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

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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.

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