Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 585 Pretoria, 28 March Maart 2014 No. 37478

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

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

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD

GENERAL NOTICES

NOTICE 244 OF 2014

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SHALAMUKA FUND MANAGER (PROPRIETARY) LIMITED

AND

SAFIKA INVESTMENT (PROPRIETARY) LIMITED

2013AUG0378

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:

The primary acquiring firm is Shalamuka Fund Manager (Pty) Ltd ("**Shalamuka Fund**"). Shalamuka Fund is jointly controlled by Shalamuka Foundation Trust ("**Shalamuka Trust**") and FirstRand Ltd ("**FirstRand**"). FirstRand is a public company listed on the JSE Ltd. Both Shalamuka Trust and FirstRand control a number of subsidiaries. On the other hand Shalamuka Fund controls Shalamuka Capital (Pty) Ltd and Shalamuka Security (Pty) Ltd. Shalamuka Trust, FirstRand and their respective subsidiaries will collectively be referred to as (the "**Acquiring Firms**").

The primary target firm is Safika Investments (Pty) Ltd ("**Safika Investments**"). Safika Investments is controlled by RMB Private Equity (Pty) Ltd, Corvest 100 (Pty) Ltd and Corvest Manco (Pty) Ltd. The entities comprising of the Corvest Consortium are ultimately controlled by FirstRand, hence Safika Investments is ultimately controlled by FirstRand.

In terms of the proposed transaction, Shalamuka Fund intends to acquire the entire issued share capital and some preference shares in Safika Investments. Post-merger, Shalamuka will have sole control over Safika Investments.

Shalamuka Trust is an investment holding company and does not offer any goods or services. FirstRand is a large financial services provider in South Africa. It is one of the financial services providers licensed by the Reserve Bank of South Africa.

Safika Investments is an investment holding company that primarily invests in private equity transactions and does not offer any goods or services.

The merging parties submit that the proposed transaction does not result in an overlap in any of their activities. However, for completeness sake, the merging parties submit that they both have non-controlling interest in entities involved in guarding and cash-in-transit services, namely G4S Cash Solutions (Pty) Ltd, Servest Group (Pty) Ltd and Fidelity Security Group (Pty) Ltd (collectively referred to as the "**Three Security Companies**).

The Commission's investigation uncovered that structure of FirstRand is inherently complex. As such, the Commission requested additional information from the parties in order to decode the underlying influence the merging parties have on the Three Security Companies, which are relatively large in their respective security markets. Upon further engagement about the control issues, the merging parties made further submissions to the Commission in response to the concern about the question of control over the Three Security Companies.

The Commission's analysis found that the proposed transaction does not present any horizontal or vertical overlaps. The Commission extensively assessed all the agreements and documents governing the relationship of the merging parties and the three security companies and is of the view that neither of the merging parties exercise control over the three companies. As such, the merged entity is unlikely to exercise any unilateral conduct in relation to the security markets in which Three Security Companies are active in. Further, FirstRand will remain as the ultimate controller of both the acquiring and the target firm before and after the merger which does not alter any market including the provision of guarding and/or cash-in-transit services.

However, the cobweb merger structure presents opportunities for potential information exchange between the Three Security Companies. Even though the merging parties argue that FirstRand ultimately controls the Three Security Companies before merger, it is the Commission's view that the consolidation of Shalamuka Fund and Safika Investment enhances the likelihood of this flow of commercially sensitive information between the security companies. More so, the presence of cross directorships within the merger structure will potentially facilitate the flow commercially sensitive information.

In order to alleviate this concern, the Commission imposed conditions that seek to prevent the flow of information between the security companies. There were no public interest issues arising as a result of the proposed transaction.

Taken as a whole, the Commission approves the proposed transaction subject to conditions in terms of section 14(1) (b) (i) of the Act, as amended.

CONDITIONS

1. Definitions

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

1.1. **"Acquiring Firm"** means Shalamuka;

1.2. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);

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

1.4. **"Competition Act"** means the Competition Act 89 of 1998, as amended;

1.5. **"Conditions"** means these conditions;

1.6. **"Competitively Sensitive Non-Public Information"** means information as described in paragraph 3.3

1.7. **"Fidelity"** means Fidelity Security Group Proprietary Limited;

1.8. **"FirstRand Group"** means the ultimate controller of the Merging Parties;

1.9. **"G4S"** means G4S Cash Solutions SA Proprietary Limited;

1.10. **"Merger"** means the acquisition of control over Safika by Shalamuka;

1.11. **"Merging Parties"** means Safika and Shalamuka;

1.12. **"Safika"** means Safika Investments Proprietary Limited and the Target firm;

1.13. **"Servest"** means Servest Group Proprietary Limited;

1.14. **"Shalamuka"** means Shalamuka Fund Manager Proprietary Limited and the Acquiring Firm; and

1.15. **"Target Firm"** means Safika;

2. Preamble

2.1. These conditions ("the Conditions") are intended to ensure that the merger does not have any detrimental effect on competition by increasing the likelihood of coordination through information exchange.

2.2. On 7 August 2013, the Merging Parties filed this merger transaction with the Commission. Following its investigation of this merger transaction, the Commission is of the view that the proposed transaction is unlikely to raise competition concerns. However, the Commission is concerned that Fidelity, G4S and Servest may have access to each other's commercially sensitive information as a result of common directorships.

2.3. Given that the Merging Parties are able to appoint the same board members to the board of Fidelity, G4S and Servest, the Commission is of the view that this is likely to give rise to competition concerns by increasing the likelihood of coordination between Fidelity, G4S and Servest through the exchange of commercially sensitive

information.

3. Conditions

3.1. The Merging Parties shall not appoint or invite the same person(s) to the Board of Directors of Fidelity, G4S or Servest as long as the FirstRand Group holds an interest in all three entities.

3.2. Safika and Shalamuka shall, from the Approval Date, ensure that the sharing of Competitively Sensitive Non-Public Information in respect of Fidelity, G4S or Servest does not take place through or between the management and/or executive teams responsible for such interests within Safika and Shalamuka.

3.3. Competitively Sensitive Non-Public Information shall include, but not be limited to, any and all such information relating to:

3.3.1 Pricing – including, but not limited to, pricing of specific products and/or services, prices/ discounts/ rebates offered to specific clients and planned reductions or increases;

3.3.2 Margin information by product or client;

3.3.3 Cost information;

3.3.4 Information on specific clients and client strategy, including information with respect to the sales volumes of clients;

3.3.5 Marketing strategies;

3.3.6 Budgets and business plans; and

3.3.7 Agreements and other (non-standard) terms and conditions relating to the provision of guarding and/or cash-in-transit services.

3.4. Within 3 (three) months of the Approval Date, Safika and Shalamuka shall adopt/implement a policy to ensure that the sharing of competitively sensitive non-public information in respect of Fidelity, G4S and Servest does not take place through or between the management teams responsible for such interests within Safika and Shalamuka, as set out in condition 3.1 and 3.2 above. The policy shall be submitted to and agreed with the Commission prior to its implementation as provided for in paragraph 4 (four) below.

4. Monitoring of Conditions

4.1. With respect to the contained policy referred to in 3.4 above –

4.1.1 Not less than 1 (one) month prior to the expiry of the 3 (three) month period referred to the in paragraph 3.4, Safika and Shalamuka shall submit a copy of the policy to be adopted, to the Commission for its approval. The Commission shall provide Safika and Shalamuka with its views/recommendations/decision within 10 (ten) business days of such submission; and

4.1.2 Within 10 (ten) business days of the approval by the Commission and the implementation of the policy by Safika and Shalamuka, Safika and Shalamuka shall submit an affidavit by a duly authorised senior official attesting to the establishment and implementation of the policy described above. Safika and Shalamuka will at the same time, also submit to the Commission a copy of the policy document signed by the directors appointed to the board of Servest, G4S and Fidelity as nominated by Shalamuka and Safika, acknowledging their understanding of the provisions of the policy document.

4.2. Should the FirstRand Group dispose of its interests in G4S, Servest or Fidelity it shall notify the Commission within 1 month of concluding the final sale agreement and shall submit a signed copy of the sale agreement as proof of the sale.

4.3. The Policy and the affidavits must be submitted to the Commission's email address: mergerconditions@compcom.co.za.

5. General

5.1. In the event that the Merging Parties appear to have breached the above conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the above conditions, this shall be dealt with in terms of

Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

5.2. The Commission may, on good cause shown, lift, revise or amend these Conditions upon being approached by the Merging Parties.

6. Termination of the conditions

6.1. These conditions shall apply as long as the FirstRand Group holds an interest in each of G4S, Servest and Fidelity.

This gazette is also available free online at **www.gpwonline.co.za**

NOTICE 245 OF 2014

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

AFGATE PROPERTIES (PIETERSBURG) PROPRIETARY LIMITED

AND

MURRAY & ROBERTS LIMITED'S HALL LONGMORE BUSINESS

2013DEC0589

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:

On 05 December 2013, the Competition Commission (the "Commission") received a notice of an intermediate merger whereby the primary acquiring firm, Afgate Properties (Pietersburg) Proprietary Limited ("Afgate") intends to acquire, as a going concern, the business operation of Murray & Roberts Limited's Hall Longmore business (the "Hall Longmore business"). On completion of the proposed transaction, Afgate will wholly-own Hall Longmore business.

There is a horizontal overlap in the activities of the merging parties in the market for the manufacturing and supply of ERW 219 mm and 273 mm diameter steel pipes.

The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the manufacturing and supply of ERW 219 mm diameter steel pipes as there are alternative players in the market that compete with the merging parties who will be in a position to constrain the merged entity.

With respect to ERW 273 mm diameter steel pipes, although the market is concentrated and post-merger market shares are high, the Commission finds that imports constrain the local market. Furthermore, Capital Star Steel, a competitor based in Mozambique has the capacity to increase its production and absorb an increase in demand, and thus constrain the post-merger entity. The Commission also finds that the proposed transaction does not result in the removal of an effective competitor as the merging parties are not each other's closest competitors. The Commission further finds that customers make purchasing decisions based on price, and therefore the merged entity would lose sales volumes to imports and Capital Star Steel if they were to increase prices. Given that the market for the manufacture of ERW 273mm diameter steel pipes is also a high volume, low margin business, such a pricing strategy would have a negative impact on the merging parties' production costs. Furthermore, the Commission finds that imports constrain the local market. The Commission is therefore of the view that the proposed transaction is unlikely to result in unilateral effects conduct.

In relation to public interest issues, the proposed transaction results in the loss of 95 jobs. In the analysis of possible effects on employment, the Commission ascertained that the job losses will not be as a result of duplication of roles but rather due to the fact that the target firm is ailing and has been making losses for the past three years. The Commission found that irrespective of the proposed transaction, job losses were going to take place as about 285 employees were already served with retrenchment letters. The Commission engaged with the merging parties on the employment effects of the proposed transaction and the merging parties subsequently reduced the number of retrenchments to 95. Considering the counterfactual, the proposed transaction will effectively save 190 jobs. The merging parties agreed to a condition limiting the retrenchments to not more than 95 employees. A copy of the condition is attached as **Annexure A.**

The Commission therefore approves the merger with conditions in terms of section 14(1)(b)(ii) of the Competition Act no. 89 of 1998, as amended.

CONDITIONS

1. Definitions

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

1.1 **"Acquiring Firm"** means Afgate Properties (Pietersburg) Proprietary Limited;

1.2 **"Afgate"** means Afgate Properties (Pietersburg) Proprietary Limited;

1.3 **"Approval Date"** means the date referred to in the Competition Commission's merger clearance certificate (Form CC 15);

1.4 **"Commission"** means the Competition Commission of South Africa;

1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended;

1.6 **"Conditions"** means these conditions;

1.7 **"Effective Date"** means the first day of the calendar month following the month in which the Fulfilment Date occurs;

1.8 **"Fulfilment Date"** means the date upon which the last of the conditions precedent is fulfilled;

1.9 **"Hall Longmore business"** means Murray & Roberts Limited's Hall Longmore business;

1.10 **"Merger"** means the acquisition of control by Afgate over Hall Longmore business;

1.11 **"Merging Parties"** means the Afgate Group of companies and Hall Longmore business;

1.12 **"Semi-skilled Employees"** means pipe makers, Office Assistants, Assistant Accountant, Machine Operators, Executive Secretary, Data Capturer, Grinders, Crane Drivers, Millwright, Stock Controller, Forklift Driver, Maintenance Planner, Export Controller, Electrician, Boiler marker and Inspectors;

1.13 **"Skilled employees"** means Training specialist, Supervisors, IT Programmer, Team Leader, IT Manager, Instrumentation Technician, Artisan Welder and Trainee Electrical Engineer;

1.14 **"Target firm"** means Hall Longmore business; and

1.15 **"Unskilled Employees"** mean general labourers.

2. Recordal

The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the manufacturing and supply of ERW 219 mm diameter pipes, as there are alternative players in the market that compete with the merging parties and who will be in a position to constrain the merged entity post-merger. With respect to manufacturing and supply of ERW 273 mm diameter pipes, although the post-merger market shares are high, the Commission finds that imports constrain the local market. The Commission is therefore of the view that the proposed transaction is unlikely to result in unilateral effects conduct. However, the proposed transaction is likely to have a negative impact on employment since it is likely to result in job losses of about 178 employees due to the Target firm's poor financial performance over the past 3 (three) years. The Commission engaged with the trade unions representing the employees of the target firm and the merging parties in order to reduce the number of retrenchments. The merging parties agreed to reduce the number of retrenchments from 178 to 95 employees being 7 unskilled, 65 sem-skilled and 23 skilled employees. The Commission therefore imposes a condition on the merged entity not to retrench more than 95 employees.

3. Conditions to the approval of the merger

3.1. The Merging parties and their respective direct and indirect subsidiaries shall, subject to the consultation requirements of section 189 of the Labour Relations Act, 1995, as amended ("LRA"), ensure that the number of retrenchments do not exceed 95 (ninety five) as a result of the merger.

3.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA.

1.2

3.3. These Retrenchments shall only be effected after 3 (three) months following the approval date.

1.3

4. Monitoring of compliance with the conditions

4.1. The Merging Parties shall circulate a copy of these Conditions to their employees/and or their respective representatives, within 7 days of the merger clearance.

1.4

4.2. As proof of compliance thereof, the merging parties shall within 5 business days of circulating the conditions, provide the Commission with an affidavit by a senior official attesting to the circulation of the conditions and attach a copy of the notice sent.

4.3. 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.

4.4. Afgate shall provide a report to the Commission on the following respective dates: 31 August 2014, 28 February 2015, 31 August 2015 and 28 February 2016 reflecting the retrenchments effected within the previous 6 month period as a result of the merger. The report must be accompanied by an affidavit deposed to by a senior official confirming the accuracy of the report.

4.5. All correspondences in relation to these conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.6. An apparent breach by the merging parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

5. Duration of the Condition

5.1. The Conditions contained herein shall be effective for a period of 2 years commencing from the effective date.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

NOTICE 246 OF 2014

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ARCTOZONE INVESTMENTS PROPRIETARY LIMITED

AND

THE LYNNRIDGE MALL (OWNED BY EMIRA PROPERTY FUND A PROPERTY FUND CREATED UNDER THE EMIRA PROPERTY SCHEME, AS THE COLLECTIVE INVESTMENT SCHEMES CONTROL ACT NO 45 OF 2002)

CASE NUMBER: 2013DEC585

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:

On 03 December 2013, the Competition Commission ("the Commission") received a notice of an intermediate merger whereby the primary acquiring firm, Arctozone Investments (Pty) Ltd ("Arctozone") intends to acquire sole control over the Lynnridge Mall from Emira Property Fund. Following the implementation of the proposed transaction, Arctozone will exercise sole control over the Lynnridge Mall.

The Commission finds that there is product overlap in respect of rentable retail space. However, there is no geographic overlap in the activities of the acquiring group and the Lynnridge Mall, as the retail property owned by the acquiring group is situated within the Western Cape and Northern Cape provinces, and the Lynnridge Mall is situated within the Gauteng Province. As a result, the Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition in any market within South Africa.

The Commission has found an exclusivity clause in the lease agreement between the landlord and one of the anchor tenants. This exclusivity clause has the potential effect of preventing small businesses from accessing the Lynnridge Mall, such as grocery stores and bakeries of a certain size, cafés and delicatessen which sell fresh fish or meat; butcheries other than halaal butcheries; and fresh produce businesses. The exclusivity clause contained in the lease agreement raises a potential public interest concern. The Commission has not received any evidence suggesting that the proposed merger is likely to raise any other public interest concerns.

Therefore the Commission approves the proposed transaction with conditions in terms of section 14(1)(b)(ii) of the Act, as amended. The Commission hereby issues a certificate in the prescribed form approving the merger subject to the following conditions:-

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding means –

1.1. "Approval Date" means the date referred to in the Competition Commission's merger clearance certificate (Form CC15);

1.2. "Arctozone" means Arctozone Investments (Pty) Ltd, its holding companies and subsidiaries;

1.3. "Commission" means the Competition Commission of South Africa;

1.4. "Conditions" means these conditions;

1.5. "Merger" means the acquisition of control over the Lynnridge Mall by Arctozone; and

2. RECORDAL

Arctozone has agreed to the following undertakings meant to address the public interest concerns identified by the Commission.

3. CONDITIONS

Arctozone undertakes to use reasonable commercial endeavours to negotiate with the anchor tenant, in the utmost good faith within sixty (60) days of the Competition Commission's decision, to remove the exclusivity clause contained in the lease agreement between the landlord and anchor tenant.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1. Arctozone shall provide the Commission with an affidavit setting out the outcome of its negotiations with the anchor tenant, as contemplated in paragraph 3 above, within 90 days of the Commission's decision.

4.2. Should Arctozone succeed in removing the exclusivity clause, it shall submit a copy of the new signed agreement to the Commission with the affidavit mentioned in paragraph 4.1 above.

4.2. The said affidavit shall be attested to by a senior official within Arctozone and must comply with the South African Legal Standards.

4.3. Any breach of these conditions shall be dealt with in accordance with Rule 39 of the Competition Commission Rules.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

NOTICE 247 OF 2014

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SHANGHAI ZENDAI PROPERTY LIMITED

AND

CERTAIN IMMOVABLE PROPERTIES HELD BY AECI GROUP AND HEARTLAND BUSINESS

CASE NUMBER: 2013NOV0538

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:
The primary acquiring firm is Shanghai Zendai Property Limited ("Zendai"), a public company incorporated in terms of the laws of the Republic of Bermuda, and is listed on the Hong Kong Stock Exchange ("HKE"). Zendai is a listed entity and is therefore not controlled by any firms. Zendai is an investment holding company that engages in property development in the People's Republic of China, Hong Kong and New Zealand. The company focuses on the development, investment and management of residential and commercial properties in China, Shanghai and Hainan. Its activities include the development and sales of apartments, villas, detached houses, and office premises, provision of travel and related services, property rental, management, agency services and hotel operations.

The primary target firms are the immovable property held by AECI Group of companies ("the Target Asset") and the Heartland Properties (Pty) Limited ("Heartland") property development business based in Modderfontein in Gauteng Province ("the Heartland Business"). The Target Asset consists of 1600 hectares of land situated in Gauteng Province, Modderfontein, north of

the Sandton area. The Target Asset is zoned as industrial space, retail office space, commercial and residential development. ***The Target Asset is controlled by AECI Real Estate (Pty) Limited ("ARE") and Heartland Business is controlled by Heartland Properties (Pty) Ltd ("Heartland"). ARE and Heartland are controlled by AECI Limited ("AECI"). AECI is a public company listed on the Johannesburg Securities Exchange and is not controlled by any firm.*** The Target Asset and Heartland Business do not control any firm.
The Target Asset is the immovable property consisting of 1600 hectares of land situated within Modderfontein (Johannesburg, Gauteng Province). The Target Asset is zoned as industrial space, retail office space, commercial and residential development. Heartland Business is a property development arm of Heartland based within Modderfontein (Johannesburg, Gauteng Province).

In terms of the Framework Agreement, the Sale of Business Agreement and the Sale of Immovable Property Agreement, Zendai Development and Zendai Investment will acquire the immovable property consisting of approximately 1600 hectares of land and buildings thereon located in Modderfontein together with the leases related to these buildings for investment purposes from AECI and ARE.

Zendai will further acquire the Heartland Business (Modderfontein) carried on by Heartland and buildings thereon, as a going concern, including the moveable and certain intangible assets used or owned by Heartland in relation to the normal, ordinary and regular operations of its business. Heartland's property holdings in KwaZulu-Natal and Western Cape will not form part of the transaction.
The Commission finds that there is a horizontal overlap in the activities of Zendai and Heartland Business in the development and sale of immovable properties. However, there is no geographic overlap as Zendai does not own or operate any form of commercial activities in South Africa.

The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition as there is no geographic overlap in the activities of the merging parties.

The Commission's investigation has found that there is a restraint of trade which effectively prevents the AECI/Heartland Properties from competing with Zendai within the Modderfontein node for a period of five (5) years (reduced by agreement with the merging parties from 10 years). The Commission is of the view that given the fact that the restraint is not absolute in its application, as Heartland Properties will still be active in KZN and Western Cape, the period of the restraint is reasonable and justified. Therefore, the Commission is of the view that the restraint clause, as contained in the Framework Agreement, is unlikely to substantially prevent or lessen competition in the property development market.

However, to ensure that no changes are effected to the signed addendum, the Commission approves the proposed transaction subject to the merging parties not changing the signed addendum to the Framework Agreement which reduce the restraint period to 5 years.

The proposed transaction does not raise any public interest concerns and has a positive impact on public interest grounds as it is likely to result in job creation opportunities.

The Commission therefore approves the proposed merger subject to conditions in terms of Section 13(5)(b) (ii) of the Act, as amended.

CONDITIONS

1. Definitions

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

1.1 **"Approval Date"** means the date referred to in the Competition Commission's merger clearance certificate (Form CC 15);

1.2 **"Acquiring Firm"** means; Shanghai Zendai Property Limited

1.3 **"Commission"** means the Competition Commission of South Africa;

1.4 **"Conditions"** means these conditions;

1.5 **Merging Parties"** means the Zendai Group of companies and the AECI Group of companies;

1.6 **"Target property"** means the immovable property in the Modderfontein Area held by the AECI Group of companies.

1.7 **"The Heartland business"** means the property development business situated within Modderfontein.

2. Recordal

2.1 Clauses 2.1.42 of the Framework Agreement between the merging parties defines the restraint period as ten (10) years, the Long Stop Date, or if applicable, the Grace period or Extended Grace Period.

Clause 17.1 contains the following restraint in favour of Zendai Property Development:

"Each of the AECI parties undertake to the Zendai Parties that it shall not, during the restraint period, directly or indirectly be engaged in, invest or participate in, or own any direct or indirect interest or right in any entities, business or service providers identical, similar to or competitive with the business of property development. This restraint shall only apply to the Remaining Assets."

2.2 The Commission found the restraint period of ten years to be unduly long and likely to result in the removal of effective competition within the Modderfontein node. A shorter period of five years was proposed and agreed to by the merging parties.

2.3 A Signed addendum to the Framework Agreement has already been submitted by the merging parties to the Commission on 17 January 2014. The amendments are in accordance with the conditions below.

3. Conditions to the approval of the merger

3.1 The merging parties shall not amend the (revised) signed addendum to the Framework Agreement until termination of the restraint period.

4 Monitoring of compliance with the conditions

4.1 Within 1 month of the termination of the restraint period, the merged entity shall submit an affidavit confirming compliance with clause 3. above.

4.2 The merging parties shall submit the affidavit referred to in 4.1. above to *mergerconditions@compcom.co.za*

5. Termination of Condition

The Condition will terminate once the restraint of trade period of five years has ended.

NOTICE 248 OF 2014

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

OCEANA GROUP LIMITED

AND

THE FISHING BUSINESS OF FOODCORP (PROPRIETARY) LIMITED

CASE NUMBER: 2013AUG0371

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:

On 02 August 2013, the Competition Commission ("Commission") received a notice of an intermediate merger whereby the primary acquiring firm, Oceana Group Limited ("Oceana") will acquire the fishing business of Foodcorp as a going concern. The business essentially constitutes the entire fishing business of Foodcorp and consists of the business of catching, processing and selling deep sea trawl hake, lobster and/or pelagic fish carried out by the relevant Sellers. It includes the Cape Town fishing operations' head office which consists of the business assets (described below) and business liabilities; the business assets of each Seller being: accounts receivable, the cash-on-hand, the contracts, fishing rights, fishing vessels, fixed assets, immovable properties, goodwill, intellectual property, shares, and claims on loan account against the Sellers subsidiaries, stock and licences; and all shares (excluding minority

shares where there are minority shareholders) of certain subsidiaries of the Sellers. Oceana Brands will purchase the Glenryck trademark.

The merging parties submit that the proposed transaction excludes the sale of the West Coast Rock Lobster ("WCRL") fishing rights and the hake long line fishing rights of the Sellers. The ownership in respect of these rights is to be determined by Foodcorp in consultation with the Department of Agriculture Fishing and Fisheries ("DAFF"). The hake business (excluding hake long-line fishing rights) will be purchased by Amawandle Hake, the pelagic business by Amawandle Pelagic and the lobster business (excluding WCRL fishing rights) by Oceana Lobster. In anticipation of possible competition concerns arising from the proposed transaction, Oceana offered to sell the Glenryck brand without the Foodcorp's small pelagic fish allocation.

The investigation procedures employed by the Commission included a field investigation to Oceana's canned pilchard processing plant located in Saldanha Bay, Western Cape and to Foodcorp's processing plant located in Laaiplek, Western Cape. This was done in order to have a better understanding of the operations of the merging parties in terms of the processing of canned pilchard and fishmeal (i.e., pilchard offcuts or offal are fed into the fishmeal processing plant). The Commission also held teleconferences and meetings with competitors of the merging parties for all the fishing sectors (i.e., hake, achovy and canned pilchard) involved in the proposed transaction. The Commission also sent information requests to some retail customers for canned pilchard. The Commission also reviewed strategy documents received from the merging parties. These include presentations made to the board, minutes of EXCO and board minutes where the proposed transaction was discussed, all documents prepared discussing the proposed transaction and due diligence reports prepared by Oceana or on behalf of Oceana. Finally, the Commission consulted with DAFF, which is responsible for regulating the fishing industry.

The Commission finds that the proposed transaction raises horizontal overlap in respect of the harvesting, processing, marketing of South Coast Rock Lobster (SCRL), hake, anchovy (i.e., fishmeal is made from anchovy and fish oil is a by-product from the process) and canned pilchards. The Commission is of the view that it is not necessary to conduct an extensive

competitive assessment of the overlap between the merging parties in *respect* of the SCRL, hake and anchovy fishing sectors for the following reasons:

- In respect of the harvesting, processing and marketing of SCRL, the merged entity willhave a combined market share of 4.15% with an accretion of 1%. It will continue to face competition from significant competitors including Premier (40.12%), Ruwekus (25.20%) and African Marine Products (22.58%). Also, 90% of the South African SCRL is exported. The Commission therefore concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the harvesting, processing and marketing of SCRL.
- In respect of the market for harvesting, processing and marketing of hake, the merged entity will have a combined market share of 8.76% with an accretion of 3.9%. Post-merger, it will continue to face competition from significant players such as I&J (31.21%) and Sea Harvest (28.14%). The Commission therefore concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the harvesting, processing and marketing of hake.
- With respect to the anchovy market, Oceana currently holds commercial fishing rights that entitle it to catch approximately 17.3% of the annual anchovy allocation whilst Foodcorp has rights to catch 7.9% of the annual anchovy allocation. This will give the merged entity 25.2% of the annual allocation of anchovy. Anchovy is harvested to manufacture fishmeal. However, each of the merging parties sells its fishmeal to different customer segments. No market participant raised any competition concerns with respect to the consolidation of the anchovy quota. The Commission therefore concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for anchovy and fishmeal.

However, the Commission finds that with respect to the vertically integrated market for canned pilchard, the proposed transaction will substantially prevent or lessen competition. The Commission finds that the merging parties' pilchard brands are each other's closest competitor. The Commission thus finds that the proposed transaction will remove an effective competitor. Post-merger, the merged entity will account for approximately 81.3% of the market whist its nearest competitor will account for less than 10% of the market. The merging parties submitted

that import of pilchards is a viable substitute for locally caught fish. The Commission also finds that the relevant market is characterised by high barriers to entry and expansion in the form of regulatory barriers, high capital outlays, brand loyalty, input scarcity, amongst other barriers. Market participants confirmed to the Commission that import of pilchard is not a viable option to locally caught fish because of the volatility in the R/$ exchange rate and other associated costs. Also, the merging parties submit that quota allocations held by small quota holders are contestable as they are not locked in long-term agreements. The Commission's investigation has found that Oceana has been able to contract the majority of the volumes attributable to small quota holders' overtime.

The Commission concludes that the proposed transaction will result in the merged entity having the ability and incentive to act unilaterally in this market to the detriment of customers and competitors and will substantially prevent or lessen competition.

Given that the proposed transaction will substantially prevent or lessen competition, the Commission market tested the proposal submitted by Oceana to sell the Glenryck brand without the small pelagic fish allocation. The Commission carried out this exercise in order to establish whether this proposal will remove the substantial prevention or lessening of competition concern. The market participants overwhelmingly informed the Commission that the Oceana proposal will not address the competition concerns raised. Market participants informed the Commission that the only viable proposal is a divestment of both the Glenryck brand and Foodcorp's small pelagic fish allocation to a market player that is independent of Oceana.

In an attempt to address the concerns raised by the Commission, the merging parties suggested an alternative condition whereby the brand remains with Foodcorp and it continues with marketing it and keeping the brand in the market until such a time when they are able to find a purchaser for the brand. Foodcorp is of the view that it will be able to find fish either locally (i.e., contract from small quota holders) or to import from other parts of the world. However, Foodcorp does not import pilchard. In an attempt to convince the Commission about the viability of this condition, Oceana submitted that it will supply Foodcorp with fish for a year at

most, at a market related price. The Commission is of the view that the alternative proposal by Oceana will ensure that Foodcorp will dependent on it for fish. Hence this proposal will not remove the substantial prevention or lessening competition in the market since Foodcorp will continue to depend on Oceana and the proposal is only for a short period of time.

The view of market participants supports the Commission's assessment that the substantial prevention or lessening of competition can only be addressed by the divestment of both the Glenryck brand and Foodcorp's small pelagic fish allocation to a market player that is independent of Oceana. This will ensure that the pre-merger market structure and competitive dynamics are restored. The Commission therefore concludes that the proposed transaction will not substantially prevent or lessen competition if Ocean were to procure Foodcorp to divest the Glenryck brand and Foodcorp's small pelagic fish allocation prior to implementing the proposed transaction. The Commission therefore attached the conditions detailed in Annexure A and Annexure B to the approval of the proposed transaction.

The Commission did not receive any evidence suggesting that the proposed transaction raises any public interest issues as contemplated in section 12A (3). The Commission is therefore of the view that the proposed transaction in itself is unlikely to raise any public interest concerns.

The Commission therefore approves the proposed transaction with conditions in terms of section 14(1)(b)(ii) of the Competition Act, as amended. The Commission hereby issues a certificate in the prescribed form approving the merger.

DIVESTITURE CONDITIONS

1. INTERPRETATION

1.1. The headings of the clauses in this Annexure "A" are for the purpose of convenience and reference only, and shall not be used in the interpretation of, or to modify or amplify,

the terms of the Competition Commission of South Africa's decision to which this document is annexed.

1.2. In this Annexure "A", unless a contrary intention clearly appears, words importing:

1.2.1. any one gender include the other genders;

1.2.2. the singular include the plural and vice versa;

1.2.3. natural persons include legal persons and vice versa.

1.3. The following terms shall have the meanings assigned to them hereunder and in any Annexure to it, and cognate expressions shall have corresponding meanings, namely:

1.3.1. "**the Act**" – means the Competition Act 89 of 1998, as amended;

1.3.2. **"Acquiring Firms"** means Oceana Group Limited ;

1.3.3. **"Clearance Date"** – the date that the Commission approves the transaction and as referred to in the Merger Clearance Certificate (Form CC15).

1.3.4. **"Commercial Terms"** – means reasonable principles of commerce, or bona fide reasons, taken into account in arriving at a decision in the ordinary course of business;

1.3.5. "**the Commission**" – means the Competition Commission of South Africa;

1.3.6. "**Days**" – means business days;

1.3.7. **"the Date of Disposal"** – the date on which the legal title of the divested business is transferred to the proposed purchaser.

1.3.8. **"the Divested Business"** –; means the divested business as detailed in clause 3 of these Conditions;

1.3.9. **"the Divestiture Period"** – is the period of three months from the clearance date, or the further extended period in terms of clause 3.1 hereof, within which Oceana must secure a proposed purchaser, and conclude a sale agreement of the divested business;

1.3.10. **"Final Date"** – means the last day of any particular time period prescribed in these conditions wherein any activity connected to the divestment of the divested business has to be duly completed;

1.3.11. **"Foodcorp"** - means Foodcorp; Foodcorp Fishing (Pty) Ltd; Bongalethu Fishing Enterprises (Pty) Ltd; Emachibini Fisheries (Pty) Ltd; Ezintlanzini Fishing (Pty) Ltd; Ezolwandle Fishing (Pty) Ltd; Orgel Vismaatskappy (Pty) Ltd; Sea-ice Manufacturers (Pty) Ltd; Siyasebenza Fishing (Pty) Ltd; and Umfondini Fishing (Pty) Ltd;

1.3.12. **"Glenryck Trademark"** means the Glenryck trademark (and all related trademark licences) together with any logo or device associated therewith and all translations, adaptations, derivations and combinations thereof, and whether registered or not;

1.3.13. **Glenryck Sale"** - means the subsequent sale by Oceana of the Glenryck Trademark to the proposed Purchaser;

1.3.14. **Merger"** means the acquisition of control by Oceana over the fishing business of Foodcorp, excluding the Glenryck Trademark;

1.3.15. **"Merging Parties"** – means Oceana Group Limited ("Oceana") and the fishing business of Foodcorp (Pty) Ltd ("Foodcorp");

1.3.16. **"Proposed Purchaser"** – means any willing and able independent third party, that elects to purchase the divested business, meets all the requirements of clause 6 hereof and which is approved by the Commission;

1.3.17. **"Proposed Transaction"** – means the sale of the divested business to the proposed purchaser;

1.3.18. **"the Regulations"** - means any regulations made in terms of the Act;

1.3.19. **"Sale Agreement"** – means an agreement, to be approved by the Commission, that will be entered into by the merging parties and the proposed purchaser, whereby the divested business will be sold;

1.3.20. **"Target Firm"** – means the fishing business of Foodcorp;

1.3.21. **"the Trustee"** – means the individual charged with the duty of monitoring and executing the Trustee mandate in accordance with the conditions to which this Trustee Mandate is attached;

1.3.22. **"Trustee Divestiture Period"** – means the period of three months, or the further extended period in terms of clause 3.5, within which the trustee must execute his mandate to divest the divested business in terms of the power of attorney and which commences at the end of the divestiture period;

1.3.23. **"Trustee Team"** – means advisors, assistants and other personnel appointed by the trustee to assist the trustee in the execution of his/her mandate.

2. RECORDAL

2.1. On 2 August 2013, the Merging Parties submitted a notice of a merger with the Commission. The implementation of the Merger will result in the Acquiring Firm gaining control over the Target Firm.

2.2. The Commission finds that the Merger raises a horizontal overlap in respect of the harvesting, processing, marketing of SCRL, hake, anchovy (i.e., fishmeal is made from anchovy and fish oil is a by-product from the process) and canned pilchards.

2.3. The Commission finds that the Merger is not likely to result in substantial lessening or prevention of competition in the relevant markets for hake, anchovy (i.e., fishmeal) and SCRL.

2.4. However, with respect to the vertically integrated market for canned pilchard the Commission finds that the proposed transaction will substantially prevent or lessen competition.

2.5. The Commission finds that the Merging Parties' pilchard brands are the closest competitors in the market and command the highest share of the market with an estimated combined market share of 81.3% post-merger. The Commission thus finds that the Proposed Transaction leads to the removal of an effective competitor.

2.6. The Commission also finds that the relevant market is characterised by high barriers to entry and expansion in the form of regulatory barriers, high capital outlays, brand loyalty, input scarcity, amongst other barriers.

2.7. The merging parties anticipated that the Commission may find that the Merger is likely to result in the substantial lessening and prevention of competition and offered to divest the Glenryck brand with the view of remedying any likely competition concerns.

2.8. Although the Commission finds from its investigation of the Merger that having a strong brand is important in order to effectively compete in the industry, the

Commission also finds that having access to the pilchard (i.e., quota allocation) is equally, if not more, important.

2.9. In this regard, the Merging Parties indicate that imports are a viable option for a potential purchaser of the Glenryck Trademark. Also, the Merging Parties submit that quota allocations held by small quota holder are contestable as they are not locked in staggered agreements.

2.10. From engagements with market participants and even the players that the merging parties had indicated as possible purchasers of the Glenryck Trademark, it became evident to the Commission that imports are not a viable option for small players (i.e., smaller scale) as it is expensive to import especially under the current exchange rates.

2.11. From the submissions received from the Merging Parties on the contestability of quota allocations held by smaller quota holders, it became evident that Oceana has been able to contract much more volumes over time regardless of the fact that the TAC allocation has dropped significantly over time. It is also evident that Oceana has also been able to maintain a consistent volume of contracted quotas.

2.12. The Commission is of the view that the conditions under clause 3 sufficiently address any likely competition concerns (i.e., unilateral effects) which are likely to arise from the implementation of the Merger.

3. DIVESTED BUSINESS

3.1. Oceana before implementing the merger shall procure that Foodcorp shall divest of:

3.1.1 the Glenryck trademark;

3.1.2 The Total Allowable Catch and/or quota allocation, fishing rights and permits with respect to small pelagic fish as allocated by the Department of Agriculture, Fisheries and Forestry in terms of the Marine Living Resources Act of 1998 to Foodcorp.

4. TIME PERIODS

4.1. Oceana shall procure that Foodcorp shall secure a Proposed Purchaser, and conclude a Sale Agreement of the Divested Business, within the Divestiture Period. This period may be extended upon written application by Oceana to the Commission for a further period not exceeding 3 months on good cause shown. For the purpose of this clause, good cause shown means circumstances that could not have reasonably been foreseen by Oceana at the time the clearance certificate was issued. This request must be made in writing to the Commission no later than one month before the expiry of the Divestiture Period and the Commission's consent may not be unreasonably withheld.

4.2. Upon receipt of the written approval by the Commission of the Proposed Purchaser, the Proposed Purchaser to the extent required by the Act or requested to do so by the Commission, notify the Proposed Transaction to the Commission, at which time the Divestiture Period shall be suspended pending the approval of the Proposed Transaction by the Commission.

4.3. Oceana will procure Foodcorp to use all reasonable endeavours to complete the transfer of ownership of the Divested Business as soon as possible after the approval of the Proposed Transaction by the Competition Commission.

4.4. If Oceana is unable to secure a Proposed Purchaser of the Divested Business within the Divestiture Period or the Extended Period as the case may be, then the Trustee will have an exclusive mandate and a power of attorney to sell the Divested Business during the Trustee divestiture period at no minimum price. The specific details of the Trustee's mandate are annexed hereto marked Annexure "B".

4.5. Notwithstanding the provisions of clause 4.4, the Trustee shall use all reasonable endeavours to ensure that any Sale Agreements concluded in respect of the Divested Business with the proposed purchaser shall be at the best possible commercial terms.

4.6. Once the Sale Agreement has been concluded, Oceana shall use all reasonable endeavours to ensure that it becomes unconditional and that it is implemented as soon as possible after the date of signature thereof. This shall be included as a provision in the Sale Agreement.

4.7. Should the Trustee fail to dispose of the Divested Business within the Trustee Divestiture Period, the Trustee may apply to the Commission for a further 3-month extension on good cause shown.

4.8. Upon receipt of the written approval by the Commission of the Proposed Purchaser during the Trustee Divestiture Period, the Trustee must, to the extent and in the manner required by the Act, notify the Proposed Transaction to the Commission, at which time the Trustee Divestiture Period shall be suspended pending the approval of the Proposed Transaction by the Commission or the Tribunal.

5. UNDERTAKINGS BY OCEANA

5.1. Oceana undertakes, to do the following in respect of the Divested Business:

5.2. Procure that Foodcorp preserves and maintains the economic and competitive value of the Divested Business until the Date of Disposal in accordance with good commercial practice and to manage the Divested Business in the best interest of such business;

5.3. Procure that Foodcorp refrains from carrying out any act that may reasonably be expected to have a significant adverse impact on the economic value, the management, or the competitiveness of the Divested Business.

5.4. Refrain from carrying out any act that may be of such a nature as to, in an adverse way, alter the economic value of the Divested Business or which could alter the commercial strategy of such business in an adverse way;

5.5. Procure that Foodcorp provides sufficient resources for the maintenance of the Divested Business in accordance with any approved strategic business plan;

5.6. Commit, from the Clearance Date until the date of disposal, to keep the Divested Business separate from the rest of its business/operations and to ensure that the personnel of the Divested Business remain independent and have no involvement in its business and vice versa, and shall ensure that all personnel do not report to any individual (apart from the Trustee) outside the Divested Business;

5.7. Until date of disposal, assist the Trustee in ensuring that the divested business is managed as a distinct and saleable entity separate from the businesses of Oceana.

6. APPOINTMENT OF TRUSTEE

6.1. Oceana shall appoint an independent trustee, subject to the prior written approval of the Commission, to ensure that the Divested Business is managed in the ordinary course of business, pursuant to good business practice.

6.2. The trustee shall be independent of Oceana, possess the necessary qualifications to carry out its mandate, for example an investment bank, consultant or auditor and shall neither have nor become exposed to a conflict of interest.

6.3. Oceana shall provide a comprehensive and duly executed power of attorney to the Trustee from the date of the Trustee's appointment.

6.4. This power of attorney will take effect on the first day of the Trustee Divestiture Period.

6.5. A certified copy of the power of attorney shall be submitted to the Commission within 5 days of the Trustee's appointment.

6.6. The power of attorney shall enable the Trustee to perform all actions which the Trustee considers necessary or appropriate, including the power to appoint advisors and to execute the trustee mandate attached hereto.

6.7. The power of attorney shall include the authority to grant sub-powers of attorney to the members of the Trustee Team.

6.8. Any power of attorney granted by Oceana, including any sub-powers of attorney granted pursuant to them, shall expire on the earlier of the termination of the Trustee's mandate or the discharge of the trustee.

6.9. Oceana shall propose a trustee for the Commission's approval within ten days from the Clearance Date.

6.10. The proposal shall contain sufficient information for the Commission to determine whether the Trustee is suitable to execute the Trustee mandate attached hereto and shall include *inter alia* the proposed trustee's contact details and employment history.

6.11. The Trustee's, the Trustee's Team and the trustee's partner firms' relationship with the Merging Parties for the previous 12 months must be disclosed to the Commission in writing.

6.12. The Commission shall have the discretion to approve or reject the proposed trustee. Such approval shall not be unreasonably withheld.

6.13. Oceana shall appoint the trustee within 5 days of the Commission's approval of said trustee.

6.14. If the proposed trustee is rejected, Oceana shall submit the names of at least two more proposed trustees within 5 days of being informed of the rejection.

6.15. If the Commission rejects all further proposed Trustees, the Commission shall nominate a Trustee, whom Oceana shall appoint, or cause to be appointed within 5 days of being informed by the Commission.

6.16. All reasonable costs incurred by the Trustee and/or the Trustee Team shall be for Oceana's account, which costs shall be settled by Oceana on demand of the Trustee.

7. THE PURCHASER

7.1. With a view to immediately restoring effective competition, the Proposed Purchaser, in order to be approved by the Commission, must;

7.2. Be independent and not related to Oceana or any directly or indirectly affiliated member of their corporate groups.

7.3. Possess the financial resources, proven expertise and the incentive to maintain the divested business as a viable and active competitive force in competition with the merging parties or any directly or indirectly affiliated member of their corporate group and other competitors.

7.4. Obtain all necessary approvals from the Commission and other regulatory authorities for the acquisition of the Divested Business (taking into account any remedies that might be offered).

7.5. The proposed purchaser shall provide the Commission with an affidavit deposed to by a senior official of the proposed purchaser confirming the accuracy of all information provided to the trustee and the Commission.

7.6. In order to maintain the structural effect of these conditions, Oceana or any directly or indirectly affiliated member of their corporate group, will not subsequently directly or indirectly re-acquire influence or control over the whole or part of the Divested Business.

8. PRIOR APPROVAL BY THE COMPETITION COMMISSION

8.1. When Foodcorp has reached an agreement with a Proposed Purchaser, Oceana shall submit to the Trustee and the Commission a fully documented and reasoned proposal enabling the Commission to:

8.2. Verify in consultation with the Trustee that the Proposed Purchaser is a suitable purchaser of the Divested Business.

8.3. Such a proposal shall be submitted no later than one month prior to the end of the Divestiture Period and shall include copies of the draft and/or final sale agreement and all other ancillary agreements and/or other documents related to the proposed divestiture.

8.4. The Commission will approve or reject Oceana's proposal in writing. The approval of the proposal shall not be unreasonably withheld.

8.5. Once the sale agreement with the proposed purchaser has been concluded, Oceana shall submit a signed copy of the sale agreement, together with any other relevant documentation to the Commission.

9. DUTIES AND OBLIGATIONS OF THE PARTIES DURING THE TRUSTEE DIVESTITURE PERIOD

9.1. If Oceana fails to procure Foodcorp to transfer the Divested Business to an approved purchaser within the Divestiture Period, the Trustee shall have an exclusive mandate

with the necessary power of attorney to secure a Proposed Purchaser and sell the Divested Business at no minimum price.

9.2. At the expense of Oceana, the trustee may appoint advisors (in particular for corporate finance or legal advice), subject to Oceana's approval, which approval shall not be unreasonably withheld or delayed, if the Trustee considers the appointment of such advisors necessary or appropriate for the performance of its duties and obligations under the trustee mandate, provided that any fees and other expenses incurred by the Trustee are reasonable.

9.3. If Oceana refuses to approve the advisors proposed by the Trustee, the Commission may approve the appointment of such advisors, after having heard Oceana's objection thereto.

9.4. Oceana will indemnify the Trustee, its employees and members of the Trustee Team (each an "Indemnified Party") and hold each indemnified party harmless against any liabilities arising out of the performance of the Trustee's duties under these conditions, except to the extent that such liabilities result from the wilful default, recklessness, gross negligence of the trustee, its employees or members of the Trustee Team.

10. CONFIDENTIALITY

10.1. Save for the time periods in which the Commission requires Oceana to dispose of the Divested Business; the contents of "Annexure A" are not confidential.

10.2. The entire document "Annexure B", the Trustee mandate, is confidential.

ANNEXURE B

TRUSTEE'S MANDATE

1. INTRODUCTION

1.1. The Trustee shall act on behalf of the Commission to ensure Oceana's compliance with the terms of Annexure A of the Commission's conditions.

1.2. The key objective of the Trustee's work is to ensure that the divested business is maintained as a competitive force pending the sale, and that it is sold to a Proposed Purchaser who meets the Commission's criteria as set out in clause 6 of "Annexure A", in a format which enables continued competition in the relevant markets.

2. DUTIES OF THE TRUSTEE

2.1. The Trustee shall until the termination of his mandate carry out the following duties:

2.1.1. Monitor the steps that the Oceana is taking to maintain the continued economic viability, competitiveness and marketability of the Divested Business and ensure that it is managed in the ordinary course of business, pursuant to good business practice.

2.1.2. Monitor and advise the Commission as to the development of the procedure for selecting the Proposed Purchaser for the Divested Business and as to the conduct of the negotiations between Oceana and the Proposed Purchasers.

2.1.3. Monitor and advise the Commission as to whether the Proposed Purchasers with whom Oceana intends to negotiate are likely to satisfy the Commission's requirements as set out in clause 6 of the conditions.

2.1.4. The Trustee's duties set out above may not be extended or varied in any way by Oceana, save with the express written consent of the Commission.

3. REPORTING OBLIGATIONS OF THE TRUSTEE PRIOR TO THE TRUSTEE DIVESTITURE PERIOD

3.1. A detailed work plan describing how the Trustee intends to monitor compliance with the obligations and conditions attached to the conditions must be drawn up in consultation with Oceana and submitted to the Commission within 10 days of the Trustee's appointment.

3.2. Within 10 days from the end of each calendar month, or as otherwise agreed with the Commission, the Trustee shall submit a written progress report to the Commission, sending a copy to the Hold Separate Manager(s), and subject to a confidentiality undertaking, the designated recipients within Oceana,

3.3. The report shall cover the Trustee's progress in the fulfilment of his/her obligations under the mandate and the compliance of Oceana with the conditions and obligations imposed upon them in Annexure A and Annexure B.

3.4. The report shall cover in particular the following topics:

3.4.1. The operational and financial performance of the business to be divested, assessed during any particular time period;

3.4.2. Monitoring of the preservation of the economic viability, marketability and competitiveness of the business to be divested;

3.4.3. A list of Proposed Purchasers and a preliminary assessment of each of them;

3.4.4. The state of negotiations with Proposed Purchasers;

3.4.5. Any issues or concerns regarding the sale of the Divested Business including any issues and concerns regarding the negotiation of the Sale Agreement.

3.5. Throughout the term of the Trustee's appointment, if at any time the Trustee has any reason to doubt Oceana's full compliance with any or all of the obligations in terms of Annexure A of the Commission's conditions, the Trustee shall immediately advise Oceana of such doubts or concerns and make recommendations to Oceana regarding how such doubts or concerns may be remedied without delay.

3.6. The abovementioned doubts or concerns as well as related recommendations and progress in their implementation must be contained in the written progress report referred to in clause 3.2.

4. ASSISTANCE BY OCEANA TO THE TRUSTEE

4.1. Oceana shall provide to the Trustee, or cause to be provided, all reasonable assistance and information required by the Trustee to carry out this mandate, including copies of all relevant documents and access to appropriate personnel. Oceana shall cover all their own expenses arising from the provision of such assistance.

4.2. Oceana shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to the Trustee.

4.3. Oceana shall provide the Commission with affidavits deposed to by a senior official confirming the accuracy of all information provided to the Trustee.

5. TRUSTEE DIVESTITURE PERIOD

5.1. For purposes of this Trustee mandate the Divestiture Period shall be the applicable time periods specified in Annexure A.

5.2. In the event that the Oceana fails to secure a Proposed Purchaser within the Divestiture Period, the Trustee shall execute his mandate in accordance with the power of attorney referred to in clause 6.3 of Annexure A.

5.3. Should the Trustee sell the Divested Business during the Trustee Divestiture Period, the remuneration package of the Trustee may not provide for a success premium that is linked to the final sale value of the Divested Business.

5.4. The Proposed Purchaser shall fulfil the purchaser requirements as set out in clause 7 of Annexure A.

5.5. The Sale Agreement shall be approved by the Commission in accordance with the procedure laid down in clause 8 of Annexure A.

5.6. The Trustee shall comply with the Commission's instructions with regards to any aspect pertaining to the negotiation and/or conclusion of the Sale Agreement. In particular, the Trustee shall comply with the Commission's instruction to suspend all negotiations with any Proposed Purchaser with immediate effect.

6. REPORTING OBLIGATIONS OF TRUSTEE DURING THE TRUSTEE DIVESTITURE PERIOD

6.1. A detailed work plan describing how the Trustee intends to divest of the business must be drawn up within 10 days from the commencement of the Trustee Divestiture Period and submitted to the Commission.

6.2. Within 10 days from the end of each calendar month, or as otherwise agreed with the Commission, the Trustee shall, for the duration of the Trustee Divestiture Period, submit a comprehensive written report to the Commission, sending the parties a copy at the same time.

6.3. The report shall cover the Trustee's progress of the divestiture process and in particular the following topics:

6.3.1 A list of Proposed Purchasers and a preliminary assessment of each of them;

6.3.2 State of negotiations with Proposed Purchasers;

6.3.3 Any issues or concerns regarding the sale of the Divested Business including any issues and concerns regarding the negotiation of the sale agreement;

6.3.4 Motivation for the utilization, associated costs and details of professional advisors appointed by the Trustee;

6.3.5. Any particular issues as set out in the work plan.

7. CONFIDENTIALITY

7.1. The Trustee's reports will be confidential and for the sole use of the addressees, who shall be the Commission, Hold Separate Managers, and subject to a confidentiality undertaking by the designated recipients within Oceana.

7.2 The Trustee's reports shall be independently prepared on the basis of the information and documents provided to him and shall reflect his assessment of such information and documentation.

7.3. The Trustee shall present the draft reports to the Hold Separate Managers in advance of its submission to the Commission in order that they may review the factual content of the report and provide their comments.

7.4. Any unresolved disagreement between the Trustee and the Hold Separate Managers concerning the content of the draft report must be noted in the final report submitted to the Commission.

8. ESTIMATED FEES AND EXPENSES

Oceana shall pay the Trustee's reasonable fees and expenses on the terms and conditions agreed upon in writing between Oceana and the Trustee.

9. REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF TRUSTEE

9.1. The Commission may at any time, after consultation with the Trustee, order Oceana to remove the Trustee, if the Trustee has not acted in accordance with the Trustee mandate or for any reason advanced by the Commission.

9.2. The new Trustee shall be appointed in accordance with the procedure referred to in clause 6 of Annexure A.

10. TERMINATION OF THE MANDATE

10.1 The mandate will automatically terminate upon completion by the Trustee of his obligations under this mandate, subject to the written approval of the Commission.

All correspondences in relation to the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

NOTICE – CHANGE OF TELEPHONE NUMBERS: GOVERNMENT PRINTING WORKS

As the mandated government security printer, providing world class security products and services, Government Printing Works has adopted some of the highly innovative technologies to best serve its customers and stakeholders. In line with this task, Government Printing Works has implemented a new telephony system to ensure most effective communication and accessibility. As a result of this development, our telephone numbers will change with effect from 3 February 2014, starting with the Pretoria offices.

The new numbers are as follows:

- Switchboard : 012 748 6001/6002
- Advertising : 012 748 6205/6206/6207/6208/6209/6210/6211/6212
- Publications Enquiries : 012 748 6052/6053/6058 GeneralEnquiries@gpw.gov.za

  Maps : 012 748 6061/6065 BookShop@gpw.gov.za

  Debtors : 012 748 6060/6056/6064 PublicationsDebtors@gpw.gov.za

  Subscription : 012 748 6054/6055/6057 Subscriptions@gpw.gov.za
- SCM : 012 748 6380/6373/6218
- Debtors : 012 748 6236/6242
- Creditors : 012 748 6246/6274

Please consult our website at www.gpwonline.co.za for more contact details.

The numbers for our provincial offices in Polokwane, East London and Mmabatho will not change at this stage.

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Publications: Tel: (012) 748 6052, 748 6053, 748 6058
Advertisements: Tel: (012) 748 6205, 748 6208, 748 6209, 748 6210, 748 6211
Subscriptions: Tel: (012) 748 6054, 748 6055, 748 6057

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001
Publikasies: Tel: (012) 748 6052, 748 6053, 748 6058
Advertensies: Tel: (012) 748 6205, 748 6208, 748 6209, 748 6210, 748 6211
Subskripsies: Tel: (012) 748 6054, 748 6055, 748 6057

This gazette is also available free online at **www.gpwonline.co.za**