skyworth). Skyworth is listed on the Shenzhen Stock Exchange and is therefore not controlled by any firm.
-

3. Skyblu is active in the manufacture, sale and import of STBs and over-the-top (OTT) boxes in South Africa. Skyblu's parent company is a global supplier of digital TV products and services and has manufacturing facilities in China and in key regional markets all over the world.
4. The primary target firm is the STB business of Altech, a firm incorporated according to the company laws of South Africa. Altech is controlled by Altron TMT SA Group (Pty) Ltd (Altron TMT) (75%).

Market definition and competition analysis

5. The proposed merger raises a horizontal overlap between the activities of the merging parties as they are both active in the market for the manufacture and supply of Zapper STBs. The Commission found that Zapper STBs constitute a distinct product market as they are unlikely to be substitutable with any other type of audio-visual product based on price and functionality. Furthermore, the Commission found that the market for STBs is national. The Commission therefore assessed the national market for the manufacture and supply of Zapper STBs.
6. The Commission found that although the post-merger market share is high, the market share accretion is small. The Commission also found that the merging parties operate in a bidding market with infrequent tenders and sophisticated buyers. The Commission therefore concluded that the proposed merger is unlikely to change the structure of the market.
7. The Commission found that the merged entity will face competition from other suppliers and manufacturers such as Leratadima Tellumat Manufacturing (Pty) Ltd, CZ Electronics Manufacturing (Pty) Ltd, Yekani (Pty) Ltd and others.
8. Despite the above findings, the Commission also found various clauses in the supply agreement between the merging parties and a customer which raises competition concerns. The Commission therefore required the acquiring firm to remove the offending clauses from the abovementioned agreement. This requirement has been made a condition for the merger approval.

Public Interest

9. The merging parties submit that the proposed merger will not result in any jobs losses. The merging parties further submit that the proposed merger will save 91 jobs within Altech as Altech was likely to shut down, absent the merger.
10. Considering the above, the Commission is of the view that the proposed merger does not raise any employment concerns. Furthermore, no other public interest issues arise from the proposed merger.
11. Therefore, the Commission approves the proposed transaction with the conditions to address the competition concerns identified above.

All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3755, or Facsimile: (012) 394 4755.

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1352

17 OCTOBER 2019

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

COUNTRY BIRD HOLDINGS (PTY) LTD

AND

OPTI AGRI (PTY) LTD

CASE NUMBER: 2018JUL0020

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 above-mentioned firms subject to conditions set out below:

1. On 09 July 2018, the Competition Commission (the Commission) received notice of an intermediate merger wherein Country Bird Holdings (Pty) Ltd (CBH) intends to acquire the entire issued share capital of Opti Agri (Pty) Ltd (Opti Agri) from its current shareholder, NWK Holdings Limited (NWK).
2. The primary acquiring firm is CBH, a private company incorporated in South Africa. CBH is a fully integrated chicken producer and controls a variety of different entities with activities at various levels of the chicken supply chain including breeding, processing and distribution of poultry in South Africa. The activities of CBH in South Africa include the production of animal feed and day-old chicks (DOCs). CBH is controlled by Synapp International Limited (Synapp), a company incorporated in the British Virgin Islands.
3. The primary target firm is Opti Agri, a wholly owned subsidiary of NWK. Opti Agri comprises NWK's poultry and animal feed businesses, which were previously held separately by NWK

through Opti Chicks and Opti Feeds respectively before being combined under Opti Agri. Opti Chicks produces day-old chicks, which it sells on the open market.

4. The Commission considered the activities of the merging parties and found that there are overlaps broadly in relation to the production and supply of animal feed as the merging parties manufacture and supply feed for ruminant and monogastric domestic animals. The Commission found that the merging parties' activities overlap with regard to the manufacture and supply of specific types of feeds for broiler chickens, layer chickens as well as sheep and cattle feed. Furthermore, the proposed transaction also has a vertical aspect in relation to the supply of DOCs post-merger.
 5. In relation to animal feed, the Commission assessed the impact of the proposed transaction on the broad market for the manufacture and supply of animal feed for all domestic animals including poultry, cattle and sheep as well as dairy feed and on the narrow market for the production and supply of poultry feed (this includes broiler feed, breeder feed and layer feed), as a worst case scenario.
 6. The Commission's investigation found that although animal feed can be distributed on a national basis, generally animal feed, including poultry feed, is distributed to parties within an average of 250km from the point of manufacture. Consequently, although leaving the precise geographic market definition open, the Commission assessed the impact of the merger on each of the aforementioned markets on a regional basis, namely the Northern Region, which comprises the Gauteng, North West, Mpumalanga and Limpopo provinces.
 7. In line with the market definition, the Commission found that the merging parties' combined market shares in the production and supply of animal feed in the Northern Region would be less than 15% based on the quantity of animal feed produced in the 2017/2018 financial year. In relation to the market for the production and supply of poultry feed, the Commission found that the merging parties will have a post-merger market share of less than 20%, with a minimal accretion based on the quantity of feed sold in the 2017/2018 financial year. The Commission found that post-merger, the merged entity would continue to face competition from other AFMA and non-AFMA producers of broiler feed in the Northern Region such as
-

AFGRI, Azlu Enterprises, Barnlab, Brencco Feeds, De Heus, Meadow Feeds, Opti Feeds and Nutri Feeds. With regard to wild animal feed, the Commission's investigation found that the merged entity will continue to be constrained by a significant number of AFMA members based in the Northern Region, namely, AFGRI, Alzu Enterprises, Nova Feeds, Brencco Feeds, De Heus, Meadow Feeds, Nova Feeds and Quantum Foods. Non-AFMA members that will continue to constrain the merging parties in the Northern Region Wes Voere, Sukses Voere, Safari Feeds, Boskorse, Rooi Ivoor, Wild Winkel and Ebaro.

8. The proposed transaction only has limited vertical effects in that both CBH and Opti Agri are producers of DOCs but that CBH consumes all its DOCs internally whereas Opti Agri supplies its DOCs in the open market. Therefore, the Commission only considered whether the proposed transaction would raise possible input foreclosure concerns for the current customers of Opti Agri who might lose supply of DOCs (from Opti Agri) in the event that that the merged entity prioritises internal supply.
9. In this regard, the Commission notes that there are no upstream suppliers that currently supply DOCs to either of the merging parties. The Commission therefore did not consider any customer foreclosure effects as it was unnecessary to do so in the circumstances. For input foreclosure assessment, the Commission did not consider CBH supply of DOC because all its DOC supply are captive sales which are not available to third parties in the downstream market. The Commission found that in the upstream market, Opti Agri accounts for less than 15% of the market. There are other major players such as National Chix, Eagle Pride's Hatchery, Keystone Hatchery and Lufafa Hatchery who account for the remaining 90% who will continue to constrain the merged entity. Given the lack of ability to foreclose, the Commission has not considered any incentives for foreclosure.
10. Based on the above, the Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in the relevant markets.
11. During its investigation of the proposed transaction, the Commission received a concern from one customer of Opti Agri in relation to Opti Agri's supply of DOCs pursuant to the implementation of the proposed transaction. The customer was worried about the quality of

DOCs it will receive from Opti Agri in the event that Opti Agri will switch from its current breed of DOCs to that of the acquiring firm. The third party subsequently withdrew its complaint.

12. The Commission has not found any compelling evidence to suggest that switching from the Cobb breed (which Opti Agri used prior to the merger) to the Arbor Acres breed, which CBH uses, will in any way reduce the quality of Opti Agri's DOCs. In this regard, the Commission notes that the Arbor Acres is currently used by reputable companies such as Pick 'n Pay, KFC, Nandos and Shoprite Checkers, which are the end-customers of CBH. The Commission also notes that besides a concern from the aforesaid third party, none of the customers of the merging parties have raised any concerns with the proposed transaction.
13. The Commission is of the view that Opti Chicks' switch to the acquiring firm's breed is unlikely to result in any competition concerns as CBH has reiterated that it has no intention to stop supplying DOCs into the open market. The only difference is that from May 2019, the breed will change to Arbor Acres instead of Cobb. Moreover, for those customers who do not wish to switch to the Arbor Acres breed, the merging parties have submitted that the Cobb breed is therefore likely to be available and supplied by Opti Chicks until around April 2019. In this regard, the Commission found that if any of Opti Agri's customers wish to end the relationship with Opti Agri because of the change of breed, there are various other suppliers who will continue to supply the Cobb breed. These suppliers include Eagle's Pride, Lufafa Hatchery, Quantum Foods and Keystone Hatchery amongst others.
14. In light of the above, the Commission is of the view that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in any relevant market.

Public interest

15. Regarding public interest, the Commission received a concern from the National Union of Food Beverage Wine Spirits and Allied Workers (NUFBWSAW) in relation to the target firm's employees' collective bargaining rights following the implementation of the proposed transaction. NUFBSAW was concerned that in the absence of organisational rights at the Target Firm post-merger, the Affected Employees would lose the ability to bargain

collectively through NUFBWSAW, on issues pertaining to their employment terms and conditions, in particular, pension fund benefits.

16. In order to mitigate the concerns raised by NUFBWSAW, the merging parties' made a number of commitments, including that the merger will not result in any job losses or material changes to the affected employees' current terms and conditions of employment; that NUFBWSAW will be granted organisational rights at the Target Firm post-merger in terms of the guidelines and thresholds of the grain industry bargaining council applicable prior to the Implementation date; that the Affected Employees' membership of the Vuka Risk Solutions funeral scheme will continue on the same terms and conditions as they enjoy pre-merger, and further that the affected employees will transfer to the Alexander Forbes Retirement Fund.
17. In view of the foregoing, and in order to address the employment concerns raised in the Merger, the Commission approached the merging parties to commit to some of their employment related commitments being made into the conditions. The Merging Parties have accordingly agreed to the conditions.
18. The proposed merger is unlikely to raise any other public interest concerns.
19. The Commission therefore approves the proposed transaction subject to the conditions attached hereto as **Annexure A**.

**ANNEXURE A
COUNTRY BIRD HOLDINGS (PTY) LTD**

AND

OPTI AGRI (PTY) LTD

CASE NUMBER: 2018JUL0020

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. **"Affected Employees"** means all employees who are employed by Opti Agri post-merger and who are members of NUFBWSAW;

1.1.2. **"Alexander Forbes Retirement Fund"** means the umbrella pension fund to which the Acquiring Firm's Employees belong and to which, post-merger, the Affected Employees will belong;

1.1.3. **"Approval Date"** means the date referred to on the Commission's Clearance Certificate;

1.1.4. **"Acquiring Firm"** means Country Bird Holdings (Pty) Ltd ("CBH");

1.1.5. **"Commission"** means the Competition Commission of South Africa;

1.1.6. **"Conditions"** means the conditions set out herein, agreed to by the Merging Parties and the Commission;

- 1.1.7. **"Days"** means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.1.8. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.9. **"Merger"** means the proposed acquisition by of Opti Agri by CBH;
- 1.1.10. **"Merging Parties"** means CBH and Opti Agri, jointly;
- 1.1.11. **"Merged Entity"** means the entity that will exist after the implementation of the Merger;
- 1.1.12. **"NUFBWSAW"** means National Union of Food Beverage Wine Spirits and Allied Workers being a trade union that currently represents a substantial number of the employees of the Target Firm;
- 1.1.13. **"Pension Funds Act"** means the Pension Funds Act No. 24 of 1956;
- 1.1.14. **"Recognition Agreement"** means the agreement to be concluded between the Merging Parties and NUFBWSAW granting, *inter alia*, NUFBWSAW organisational rights at the Target Firm;
- 1.1.15. **"Target Firm"** or "Opti Agri" means Opti Agri (Pty) Ltd; and
- 1.1.16. **"Tribunal"** means the Competition Tribunal of South Africa.

2. RECORDAL

- 2.1. On 09 July 2018, the Commission received notice of the Merger.

2.2. The Merging Parties notified the Commission that there are no public interest concerns arising as a result of the Merger. However, the Commission received a concern from NUFBWSAW in relation to collective bargaining at the Target Firm post-merger. In particular, NUFBWSAW was concerned that post-merger, the Acquiring Firm may not allow the Affected Employees to maintain their current affiliation to NUFBWSAW due to NUFBWSAW being denied organisational rights at the Target Firm. NUFBWSAW was further concerned that in the absence of organisational rights at the Target Firm post-merger, the Affected Employees would lose the ability to bargain collectively through NUFBWSAW, on issues pertaining to their employment terms and conditions, in particular, pension fund benefits.

2.3. In order to mitigate the concerns raised by NUFBWSAW, the Merging Parties' made a number of commitments, including that the Merger will not result in any job losses or material changes to the Affected Employees' current terms and conditions of employment; that NUFBWSAW will be granted organisational rights at the Target Firm, post-merger in terms of the guidelines and thresholds of the grain industry bargaining council applicable prior to the Implementation date; that the Affected Employees' membership of the Vuka Risk Solutions funeral scheme will continue on the same terms and conditions as they enjoy pre-merger; and further that the Affected Employees will transfer to the Alexander Forbes Retirement Fund.

2.4. In view of the foregoing, and in order to address the employment concerns raised in the Merger, the Commission approached the Merging Parties to commit to some of their employment related commitments being made into the Conditions. The Merging Parties have accordingly agreed to the Conditions.

3. CONDITIONS

3.1. The Target Firm will use reasonable endeavours to conclude a Recognition Agreement with NUFBWSAW within 90 (ninety) Days of the Approval Date, granting NUFBWSAW

organisational rights at the Target Firm based on the same thresholds and related rights which apply to the main agreement of the grain industry bargaining council.¹

3.2. Within 30 (thirty) Days of the Implementation Date, the Acquiring Firm shall initiate the transfer of the Affected Employees to the Alexander Forbes Retirement Fund. It is recorded that the transfer of the Affected Employees to the Alexander Forbes Retirement Fund is required to be performed in terms of section 14 of the Pension Funds Act.

3.3. CBH shall not alter any material terms of Opti Agri's employees' current employment as a result of the merger.

3.4. The Acquiring Firm shall ensure that the Affected Employees' membership of the Vuka Risk Solutions funeral scheme continues on the same terms and conditions as they currently enjoy pre-merger.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1. The Merging Parties shall inform the Commission of the Implementation Date within 10 (ten) Days of it becoming effective.

4.2. The Target Firm shall circulate a copy of the Conditions within 10 (ten) Days of the Approval Date to all the employees of the Target Firm in South Africa, NUFBWSAW and the employee representative of the Target Firm. By no later than 10 Days from the Approval Date, the Target Firm shall provide the Commission with an affidavit deposed to by the Target Firm's Chief Executive Officer, attesting to the circulation of the Conditions and attaching a copy of the said notice.

4.3. Within 10 (ten) Days of the signature of the recognition agreement contemplated in clause 3.1 above, the Target Firm shall provide the Commission with a copy of the signed recognition agreement.

¹ As stipulated in paragraphs 4.3 and 4.5 of the current Recognition and Collective Bargaining agreement concluded by and between the Employers Organisation for the Grain Industry and FAWU, Solidariteit and NUFBWSAW.

4.4. Within 10 (ten) Days of procuring the transfer of the Affected Employees contemplated in clause 3.2 above, the Acquiring Firm shall provide the Commission with an affidavit deposed to by its Chief Executive Officer, attesting to the transfer of all of the Affected Employees to the Alexander Forbes Retirement Fund.

5. GENERAL

5.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

5.2. In the event that the Commission discovers that there has been an apparent breach by the Merging Parties 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.

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

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3755, or Facsimile: (012) 394 4755.

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1353

17 OCTOBER 2019

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

NEOPAK PROPRIETARY LIMITED

AND

APL CARTONS (PTY) LTD

CASE NUMBER: 2018JUL0035

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 above-mentioned firms subject to conditions as set out below:

1. On 19 July 2018 the Competition Commission ("the Commission") received notice of an intermediate merger in terms of which, APL Cartons (Pty) Ltd ("APL") intends to acquire the corrugating and converting plants currently owned and operated by Neopak (Pty) Ltd ("Neopak") in Epping and Port Elizabeth ("PE").

Parties to the merger

2. APL is a private company incorporated in accordance with the company laws of the Republic of South Africa ("South Africa"). APL is not controlled by any single firm or group of firms, and is owned by five fruit packers namely (i) Ceres Fruit Growers (Pty) Ltd ("Ceres"), (ii) Two-a Day Group (Pty) Ltd ("Two-a Day"), (iii) Kromco (Pty) Ltd ("Kromco"), (iv) Goede Hoop Sitrus (Pty) Ltd ("Good Hope Citrus") and (v) Sundays River Citrus Company (Pty) Ltd ("Sundays River").

3. APL is a partially integrated corrugated packaging company which operates a plant in Worcester, Western Cape. It produces corrugated sheet, which is in turn "converted" into corrugated packaging at its converter plant.
4. The Target Firms are wholly owned subsidiaries of Neopak, which is in turn a wholly owned subsidiary of Neopak Holdings (Pty) Ltd. Neopak's corrugating plants located in Epping and PE (which form part of the Target Firms) are used to manufacture corrugated sheet which is then converted into corrugated packaging at its converting plants located next to or housed under the same roof as each corrugating plant. For ease of reference Neopak's corrugating and converting plants located in PE and Epping will be referred to as the Target Firms. Neopak's other business entities are not part of the instant transaction.

Market definition and competitiveness assessment

5. The Commission defined the following markets; (i) the national market for the manufacturing and supply of corrugated sheet and (ii) the regional downstream market for manufacturing and supply of corrugated packaging in the Western Cape Province.
6. The Commission found that APL will have post-merger market shares below 45%, based on the sales volumes of 2016 and 2017 respectively (in both relevant markets). The merging parties' three largest competitors have market shares that are below 30% (based on 2017 sales volumes). Although the post-merger market shares in both cases were relatively high, the Commission found that it is unlikely that the proposed merger will raise significant competition concerns.

Vertical foreclosure

7. With respect to input foreclosure, the investigation revealed that the merged entity's customers (as such their competitors in the downstream market for the manufacturing of corrugated packaging) have bargaining power. The investigation further revealed that the merged entity will continue to face competition from companies such as Corruseal, Mpack and New Era in the supply of corrugated sheet. Regarding customer foreclosure, the
-

investigation revealed that the merging parties do not acquire corrugated sheet from third parties.

Public interest issues

8. The Commission found that there are 2 (two) sets of employees that are likely to be affected by the proposed merger. Firstly, there are employees in the Marketing Department of the merged entity and, secondly there are those employees who became employees of Neopak following the Constitutional Court judgment that held that employees placed by agents who have actually worked for 3 or more months are considered to be employees of that particular firm. The latter employees are referred to as Deemed Employees.
9. The investigation revealed that the category of Deemed Employees to be affected by the proposed transaction is the unskilled category. Only one of the Deemed Employees holds a certificate above Grade 12. There was no clear indication of whether the marketing employees would include any unskilled employees.
10. Given that all the Deemed Employees that are likely to be affected are unskilled, the Commission found that the proposed transaction is likely to result in substantial negative effects on employment. Specifically, the Commission found that the affected Deemed Employees account for more than 75% of the total affected employees (including employees in the marketing department of the merged entity) as identified by the merging parties.
11. In light of the above, the Commission imposed an employment condition in terms of which the merged entity is prohibited from retrenching any employees over and above the identified affected employees (Deemed and marketing employees). The condition also requires the merged entity to set up a Training Fund to assist in reskilling the affected employees likely to be retrenched. No other public interest issues arose as a result of the proposed merger.
12. The Commission therefore approves the proposed merger subject to conditions stated above.

4. Duration of the Condition

5.1. The Conditions shall remain in effect for a period of 3 years from the Implementation Date.

All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1354

17 OCTOBER 2019

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SUBTROPICO LIMITED

AND

KLK LANDBOU LIMITED

CASE NUMBER: 2018DEC0038

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 above mentioned firms subject to conditions as set out below:

1. On 12 December 2019, the Commission received notification of a proposed intermediate merger in terms of which Subtropico Ltd ("Subtropico") intends to acquire the remaining shareholding in KLK Landbou Ltd ("KLK"). The proposed transaction was a hostile takeover and was notified to the Commission in terms of Rule 28 of the Rules for the Conduct of Proceedings in the Commission. The Commission received KLK's filing on 19 January 2019.
2. Subtropico is not controlled by any single or group of firms. Subtropico offers various products and services in the agricultural industry, including processing and packaging of agricultural produce, livestock auctioning, financial services and the operation of a fresh produce market.
3. KLK is publicly listed company and as such is not controlled by any single or group of firms. KLK's business activities include meat trade and abattoirs, processing/value add of dorper skins and hides, processing of raisins, operating trade and building stores, petroleum and retail fuel stations, motor dealerships, livestock auctioneering, and financial services.

4. The Commission considered the activities of the merging parties and found that they overlap in livestock auctioneering. In particular, both the merging parties operate livestock auctions in the Northern Cape.
5. In light of the overlap, the Commission moved on to define the relevant market(s). With regard to the product market, submissions made by the merging parties' customers, competitors and the South African Federation for Livestock Auctioning suggested that auction houses such as the merging parties face competition from direct sales between farmers and customers. However, to provide a worst case scenario of the effects of the proposed transaction, the Commission considered the effects of the proposed transaction in a market that excludes direct sales.
6. Regarding the geographic market the Commission's investigation revealed that auction houses can enter new geographic areas with relative ease following a 5-10% increase in the premiums earned from auctions in the given area. The Commission also found that customers procure livestock across South Africa. These customers tend to adjust their bidding prices to account for transport costs. To this end, the Commission concluded on a national market for livestock auctioning.
7. The Commission's competition assessment revealed that the merged entity is likely to hold less than 30% market share, with less than 5% accretion in the abovementioned market. In addition, the Commission's investigation revealed that customers tend to procure livestock from more than one auction house/auction at any given point in time. On this basis, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for livestock auctioning in South Africa.
8. With regard to public interest concerns, the Commission found that the proposed transaction will not result in any retrenchments. However, the Southern African Clothing and Textile Worker Union ("SACTWU") raised various concerns pertaining to the transaction. SACTWU requested a written confirmation from Subtropico confirming the transaction will not result in any retrenchments. Subtropico provided this commitment. Subtropico also suggested that the proposed transaction be approved on condition that it will not retrench any employees,

as a result of the proposed transaction for a period of 2 years. According to Subtropico, this condition will remove any doubt regarding employment issues.

9. The Commission, therefore approves the proposed transaction subject to the conditions attached as annexure A.

ANNEXURE A**SUBTROPICO LIMITED****AND****KLK LANDBOU LIMITED****CASE NUMBER: 2018DEC0038**

CONDITION

1. Interpretation

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

1.1.1. "**Act**" means the Competition Act No. 89 of 1998;

1.1.2. "**Affected Employees**" means all KLK Landbou Limited ("**KLK**") and Subtropico employees, that may be affected by the proposed transaction;

1.1.3. "**Acquiring Firm**" means Subtropico Limited ("**Subtropico**");

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 Competition Commission;

1.1.6. "**Conditions**" means these conditions

- 1.1.7. "**Days**" means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.1.8. "**Implementation Date**" means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
- 1.1.9. "**LRA**" means the Labour Relations Act 66 of 1995 (as amended);
- 1.1.10. "**Merger**" means the acquisition of control by Subtropico over the entire issued share capital of KLK as at the Effective Date, as contained under Commission case number 2018Dec0038;
- 1.1.11. "**Merged Entity**" means Subtropico and KLK and collectively, the Merging Parties;
- 1.1.12. "**Merging Parties**" means Subtropico and KLK;
- 1.1.13. "**Target Firm**" means KLK ; and
- 1.1.14. "**Tribunal**" means the Competition Tribunal of South Africa.

2. Recordal

- 2.1. On 20 December 2018 and 17 January 2019, the Merging Parties filed an intermediate Merger with the Commission in accordance with Rule 28 of the Commission Rules. Following its investigation, the Commission is of the view that the Merger is unlikely to substantially prevent or lessen competition in any market.
- 2.2. The Acquiring Firm submitted that the Merger would not result in any job losses or other negative impact on employment. However, the Target Firm submitted that the Merger is likely to result in the retrenchments of the Affected Employees. The submissions raised

by the Target Firm were echoed by the trade unions that represent employees of the Target Firm.

2.3. Therefore, in order to address the employment concerns raised, the Commission approves the Merger subject to these Conditions.

3. Conditions to the Approval of the Merger

3.1. The Merging Parties shall not retrench any Affected Employees as a result of the Merger, for a period of two (2) years from the Implementation Date.

3.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (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 or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

4. Monitoring compliance with the Conditions

4.1. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective

4.2. The Merging Parties shall circulate a copy of the Conditions within 5 (five) Days of the Approval Date to all employees of the Merging Parties and/or their employee representatives.

4.3. As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, provide the Commission with an affidavit by the Chief Executive Officer or Managing Director of the Merged Entity attesting to the circulation of the Conditions and attach a copy of the said notice.

4.4. The Merged Entity shall submit a report on each anniversary of the Implementation Date, setting out its compliance with clause 3 of the Conditions for the duration of the Conditions. This report shall be accompanied by an affidavit, attested to by the Chief Executive Officer or Managing Director of the Merged Entity, confirming the accuracy of the report.

5. Apparent breach

5.1. In the event that the Commission receives any complaint in relation to non-compliance with the above undertaking or otherwise determines that there has been an apparent breach of any of the Condition by the Merged Entity, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. Variation of the Conditions

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

7. General

7.1. All correspondences in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3755, or Facsimile: (012) 394 4755.

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1355

17 OCTOBER 2019

COMPETITION COMMISSION

NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

REBEL PACKAGING (PTY) LTD

AND

SEYFERT CORRUGATED WESTERN CAPE (PTY) LTD

2018DEC0046

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 prohibited the transaction involving the above-mentioned firms:

1. On 21 December 2018, the Competition Commission (Commission) was notified of a prior implemented merger whereby Rebel Packaging (Pty) Ltd (Rebel) acquired control over Seyfert Corrugated Western Cape (Pty) Ltd (Seyfert) in 2011 without notifying the Commission as required by section 13A of the Competition Act of 1998 (the Act).
2. The primary acquiring firm is Rebel, a firm incorporated in accordance with the company laws of the Republic of South Africa (South Africa). Rebel is a wholly owned subsidiary of Mpact Limited (Mpact).
3. The primary target firm is Seyfert, a firm incorporated according to the company laws of South Africa.

Activities of the parties

4. Mpact is a paper and plastics packaging manufacturer with operations in South Africa, Mozambique, Namibia and Botswana. The business involves the production of paper and plastic packaging products, and recycling (of both paper and plastic). Mpact's paper business comprises three parts, each of which operates at a different level of the paper and paper packaging value chain.
5. Mpact Recycling is active in the collection and purchase of pre- and post-consumer recyclable paper through various paper pick-up programmes including commercial, kerbside, school, church, community, housing complex and office programmes. Mpact Recycling also purchases recyclable paper from recyclable material traders. Mpact's paper manufacturing operations produce a range of intermediate paper products such as cartonboard and containerboard.
6. Mpact's corrugated and converted paper products operations are active in the production of printed and unprinted concerted corrugated and other paper products including corrugated packaging, corrugated boxes, die-cut cases, folded glued cases and others.
7. Seyfert operates as a sheet plant and is based in Atlantis near Cape Town in the Western Cape. Sheet plants purchase corrugated sheet board from corrugating facilities and convert this board into corrugated packaging, corrugated boxes and other finished products.

Overlap

8. The activities of the merged parties result in both a horizontal and vertical overlap in relation to the manufacturing and supply of finished corrugated boxes and corrugated packaging. The Commission considered the following the relevant markets:
 - 8.1. The upstream market for the manufacture and supply of corrugated boards in the Western Cape; and
 - 8.2. The downstream market for the manufacture and supply of corrugated boxes and packaging in the Western Cape.

Competition Assessment

9. The Commission found that Mpact currently has an estimated market share of between 20 - 25% and Seyfert an estimated market share of 2 - 5% based on the sales volumes in 2017 with a combined market share of 22 - 30% in the downstream market for the manufacture and supply of corrugated boxes and packaging in the Western Cape.
10. The merged entity continues to be constrained by firms such as New Era, Corroseal Tekco and others who operate in the Western Cape Province.

Vertical assessment

11. Regarding input foreclosure, the Commission considered the merged entities' ability to exercise market power in the market for the manufacture of corrugated board, therefore foreclosing its rivals in the downstream market for the supply of corrugated packaging. The Commission found that Mpact does not appear to have the ability to foreclose the downstream competitors.
12. About customer foreclosure; the Commission found that the merger did not have an impact on any upstream competitors of Mpact.

Coordinated effects

13. The Commission considered the transactions impact on coordination in the market as there are several cartel investigations in the corrugated packaging markets. Evidence before the Commission indicates that the prior implemented merger was used as a platform for collusion and the formation of a cartel with likely contravention of section 4(1) b of the Competition Act. Therefore, the Commission concluded that the prior implemented merger resulted in a substantial prevention or lessening of competition within the corrugated packaging market.

Efficiencies

14. Given the nature of the anti-competitive concerns this merger raises, namely collusion which is a *per se* prohibition in terms of section 4(1)(b) of the Act, there are no efficiencies that can justify the merger.

Remedies

15. Given the nature of the anti-competitive concern this merger raises, namely collusion which is a *per se* prohibition in terms of section 4(1)(b) of the Act, there is no remedy that could

alleviate it. In order to address this concern, the Commission prohibits the merger. Further, since the merger has been implemented already, the Commission orders a divestiture of Mpact's 49% share in Seyfert.

Public interest

16. The merged parties submit that the 2011 transaction did not raise public interest concerns.

Conclusion

17. The Commission prohibits the proposed transaction. The Commission further orders a divestiture of the 49% shareholding that Mpact acquired in Seyfert.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3755, or Facsimile: (012) 394 4755.

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1356

17 OCTOBER 2019

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MMC TREASURY HOLDINGS (UK) LIMITED

AND

JARDINE LLOYD THOMPSON GROUP PLC

CASE NUMBER: 2018DEC0033

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 above-mentioned firms subject to conditions as set out below:

1. On 19 December 2018 the Competition Commission received notification of an intermediate merger in terms of which MMC Treasury Holdings (UK) Ltd ("MMC Treasury") intends to acquire the entire issued share capital of Jardine Lloyd Thompson Group PLC ("JLT").
2. MMC Treasury is a wholly owned subsidiary of Marsh & McLennan Companies Inc. ("MMC"). MMC is a global professional services firm that offers client advice and solutions in areas of risk, strategy and people. In South Africa, MMC's activities consist of short-term (or non-life) insurance broking, short-term reinsurance broking and employee benefits related services. In this regard, MMC offers short-term insurance broking to commercial and corporate customers.
3. JLT is not controlled by any single or group of firms and as at the date of the filing, its largest shareholders were JMH Investments Ltd (40.16%) and MFS Investment Management (7.01%). Similar to MMC, JLT also offers short-term insurance broking, short-term reinsurance broking and employee benefits related services.

4. The Commission considered the activities of the merging parties and found that they overlap in the provision of short-term insurance broking, short-term reinsurance broking and employee benefits related services. In particular, the Commission found that both merging parties offer short-term insurance broking services to corporate and commercial customers. With regard to employee benefits-related services, the merging parties offer employee benefits consulting services and healthcare insurance consulting services.
5. In defining the relevant markets, the Commission relied on domestic case law and concluded on the markets for (i) short-term commercial insurance broking, (ii) short-term corporate insurance broking, (iii) short-term reinsurance distribution, (iv) employee benefits consulting services, and (v) healthcare insurance consulting services.
6. Regarding the geographic market, the Commission found that the merging parties compete on a national basis for the provision of the broking services across the abovementioned product markets. The Commission also found that even though there are some international firms, (e.g. JLT has its head offices in England) brokers require offices in South Africa (domestic footprint) to offer customer services. To this end, the Commission considered the proposed transaction in the national markets for (i) short-term commercial insurance broking, (ii) short-term corporate insurance broking, (iii) short-term reinsurance distribution, (iv) employee benefits consulting services, and (v) healthcare insurance consulting services.
7. The Commission's competitiveness assessment revealed that the merged entity is likely to hold less than 5% and less than 30% market shares in the national markets for short-term commercial and corporate insurance broking, respectively. The Commission also found that the merged entity's customers have some level of countervailing power in the aforementioned markets. In particular, corporate and commercial customers are able to timeously switch brokers without incurring costs.
8. Regarding the market for short-term reinsurance distribution, the Commission found that the merged entity will hold less than 35% market share, with minimal accretion. In this

regard, the Commission took the view that the percentage market share accretion is insignificant and as such will not provide the merged entity with the ability to exercise market power. The investigation also revealed that insurers (customers to reinsurance broking services) have vast knowledge of insurance and are, therefore, likely to possess some level of countervailing power.

9. Lastly, the investigation revealed that the merged entity will hold less than 10% market share in the broad national market for employee benefits-related services. In the national markets for employee benefits consulting services and retirement consulting services, the merged entity is also likely to hold less than 2% and less than 20% market shares, respectively. Regarding healthcare consulting services, the Commission did not find any reliable source of data to estimate market shares. However, the Commission found that the merged entity will continue facing competition from alternatives such as NMG, ASI, Alexander Forbes and Towers and Watson.
 10. On the basis of the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.
 11. Notwithstanding the above, the Commission noted that Mercer Africa Ltd, a subsidiary of MMC holds a non-controlling interest in Alexander Forbes Group Holdings Ltd ("Alexander Forbes"), a competing firm. In this regard, the Commission found that MMC can appoint directors at Alexander Forbes. The Commission has imposed a condition which will ensure that there are no common directors between MMC Treasury and Alexander Forbes in future.
 12. The Commission also considered public interest and found that the proposed transaction is likely to result in retrenchments in the merged entity. The Commission further found that some of these employees are unskilled employees with only a matric or lower level qualification. In this regard, the Commission requested that the merging parties retain these employees. The merging parties agreed to a merger condition which would ensure that these unskilled employees are not retrenched for at least two (2) years. The Commission set a limit on the number of skilled employees to be retrenched as a result of the proposed
-

transaction. To this end, the Commission imposed a condition which will ensure that the merging parties do not retrench more than the identified skilled employees.

13. In light of the above, the Commission approves the proposed transaction subject to the attached conditions.

Annexure A**MMC Treasury Holdings (UK) Limited****and****Jardine Lloyd Thompson Group plc****CC Case Number: 2018Dec0033**

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 No. 89 of 1998;
 - 1.2 **"Acquiring Firm"** means MMC Bidco;
 - 1.3 **"Approval Date"** means the date referred to in the Commission's clearance certificate (Form CC15);
 - 1.4 **"Commission"** means the Competition Commission of South Africa;
 - 1.5 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Competition Commission;
 - 1.6 **"Conditions"** means these conditions;
 - 1.7 **"Days"** mean any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
 - 1.8 **"Implementation Date"** means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
 - 1.9 **"JLT"** means Jardine Lloyd Thompson Group plc;
 - 1.10 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);
-

- 1.11 **"Merger"** means the acquisition by MMC Bidco of the entire issued share capital of JLT;
- 1.12 **"Merged Entity"** means MMC Bidco and JLT, post implementation of the Merger;
- 1.13 **"Merging Parties"** means MMC Bidco and JLT;
- 1.14 **"MMC Bidco"** means MMC Treasury Holdings (UK) Limited;
- 1.15 **"Moratorium Period"** means a period of at least 2 (two) years from the Implementation Date;
- 1.16 **"Skilled Employees"** means the maximum of the identified employees of the Merging Parties who have post-grade 12 qualifications, and who may be retrenched as a result of the merger;
- 1.17 **"Target Firm"** means JLT;
- 1.18 **"Tribunal"** means Competition Tribunal of South Africa; and
- 1.19 **"Vulnerable Employees"** means identified employees of the Merging Parties whose highest qualification is a grade 12 certificate or below, and who may be retrenched as a result of the merger.

2. Recordal

- 2.1 Following its investigation, the Commission finds that the Merger is unlikely to substantially prevent or lessen competition in the non-life insurance broking services, reinsurance broking services and employee benefits-related services markets in South Africa.
- 2.2 However, the Commission finds that the Merger may result in retrenchments of the Merged Entity in South Africa. Of these employees, the Commission notes that some are Vulnerable Employees while others are Skilled Employees. The Skilled Employees and Vulnerable Employees constitute 7.5% of Merged Entity's total workforce.
- 2.3 The Commission also finds that Marsh & McLennan Companies Inc. ("MMC"), which owns and controls MMC Bidco, indirectly holds a non-controlling interest in Alexander Forbes Group Services (Pty) Ltd ("Alexander Forbes").

3. Conditions

Employment

- 3.1 The Merged Entity shall not retrench any Vulnerable Employees as a result of the merger for the duration of the Moratorium Period.
- 3.2 Save for the Skilled Employees, the Merged Entity shall not retrench any other employees as a result of the merger during the Moratorium Period.
- 3.3 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; (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.
- 3.4 For a period of one year after the Moratorium Period, should any employment opportunity arise at the Merged Entity for which a Vulnerable Employee is qualified, the Merged Entity shall give first right to an interview to such a Vulnerable Employee/s.
- 3.5 In compliance with clause 3.3 above, the Merged Entity shall:
- 3.4.1. When a vacancy, of the sort referred to above, arises to be filled within the Merged Entity, forward a batch communicate via SMS to all retrenched Vulnerable Employees, who meet the relevant requirements, providing them with the information and details of the position as well as contact details as to whom to contact within the Merged Entity to enable them to apply should they wish to do so. Under all circumstances the onus will rest on such Vulnerable Employees to apply for vacant positions; and
- 3.4.2. In the event that there are two or more retrenched Vulnerable Employees who apply for the same vacancy, the Merged Entity may select one of them in its sole discretion, who meet the relevant requirements, in accordance with the provisions
-

of 3.3 above, subject to the LRA and the Merged Entity's Labour Law practices and policies.

Cross Directorships

- 3.6 For as long as MMC directly/indirectly holds interest in Alexander Forbes and has the right to appoint directors, it will not appoint the same director(s) for MMC Bidco and Alexander Forbes. MMC will also not appoint the same directors for any of its subsidiaries that compete with Alexander Forbes.

4. Monitoring of compliance with the conditions

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. The Merging Parties shall circulate a copy of the Conditions to their employees/and or their respective representatives including relevant trade unions within 5 (five) Days of the Approval Date.
- 4.3. As proof of compliance thereof, the Merging Parties shall within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit by a director employed by each of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.4. The Merged Entity shall submit a report on each anniversary of the Implementation Date and for a period of 2 (two) years, setting out its compliance with these Conditions. This report shall be accompanied by an affidavit, attested to by a director of the Merged Entity, confirming the accuracy of the report.
- 4.5. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.

- 4.6. An apparent breach by the Merging Parties of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 4.7. All correspondence in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

5. Duration of the Condition

- 5.1. The Conditions shall remain in effect for a period of 3 years from the Implementation Date.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3755, or Facsimile: (012) 394 4755.

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1357

17 OCTOBER 2019

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

EKAPA MINING PROPRIETARY LIMITED

AND

CROWN RESOURCES PROPRIETARY LIMITED

CASE NUMBER: 2018JUL0052

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 above-mentioned firms subject to conditions as set out below:

1. On 25 July 2018, the Competition Commission (Commission) was notified of an intermediate merger whereby Ekapa Mining (Pty) Ltd (Ekapa Mining) intends to acquire sole control of Crown Resources (Pty) Ltd (Crown).
2. Ekapa Mining is a firm incorporated in accordance with the company laws of the Republic of South Africa (South Africa), Ekapa Mining is not controlled by any firm and its shares are held by a number of different broad based black economic empowerment (BBBEE) entities. Ekapa controls several firms, of relevance to the proposed transaction is its interest in the Kimberley Ekapa Mining Joint Venture (KEM JV).
3. Crown Resources is a firm incorporated in accordance with the company laws of South Africa. Crown is ultimately controlled by Petra Diamonds Limited (Petra Diamonds). Crown Resources owns an interest in the KEM JV. As a result of the proposed transaction, Ekapa will have sole control of the KEM JV, which it currently co-owns with Crown Resources. Petra Diamonds will exit the joint venture.

4. The Ekapa Mining group provides loading and hauling services, commission of diamond polishing and holds certain investments and investment properties. Ekapa Minerals holds a diamond dealers' licence and buys, sells and exports rough diamonds. Ekapa Mining is in a Joint Venture partnership with Crown Resources in respect of the KEM JV.
 5. Crown Resources does not have any activities apart from its interest in the KEM JV. The KEM JV is the owner and operating firm of the Kimberley underground diamond mines. The Kimberley underground mines comprise of underground diamond mines and tailing of mineral resources (TMRs), namely, Bultfontein, Dutoitspan and Wesselton mines situated in Kimberley, in the Northern Cape Province. The diamond mine was previously owned by De Beers.
 6. The proposed merger raises a horizontal overlap between the activities of the merging parties only as far as both parties are partners in the KEM JV. KEM JV operates as a diamond miner and sells diamonds on the global market. The proposed transaction does not give rise to any overlap as Ekapa Mining does not have any other activities outside of the KEM JV.
 7. The Commission considered the activities of the merging parties in relation to the production (mining) and supply of diamonds. The Commission found that Ekapa Mining will only assume the market shares of KEM JV and there will be no material change to the structure of the market as there will be no market share accretion. Therefore, the Commission concluded that it is unlikely that the proposed transaction will raise competition concerns.
 8. In relation to public interest, the Commission found that the KEM JV retrenched 79 employees prior to the proposed merger. Of the 79 retrenchments, the Commission found that 17 are merger specific. Of the 17 merger specific retrenchments, the Commission found that 7 of these employees are unskilled and therefore unlikely to be able to find alternative employment in the short term. With respect to the remaining 10 employees, the Commission found that they are skilled with post-matriculation qualifications. Given that the KEM JV is in financial distress and the fact that the 10 employees are skilled, the Commission is of the view that the retrenchments can be allowed under the circumstances.
-

9. The Commission engaged with the merging parties on how to mitigate the negative effects on employment. Through these engagements, the Commission and the merging parties agreed that the Commission impose a condition on approval of the proposed transaction that the merging parties would reinstate the 7 (seven) unskilled employees reducing the number of merger specific retrenchments to 10 (ten). In this way, the merging parties will only be allowed to retrench up to 10 skilled employees as a result of the proposed transaction for a period of 2 (two) years from implementation date. Furthermore, the conditions require merging parties to offer the remaining 72 retrenched employees first preference for employment should conditions improve at the KEM JV and positions become available in future.
10. The Commission therefore approves the proposed merger subject to the conditions stated above.

All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3755, or Facsimile: (012) 394 4755.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065