



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM215Feb17/VAR056Aug21

In the application for variation of the merger conditions:

**GOVERNMENT EMPLOYEES PENSION FUND
REPRESENTED BY THE PUBLIC INVESTMENT
CORPORATION SOC LIMITED**

Applicant

and

COMPETITION COMMISSION OF SOUTH AFRICA

Respondent

In re: the large merger between:

**GOVERNMENT EMPLOYEES PENSION FUND
REPRESENTED BY THE PUBLIC INVESTMENT
CORPORATION SOC LIMITED**

Primary Acquiring Firm

and

DISTELL GROUP LIMITED

Primary Target Firm

Panel:	A Wessels (Presiding Member) A Ndoni (Tribunal Member) F Tregenna (Tribunal Member)
Last submission received on:	14 December 2023
Heard on:	09 January 2024
Order Issued on:	09 January 2024

ORDER

On application by the Government Employees Pension Fund represented by the Public Investment Corporation SOC Limited and as agreed to by the Competition Commission, the Competition Tribunal orders the following:

- 1 The conditions to the approval of the abovementioned merger imposed by the Tribunal in case LM215Feb17 on 29 March 2017, as varied by the Tribunal on

15 May 2018, are varied as per the amendments reflected in **Annexure A** and **Annexure B** attached hereto.

Mr Andreas Wessels

09 January 2024

Date

Ms Andiswa Ndoni and Prof. Fiona Tregenna concurring

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ANNEXURE A:

AMENDED CONDITIONS

Case No: LM215Feb17/VAR056Aug21

In the application for variation of merger conditions:

Government Employees Pension Fund represented by the Public **Applicant**
Investment Corporation SOC Limited

and

Competition Commission **Respondent**

In re: merger between

Government Employees Pension Fund represented by the Public **Primary Acquiring**
Investment Corporation SOC Limited **Firm**

and

Distell Group Limited **Primary Target Firm**

AMENDED CONDITIONS

1 DEFINITIONS AND INTERPRETATION

- 1.1 The headings to the clauses of the Amended Conditions are for reference purposes only and shall in no way govern or affect the interpretation of or modify the terms of the Amended Conditions or any clause hereof.
- 1.2 Unless inconsistent with the context, the words and expressions set forth below shall bear the following meanings assigned to them below and cognate expressions shall bear corresponding meanings —

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- (1) **“AB InBev/SAB Transaction”** means the merger between Anheuser-Busch Inbev SA/NV and SABMiller Plc approved by the Tribunal on 30 June 2016 under case number LM211Jan16;
- (2) **“Amended Conditions”** means the conditions set out herein, agreed to by the PIC and the Commission;
- (3) **“B-BBEE”** means broad-based black economic empowerment as defined in the B-BBEE Act;
- (4) **“B-BBEE Act”** means the Broad-Based Economic Empowerment Act, 53 of 2003, as amended, and the Codes of Good Practice 2013, as amended;
- (5) **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- (6) **“Competition Act”** means the Competition Act, 89 of 1998, as amended;
- (7) **“Distell”** means Distell Group Limited;
- (8) **“Distell BEE Equity”** means such number of ordinary shares that constituted 5.28% of the voting rights and economic interest in Distell;
- (9) **“Distell Shareholding”** means the 26.5% shareholding interest in Distell acquired by the PIC pursuant to the Distell Transaction;
- (10) **“Distell Transaction”** means the PIC’s acquisition of the Distell Shareholding, which was approved by the Tribunal on 29 March 2017 (subject to the Original Conditions) under case number LM215Feb17;
- (11) **“Divestiture”** means the acquisition of the NewCo BEE Equity by one or more Purchaser(s) during either the Initial Divestiture Period or the Trustee Divestiture Period;
- (12) **“GEPF”** means the Government Employees Pension Fund, represented by the PIC;
- (13) **“HDP”** means any historically disadvantaged person as defined in the Competition Act;

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- (14) **"Heineken/Distell Transaction"** means the merger between NewCo, NBL Investment Holdings Limited and New Distell approved by the Tribunal on 8 March 2023 under case number LM136Dec21;
- (15) **"Initial Divestiture Period"** means the period of 24 (twenty-four) months from the closing date of the Heineken/Distell Transaction (i.e. 28 April 2023);
- (16) **"NewCo"** means Sunside Acquisitions Limited;
- (17) **"NewCo BEE Equity"** means 11,741,789 ordinary shares held by the PIC constituting 2.92% of the issued share capital of NewCo at the time of implementation of the Heineken/Distell Transaction;
- (18) **"New Distell"** means Distell Group Holdings Limited, which was created for the purposes of the RIH/Capevin Transaction;
- (19) **"New Distell BEE Equity"** means such number of ordinary shares that constituted 5.28% of the voting rights and economic interest in New Distell;
- (20) **"Original Conditions"** means the conditions imposed by the Tribunal on 29 March 2017 on the Distell Transaction;
- (21) **"PIC"** means the Public Investment Corporation SOC Limited, as a duly authorised representative of the GEPPF;
- (22) **"Purchaser"** means any HDP;
- (23) **"RIH/Capevin Transaction"** means the merger between Remgro International Holdings Proprietary Limited and Capevin Holdings Limited approved by the Tribunal on 11 May 2018 under case number LM177Sep17;
- (24) **"South Africa"** means the Republic of South Africa;
- (25) **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- (26) **"Trustee"** means one or more natural or legal person(s), independent of the PIC, who is appointed by the PIC subject to the approval of the Commission, who shall, *inter alia*, have the exclusive mandate to effect the Divestiture within the Trustee Divestiture Period;

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- (27) “**Trustee Divestiture Period**” means the period of 12 (twelve) months immediately following the expiry of the Initial Divestiture Period;
- (28) “**Trustee Mandate**” means the duties as set out in **Annexure B**;
- (29) “**Trustee Team**” means advisors, assistants and other personnel appointed by the Trustee to assist the Trustee in the execution of the Trustee Mandate; and
- (30) “**Varied Conditions**” means the variation to the Original Conditions ordered by the Tribunal on 15 May 2018 under case number LM215Feb17/VAR037Apr18.

1.3 In the Amended Conditions and their interpretation:

- (1) references to a statute or statutory provision include any subordinate legislation made from time to time thereunder and include that statute or statutory provision as modified, amended or re-enacted from time to time;
- (2) where any number of days is prescribed, those days shall include only ordinary business days (i.e. excluding Saturdays, Sundays and prescribed public holidays in South Africa). The number of days shall be reckoned exclusive of the first and inclusive of the last day;
- (3) where reference to the GEPF is made it simultaneously refers to the PIC;
- (4) unless inconsistent with the context, the *eiusdem generis* rule shall not apply, and whenever the word “including” is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and
- (5) account shall be taken of the purpose of the Amended Conditions and the objectives listed in the Recordal.

2 RECORDAL

- 2.1 On 31 January 2017, the PIC and Distell notified the Distell Transaction to the Commission.
- 2.2 The notification of the Distell Transaction was in fulfilment of the condition imposed by the Tribunal in the AB InBev/SABMiller Transaction whereby the merged entity was required to divest the Distell Shareholding with a preference for B-BBEE bidders. As there were no B-BBEE bidders who submitted bids for the purchase of the Distell Shareholding, the

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Commission recommended that the Distell Transaction be approved subject to the condition that the PIC on-sells a percentage of the Distell Shareholding to one or more Purchaser(s).

- 2.3 On 29 March 2017, the Tribunal approved the Distell Transaction subject to the Original Conditions whereby the PIC would dispose of the Distell BEE Equity to one or more Purchaser(s) within 12 (twelve) months from the completion of the Distell Transaction. The Original Conditions specified that the PIC was under no obligation to provide, procure or facilitate funding to any potential Purchaser(s) and was subject to the purchase consideration being on commercially viable terms.
- 2.4 On 11 September 2017, the RIH/Capevin Transaction was notified to the Commission. As a result of the RIH/Capevin Transaction, the Commission found that the Original Conditions would no longer be implementable because, *inter alia*, the PIC would hold shares in New Distell as opposed to Distell. Accordingly, the Commission and the PIC agreed to vary the Original Conditions.
- 2.5 On 15 May 2018, the Tribunal varied the Original Conditions through the adoption of the Varied Conditions. In accordance with the Varied Conditions, the PIC would dispose of the New Distell BEE Equity to one or more Purchaser(s) within 18 (eighteen) months from 1 August 2018. The Varied Conditions specified that the PIC was under no obligation to provide, procure or facilitate funding to any potential Purchaser(s) and that the purchase considerations should be on commercially viable terms.
- 2.6 The PIC had encountered difficulties in implementing the Varied Conditions mainly due to exogenous factors including the performance of the Distell share price which had not been conducive to reaching commercially viable terms. Accordingly, in May 2021, the PIC and the Commission had agreed to approach the Tribunal to amend the Varied Conditions in order to allow the PIC an additional period to dispose of the New Distell BEE Equity. In light of this, on 3 August 2021, the PIC had lodged an application with the Tribunal to amend the Varied Conditions.
- 2.7 Prior to the Tribunal adjudicating upon the application, on 14 November 2021, as part of the Heineken/Distell Transaction, Heineken International B.V made an offer to acquire the entire issued share capital of New Distell. As the Varied Conditions would no longer be implementable because, *inter alia*, the PIC (if it elected to participate in the Heineken/Distell Transaction) would hold shares in NewCo as opposed to New Distell, the PIC and the Commission agreed that the proceedings to amend the Varied Conditions would be stayed pending the outcome of the Heineken/Distell Transaction.

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- 2.8 On 2 December 2021, the Heineken/Distell Transaction was notified to the Commission. On 8 March 2023, the Tribunal approved the Heineken/Distell Transaction subject to the condition, *inter alia*, that the parties to the Heineken/Distell Transaction (i) acknowledged that the PIC's obligation under the Varied Conditions should be amended to allow the PIC to dispose of the NewCo BEE Equity in NewCo and (ii) that NewCo shall not oppose the PIC and the Commission's efforts to amend the Varied Conditions.
- 2.9 As a result of the Heineken/Distell Transaction, the New Distell BEE Equity has been converted to the NewCo BEE Equity.
- 2.10 In light of the above, the Commission and the PIC have agreed to the Amended Conditions in order to provide additional time for the PIC to implement the Divestiture on commercially viable terms during the Initial Divestiture Period, failing which, the Trustee will implement the Divestiture during the Trustee Divestiture Period.

3 INITIAL DIVESTITURE PERIOD

- 3.1 Subject to clause 3.7, the PIC shall divest of the NewCo BEE Equity within the Initial Divestiture Period to one or more Purchaser(s).
- 3.2 The PIC shall be under no obligation to provide, procure or facilitate funding to any potential Purchaser(s) to acquire the NewCo BEE Equity.
- 3.3 Clause 3.2 does not preclude any potential Purchaser(s) from approaching the PIC for funding in accordance with the PIC's funding policies and procedures.
- 3.4 The requirement to divest the NewCo BEE Equity is subject to the PIC reaching commercially viable terms with the Purchaser(s) regarding the purchase consideration for the NewCo BEE Equity. The commercial viability will be reasonably assessed by the PIC in a manner consistent with its mandate as asset manager to the GEPP in light of its fiduciary duties to the GEPP and evaluated by the PIC on the basis of the PIC mandatory investment policies.
- 3.5 The PIC shall furnish the Commission with progress reports every 6 (six) months during the Initial Divestiture Period on the PIC's efforts to identify a suitable Purchaser(s) and to reach commercially viable terms for the Divestiture. The report shall detail all expressions of interest to purchase the NewCo BEE Equity received by the PIC from any potential Purchaser(s) in the reporting period. The report shall also set out the application of the applicable valuation methodology by the PIC to each expression of interest.

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- 3.6 The PIC shall inform the Commission within 10 (ten) days of the decision of the board of the PIC (including board sub-committees) whether to accept any expression of interest or offer from any proposed Purchaser(s) in accordance with the PIC mandatory investment policies. Such acceptance will be explicitly conditional on the Commission's approval of the proposed Purchaser(s) pursuant to clause 3.7. The PIC will submit to the Commission all relevant information enabling the Commission to confirm that the proposed Purchaser(s) complies with the Amended Conditions as well as to assess the application of the applicable valuation methodology by the PIC. The PIC will provide the Commission with an affidavit deposed to by a senior official of the proposed Purchaser(s) confirming the accuracy of all information relating to the proposed Purchaser(s).
- 3.7 The Commission will, within 20 (twenty) days of receiving such notification in terms of clause 3.6, provide the PIC with written approval or rejection of the proposed Purchaser, which approval may not be unreasonably withheld.
- 3.8 The PIC shall inform the Commission in writing within 5 (five) days after implementation of the Divestiture, being the point in time at which the securities register of NewCo is updated to reflect the NewCo BEE Equity in the name of the Purchaser(s).

4 APPOINTMENT OF THE TRUSTEE

- 4.1 The PIC shall propose to the Commission, in writing and for the Commission's consideration a nominee to be appointed by the PIC as an independent Trustee no later than 1 (one) month prior to the end of the Initial Divestiture Period. The Commission must approve or reject the proposed Trustee within 20 (twenty) days of receipt of such a nominee.
- 4.2 The Trustee shall be an employee of an auditing firm independent of the PIC that does not, at the time of the appointment, provide auditing or advisory services to the PIC, shall possess the necessary qualifications to carry out the Trustee's mandate and shall, at the date of appointment, not be exposed to a conflict of interest. The relationship of the Trustee and the Trustee's firm with the PIC during the 12 (twelve) months prior to the proposed appointment, if any, must be disclosed to the Commission under oath.
- 4.3 The proposal by the PIC shall contain such information as is necessary for the Commission to determine whether the proposed Trustee is suitable and able to execute the Trustee Mandate and shall include, *inter alia*, the proposed Trustee's contact details and curriculum vitae.
- 4.4 Should the Commission reject the proposed Trustee, the Commission must provide written reasons explaining the rejection of the proposed Trustee.

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- 4.5 If the proposed Trustee is rejected by the Commission, the PIC shall submit the names of at least 2 (two) more proposed Trustees within 5 (five) days of obtaining the reasons explaining the rejection.
- 4.6 If the Commission rejects the further proposed Trustees, the Commission (i) must provide written reasons explaining the rejection of the proposed Trustees; and (ii) the PIC shall, within 5 (five) days of receiving such written reasons, provide the names of additional proposed Trustees to the Commission.
- 4.7 The PIC shall appoint the Trustee within 5 (five) days of the Commission's approval of the proposed Trustee *inter alia* on the terms contained in **Annexure B**. Such terms will provide for the Trustee to have an exclusive mandate and a power of attorney to dispose of the NewCo BEE Equity to one or more Purchaser(s) during the Trustee Divestiture Period.
- 4.8 The PIC shall indemnify the Trustee and hold the Trustee and the Trustee Team harmless against any liabilities arising from the performance of the Trustee's duties under the Trustee Mandate, except to the extent that such liabilities result from the wilful default, recklessness and/or negligence of the Trustee and/or Trustee Team.
- 4.9 The PIC shall pay the reasonable fees and expenses of the Trustee and the Trustee Team on the terms and conditions agreed upon in writing between the PIC and the Trustee.
- 4.10 The PIC shall provide the Trustee with a comprehensive and duly executed power of attorney on the first day after the Trustee's appointment. 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 the Trustee Mandate, including the power to appoint advisors and to execute the Trustee Mandate attached hereto.
- 4.11 The PIC shall provide a certified copy of the power of attorney to the Commission within 10 (ten) days after the Trustee's appointment.
- 4.12 The power of attorney granted to the Trustee shall expire on the earlier of the termination of the Trustee Mandate or the discharge of the Trustee's duties.

5 TRUSTEE DIVESTITURE PERIOD

- 5.1 If the PIC fails to dispose of the NewCo BEE Equity during the Initial Divestiture Period, subject to clause 5.5, the Trustee shall effect the Divestiture within the Trustee Divestiture Period on reasonable commercial terms using an independent valuation of the NewCo BEE Equity.

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- 5.2 As part of the Trustee Team, the Trustee may obtain services from an appropriately qualified consultant to assist in an accurate and independent valuation of the NewCo BEE Equity. The consultant will require information regarding NewCo (subject to an appropriate confidentiality regime). In accordance with clause 4.9, all costs related to the appointment and utilisation of the consultant shall be borne by the PIC.
- 5.3 The Trustee shall furnish the Commission with progress reports every 3 (three) months during the Trustee Divestiture Period on the Trustee's efforts to identify a suitable Purchaser(s) and to negotiate terms for the Divestiture. The report shall detail all expressions of interest to purchase the NewCo BEE Equity received by the Trustee from any potential Purchaser(s) in the reporting period as well as the application of the applicable valuation methodology to each expression of interest.
- 5.4 The Trustee will inform the Commission where the Trustee has accepted any expression of interest or formal offer from any proposed Purchaser(s) within 10 (ten) days of such acceptance. Such acceptance will be explicitly conditional on the Commission's approval of the proposed Purchaser(s) pursuant to clause 5.5. The Trustee will submit to the Commission all relevant information enabling the Commission to confirm that the proposed Purchaser(s) complies with the Amended Conditions and to assess the application of the applicable valuation methodology to the offer. The Trustee will provide the Commission with an affidavit deposed to by a senior official of the proposed Purchaser(s) confirming the accuracy of all information relating to the proposed Purchaser(s).
- 5.5 The Commission will, within 20 (twenty) days of receiving such notification in terms of clause 5.4, provide the Trustee with written approval or rejection of the proposed Purchaser, which approval may not be unreasonably withheld.
- 5.6 The Trustee shall inform the Commission in writing within 5 (five) days after implementation of the Divestiture, being the point in time at which the securities register of NewCo is updated to reflect the NewCo BEE Equity in the name of the Purchaser(s).
- 5.7 No later than 1 (one) month prior to the end of the Trustee Divestiture Period and subject to clause 8.1, should the Trustee fail to conclude the Divestiture in terms of clause 5.1, the Trustee may apply to the Commission on good cause shown for extension of further period(s) which may be agreed to by the Commission prior to approaching the Tribunal. The Commission's consent to an extension may not be unreasonably withheld.

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6 SUPPORT OF NEWCO

- 6.1 The Divestiture is subject to the parties to the Heineken/Distell Transaction providing any appropriate assistance to the PIC, Commission and the Trustee to ensure that the Divestiture is implemented in accordance with applicable timeframes contemplated by the Amended Conditions.
- 6.2 As is customary in such transactions, such assistance will include, but is not limited to:
- (1) the prompt provision of information regarding NewCo (including any due diligence process) to a potential Purchaser(s), the Trustee and the Trustee Team (subject to an appropriate confidentiality regime);
 - (2) the waiver of any pre-emption rights by NewCo shareholders;
 - (3) the facilitation of any site visits of NewCo premises by any potential Purchaser(s);
 - (4) the facilitation of engagement with NewCo management by any potential Purchaser(s);
and
 - (5) the passing of any resolutions and the undertaking of any corporate actions necessary for the implementation of the Divestiture.

7 MONITORING OF COMPLIANCE WITH THE AMENDED CONDITIONS

- 7.1 The Commission may request any additional information from the PIC or the Trustee, as the case may be, which the Commission from time to time deems necessary for the monitoring of compliance with the Amended Conditions.
- 7.2 In the event that the Commission receives a complaint regarding non-compliance with the Amended Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.
- 7.3 For the avoidance of doubt, to the extent that the Divestiture also constitutes a merger as defined in the Competition Act and the thresholds for mandatory notification are met, the Divestiture can only be implemented once it has been notified to the Commission in the prescribed manner and form as contemplated in the Competition Act and approved with or without conditions.

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8 VARIATION

- 8.1 The PIC and/or the Commission shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the Amended Conditions.

9 GENERAL

- 9.1 All correspondence in relation to the Amended Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

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ANNEXURE B

TRUSTEE MANDATE

1 DUTIES OF THE TRUSTEE

- 1.1 The Trustee shall act on behalf of the Commission in order to ensure the PIC's compliance with the provisions of the Amended Conditions during the Trustee Divestiture Period.
- 1.2 In accordance with the terms of the Amended Conditions, the Trustee shall take all relevant steps to dispose of the NewCo BEE Equity to a Purchaser(s) during the Trustee Divestiture Period in the event that the Divestiture was not concluded during the Initial Divestiture Period.
- 1.3 The Trustee shall for the duration of the Trustee Divestiture Period or until termination of the Trustee Mandate, furnish the Commission with a quarterly report (i.e. every 3 (three) months) of the Trustee Divestiture Period, concerning the Trustee's compliance with its obligations as set out in **Annexure B**.
- 1.4 The Trustee's duties set out above may not be extended or varied in any way by the PIC, save with the express written consent of the Commission.

2 REPORTING OBLIGATIONS OF THE TRUSTEE

- 2.1 Every 3 (three) months from the first day of the Trustee Divestiture Period until the NewCo BEE Equity is sold or as otherwise agreed with the Commission, the Trustee shall submit a written progress report to the Commission, sending the PIC a copy at the same time.
- 2.2 The report shall cover the Trustee's progress in the fulfilment of their obligations under the Trustee Mandate and compliance by the PIC with the conditions imposed in **Annexure B**.
- 2.3 The report shall detail all expressions of interest to purchase the NewCo BEE Equity received by the Trustee from any potential Purchaser(s) in the reporting period.

3 ASSISTANCE BY THE PIC TO THE TRUSTEE

- 3.1 Subject to clause 6 of the Amended Conditions, the PIC shall provide to the Trustee, or cause to be provided, all such reasonable assistance and information as may be required by the

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Trustee and the Trustee Team to enable them to carry out their mandate, by providing copies of all relevant documents and access to appropriate personnel.

- 3.2 The PIC shall cover all its own expenses arising from the provision of such assistance.
- 3.3 The PIC shall provide the Commission, on receipt of a written request by the Commission, affidavits deposed to by the Chief Executive Officer of the PIC confirming the accuracy of the information provided to the Trustee by the PIC.

4 DIVESTITURE PERIOD

- 4.1 For the purposes of this Trustee Mandate, the Trustee Divestiture Period shall be the applicable time period specified in the Amended Conditions.
- 4.2 In the event that the PIC has not concluded the Divestiture within the Initial Divestiture Period, the Trustee shall execute the Trustee Mandate in accordance with the power of attorney referred to in the Amended Conditions.

5 CONFIDENTIALITY

- 5.1 The Trustee and the Trustee Team will conclude any necessary confidentiality agreements to receive information from either the PIC or NewCo.
- 5.2 The Trustee's report and any other document generated by the Trustee (including the Trustee Team) in relation to their mandate will be confidential and for the sole use of the Trustee, the Commission and the PIC.
- 5.3 The Trustee shall present the draft reports to the PIC in advance of its submission of these reports to the Commission in order that the PIC may review the factual content of the reports and provide its comments.
- 5.4 The Trustee will promptly inform the PIC of any developments regarding the disposal of the NewCo BEE Equity.
- 5.5 Any unresolved disagreement between the Trustee and the PIC concerning the content of the draft report must be noted in the final report.

6 ESTIMATED FEES AND EXPENSES

- 6.1 The PIC shall pay the reasonable fees and expenses of the Trustee and of the Trustee Team (including any consultants) reasonably incurred in the fulfilment of the Trustee Mandate.

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6.2 The Trustee and the PIC may, prior to or immediately following approval of the Trustee by the Commission, negotiate a reasonable rate of fees and expenses for the fulfilment by the Trustee and the Trustee Team of the Trustee Mandate and in relation to the conducting 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 PIC to remove the Trustee, if the Trustee has not acted in accordance with the Trustee Mandate.

7.2 The new Trustee shall be appointed in accordance with the procedure referred to in the Amended Conditions.

8 TERMINATION OF THE MANDATE

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