

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM150Dec23

In the matter between:

Sentraal-Suid Cooperative Ltd

**Primary Acquiring Firm**

And

Die Humansdorpse LandBou Kooperasie Beperk

**Primary Target Firm**

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Panel:	A Wessels (Presiding Member)
	A Kessery (Tribunal Member)
	T Vilakazi (Tribunal Member)
Heard on:	28 March 2024
Last date of Submission	31 March 2024
Decided on:	31 March 2024

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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 Adreas Wessels**

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**31 March 2024**

**Date**

**Concurring: Adv Anisa Kessery and Prof. Thando Vilakazi**

## ANNEXURE A

SENTRAAL-SUID COOPERATIVE LIMITED

AND

DIE HUMANSDORPSE LANDBOU KOÖPERASIE BEPERK

CASE NUMBER: LM150DEC23

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### MERGER CONDITIONS

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#### 1. DEFINITIONS

In this Annexure 'A', unless expressly stated or the context indicates otherwise, the following words and expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1 “**Affected Employees**” means a maximum of 100 employees of HLK Group that may be retrenched by HLK for operational reasons, it being recorded for the avoidance of doubt, that such operational retrenchments exclude (i) voluntary separation arrangements; (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) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vi) any decision not to renew or extend a fixed term contract of a contract worker or Employee taken in the ordinary course of business;
- 1.2 “**Approval Date**” means the date on which the Tribunal issues a Clearance Certificate (Notice CT10) in terms of the Competition Act in respect of the Merger;
- 1.3 “**Commission**” means the Competition Commission of South Africa;
- 1.4 “**Competition Act**” means the Competition Act No. 89 of 1998;
- 1.5 “**Conditions**” means the conditions set out in this Annexure;

- 1.6 “**Conversion**” means the registration, by the Registrar, of HLK as a private company with limited liability in terms of the Companies Act, No. 71 of 2008 (“**Companies Act**”), and the simultaneous cancellation of the registration of HLK pursuant to the provisions of section 62 of the Co-operatives Act, No. 14 of 2005 (“**Co-operatives Act**”);
- 1.7 “**Days**” means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.8 “**Employee**” means an employee as defined in the LRA;
- 1.9 “**Implementation Date**” means the date, occurring after the Approval Date, on which the first of the Merger steps as set out in 1.16 below, is implemented;
- 1.10 “**Friedshelf Properties**” means Friedshelf 1722 Proprietary Limited, registration number 2016/164323/07, which has no Employees and in which HLK owns 75% of the issued share capital;
- 1.11 “**HDPs**” means historically disadvantaged persons as defined in section 3(2) of the Competition Act;
- 1.12 “**HLK**” means Die Humansdorpse Landbou Koöperasie Beperk, an agricultural co-operative with limited liability originally incorporated in terms of the provisions of the Co-operative Act No. 91 of 1981 and which continues as such under the Co-operatives Act, with registration number 1944/000003/24;
- 1.13 “**HLK Group**” means HLK and its subsidiaries as at the Approval Date;
- 1.14 “**HLK PL**” means a private company with limited liability, as contemplated in the Companies Act, being the successor to HLK pursuant to the provisions of section 62 of the Co-operatives Act;
- 1.15 “**LRA**” means the Labour Relations Act, No. 66 of 1995, as amended or replaced from time to time;
- 1.16 “**Merger**” means, collectively, the acquisition by –
- 1.16.1 Tuinroete of certain immovable properties owned by HLK;
- 1.16.2 SSK of the business conducted by Umtiza (“**the Umtiza Transaction**”);
- 1.16.3 Tuinroete of the immovable property rental business conducted by Friedshelf Properties;
- 1.16.4 SSK of one or more separate businesses owned by HLK; and
- 1.16.5 SSK of the entire issued share capital in HLK PL consequent upon the Conversion (“**the HLK PL Transaction**”);

- 1.17 “**Merger Parties**” means SSK, Tuinroete, Umtiza, Friedshelf Properties and HLK or HLK PL (as the case may be), or any one or more of them as indicated by the context;
- 1.18 “**Registrar**” means the Commissioner appointed in terms of section 189 of the Companies Act, exercising the duties and functions imposed in terms of the Companies Act or the Co-operatives Act, as the case may be;
- 1.19 “**SSK**” means Sentraal-Suid Co-operative Limited, an agricultural co-operative with limited liability originally incorporated in terms of the provisions of the Co-operative Act No. 91 of 1981 and which continues as such under the Co-operatives Act, with registration number 1943/000002/24;
- 1.20 “**SSK Membership Assistance Fund**” means a fund set up by SSK to assist HDPs with the acquisition of the requisite 4,000 shares in SSK if they qualify for membership in SSK;
- 1.21 “**Tuinroete**” means Tuinroete Agri Proprietary Limited, registration number 1997/003183/07, a wholly owned subsidiary of SSK which has no Employees;
- 1.22 “**Tribunal**” means the Competition Tribunal of South Africa; and
- 1.23 “**Umtiza**” means Umtiza Farmers Corporation Limited, registration number 2003/004926/06, in which HLK owns 72.16% of the issued share capital.

## **2. CONDITIONS TO THE APPROVAL OF THE MERGER**

### **2.1 Transformation Initiatives**

SSK will take the following steps in an attempt to increase the number of HDPs holding membership of SSK –

- 2.1.1 SSK will take all reasonable steps to identify as many suitable candidates as possible, in the service area of SSK and also in the service areas of HLK and Umtiza. These steps will be conducted:(i) in respect of the historical SSK service area, with effect from the Approval Date for a period of 3 (three) years from the Approval Date; (ii) in respect of the historical service area of Umtiza, with effect from the implementation of the Umtiza Transaction for a period of 3 (three) years from the date of implementation of the Umtiza Transaction; and (iii) in respect of the historical service area of HLK, with effect from the date of implementation of the HLK PL Transaction for a period of 3 (three) years from the date of implementation of the HLK PL Transaction;
- 2.1.2 Upon the implementation of the Umtiza Transaction, SSK will for a period of 3 (three) years from the date of implementation of the Umtiza Transaction, appropriately extend its retail services to reach even farmers who may be described as marginalised,

particularly in the historical service area of Umtiza, in an attempt to promote to such farmers the benefits of being a member of a co-operative and incentivise them to apply to become members of SSK;

- 2.1.3 SSK will, at least 3 (three) times per year, conduct membership drives amongst those farmers identified as a result of the efforts described in clauses 2.1.1 and 2.1.2. These membership drives will be conducted: (i) in respect of farmers identified or to be identified in the historical SSK service area, with effect from the Approval Date for a period of 3 (three) years from the Approval Date; (ii) in respect of farmers identified or to be identified in the historical service area of Umtiza, with effect from the implementation of the Umtiza Transaction for a period of 3 (three) years from the date of implementation of the Umtiza Transaction; and (iii) in respect of farmers identified or to be identified in the historical service area of HLK, with effect from the date of implementation of the HLK PL Transaction for a period of 3 (three) years from the date of implementation of the HLK PL Transaction;
- 2.1.4 In respect of clauses 2.1.1 to 2.1.3 above, SSK will encourage suitable candidates to apply for membership in SSK and create conducive conditions for them to do so (by, for instance, assistance with completion and delivery of application forms and supporting documents and/or information);
- 2.1.5 In respect of clauses 2.1.1 to 2.1.3 above, SSK will provide funding to qualifying candidates by means of the SSK Membership Assistance Fund: and
- 2.1.6 SSK will publish details of the transformation initiatives described in this clause 2.1 on its website, such publication to be effected as follows: (i) in respect of farmers identified or to be identified in the historical SSK service area, with effect from 2 (two) Days after the Approval Date; (ii) in respect of farmers identified or to be identified in the historical service area of Umtiza, with effect from the date of implementation of the Umtiza Transaction; and (iii) in respect of farmers identified or to be identified in the historical service area of HLK, with effect from the date of implementation of the HLK PL Transaction.

## 2.2 **Employment**

- 2.2.1 The Merger Parties shall not make any Merger specific retrenchments of any Employees (other than, for the avoidance of doubt, Affected Employees) during the period from the Approval Date to expiry of a period of 3 (three) years from the date of implementation of the last Merger step as set out in clause 1.16 above.

- 2.2.2 Prior to any retrenchments of Affected Employees being implemented by HLK, SSK shall give first preference to HLK Employees that are to be retrenched for any vacancies within the ranks of its Employees, provided that the HLK Employees that are to be retrenched have the requisite qualifications, skills, know-how and experience for those specific vacancies and, at all times, subject to the employment equity plan and transformation requirements of SSK.
- 2.2.3 For a period of 24 months after the retrenchment of the Affected Employees by HLK , SSK and HLK shall furthermore give first preference to the Affected Employees for any vacancies within the ranks of their respective Employees, provided that the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies and, at all times, subject to the employment equity plan and transformation requirements of SSK and HLK respectively.
- 2.2.4 SSK and HLK shall each maintain a database of the names and contact details of all the Affected Employees and, should any vacancies arise within the ranks of their respective Employees, undertake to communicate available vacancies to the Affected Employees through their last known contact details such as email and/or cell phone numbers.
- 2.2.5 Each HLK Employee that is to be retrenched and each Affected Employee applying for a vacancy, respectively pursuant to clause 2.2.2 and clause 2.2.3 above, must do so in accordance with the time frame specified in the advertisement or communication applicable to the vacancy. The usual recruitment and appointment procedures and requirements of SSK and HLK respectively, including undergoing an interview process, will apply to applications made by such Employees or Affected Employees. If an Affected Employee applying for a vacancy is still unemployed at the time of applying and is equally as suitably qualified and experienced for a position as another candidate, that Affected Employee will be appointed in preference to other candidates. A successful HLK Employee or Affected Employee, as the case may be, will be employed in accordance with the terms and conditions in place for the relevant position at the time.
- 2.2.6 For the avoidance of doubt, 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 LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements; (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 fixed term contract of a contract worker or Employee taken in the ordinary course of business.

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

3.1 For the duration of the Conditions, the Merger Parties shall annually provide the Commission with an affidavit attested to by a senior official of the Merger Parties, confirming compliance with the Conditions.

3.2 The Commission may request such additional information from the Merger Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

3.3 For the duration of the relevant Conditions, the Merger Parties shall annually submit to the Commission an affidavit –

3.3.1 detailing the number of retrenchments made (if any) and the number of new employment positions (if any) created during the preceding 12 (twelve) months; and

3.3.2 confirming compliance with the Conditions set out in clause 2.2.

3.4 SSK will inform the Commission of the Implementation Date and of the date of implementation of each subsequent Merger step in 1.16 above within 10 (ten) Days of its occurrence.

3.5 For the duration of the relevant Conditions, SSK will annually submit to the Commission an affidavit –

3.5.1 detailing the level of membership by HDPs in SSK; and

3.5.2 confirming compliance with the Conditions set out in clause 2.1 above.

3.6 The first of the affidavits as contemplated in clauses 3.1, 3.3 and 3.5 above will be submitted to the Commission within 20 (twenty) Days of the first anniversary of the Implementation Date and each subsequent affidavit within 20 (twenty) Days of the subsequent anniversaries of the Implementation Date.

### **4. VARIATION**

The Merger Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

## **5. APPARENT BREACH**

If the Merger Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merger 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.

## **6. GENERAL**

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)



# Merger Clearance Certificate

**Date** : 31 March 2024

**To** : Vanderspuy Attorneys

Case Number: LM150DEC23

Sentraal-Suid Cooperative Limited And Die Humansdorpse  
Landbou Koöperasie Beperk

## 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 **13 December 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

### The Registrar, Competition Tribunal

*Tebogo H. Mphahlele*