

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM097Oct23

In the matter between:

3 Sisters (Pty) Ltd

**Primary Acquiring Firm**

And

Capespan Group (Pty) Ltd

**Primary Target Firm**

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Panel: A W Wessels (Presiding Member)  
L Mncube (Tribunal Member)  
G Budlender (Tribunal Member)

Heard on: 11 December 2023

Decided on: 12 December 2023

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### ORDER

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Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved subject to the conditions set out in “**Annexure A**” in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).



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**Presiding Member**  
**Mr Andreas Wessels**

**12 December 2023**

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**Date**

**Concurring: Prof. Liberty Mncube and Adv. Geoff Budlender SC**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 12 December 2023

**To** : Cliffe Dekker Attorneys

Case Number: LM097Oct23

3 Sisters (Pty) Ltd And Capespan Group (Pty) Ltd

## Notice CT 10

### About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **26 September 2023** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

### Contacting the Tribunal

The Competition Tribunal  
Private Bag X24  
Sunnyside  
Pretoria 0132  
Republic of South Africa  
tel: 27 12 394 3300  
fax: 27 12 394 0169  
e-mail: [ctsa@comptrib.co.za](mailto:ctsa@comptrib.co.za)

### The Registrar, Competition Tribunal

*Teddyo Hupie*

**ANNEXURE A**  
**3 SISTERS PROPRIETARY LIMITED**  
**AND**  
**CAPESPAN GROUP PROPRIETARY LIMITED**  
**CASE NUMBER: LM097Oct23**

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**CONDITIONS**

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**1. DEFINITIONS**

- 1.1 The following expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings:
- 1.1.1 **"27four"** means 27four Investment Managers Proprietary Limited;
- 1.1.2 **"Acquiring Firm"** means 3 Sisters Proprietary Limited;
- 1.1.3 **"Acquiring Group"** means the Acquiring Firm, which is beneficially owned and funded by Agrarius OpCo, which is fully funded by Agrarius ListCo and is administered and driven by 27four, which in turn is ultimately controlled by Fatima Essop Vawda, as well as all firms directly and indirectly controlled by the aforesaid firms;
- 1.1.4 **"Agrarius ListCo"** means Agrarius Sustainability Engineered RF Limited;
- 1.1.5 **"Agrarius OpCo"** means Agrarius Agri Value Chain RF Proprietary Limited;
- 1.1.6 **"Approval Date"** means the date referred to on the Tribunal's merger clearance certificate (Form CT 10), being the date on which the Merger is approved in terms of the Competition Act;
- 1.1.7 **"Capespan"** means Capespan Group Proprietary Limited (*exclusive of its pome fruit primary production operations and its Novo packhouse which is not being sold to 3 Sisters*);
- 1.1.8 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

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- 1.1.9            **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.10           **"Competition Act"** means the Competition Act, 89 of 1998, as amended;
- 1.1.11           **"Conditions"** means these conditions;
- 1.1.12           **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.13           **"Emerging HDP-owned Farmers"** means HDP-owned farmers based in South Africa with more than 10,000 cartons but less than 250,000 cartons of export quality fruit;
- 1.1.14           **"HDP"** means a historically disadvantaged person as defined in the Competition Act;
- 1.1.15           **"HDP-owned"** means owned as to, at least, 50% plus 1 share by HDP(s);
- 1.1.16           **"HDP Transaction"** means the introduction of at least 24% shareholding by HDPs in the Acquiring Firm within 24 months from the Implementation Date;
- 1.1.17           **"Implementation Date"** means the date occurring after the last condition precedent to the transaction is fulfilled or waived, as the case may be, when the Merger is implemented in accordance with its terms;
- 1.1.18           **"Merged Entity"** means Capespan subject to the control of the Acquiring Group following the Implementation Date;
- 1.1.19           **"Merger"** means the proposed acquisition by the Acquiring Firm of the entire issued ordinary share capital of Capespan;
- 1.1.20           **"Merging Parties"** means the Acquiring Group and Capespan;
- 1.1.21           **"Moratorium Period"** means a period of 3 (three) years from the Implementation Date and includes the period between the Approval Date and the Implementation Date;
- 1.1.22           **"South Africa"** means the Republic of South Africa;

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1.1.23 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and

1.1.24 "Tribunal Rules" means the Rules for the Conduct of Proceedings in the Competition Tribunal.

## 2. HDP TRANSACTION

2.1 The Acquiring Firm shall, within 24 months of the Implementation Date, conclude a HDP Transaction.

## 3. DEVELOPMENT OF EMERGING HDP-OWNED FARMERS

3.1 On an annual basis for the next 2 (two) financial years, commencing 1 July 2024, Capespan shall provide Capespan's South African based export and marketing services to at least 4 (four) Emerging HDP-owned Farmers at Capespan's cost of service (which represents at least a ■■■% (■■■■ percent) discount to what Capespan charges any of its third-party commercial farmers).

3.2 The services include high level technical farming advice, appropriate market and customer assessments, commercial harvesting, packing and supply chain advice and recommendations as well as standard pre-payments on loading and intake of produce.

## 4. HDP SKILLS DEVELOPMENT INITIATIVES

4.1 The Acquiring Group shall ensure that Capespan, on an annual basis for Capespan's next 2 (two) financial years commencing 1 July 2024, fund at least 2 (two) additional training positions at Capespan for suitable HDP candidates who are not, at the time of the offer for training, employed by Capespan.

4.2 The positions are to be determined according to Capespan's human resources needs at the time, such as, procurement, commercial, logistics or technical teams.

## 5. SOCIAL DEVELOPMENT INITIATIVES

5.1 The Acquiring Group shall ensure that Capespan, during Capespan's next 2 (two) financial years commencing 1 July 2024, spend at least an aggregate total amount of R8 million

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(eight million Rand) over the period in the form of social development initiatives across the communities where Capespan is active.

- 5.2 These initiatives include but are not limited to funding of healthcare services for Capespan's farm workers, funding the education needs of the families of Capespan's farm workers, and community development projects.

## 6. **CAPITAL EXPENDITURE**

The Acquiring Group shall ensure that Capespan over the next 2 (two) financial years commencing on 1 July 2024 incur in aggregate no less than R28 million (twenty-eight million Rand) in replacement capital expenditure on Capespan's South African operations.

## 7. **EMPLOYMENT**

- 7.1 Subject to the provisions of clause 7.2 below, the Merged Entity shall not retrench any permanent or fixed-term contract employees as a result of the Merger during the Moratorium Period.

- 7.2 The undertaking provided in paragraph 7.1 above means that no retrenchments will result as a consequence of the implementation of the Merger. For the sake of clarity, Merger specific retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements (for the purposes of the Labour Relations Act) 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 fixed-term third party contract employee or contract with a third party.

## 8. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 8.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.

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- 8.2 The Merged Entity shall, within 30 (thirty) Days of the end of Capespan's financial year-end, for its next 2 (two) financial years commencing 1 July 2024, provide to the Commission a report detailing its progress regarding the compliance with the Conditions. This report shall be accompanied by an affidavit attested to by a senior official of the Merged Entity, confirming the report's accuracy.
- 8.3 The Commission may request additional information from the Merging Parties, which the Commission may reasonably deem necessary to monitor the extent of compliance with the Conditions.
- 8.4 Any person who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission with their complaint. If the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, the matter shall be dealt with in terms of clause 10 below.

## 9. **VARIATION OF THE CONDITIONS**

- 9.1 The Merging Parties or the Commission may at any time, on good cause shown and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified or substituted.

## 10. **APPARENT BREACH**

- 10.1 If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

## 11. **GENERAL**

- 11.1 All correspondence concerning the Conditions must be submitted to the following e-mail addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [ministry@thedtic.gov.za](mailto:ministry@thedtic.gov.za).