

ANNEXURE A

CONFIDENTIAL

SOUTH BAKELS PROPRIETARY LIMITED

AND

**KERRY ORLEY FOODS (A DIVISION OF KERRY INGREDIENTS SOUTH AFRICA
PROPRIETARY LIMITED)**

CC CASE NUMBER: 2022NOV0035

CONDITIONS

1 DEFINITIONS

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

- 1.1 **"Approval Date"** means the date on which the Commission issues a Clearance Certificate (Notice CC15) in terms of the Competition Act;
- 1.2 **"Bakels Group"** means the international Bakels Group, registered in Switzerland (trade registry number CHE 112.837.198), which manufactures, distributes and technically supports innovative baking ingredients and solutions to bakery and confectionary customers worldwide;
- 1.3 **"B-BBEE"** means Broad-Based Black Economic Empowerment;
- 1.4 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6 **"Compliance Report"** means a report compiled by the Merger Parties/merged entity which outlines the Merger Parties' adherence to these Conditions;

- 1.7 “**Conditions**” means these conditions contained in this **Annexure A**;
- 1.8 “**days**” means any calendar day which is not a Saturday, Sunday or an official public holiday in South Africa. A public holiday shall include such days as may be declared by the President of the Republic of South Africa in terms of the Public Holidays Act, 36 of 1994;
- 1.9 “**employee(s)**” means all the permanent employees of the Primary Acquiring Firm or the Primary Target Firm, as defined in the LRA, and employed as such on the Implementation Date;
- 1.10 “**HDP**” means historically disadvantaged person within the meaning of the Competition Act;
- 1.11 “**Implementation Date**” means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
- 1.12 “**LRA**” means the Labour Relations Act 66 of 1995, as amended;
- 1.13 “**merger**” means the acquisition of control of the Primary Target Firm by the Primary Acquiring Firm;
- 1.14 “**Merging Parties**” means the Primary Acquiring Firm and the Primary Transferred Firm;
- 1.15 “**month**” means a period of 30 (thirty) calendar days;
- 1.16 “**Moratorium Period**” means a period of 3 (three) years from the Implementation Date, and includes a period between the Approval Date and the Implementation Date;
- 1.17 “**Primary Acquiring Firm**” means South Bakels Proprietary Limited, a subsidiary of the Bakels Group;

- 1.18 **"Primary Target Firm"** means the sweet foods manufacturing business conducted by Kerry Ingredients as a going concern and income earning activity at the premises under the name of "Kerry Orley Foods" (a division of Kerry Ingredients), subject to the acquisition by the Primary Acquiring Firm;
- 1.19 **"Seller"** means Kerry Ingredients South Africa Proprietary Limited (registration number: 2004/000621/07);
- 1.20 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.21 **"Y.E.S"** means the YES 4 Youth business-led collaboration/initiative.

2 **RECORDAL**

- 2.1 The Merging Parties and the Commission have engaged in various discussions relating to the impact of the merger on the public interest grounds listed under section 12A(3) of the Competition Act, and specifically section 12A(3)(e) of the Competition Act.
- 2.2 Accordingly, both the Merging Parties and the Commission agree to the Conditions set out below.

3 **EMPLOYMENT**

- 3.1 The Primary Acquiring Firm undertakes that it will not conduct any merger-related retrenchments in respect of the employees during the Moratorium Period.
- 3.2 For the sake of clarity, merger-specific retrenchments do not include: (i) voluntary separation arrangements and/or voluntary retrenchments; (ii) voluntary early retirement; (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) terminations as a result of misconduct or poor

performance; and (vii) any decision not to renew or extend a contract or a fixed-term third-party contract employee or contract with a third party.

3.3 The Primary Acquiring Firm will, within 12 (twelve) months of the Approval Date, on-board an additional 10 employees. The hiring of such additional employees will be in respect of (but not limited to) the following positions:

- 3.3.1 Management Accountant;
- 3.3.2 Senior NPD Technologist;
- 3.3.3 Production Manager;
- 3.3.4 Telesales Administration Clerk;
- 3.3.5 Warehouse Manager;
- 3.3.6 Industrial Sales Manager;
- 3.3.7 Industrial Sales Representative;
- 3.3.8 Production Supervisor;
- 3.3.9 Production Supervisor; and
- 3.3.10 Site Manager.

Management control

3.4 The Primary Acquiring Firm shall promote the following individuals to senior management positions within 12 (twelve) months of the Approval Date:

Name	Current Job Title	Promotion Level	Race	Gender
██████████	QA Manager	Top management	Indian	Female
██████████	Non-executive director	Executive director	Black	Male
██████████	Sales Manager	Branch Manager (senior management)	Coloured	Male
██████████	(New hire)	Procurement Manager	Black	Female

■ [REDACTED]

[REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
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■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

[REDACTED]

5 SOCIO-ECONOMIC DEVELOPMENT

Skills development

- 5.1 Within 12 (twelve) months of the Implementation Date, the Primary Acquiring Firm will implement the Y.E.S initiative for a minimum of 30 candidates.
- 5.2 For a period of 3 (three) years following the Implementation Date, the Primary Acquiring Firm will -
 - 5.2.1 offer a minimum of 5 eligible HDPs placement in its Professional Cookery and Baking and Confectionary learnership programmes (respectively), per annum;
 - 5.2.2 absorb a minimum of 2 of the aforementioned HDP learnership participants as permanent employees, per annum;
 - 5.2.3 offer a minimum of 5 eligible HDPs placement in its internship programme, per annum;
 - 5.2.4 on-board a minimum of 1 of the aforementioned HDP interns as permanent employees, per annum. and
 - 5.2.5 avail a total of 5 bursaries to eligible HDPs to attend Sparrow College, per annum.

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]

■ [REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]

8 MONITORING OF UNDERTAKINGS

8.1 The Primary Acquiring Firm shall notify the Commission in writing of the Implementation Date of the merger and the number of employees within 5 (five) days of the merger becoming effective.

8.2 The Merging Parties shall circulate a copy of the employment conditions to the employees, trade-union representative(s) and employee representative(s) of the Primary Acquiring Firm and the Primary Target Firm, respectively, within 5 (five) days of the Approval Date.

8.3 As proof of compliance with paragraph 3 above, a senior executive of the Primary Acquiring Firm shall within 10 (ten) days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notices that were circulated to the employees, trade union(s) and their employee representative(s).

8.4 The Primary Acquiring Firm shall, within the first 30 (thirty) days of the merger becoming effective, publish a non-confidential version of the Conditions on its website so as to ensure that potential beneficiaries in respect of all conditions (with the exception of the employment conditions in 3 above) are notified of same. .

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

9 VARIATION

The Merger 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 Merger Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

10 APPARENT BREACH

An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

11 GENERAL

All correspondence in relation to these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za