



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM001Apr20

In the matter between:

Senwesbel Limited and Senwes Limited

Primary Acquiring Firms

and

Suidwes Holdings (RF) (PTY) LTD

Primary Target Firm

Panel : M Mazwai (Presiding Member)
: E Daniels (Tribunal Panel Member)
: I Valodia (Tribunal Panel Member)
Heard on : 1; 3; 8; 19; 23 July and 5 August 2020
Final submissions received : 14 August 2020
Decided on : 18 August 2020

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as "**Annexure A**"; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Ms Mondo Mazwai
Presiding Member

18 August 2020

Date

Concurring: Mr E Daniels and Prof I Valodia

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings:

- 1.1 **“Acquiring Firm”** means Senwesbel Limited (**“Senwesbel”**), a public company incorporated in accordance with the laws of South Africa, with Registration Number 1996/017629/06 and its subsidiary, Senwes Limited (**“Senwes”**), a public company incorporated in accordance with the laws of South Africa, with Registration Number 1997/005336/06 and any other related, group, affiliated, holding, controlling and/or controlled firms or companies (**“Senwes”**);
- 1.2 **“Africum Mill”** means the maize mill linked to the Wolmaransstad silo;
- 1.3 **“Agri Sector Code”** means the Amended AgriBEE Sector Code in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act, (Act No. 53 of 2003) as amended by the B-BBEE Act 46 of 2013;
- 1.4 **“Approval Date”** means the date the Tribunal issues a Clearance Certificate (Notice CT10) in terms of the Competition Act;
- 1.5 **“Business Days”** means any day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.6 **“Closing Date”** means the date(s) of transfer of ownership of each of the Jan Kemp Dorp, Strydpoort and Wolmaransstad concrete silos, and the Africum Mill;
- 1.7 **“Commission”** means the Competition Commission of South Africa;
- 1.8 **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;

- 1.9 “**Competition Act**” means the Competition Act 89 of 1998, as amended from time to time;
- 1.10 “**Conditions**” mean these conditions;
- 1.11 “**Divestiture**” means the sale collectively or individually of the Jan Kemp Dorp, Strydpoort, Wolmaransstad silos and the Africum Mill. During the First Divestiture Period, the assets must be sold collectively. In the Second Divestiture Period and the Trustee Divestiture Period, the assets may be sold collectively or individually;
- 1.12 “**Divestiture Agreement**” means the agreement(s) entered into between Senwes and/or Suidwes and the Purchaser(s);
- 1.13 “**First Divestiture Period**” means a period of [...] months from the Approval Date;
- 1.14 “**Divestiture Business**” means collectively or individually the Jan Kemp Dorp, Strydpoort, Wolmaransstad silos and the Africum Mill. During the First Divestiture Period, the assets must be sold collectively. In the Second Divestiture Period and the Trustee Divestiture Period, the assets may be sold collectively or individually;
- 1.15 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.16 “**Jan Kemp Dorp concrete silo**” means the concrete silo with a capacity of approximately 28 000 tonnes currently operated by Senwes at Jan Kemp Dorp;
- 1.17 “**Merged Entity**” means the Target Firm, subject to the control of the Acquiring Firm;
- 1.18 “**Merger**” means the acquisition of control over the Target Firm by the Acquiring Firm;
- 1.19 “**Merging Parties**” means the Acquiring Firm and Target Firm and their respective subsidiaries;

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- 1.20 “**Production loans**” means the amount of R20 million per annum in the form of production loans (including, but not limited to loans for the production of grains and/or livestock farming) to black farmers;
- 1.21 “**Purchaser(s)**” means the identified purchaser of the Divestiture Business which must be an independent third party which is not a related entity of the Acquiring Firm;
- 1.22 “**Second Divestiture Period**” means a period of [...] after the completion of the First Divestiture Period;
- 1.23 “**South Africa**” means the Republic of South Africa;
- 1.24 “**Strydpoort silo**” means the concrete silo with an installed capacity of approximately 68 000 tonnes currently operated by Suidwes in the North West Province;
- 1.25 “**Target Firm**” means Suidwes Holdings (Ring Fenced) Proprietary Limited (“**Suidwes**”), a private company incorporated in accordance with the laws of South Africa, with Registration Number 1998/00760/07 and principal business address at 5 Voortrekker Street, Leeudoringstad, North West Province, South Africa, including its various subsidiaries (also referred to in these Conditions as “**Suidwes**”);
- 1.26 “**Tribunal**” means the Competition Tribunal of South Africa;
- 1.27 “**Tribunal Rules**” means Rules for the Conduct of Proceedings in the Tribunal;
- 1.28 “**Trustee**” means one or more natural or legal person(s), independent of the Merging Parties, who is/are appointed by the Commission in accordance with the provisions of these conditions;
- 1.29 “**Trustee Divestiture Period**” means the period of [...] months following the expiry of the Second Divestiture Period;
- 1.30 “**Trustee’s Mandate**” means the duties of the Trustee as set out in the specimen Annexure B;

- 1.31 **“Trustee team”** means advisors, assistants and other personnel appointed by the Trustee to assist the Trustee in the execution of the Trustee’s Mandate; and
- 1.32 **“Wolmaransstad concrete silo”** means the concrete silo with an installed capacity of approximately 83 000 tonnes currently operated by Suidwes at the town Wolmaransstad, North West Province.

2. **EMPLOYMENT**

- 2.1 With the exception of the 136 positions which have been identified by Senwes as being potentially duplicative, the Merging Parties shall not retrench any employees of the Merging Parties as a result of the merger for a period of 24 months from the Implementation Date. The Merging Parties shall provide the Commission with the final number of the retrenchments arising from duplications within three months of the Implementation Date.
- 2.2 This would not preclude the non-merger specific retrenchments which Suidwes will have to undertake to close the loss-making businesses.
- 2.3 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 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.

3. **THE APPOINTMENT OF THE TRUSTEE**

- 3.1 Senwes shall propose a nominee to be appointed as Trustee in writing for the Commission to consider for Senwes to appoint as Trustee within fifteen (15) Business Days from the Approval Date.
- 3.2 The Trustee shall be an employee of an auditing firm independent of Senwes

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and that does not, at the time of appointment, provide auditing or advisory services to Senwes, shall possess the necessary qualifications to carry out his or her mandate and shall, at the date of appointment, not be exposed to a conflict of interest.

- 3.3 The proposal shall contain such information as is necessary for the Commission to determine whether the proposed Trustee(s) are suitable to execute the Trustee's Mandate and shall include, *inter alia*, the proposed Trustees' contact details and curriculum vitae.
- 3.4 Should the Commission reject the proposed Trustee, the Commission must provide detailed written reasons explaining the rejection of the proposed Trustee.
- 3.5 Senwes shall appoint the Trustee within fifteen (15) Business Days of the Commission's approval of the proposed Trustee *inter alia* on the terms contained in Annexure B.
- 3.6 If the proposed Trustee is rejected, Senwes shall submit the names of at least two (2) more proposed Trustees within ten (10) Business Days of obtaining the detailed reasons explaining the rejection.
- 3.7 If the Commission, acting reasonably and on good cause shown, rejects all further proposed Trustees, the Commission shall appoint a Trustee within ten (10) Business Days of rejecting the further proposed Trustees.
- 3.8 Senwes shall pay the reasonable fees and expenses of the Trustee and the Trustee team on the terms and conditions agreed upon in writing between Senwes and the Trustee.
- 3.9 Senwes shall provide the Trustee with a comprehensive and duly executed power of attorney on the first Business Day after the Trustee's appointment.
- 3.10 A certified copy of the power of attorney shall be submitted to the Commission within ten (10) Business Days of the Trustee's appointment.
- 3.11 The power of attorney shall enable the Trustee to perform actions which the

Trustee considers strictly necessary or appropriate for purposes of the discharge of his or her mandate, including the power to appoint advisors and to execute the Trustee's Mandate attached hereto.

- 3.12 The power of attorney granted to the Trustee shall expire on the earlier of the termination of the Trustee's Mandate or the discharge of the Trustee.

4. CONDITIONS TO THE APPROVAL OF THE MERGER: PRICING

- 4.1 Following the Implementation Date, Senwes must ensure that for a period of 5 years, the differential between (i) the handling and storage tariffs applicable at the Leeudoringstad, Christiana and Bamboesspruit silos and (ii) those applicable at the Regina, Werda and Melliodora silos must remain the same as the differential applicable on the day before the Implementation Date, unless Senwes invests into the Leeudoringstad, Christiana and Bamboesspruit silos to (i) increase the loading and outloading speed by 10% from the existing rate or (ii) increase the ability to handle higher moisture grain from the existing rate by 10%, or (iii) a 10% increase in the efficiency of the silo by way of installing 10% more stock measurement equipment (i.e. Crux laser technology), replacing the existing grading machinery or installing temperature strings and CO₂ meters for more than 10% of the bins at the silo in which case this provision must no longer apply to the silo in respect of which the investment has been made.
- 4.2 Prior to any change to the differential in storage tariffs or handling tariffs in respect of any of the Bamboesspruit silo, Leeudoringstad silo or the Christiana silo in terms of clause 4.1, the Merged Entity must inform the Commission of the increase in the tariffs and provide the Commission with a report by an independent third party evidencing the increase in the loading and outloading speed, increase in the ability to handle higher moisture content grain or the increase in the efficiency of the silo as contemplated in clause 4.1.
- 4.3 This report must be provided to the Commission one month prior to the change to the differential for the purposes of clause 4.1. At the same time, the Merged Entity must also inform farmers who delivered grain to the silo in question during the preceding year of the change in the differential.

4.4 Within 15 business days of the Approval Date the Merging Parties must inform their customers in writing of this condition. In addition, the merging parties must place a notice in a relevant local publication/s that has a reach to customers and potential customers informing them of this condition.

5. **CONDITION TO THE APPROVAL OF THE MERGER: DIVESTITURE OF THE DIVESTITURE BUSINESS**

5.1 Following the Approval Date and subject to receipt of the Commission's approval pursuant to clause 5.4.1, Senwes shall seek to divest the Divestiture Business on reasonable commercial terms to a Purchaser(s) within the First Divestiture Period to a B-BBEE controlled entity as defined in the Agri Sector Code), subject to receipt of all relevant regulatory approvals being obtained.

5.2 In the event that it is not able to divest of the Divestiture Business to a Purchaser as contemplated in 5.1 within the First Divestiture Period, it will seek to divest of the Divestiture Business to a Purchaser within the Second Divestiture Period.

5.3 In the event that any regulatory approvals have not been obtained within the relevant Divestiture Period, then such period will be extended until receipt of the relevant regulatory approvals.

5.4 Should Senwes reach agreement in principle to dispose of the Divestiture Business in terms of paragraph 5.1 or 5.2 above, Senwes shall:

5.4.1 Submit, in writing, the name of the Purchaser(s) together with any relevant documentation in respect of the Purchaser that the Commission may request, as well as the proposed terms of the purchase, for approval by the Commission within 10 Business days after such submission (which shall not be unreasonably withheld), prior to concluding any sale agreement with the Purchaser(s); and the Purchaser(s) shall provide the Commission with an affidavit deposed to by the Chief Executive Officer of the Purchaser(s) confirming the accuracy of all information relating to the Purchaser(s).

5.5 If the Divestiture meets the stipulated financial thresholds, it must be notified

as a merger to the Commission.

- 5.6 If the Purchaser elects to enter into a management agreement with Senwes, then Senwes will, on an arms' length basis, act as the manager of the Divestiture Business (subject to reaching agreement on the terms and conditions on which it will do so) for a period of three years.

6. THE ROLE OF THE TRUSTEE

- 6.1 The Trustee shall ensure that Senwes complies with the obligations listed in paragraphs 5.1, 5.2 and 8.1 and shall furnish the Commission with a written report in this regard on a quarterly basis from the Approval Date.
- 6.2 The Trustee shall have a mandate with the necessary power of attorney to effect the Divestiture as set out below and in accordance with his or her mandate as set out in Annexure B.
- 6.3 Senwes shall indemnify the Trustee and the Trustee team and hold the Trustee and the Trustee team harmless against any liabilities arising from the performance of the Trustees' duties under the Trustee's Mandate, except to the extent that such liabilities result from the wilful default, recklessness and/or negligence of the Trustee.
- 6.4 During the Trustee Divestiture Period the Trustee shall have an exclusive mandate to cause a disposal in terms of paragraph 7.1.

7. TRUSTEE DIVESTITURE: SALE OF THE DIVESTED BUSINESS

- 7.1 If Senwes fails to dispose of the Divested Business within the First and Second Divestiture Periods, the Trustee shall then dispose of the Divested Business to a Purchaser(s).
- 7.2 The Trustee will have an exclusive mandate and power of attorney to dispose of the Divestiture Business within the Trustee Divestiture Period [...]
- 7.3 [...]
- 7.4 Once the Trustee has disposed of the Divestiture Business within the Trustee

Divestiture Period the parties to that disposal agreement must use their reasonable commercial endeavours to ensure that at the Closing Date, the disposal agreement becomes unconditional and that the disposal is implemented as soon as practicably possible after the signature date of the agreements. This shall be included as a provision of the disposal agreement.

7.5 The salient provisions of the Trustee Mandate are annexed hereto marked **“Annexure B”**.

7.6 Should the Trustee fail to conclude a disposal in terms of paragraph 7.1, the Trustee may apply to the Commission on good cause shown for a maximum of one (1) further period to do so, which period shall not exceed [...]. The Commission’s consent to an extension may not be unreasonably withheld.

7.7 The Trustee shall inform the Commission of the identity of the Purchaser(s) mentioned in terms of 7.1 and shall:

7.7.1 Submit, in writing, the name of the Purchaser(s) together with any relevant documentation in respect of the Purchaser that the Commission may request, as well as the proposed terms of the purchase, for approval by the Commission within 10 Business days after such submission (which shall not be unreasonably withheld), prior to concluding any sale agreement with the Purchaser(s); and

7.7.2 the Purchaser(s) shall provide the Commission with an affidavit deposed to by the Chief Executive Officer of the Purchaser(s) confirming the accuracy of all information relating to the Purchaser(s).

7.8 If the Divestiture meets the stipulated financial thresholds, it must be notified as a merger to the Commission.

8. **OBLIGATIONS OF SENWES IN RESPECT OF THE DIVESTITURE**

8.1 Senwes shall comply with the following during the entire Divestiture Period in respect of the Divestiture Business:

8.1.1 Preserve and maintain the economic and competitive value of the

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Divestiture Business in accordance with good commercial practice;

- 8.1.2 manage the Divestiture Business in the ordinary course of business with reasonable care and skill, pursuant to good business practices;
- 8.1.3 not carry out any act that might materially alter the nature and scope of the current activity or the current commercial strategy of the Divestiture Business; and
- 8.1.4 provide sufficient resources for the maintenance of the Divestiture Business in accordance with any approved strategic business plans.

9. **PRODUCTION LOANS**

- 9.1 For a period of three years following the Implementation Date, Senwes must advance the sum of R20 million per annum in the form of production loans to black farmers, in addition to any existing loans to black farmers in the areas in which the Merging Parties operate (in keeping with the relevant provisions of the Agri Sector Code). The production loans must be made in terms of Senwes' applicable credit policies. Within 30 days of the date of Approval, the Merging Parties must provide a list of loans provided to black farmers in the preceding three years to the Commission, and the amount of such loans.
- 9.2 Senwes' auditors must, on an annual basis and within three months after the financial year end, confirm that Senwes has complied with this condition.
- 9.3 Within three months after the financial year of Senwes following the Implementation Date and annually thereafter within three months of the financial year end of Senwes, the auditors must provide Senwes with written confirmation that it has complied with its obligations in terms of this clause for the preceding year. The auditor's confirmation must include the following information: (a) the number of applications received from black farmers; (b) the number of loans provided to black farmers; (c) the names of the black farmers to whom the production loans have been provided and the amount advanced to each individual farmer; (d) the number of loans declined to black

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farmers (e) confirmation that an aggregate amount of at least R20 million has been advanced to black farmers for the preceding year.

- 9.4 Within 15 days of the Date of Approval the Merging Parties must place an advert in a relevant local publication/s that has a reach to qualifying persons informing them of the obligation in terms of these conditions to provide loans to black farmers. Thereafter the Merging parties must place an advert annually before the planting season in similar publication/s for the remaining two years.
- 9.5 Senwes must provide the auditor's written confirmation to the Commission as provided above.

10. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 10.1 The Merging Parties shall notify the Commission in writing of the Implementation Date within five (5) days of it becoming effective.
- 10.2 The Merging Parties shall circulate a copy of the employment conditions to their employees, the trade unions representatives and employee representatives within 5 (five) days of the Approval Date.
- 10.3 As proof of compliance with paragraph 10.2, the Group Company Secretary of the Senwes 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 and their employee representatives.
- 10.4 The Commission shall, within fifteen (15) days of being informed of the proposed Purchaser(s), provide the Trustee with written approval or rejection of each of the proposed Purchaser(s), the approval of which may not be unreasonably withheld.
- 10.5 In the event that the Commission rejects any of the proposed Purchaser(s), the Trustee shall notify the Commission of another proposed purchaser(s) in writing, the approval of which may not be unreasonably withheld.

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- 10.6 The Merging Parties shall submit a report on an annual basis to the Commission within 3 months after Senwes' financial year end detailing compliance with these Conditions, for the duration of those Conditions.
- 10.7 Each report submitted in terms of paragraph 10.6 shall be accompanied by an affidavit of the Chief Executive Officer of Senwes confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.
- 10.8 The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
- 10.9 Any person who believes or has reason to believe that the Merging Parties have acted in breach of these Conditions, may approach the Commission.
- 10.10 In the event that the Commission receives a complaint regarding non-compliance by the Merged Entity with these Conditions, or otherwise determines that there has been an apparent breach by the Merged Entity, the matter shall be dealt with in terms of Rule 37 of the Rules of Conduct of Proceedings of the Tribunal read with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 10.11 All correspondence in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

11. VARIATION

- 11.1 The Commission or the Merging Parties may at any time, on good case shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

TRUSTEE MANDATE

1. DUTIES OF THE TRUSTEE

- 1.1. The Trustee shall act on behalf of the Commission to monitor the Merging Parties' compliance with the provisions of **Annexure A** during the Divestiture Period and the Trustee Divestiture Period.
- 1.2. The key objective of the appointed Trustee is to ensure that he/she takes relevant steps to ensure the disposal of the Divestiture Business to a Purchaser(s) that meets the criteria in terms of **Annexure A**, during the Trustee Divestiture Period should the Merging Parties not dispose of the Divestiture Business during the First and Second Divestiture Period.
- 1.3. The Trustee shall for the duration of the Divestiture Period or until termination of his/her Trustee Mandate, carry out the following duties:
 - 1.3.1. Furnish the Commission with a quarterly report (i.e. every 3 (three) months) from the Approval Date, concerning the Merged Entity's compliance with their obligations as set out in **Annexure A**; and/or
 - 1.3.2. Furnish the Commission with a quarterly report (i.e. every 3 (three) months) concerning the efforts of the Merging Parties to identify a suitable Purchaser and the progress made in concluding the divestiture(s) of the Divestiture Business, within the First and Second Divestiture Periods.
 - 1.3.3. Furnish the Commission with a quarterly report (i.e. every 3 (three) months) concerning his/her efforts to identify a suitable Purchaser and the progress made in concluding the divestiture(s) of the Divestiture Business, within the Trustee Divestiture Period.

- 1.4. The Trustee's duties set out above may not be extended or varied in any way by the Merging Parties, save with the express written consent of the Commission.

2. REPORTING OBLIGATIONS OF THE TRUSTEE

- 2.1. A detailed working plan describing how the Trustee intends to monitor compliance with the obligations and conditions attached to the Clearance Certificate will be drawn up in consultation with the Acquiring Firm within 15 (fifteen) Business Days of the Trustee's appointment and copied to the Commission.
- 2.2. The Trustee must provide the Commission with an itemised list of tangible and intangible assets associated with the Divestiture Business, including an assessment of the state of the assets, within ten (10) Business Days of the Trustee's appointment.
- 2.3. Every 3 (three) months from the Approval Date until the Closing Date or as otherwise agreed with the Commission, the Trustee shall submit a written progress report to the Commission, sending the Acquiring Firm a copy at the same time. This report shall be accompanied by a duly commissioned affidavit from the Company Secretary of the Acquiring Firm attesting to the accuracy of the report.
- 2.4. The report shall cover the Trustee's progress in the fulfilment of his or her obligations under the Trustee's Mandate and compliance by the Merging Parties with the Conditions and obligations imposed in **Annexure A**.
- 2.5. Throughout the term of the Trustee's appointment, if at any time the Trustee has any reason to doubt the Merging Parties' reasonable compliance with any or all of its obligations which are within the scope of the Trustee's Mandate, the Trustee shall immediately advise the Acquiring Firm of such doubt or concerns and make recommendations to the Acquiring Firm regarding how such doubts or concerns may be remedied without delay.

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- 2.6. The abovementioned doubt or concerns as well as related recommendations and progress in their implementation must be contained in the written progress report referred to in paragraph 1.3 and 2.3 of **Annexure B** above.

3. ASSISTANCE BY THE ACQUIRING FIRM TO THE TRUSTEE

- 3.1. The Acquiring Firm shall provide to the Trustee, or cause to be provided, all such reasonable assistance and information as may be required by the Trustee to enable him or her to carry out this mandate, by providing copies of all relevant documents and access to appropriate personnel.
- 3.2. The Acquiring Firm shall cover all of its own expenses arising from the provision of such assistance.
- 3.3. The Acquiring Firm shall provide the Commission, on receipt of a written request by the Commission, with affidavits deposed to by the Chief Executive Officer of the Acquiring Firm confirming the accuracy of the information provided to the Trustee.

4. DIVESTITURE PERIOD

- 4.1. For purposes of this Trustee's Mandate, the First and Second Divestiture Periods and the Trustee Divestiture Period shall be the applicable time period specified in **Annexure A**.
- 4.2. In the event that the Merging Parties have not concluded the divestiture agreements within the relevant Divestiture Period, then the Trustee shall execute his/her mandate in accordance with the power of attorney referred to in **Annexure A**.

5. CONFIDENTIALITY

- 5.1. The Trustee's report and any other document generated by the Trustee in relation to his/her mandate will be confidential and for the sole use of the Trustee, the Commission and the Acquiring Firm.
- 5.2. The Trustee shall present the draft reports to the Acquiring Firm in

advance of its submission of these reports to the Commission in order that the Acquiring Firm may review the factual content of the report and provide their comments.

- 5.3. Any unresolved disagreement between the Trustee and the Acquiring Firm concerning the content of the draft report must be noted in the final report.

6. ESTIMATED FEES AND EXPENSES

- 6.1. The Acquiring Firm shall pay the Trustee's reasonable fees and expenses, including any fees reasonably spent in litigating for the enforcement of **Annexure A**. The Trustee and the Acquiring Firm may, prior to or immediately following approval of the Trustee by the Commission, negotiate a reasonable rate of fees and expenses for the Trustee and in relation to the conduct of any litigation.

7. REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF TRUSTEE

- 7.1. The Commission may at any time, after consultation with the Trustee, order the Acquiring Firm to remove the Trustee, if the Trustee has not acted in accordance with the Trustee's Mandate.
- 7.2. The new Trustee shall be appointed in accordance with the procedure referred to in **Annexure A**.

8. TERMINATION OF THE MANDATE

- 8.1. The Trustee's Mandate will automatically terminate upon completion by the Trustee of his or her obligations under this mandate subject to written confirmation from the Commission.