



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM051Jul23

In the matter between:

Afrimat Ltd

Primary Acquiring Firm

And

Lafarge South Africa Holdings (Pty) Ltd

Primary Target Firm

Panel: L Mncube (Presiding Member)
G Budlender (Tribunal Member)
T Vilakazi (Tribunal Member)

Heard on: 05 April 2024
Decided on: 10 April 2024

ORDER

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 section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Presiding Member
Professor Liberty Mncube

Concurring: Advocate Geoff Budlender SC and Professor Thando Vilakazi

10 April 2024

Date



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 10 April 2024

To : DLA Piper Attorneys

Case Number: LM051Jul23

Afrimat Ltd And Lafarge South Africa Holdings (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 **07 July 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

ANNEXURE A

AFRIMAT LIMITED AND LAFARGE SOUTH AFRICA HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: LM051Jul23

CONDITIONS

1 DEFINITIONS

- 1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings: -
- 1.1.1. **"Act"** means the Competition Act, 89 of 1998 (as amended);
- 1.1.2. **"Acquiring Firm"** means Afrimat;
- 1.1.3. **"Afrimat"** means Afrimat Limited;
- 1.1.4. **"Afrimat Group"** means Afrimat, all firms directly or indirectly controlled by Afrimat, all firms directly or indirectly controlling Afrimat and all firms directly or indirectly controlled by all firms directly or indirectly controlling Afrimat;
- 1.1.5. **"Affected Employee"** means a maximum of 46 Employees of the Merged Entity, and shall not include any Employee who:
- 1.1.5.1. Has a total annual cost to company at Approval Date of less than R1 000 000 (One million Rand); or
- 1.1.5.2. Who has as their highest qualification a South African matric (grade 12) or lower; or
- 1.1.5.3. Who has a Paterson grade A1 to B5 grading.
- 1.1.6. **"Approval Date"** means the date referred to on the Competition Tribunal's Merger Clearance Certificate (Form CT 10), being the date on which the Merger is approved in terms of the Act;
- 1.1.7. **"BCEA"** means Basic Conditions of Employment Act, 75 of 1997 (as amended);
- 1.1.8. **"Commission"** means the Competition Commission of South Africa;

- 1.1.9. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.10. **“Conditions”** means the conditions set out in this **Annexure A** (read with **Annexure B**);
- 1.1.11. **“Day”** means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.1.12. **“Divestiture”** means the sale, either collectively or individually, of the Divestiture Businesses to one or more Purchasers;
- 1.1.13. **“Divestiture Agreement”** means the written sale and purchase agreement(s) to be entered into between Afrimat and the Purchaser(s) in respect of the Divestiture;
- 1.1.14. **“Divestiture Business”** means collectively or individually the following aggregates and ready-mix businesses, including all employees, liabilities, tangible and intangible assets, excluding trademarks but including all relevant mining rights and responsibilities attached to those mining rights, as well as industrial assets, warehouses, land, buildings, plant and equipment and other fixed assets owned by Afrimat and exclusively used at the relevant quarry to produce aggregates, or at the relevant ready-mix operation to produce ready-mix cement at Implementation Date:
- 1.1.14.1. Afrimat Kliprug aggregates quarry;
 - 1.1.14.2. Afrimat Palmiet aggregates quarry;
 - 1.1.14.3. Lafarge Saldanha aggregates quarry;
 - 1.1.14.4. Lafarge Moregrove aggregates quarry;
 - 1.1.14.5. Lafarge Karino aggregates quarry;
 - 1.1.14.6. Afrimat Paarl ready-mix operation;
 - 1.1.14.7. Lafarge Saldanha ready-mix operation;
 - 1.1.14.8. Lafarge Moregrove ready-mix operation;
 - 1.1.14.9. Lafarge Nelspruit wet and dry batch ready-mix operation.
- 1.1.15. **“Employee”** means an employee (as contemplated by the LRA) who is permanently employed or contracted for an unlimited duration;
- 1.1.16. **“First Divestiture Period”** means a period of 9 (nine) months from the Implementation Date, or a period of 12 (twelve) months from the Implementation Date if the Commission agrees to extend the 9 (nine)-month period on written request by Afrimat and on good cause shown (which consent to an extension may not be unreasonably withheld);
- 1.1.17. **“HDP”** means historically disadvantaged person within the meaning of the Act;

- 1.1.18. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.1.19. **“LRA”** means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.1.20. **“Lafarge Holdings”** means Lafarge South Africa Holdings Proprietary Limited;
- 1.1.21. **“Merged Entity”** means Afrimat Group and the Target Business, following implementation of the Merger;
- 1.1.22. **“Merged Entity Headcount”** means the total aggregate number of all Employees of the Merged Entity as at the Approval Date (less the number of employees of the Divestiture Businesses at the Approval Date);
- 1.1.23. **“Merger”** means the proposed acquisition by Afrimat of the entire issued share capital of Lafarge Holdings, as notified to the Commission under case number 2023Jul0011;
- 1.1.24. **“Merger Parties”** means Afrimat and Lafarge Holdings;
- 1.1.25. **“Moratorium Period”** means a period of 3 (three) years from the Implementation Date and includes the period between the Approval Date and Implementation Date;
- 1.1.26. **“Purchaser”** means an acquirer of one or more of the Divestiture Businesses;
- 1.1.27. **“Purchase Closing”** means the transfer of the legal title of the Divestiture Businesses to the Purchaser or Purchasers;
- 1.1.28. **“South Africa”** means the Republic of South Africa;
- 1.1.29. **“Target Business”** means Lafarge Holdings and all firms directly or indirectly controlled by Lafarge Holdings at Implementation Date;
- 1.1.30. **“Target Firm”** means Lafarge Holdings;
- 1.1.31. **“Tribunal”** means the Competition Tribunal of South Africa;
- 1.1.32. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal;
- 1.1.33. **“Trustee”** means one or more natural or legal person(s), independent of the Merger Parties, who is appointed by Afrimat subject to the approval of the Commission, who shall, inter alia, have the exclusive mandate to sell the Divestiture Business to one or more Purchasers following the expiry of the First Divestiture Period and to monitor and report Afrimat’s compliance with clause 6 to the Commission;

1.1.34. **“Trustee Divestiture Period”** means a period of 9 (nine) months following the expiry of the First Divestiture Period, or a period of 12 (twelve) months from the expiry of the First Divestiture Period if the Commission agrees to extend the 9 (nine)-month period on written request by Afrimat and on good cause shown (which consent to an extension may not be unreasonably withheld);

1.1.35. **“Trustee Mandate”** means the duties of the Trustee as set out in **Annexure B**;

1.1.36. **“Trustee Team”** means advisors, assistants and other personnel appointed by the Trustee to assist the Trustee in the execution of the Trustee’s Mandate.

2 AFRIMAT DIVESTITURE

2.1. Afrimat shall use its reasonable commercial endeavours to, by the end of the First Divestiture Period, conclude one or more Divestiture Agreements, with one or more Purchasers who have been approved by the Commission in terms of 4.2 and 4.3.

2.2. Afrimat must conduct the sale of the Divestiture Businesses subject to a transparent and competitive process to facilitate as broad participation by prospective Purchasers, as possible. This must include advertising the Divestiture Businesses on each of the Merger Parties’ websites, relevant industry associations / bodies and industry publications.

3 TRUSTEE DIVESTITURE

3.1. If Afrimat is not able to conclude the Divestiture Agreement(s) for the Divestiture within the First Divestiture Period as contemplated in 2, the Trustee will have an exclusive mandate and a power of attorney to, during the Trustee Divestiture Period, conclude one or more Divestiture Agreement(s), with one or more Purchasers who have been approved by the Commission.

3.2. The Trustee shall, during the Trustee Divestiture Period have sole discretion to determine fair value for the Divestiture Businesses and whether the Trustee accepts an offer from any Purchaser shall not require engagement with, or be subject to, the input of the Merger Parties.

4 THE PURCHASER

4.1. A Purchaser of the Divestiture Business shall be a firm:

- 4.1.1. with no less than 50% + 1 shareholding held by HDPs and shall be independent from and unrelated to either of the Merger Parties;
 - 4.1.2. that has HDP representation at its board, senior or executive management and operational management levels.
- 4.2. Afrimat and the Trustee shall prior to concluding any Divestiture Agreement with the Purchaser(s) submit, in writing, the name of the Purchaser(s) for approval by the Commission (which approval shall not be unreasonably withheld) together with any relevant documentation in respect of the Purchaser(s) that the Commission may request (which request shall be made in writing and no later than 3 (three) Days of Afrimat or the Trustee submitting the name of the Purchaser(s) to the Commission for approval). The Commission may not refuse to approve any Purchaser(s) put forward for approval, as contemplated in this clause 4.2, on any basis other than that the proposed Purchaser does not meet the criteria for Purchasers(s) as set out in 4.1.
- 4.3. The Commission shall, within 30 (thirty) Days of Afrimat or the Trustee providing the information and documents referred to in 4.2, advise Afrimat or the Trustee whether the Purchaser(s) put forward for approval in terms of 4.2 are approved by the Commission (and if any Purchaser is not approved, shall at the same time provide written reasons for not approving any Purchaser).
- 4.4. Afrimat and the Trustee shall not conclude a Divestiture Agreement with any Purchaser who has not been approved by the Commission in terms of 4.3.
- 4.5. Once a Divestiture Agreement has been concluded, the parties to that Divestiture Agreement must use their reasonable commercial endeavours to ensure that the Divestiture Agreement becomes unconditional and that it is implemented as soon as practical after the date of signature of the Divestiture Agreement, subject to any regulatory approvals which may apply. This shall be included as a provision in each Divestiture Agreement.
- 4.6. When selecting potential Purchaser(s) for approval by the Commission, Afrimat and the Trustee shall give preference to potential Purchasers that are HDPs (in other words, if both a non-HDP Purchaser and HDP Purchaser submit reasonable commercial bids, only the HDP Purchaser will be put forward for approval). For the avoidance of doubt, if no reasonable commercial bids are submitted by any potential HDP Purchasers, the Commission may not refuse to approve the Purchaser(s) put forward by Afrimat and the Trustee on the basis that they are not HDPs.

5 MERGER APPROVAL

- 5.1. The Divestiture (or any part thereof) must be notified to the Commission, in the prescribed form, as a merger, prior to its implementation and irrespective of whether the mandatory thresholds for notification of mergers contemplated by the regulations to the Act, are met.

6 AFRIMAT'S OBLIGATIONS FROM IMPLEMENTATION DATE TO DIVESTITURE

- 6.1. Afrimat shall from Implementation Date until each Divestiture Business has been sold:
 - 6.1.1. preserve and maintain the economic and competitive value of the Divestiture Businesses in accordance with good commercial practice; and
 - 6.1.2. manage the Divestiture Businesses in the ordinary course of business and in the best interest of such businesses with reasonable care and skill, pursuant to good business practices.

7 THE APPOINTMENT OF THE TRUSTEE

- 7.1. Afrimat shall, subject to the prior written approval of the Commission, appoint a Trustee, to (i) monitor and report Afrimat's compliance with clause 6 to the Commission and, (ii) if the Divestiture Businesses are not divested within the First Divestiture Period, to divest of the Divestiture Businesses during the Trustee Divestiture Period.
- 7.2. The Trustee shall be independent of the Merger Parties, possess the necessary qualifications to carry out his or her mandate (for example be an investment banker, consultant or auditor) and shall at the date of appointment not be exposed to a conflict of interest.
- 7.3. Afrimat shall propose a Trustee for the Commission's written approval within 15 (fifteen) Days of the Approval Date.
- 7.4. The proposal shall contain such information for the Commission to determine whether the proposed Trustee is suitable to execute the Trustee's Mandate as per Annexure B and shall include, inter alia, the proposed Trustee's contact details and employment history.
- 7.5. Any relationship between the proposed Trustee and the Merger Parties during the previous twelve (12) months prior to the Approval Date must be disclosed to the Commission in writing in the proposal.

- 7.6. The Commission shall have the discretion to approve or reject the proposed Trustee and the Commission shall advise whether it approves the proposed Trustee in writing within 30 (thirty) Days of receiving Afrimat's proposal. Such approval shall not be unreasonably withheld. Should the Commission reject the proposed Trustee, the Commission must provide reasons explaining the reasons for the rejection of the proposed Trustee.
- 7.7. Afrimat shall appoint the Trustee within 15 (fifteen) Days of the Commission's approval of the proposed Trustee, or within 15 (fifteen) Days of the Implementation Date (whichever is the latest date).
- 7.8. If the proposed Trustee is rejected, Afrimat shall submit the names of at least two (2) more proposed Trustees within 10 (ten) Days of being informed of the rejection and the Commission shall advise Afrimat whether it approves the proposed Trustee in writing within 30 (thirty) Days of receiving Afrimat's revised proposal.
- 7.9. If the Commission, acting reasonably and on good cause shown, rejects all further proposed Trustees, the Commission shall nominate a Trustee within 30 (thirty) Days of the last rejection, whom Afrimat shall appoint, or cause to be appointed, within 10 (ten) Days of being informed by the Commission of such Trustee's identity, or within 15 (fifteen) Days of the Implementation Date (whichever is the latest date).
- 7.10. If the Commission fails to advise Afrimat that it has rejected the proposed Trustee within the 30 (thirty) Days contemplated in 7.6 or 7.8, or if the Commission fails to nominate a Trustee within the 30 (thirty) Days of the last rejection, as contemplated in 7.9 the Trustee Divestiture Period will be extended by the number of additional Days that the Commission takes to advise Afrimat that the Commission has rejected the proposed Trustee or that the Commission takes to nominate a Trustee.
- 7.11. Afrimat shall pay the reasonable fees and expenses of the Trustee and the Trustee Team on the terms and conditions agreed upon in writing between Afrimat and the Trustee.
- 7.12. Afrimat shall provide the Trustee with a comprehensive and duly executed power of attorney on the first day of the Trustee's appointment to enable the Trustee to give effect to the Divestiture and, to the extent required, monitor Afrimat's compliance with clause 6.
- 7.13. A certified copy of the power of attorney shall be submitted to the Commission within 5 (five) Days of the Trustee's appointment.
- 7.14. For avoidance of doubt, the power of attorney, which will be consistent with the Trustee Mandate (including and subject to these Conditions) and acceptable to the Commission shall enable the Trustee to perform all actions, which the Trustee considers necessary or

appropriate, including the power to appoint advisors, to litigate for enforcement of the Divestiture and to execute the Trustee Mandate attached hereto, until the expiry of the power of attorney.

- 7.15. The power of attorney granted to the Trustee shall expire on the earlier of the termination of the Trustee Mandate, termination of the Trustee Divestiture Period, or the discharge of the Trustee.

8 EMPLOYMENT

- 8.1. For the duration of the Moratorium Period, the Merger Parties shall not retrench any Employees (other than the Affected Employees) as a result of the Merger.

- 8.2. For the avoidance of doubt:

8.2.1. to “retrench” does not include (i) voluntary retrenchment, mutual consensus agreements and/or other separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA and the BCEA; (iv) resignations or retirements in the normal course; and (v) terminations in the normal course of business, including but not limited to, dismissals because of misconduct, incapacity, or poor performance;

8.2.2. the obligation in 8.1 does not extend to any Purchaser of the Divestiture Businesses, meaning that if a Purchaser retrenches any employees of the Divestiture Businesses this cannot not be viewed as a contravention of these Conditions; and

8.2.3. the obligation in 8.1 also does not require Afrimat (or a firm controlled by Afrimat) to not transfer any employees of the Divestiture Businesses to the relevant Purchaser(s) of the Divestiture Businesses in terms of the Divestiture.

- 8.3. Afrimat shall, subject to clause 8.5, ensure that the Merged Entity’s Headcount is maintained for a period of 3 (three) years from the Approval Date.

- 8.4. Should there, during the 3 (three) year period from Approval Date, be job losses in respect of Employees of the Merged Entity, Afrimat shall, subject to clause 8.5, ensure that any resultant reduction in the Merged Entity Headcount shall be rectified to return the number to the Merged Entity Headcount within 6 (six) months of each reduction.

- 8.5. The obligations in clauses 8.3 and 8.4 shall not apply to any reduction in the Merged Entity Headcount arising from a disposal of any part of Afrimat's business (including any subsidiary company and/or business unit of Afrimat) which Afrimat may undertake during the 3 (three) year period from the Approval Date.

9 MONITORING

- 9.1. Afrimat shall within 5 (five) Days of the Implementation Date notify the Commission of the:
- 9.1.1. Implementation Date; and
 - 9.1.2. Merged Entity Headcount.
- 9.2. Within 10 (ten) Days of the Implementation Date, Afrimat shall circulate a non-confidential version of the Conditions to employees of the Merged Entity, their employee representatives and trade unions. As proof of compliance herewith, Afrimat shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 9.3. A certified copy of the power of attorney referred to in 7.12 shall be submitted to the Commission with 5 (five) Days of the Trustee's appointment.
- 9.4. For a period of 3 (three) years from Approval Date, Afrimat shall within 10 (ten) Days of each anniversary of the Approval Date:
- 9.4.1. notify the Commission of the number of the Merged Entity's Employees retrenched during the preceding 12 months as a result of the Merger;
 - 9.4.2. if any Merged Entity Employees were retrenched during the preceding 12 months, furnish the Commission with an affidavit deposed to by a senior official of Afrimat, confirming that (i) all Employees that were retrenched during the preceding 12 months as a result of the Merger were Affected Employees (as defined in 1.1.5) and (ii) all other Employees that were retrenched during the preceding 12 months were not as a result of the Merger;
 - 9.4.3. notify the Commission of the number of Employees employed by the Merged Entity (excluding the Divestiture Businesses) on the immediately preceding anniversary of the Approval Date; and

9.4.4. notify the Commission of the any reduction in the Merged Entity Headcount arising from a disposal of any part of Afrimat's business, as contemplated in clause 8.5, during the preceding 12 months.

9.5. The Commission may request the Merger Parties to provide any information or documents which the Commission considers necessary for monitoring compliance with the Conditions.

10 APPARENT BREACH

10.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merger Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

11 VARIATION

11.1. The Merged Entity 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 and/or substituted. Either party may oppose or support such an application.

12 GENERAL

12.1. All correspondence in relation to these Conditions shall be sent to mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

ANNEXURE B

AFRIMAT LIMITED

AND

LAFARGE SOUTH AFRICA HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: LM051Jul23

TRUSTEE MANDATE

1 DUTIES OF THE TRUSTEE

- 1.1. The key objective of the appointed Trustee is to act on behalf of the Commission to monitor Afrimat's compliance with clause 6 of Annexure A pending the Divestiture and to ensure that he/she takes necessary steps to ensure the disposal of the Divestiture Businesses to a Purchaser(s) during the Trustee Divestiture Period who meet(s) the Commission's criteria in terms of Annexure A, should the sale of the Divestiture Business not be implemented during the First Divestiture Period.
- 1.2. The Trustee shall until the termination of his/her mandate carry out the following duties:
- 1.2.1. monitor the steps that Afrimat is taking to maintain the continued economic viability, competitiveness and marketability of the Divestiture Businesses and to report to the Commission that they are managed in the ordinary course of business, pursuant to good business practices;
 - 1.2.2. observe and advise the Commission as to the development of the procedure for selecting the proposed Purchaser(s) for the Divestiture Businesses and the progress of the negotiations between Afrimat and the proposed Purchaser(s);
 - 1.2.3. observe and advise the Commission as to whether the proposed Purchaser(s) with whom Afrimat intends to negotiate is/are likely to satisfy the requirements as set out in **Annexure A**;
- 1.3. The Trustee's duties set out above may not be extended or varied in any way by Afrimat, save with the express written consent of the Commission (which shall not unreasonably be withheld).

2 REPORTING OBLIGATIONS OF THE TRUSTEE

- 2.1. A detailed plan describing how the Trustee intends to monitor Afrimat's compliance with clause 6 of Annexure A must be drawn up in consultation with Afrimat and submitted to the Commission within 15 (fifteen) Days of the Trustee's appointment, sending Afrimat a copy at the same time.
- 2.2. The Trustee shall for the duration of the First Divestiture Period, furnish the Commission with a report (every month). The report shall cover compliance of Afrimat with the Conditions and obligations imposed in **Annexure A** relevant to the Trustee's Mandate.
- 2.3. The report shall cover in particular the following topics:
 - 2.3.1. the operational and financial performance of the Divestiture Businesses, assessed during any particular time period;
 - 2.3.2. the available finance and working capital of the Divestiture Businesses, as assessed during any particular time period;
 - 2.3.3. monitoring of the preservation of the economic viability, marketability and competitiveness of the Divestiture Businesses;
 - 2.3.4. Afrimat's compliance with its obligations to manage the Divestiture Businesses in the ordinary course of business and with reasonable care and skill;
 - 2.3.5. whether the proposed Purchaser(s) with whom Afrimat intends to negotiate are likely to satisfy the requirements as set out in **Annexure A**;
 - 2.3.6. the progress of Afrimat's negotiations with proposed Purchasers;
 - 2.3.7. any issues or concerns regarding the divestiture of Divestiture Businesses;
- 2.4. Throughout the term of the Trustee's appointment, if at any time the Trustee has any reason to doubt full compliance with any or all of the obligations of Afrimat in terms of Annexure A of the Tribunal's order relevant to the Trustee's Mandate, the Trustee shall immediately advise Afrimat and the Commission in writing of such doubts or concerns and make recommendations to Afrimat and the Commission regarding how such doubts or concerns may be remedied without delay.
- 2.5. The abovementioned doubts or concerns as well as related recommendations and progress in their implementation must be contained in the written report referred to in clause 2.2.

- 2.6. A detailed plan describing how the Trustee intends to dispose of the Divestiture Business in accordance with the requirements set out in Annexure A will be drawn up by the Trustee, in consultation with Afrimat, and submitted to the Commission by the Trustee, within 15 (fifteen) Days of the commencement of the Trustee Divestiture Period, sending Afrimat a copy at the same time.
- 2.7. The Trustee shall for the duration of the Trustee Divestiture Period or until termination of his/her Trustee Mandate, furnish the Commission with a report (every month) concerning his/her efforts to identify a suitable Purchaser(s) and the progress made in concluding the Divestiture of the Divestiture Businesses within the Trustee Divestiture Period, sending Afrimat a copy at the same time.

3 ASSISTANCE BY THE MERGER PARTIES TO THE DIVESTITURE TRUSTEE

- 3.1. Afrimat 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. Afrimat shall cover its own expenses arising from the provision of such assistance.
- 3.3. Afrimat shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to the Trustee by such employees and agents.
- 3.4. Afrimat shall provide the Commission, on receipt of a written request by the Commission, with an affidavit deposed to by a senior official of Afrimat, confirming the accuracy of the information provided to the Trustee by Afrimat.

4 DIVESTITURE PERIOD

- 4.1. For purposes of this Trustee's Mandate, the Trustee Divestiture Period shall be the applicable time period specified in **Annexure A**.
- 4.2. If Afrimat has not concluded the Divestiture within the First Divestiture Period, the Trustee shall execute his 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 or her mandate will be confidential and for the sole use of the Trustee, the Commission and Afrimat (or Afrimat's advisors).
- 5.2. The Trustee shall present the draft reports to Afrimat in advance of its submission of these reports to the Commission in order that Afrimat may review the factual content of the reports and provide comments.
- 5.3. Any unresolved disagreement between the Trustee and Afrimat concerning the content of the draft reports must be noted in the final report.

6 ESTIMATED FEES AND EXPENSES

- 6.1. Afrimat shall pay the Trustee reasonable fees and expenses, including any fees reasonably incurred as a direct result of any litigation concerning the enforcement of **Annexure A** except to the extent that such litigation results from the fraud, wilful default, recklessness and/or negligence of the Trustee. The Trustee and Afrimat 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.
- 6.2. For the avoidance of doubt, any disputes between Afrimat and the Trustee as regards the reasonableness of fees and expenses fall outside the scope of the Conditions contemplated in **Annexure A**.

7 REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF THE DIVESTITURE TRUSTEE

- 7.1. The Commission may at any time, after consultation with the Trustee, order Afrimat 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.