

## 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, Mpact and New Era in the supply of corrugated sheet. Regarding customer foreclosure, the
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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](mailto: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