

ANNEXURE “A”
IN THE LARGE MERGER BETWEEN
SHISELWENI FORESTRY COMPANY LIMITED (TWK)
AND
PEAK TIMBERS LIMITED AND PEAK FOREST PRODUCTS (PTY) LTD
CASE NUMBER: 2020AUG0084

CONDITIONS

1. DEFINITIONS

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

- 1.1. **“Acquiring Firm”** or **“SFC”** means Shiselweni Forestry Company Limited, a private company registered and incorporated in accordance with the company laws of eSwatini;
- 1.2. **“Approval Date”** means the date referred to in the Competition Tribunal’s merger clearance certificate (Notice CT10);
- 1.3. [REDACTED]
- 1.4. [REDACTED]
- 1.5. **“BedRock”** means BedRock Mining Support (Pty) Ltd, a subsidiary of TWK;
- 1.6. [REDACTED]
- 1.7. **“Commission”** means the Competition Commission of South Africa;
- 1.8. **“Competition Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.9. **“Commercial Terms”** means terms that are commercially reasonable and non-discriminatory terms, which are fair arm’s length terms, similar in nature to those that direct customers of the Merged Entity would enter into in the normal course of business. The conditions of supply are to be consistent with Industry Norms.
- 1.10. **“Conditions”** means these conditions contained in this Annexure “A”;
- 1.11. **“Days”** means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.12. **“Existing Agreement”** means the agreement between [REDACTED] and Peak entered into on [REDACTED] for the supply of Mining Timber (not sawn and untreated), which TWK will continued until the end of the agreement in [REDACTED]
- 1.13. **“Extended Supply Period”** means the period following the end of the Existing Agreement in terms of which TWK will negotiate a supply agreement for the supply of Mining Timber (not sawn and untreated) between TWK and [REDACTED] for a further [REDACTED] until the end of [REDACTED]
- 1.14. [REDACTED]

- 1.15. [REDACTED]
- 1.16. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Proposed Transaction is implemented by the Merging Parties;
- 1.17. **“Industry Norms”** means the generally accepted standards and norms in the forestry industry, including the accepted terms regarding pricing, contract duration, payment terms, volumes, product specifications, quality, the period of supply and force majeure;
- 1.18. [REDACTED]
- 1.19. [REDACTED]
- 1.20. [REDACTED]
- 1.21. **“Merger”** means the acquisition by SFC of the assets of the Target Firms as described in the Sale of Business Agreement, and the addendum thereto, for purposes of continuing to conduct the business of the Target Firms in the ordinary course, as notified to the Commission under case number: 2020AUG0084;
- 1.22. **“Merged Entity”** means the Acquiring Firm and the Target Firms following the implementation of the Merger;
- 1.23. **“Merging Parties”** means the Acquiring Firm and the Target Firms;
- 1.24. **“Mining Timber (not sawn and untreated)”** means logs that are grown in plantations and are transported to mining timber sawmills;
- 1.25. **“Mining Timber (final product)”** means the final timber products which have been sawn or milled in a sawmill and treated according to certain specifications;
- 1.26. [REDACTED]
- 1.27. **“Month”** means a calendar month;
- 1.28. [REDACTED]
- 1.29. [REDACTED]
- 1.30. **“Peak”** means Peak Timbers Ltd, a company registered and incorporated in accordance with the company laws of the Republic of South Africa;
- 1.31. **“PFP”** means Peak Forest Products (Pty) Ltd, a private company registered and incorporated in accordance with the company laws of eSwatini;
- 1.32. **“Pulp Logs”** means logs that are cut to various lengths for different pulpwood mills;
- 1.33. [REDACTED]
- 1.34. [REDACTED]
- 1.35. [REDACTED]
- 1.36. [REDACTED]
- 1.37. **“Target Firms”** means Peak and PFP;
- 1.38. [REDACTED]

- 1.39. **“Treated Building and Fencing Poles”** means poles that have been treated for use in the building and fencing market;
- 1.40. **“Treated Transmission Poles”** means poles produced for transmission poles market;
- 1.41. **“Tribunal”** means the Competition Tribunal of South Africa;
- 1.42. **“TWK”** means TWK Investments Limited, a company incorporated under the company laws of South Africa and the controlling entity of SFC;
- 1.43. [REDACTED]
- 1.44. [REDACTED]
- 1.45. **“Untreated Transmission Poles”** means hardwood poles produced for pole treating plants that produce treated transmission poles;
- 1.46. **“Untreated Building and Fencing Poles”** means small diameter poles produced for treating plants, which in turn produce poles for the building and fencing market;
- 1.47. [REDACTED] and
- 1.48. **“Woodchips”** means small to medium sized pieces of wood formed by cutting or chipping larger pieces of wood such as trees, branches, logging residues, stumps, roots, and wood waste.

2. CONDITIONS TO THE MERGER

- 2.1. A non-confidential version of these Conditions will be published on the Merged Entity’s website (<https://www.twkagri.com>) within five Days of the Implementation Date, and will remain there for a period of twelve months.
- 2.2. The Merged Entity will also provide the non-confidential version of these conditions to existing customers of Peak in South Africa within 14 days of the Approval Date. The Merged Entity will provide each of the existing customers of Peak with the details of the annual contract volumes (as set out in these Conditions) for the relevant products that will be offered to each existing customer for any supply agreements that are negotiated and entered into in terms of these Conditions. Each existing customer of Peak will only receive their own respective information.

3. SUPPLY OF VOLUMES TO THIRD PARTIES

The Merging Parties shall undertake the conditions set out below for each of the relevant markets.

3.1. Mining Timber (not sawn and untreated)

- 3.1.1. TWK will continue to honour the contractual terms entered into by the Target Firms with [REDACTED] on [REDACTED] in respect of the supply of Mining Timber (not sawn and untreated) for the

duration of the Existing Agreement, subject to the contractual terms. TWK will negotiate with [REDACTED] in good faith, to extend this Existing Agreement by a further [REDACTED] with the option to renew the Extended Supply Period for a further period subject to the agreement of both parties. The terms of the Extended Supply Period entered into between TWK and [REDACTED] will be based on Commercial Terms and Industry Norms. The annual contract volumes of Mining Timber (not sawn and untreated) offered to [REDACTED] for the Extended Supply Period will be not less than the average volumes of Mining Timber (not sawn and untreated) that [REDACTED] has purchased over the three years prior to the renegotiation of the Extended Supply Period. TWK reserves the right to not supply [REDACTED] for accepted commercial reasons, including but not limited to credit risk, breach, hardship and force majeure.

3.1.2. TWK undertakes that it will continue to negotiate in good faith, with the aim of entering into a supply agreement for the supply of Mining Timber (not sawn and untreated) for a period of [REDACTED] [REDACTED] from the Approval Date, with Peak's existing customers (which are set out in clause 3.1.3 below). The terms of any supply agreements entered into will be based on Commercial Terms and Industry Norms. The annual contract volumes of Mining Timber (not sawn and untreated) offered to the existing customers will be not less than the highest volume of Mining Timber (not sawn and untreated) that the existing customers have purchased from Peak in any of the last three years since 2018. TWK reserves the right to not supply a customer for accepted commercial reasons, including but not limited to credit risk, breach, hardship and force majeure.

3.1.3. The relevant existing customers of Peak for the supply of Mining Timber (not sawn and untreated) are:

3.1.3.1. [REDACTED] and

3.1.3.2. [REDACTED]

3.1.4. In the unlikely event of TWK's volumes of Mining Timber (not sawn and untreated) being reduced as a result of fire, theft or any other reason, TWK will ensure that customers with contractual relationships with TWK, including in particular [REDACTED] are supplied in accordance with the Commercial Terms with each customer. To the extent that a relationship with a customer is not contractually regulated, TWK will ensure that Mining Timber (not sawn and untreated) is offered to the customers of the Merged Entity on Commercial Terms, after meeting its internal requirements.

3.1.5. The Merging Parties shall provide the Commission with an annual breakdown of the pricing between BedRock and Peak for Mining Timber (not sawn and untreated).

3.2. Mining Timber (final product)

3.2.1. TWK, through BedRock, will continue, as and when necessary, to purchase Mining Timber (final product) from third party mills on a spot basis, for a period of [REDACTED] from the Approval Date. All spot purchases will be done on Commercial Terms and Industry Norms.

3.3. Untreated Transmission Poles

3.3.1. TWK undertakes that it will continue to negotiate in good faith, with the aim of entering into a supply agreement for the supply of Untreated Transmission Poles, for a period of [REDACTED] from the Approval Date, with Peak's existing customers (which are set out in clause 3.3.2 below). The terms of any supply agreements entered into will be based on Commercial Terms and Industry Norms. The annual contract volumes of Untreated Transmission Poles offered to the existing customers will be not less than the average volumes that the existing customers have purchased from Peak over the last three years since 2018. TWK reserves the right to not supply a customer for accepted commercial reasons, including but not limited to credit risk, breach, hardship and force majeure.

3.3.2. The relevant existing customers of Peak for the supply of Untreated Transmission Poles are:

3.3.2.1. [REDACTED]

3.3.2.2. [REDACTED]

3.3.2.3. [REDACTED]

3.3.2.4. [REDACTED]

3.3.2.5. [REDACTED] and

3.3.2.6. [REDACTED]

3.4. Untreated Building and Fencing Poles

3.4.1. TWK undertakes that it will continue to negotiate in good faith, with the aim of entering into a supply agreement for the supply of Untreated Building and Fencing Poles for a period of [REDACTED] [REDACTED] from the Approval Date, with Peak's existing customers (which are set out in clause 3.4.2 below). The terms of the supply agreements will be entered into on Commercial Terms and Industry Norms. The annual contract volumes of Untreated Building and Fencing Poles offered to the existing customers will be not less than the average volumes that the existing customers

1 [REDACTED]

have purchased from Peak over the last three years since 2018. TWK reserves the right to not supply a customer for accepted commercial reasons, including but not limited to credit risk, breach, hardship and force majeure.

3.4.2. The relevant existing customers of Peak for the supply of Untreated Building and Fencing Poles are:

3.4.2.1. [REDACTED]

3.4.2.2. [REDACTED]

3.4.2.3. [REDACTED]

3.4.2.4. [REDACTED]

3.4.2.5. [REDACTED]

3.4.2.6. [REDACTED]

3.4.2.7. [REDACTED]

3.4.2.8. [REDACTED]

3.4.2.9. [REDACTED]

3.4.2.10. [REDACTED]

3.4.2.11. [REDACTED] and

3.4.2.12. [REDACTED]

3.5. **Treated Building and Fencing Poles**

3.5.1. TWK will continue to honour the supply agreement entered into in [REDACTED] with [REDACTED] for Treated Building and Fencing Piles for the remainder of the contract term, subject to the contractual terms, until the end of the agreement on [REDACTED]. In respect of this agreement, TWK currently supply [REDACTED] per annum of Treated Building and Fencing Poles to [REDACTED].

3.6. **Pulp Logs**

3.6.1. TWK undertakes that it will continue to negotiate in good faith, with the aim of entering into a supply agreement for the supply of Pulp Logs, for a period of [REDACTED] from the Approval Date, with Peak's existing customers (which are set out in clause 3.6.3 below). The terms of

² [REDACTED]

any supply agreements entered into will be consistent with industry related Commercial Terms and Industry Norms. The annual contract volumes of Pulp Logs offered to the existing customers will be not less than the highest volume of Pulp Logs that the existing customers have purchased from Peak in any of the last three years since 2018. TWK reserves the right to not supply a customer for accepted commercial reasons, including but not limited to credit risk, breach, hardship and force majeure.

3.6.2. In addition, TWK further undertakes that it will continue with the existing price structures with Peak's existing customers (which are set out in clause 3.6.3 below) for Pulp Logs and will negotiate any price increases with these existing customers on the normal anniversary of the agreement, taking into account the usual price drivers within the regional timber industry.

3.6.3. The relevant existing customers of Peak for the supply of pulp logs are:

3.6.3.1. [REDACTED]

3.6.3.2. [REDACTED]

3.6.3.3. [REDACTED]

3.6.3.4. [REDACTED] and

3.6.3.5. [REDACTED].

3.7. **Saw logs**

3.7.1. TWK undertakes that it will continue to offer to supply [REDACTED] of saw logs to [REDACTED] for a period of [REDACTED] from the Approval Date, subject to availability of the saw logs produced by the Target Firms. The terms of the supply by TWK will be based on Commercial Terms and Industry Norms. TWK reserves the right to not supply [REDACTED] for accepted commercial reasons, including but not limited to credit risk, breach, hardship and force majeure.

3.8. **Other customers**

3.8.1. Should the existing customers for the products listed in 3.1, 3.3, 3.4, 3.6 and 3.7 above not purchase their allocated volumes in any given year, the Merging Parties shall endeavour to

supply the balance of the volumes to any customer in South Africa that requires the said product.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1. The Merging Parties shall inform the Commission of the Implementation Date within five Days of its occurrence.

4.2. MONITORING OF SUPPLY CONDITIONS

4.2.1. The Merged Entity shall provide the Commission with a report within seven days of the Approval Date confirming the annual contract volumes of the relevant products that will be offered to the existing customer for any supply agreements that are negotiated and entered into in terms of these Conditions.

4.2.2. The Merged Entity shall provide the Commission with a comprehensive report, on the anniversary of the Implementation Date for a period of three years, detailing the extent of its compliance with clauses **3.1** to **3.7** of these Conditions. This report will include information detailing:

4.2.2.1. The volumes per customer of the products purchased by the existing customers of the Target Firms for the preceding year, for each of the markets identified in clauses **3.1**, **3.3**, **3.4** and **3.6** above.

4.2.2.2. The volumes of the saw logs purchased by [REDACTED] for the preceding year, in terms of clause **3.7** above.

4.2.2.3. An annual breakdown of the pricing between BedRock and Peak; and

4.2.2.4. In the event a customer was not supplied with the required product and/or volume, the report must also include a detailed explanation on reason for not supplying the relevant product to the customer, as well as details regarding the shortfall of the products that were not supplied.

4.2.3. The reports shall be accompanied by an affidavit, duly deposed of by the managing director of the Merged Entity, attesting to the accuracy of the entire contents of the report.

5. BREACH

5.1. An apparent breach by the Merged Entity of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission and Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

6. VARIATION

- 6.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the waiver, relaxation, modification, variation and/or substitution of one or more of the Conditions.

7. GENERAL

- 7.1. The documents referred to in the Conditions shall be submitted to the following email address:
mergerconditions@compcom.co.za