



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM120Sep20

In the matter between:

**SHISELWENI FORESTRY COMPANY LTD**

Acquiring Firm

and

**PEAK TIMBERS LTD AND**

Target Firms

**PEAK FOREST PRODUCTS (PTY) LTD**

---

Panel : Ms M Mazwai (Presiding Member)  
: Mr A Wessels (Tribunal Member)  
: Dr T Vilakazi (Tribunal Member)  
Heard on : 17 February 2021  
Date of last submission : 19 February 2021  
Order issued on : 24 February 2021  
Reasons issued on : 06 April 2021

---

### REASONS FOR DECISION

---

#### CONDITIONAL APPROVAL

[1] On 24 February 2021, the Competition Tribunal (“Tribunal”) conditionally approved the proposed transaction in terms of which Shiselweni Forestry Company Ltd (“SFC”) acquired the businesses of Peak Timbers Ltd (“Peak Timbers”) and Peak Forest Products (Pty) Ltd (“PFP”).

[2] The reasons for the conditional approval of the proposed transaction follow.

## **Parties to the transaction and their activities**

- [3] The primary acquiring firm is SFC, a company incorporated in eSwatini. SFC is wholly owned by TWK Investments Limited (“TWK”), a South African incorporated company which is ultimately controlled by TWK Agricultural Holdings (Pty) Ltd (“TWK Agriculture”).<sup>1</sup> TWK Agriculture also controls Bedrock (Pty) Ltd (“Bedrock”). TWK Agriculture and its subsidiaries are hereinafter collectively referred to as the “TWK group”.
- [4] The business activities of the TWK group comprise of the supply of agricultural and related services, and the provision of products including timber, grain, trade, mechanisation, financing, insurance, vehicles, and tyres. TWK group’s plantations in eSwatini include wattle, eucalyptus, and pine.
- [5] Relevant to this transaction is TWK group’s timber division which supplies untreated transmission poles; treated transmission poles (supplied only in eSwatini); untreated building and fencing poles; treated building and fencing poles; untreated mining timber logs (not sawn); mining timber logs; pulp logs; and woodchips. TWK group supplies their treated building and fencing poles to customers in South Africa.
- [6] The primary target firms are the businesses of Peak Timbers and PFP. Peak Timbers and PFP are ultimately controlled by Criterion Africa Partners (Pty) Ltd.
- [7] Peak Timbers is active in the planting, harvesting, processing and sale of timber and timber related products. Peak Timbers supplies hardwood saw logs; mining timber logs; pulpwood; untreated transmission pole logs; and untreated building and fencing pole logs.
- [8] PFP operates a sawmill and supplies mining timber products and woodchips. The target firms are based in eSwatini and supply their products to customers in South Africa.

---

<sup>1</sup> TWK Agriculture is owned by individual shareholders who are current or former farmers, and none of whom have a controlling interest.

## **Proposed transaction**

[9] SFC intends to acquire the businesses of Peak Timbers and PFP as going concerns. Post-merger, SFC will control the target firms.

## **Relevant market and impact on competition**

### *Horizontal assessment*

[10] The Competition Commission (“Commission”) found several horizontal overlaps in the activities of the merging parties as they are active in the supply of untreated transmission poles; untreated building and fencing poles; untreated and unsawn mining timber; pulp logs; and woodchip.

[11] Based on the merged entity’s market share accretions (of between 1-5% respectively), the Commission concluded that the proposed transaction is unlikely to result in unilateral effects in the following markets: (i) the upstream market for the supply of untreated building and fencing poles in Mpumalanga and Northern KZN regions; and (ii) the downstream market for the supply of woodchips. In the upstream market for the supply of untreated building and fencing poles in Mpumalanga and Northern KZN regions, the merged entity will continue to compete with various players active in the market, where the largest player has a market share of over 40%. Similarly, in the downstream market for the supply of woodchips, the merged entity will continue to face competition from several firms, such as Montigny, Timrite and Paulpietersburg.

[12] In the upstream market for the supply of the untreated transmission poles in Mpumalanga and Northern KZN regions, the Commission considered the merging parties’ post-merger market share of between 25-30% and found that the proposed transaction is unlikely to result in unilateral effects as the merging parties are not necessarily competitors, [REDACTED]

[13] In the upstream market for the supply of mining timber (not sawn and untreated), where the merging parties’ post-merger market share is between 30-35%, the Commission concluded that any unilateral effects likely to result therefrom relate

to input foreclosure effects and as such, the Commission considered this market under the vertical assessment.

[14] In the upstream market for the supply of pulp logs in the Mpumalanga and KZN regions, where the merging parties' post-merger market share is between 20-25%, the Commission considered the question of whether the merging parties will face a real competitive constraint in the market post-merger; and whether the merging parties will have the ability to increase prices to its customers. The Commission found that the merging parties' competitors are unlikely to be able to constrain the merged entity and based on a concern expressed by a customer, the merged entity may have the ability to increase the price of pulp logs post-merger.<sup>2</sup> A supply condition to address this concern was imposed.

#### *Vertical assessment*

[15] The Commission identified vertical overlaps between: (i) the target firms as suppliers of untreated transmission poles and the TWK group as a downstream player in the supply of treated transmission poles; (ii) the target firms as suppliers of untreated building and fencing poles and the TWK group as a downstream player in the supply of treated building and fencing poles; and (iii) the target firms as suppliers of untreated mining timber and the TWK group (through Bedrock) as a downstream player in the supply of treated mining timber (final product).

#### *Vertical overlap between the target firms as suppliers of untreated transmission poles and the TWK group as a downstream player in the supply of treated transmission poles*

[16] The Commission considered whether the proposed transaction may present an ability and incentive by the merged entity to foreclose downstream customers of untreated transmission poles. The Commission found that there may be an ability and incentive to foreclose downstream customers in that the merged entity will be vertically integrated and may not supply untreated transmission poles to the open-market post-merger. [REDACTED]

---

<sup>2</sup> Merger record, page 776.

[17] However, the Commission found that the merged entity's market share of between 25-30% is unlikely to put the latter in a position of market power in this upstream market to confer it with the ability to significantly foreclose access to untreated transmission poles. The merged entity may, nonetheless, have the incentive to divert untreated transmission poles from the target firms for its own downstream production of treated transmission poles. Therefore, it is likely that the target firms' customers will be significantly impacted should the target firms stop supplying to these customers post-merger.

[18] Further, the Commission received concerns from customers pertaining to input foreclosure. In sum, a specific customer was concerned that should the merged entity divert untreated transmission poles towards its internal operations then this would negatively impact the customer because switching to alternative suppliers would increase its transportation costs. The merger parties tendered a supply condition that will endure long enough to enable the customer to rearrange its source of supply and also identify alternative suppliers. The customer was satisfied with the proposed remedy.

[19] The Commission found no customer foreclosure concerns, as the TWK group currently procures significant volumes of untreated transmission poles from its own shareholders and not from third party suppliers.

*Vertical overlap between the target firms as suppliers of untreated building and fencing poles and the TWK group as a downstream player in the supply of treated building and fencing poles*

[20] The Commission found no input or customer foreclosure concerns as the merged entity's post-merger market share is low and neither the TWK group nor the target firms procure untreated building and fencing poles from third parties.

*Vertical overlap between the target firms as suppliers of untreated mining timber and the TWK group (through Bedrock) as a downstream player in the supply of treated mining timber (final product)*

[21] Owing to the distance between Bedrock and the target firms, as well as the high costs of transporting timber over a long distance, the Commission found that the

merger parties' ability and incentive to divert all its mining timber to the TWK group is constrained.

[22] However, a customer of the target firms which is also a downstream competitor of BedRock,<sup>3</sup> raised a concern that the merger parties may divert mining timber supplied by the target firms to third party customers towards TWK group's internal operations to the detriment of downstream rivals. As a result, the Commission found that this customer is likely to be foreclosed should the merger parties stop supplying to third party customers.

[23] The Commission further found that the TWK group may stop or reduce its procurement of mining timber (not sawn and untreated) from small suppliers, as it will have access to the target firms' products.

#### *Conclusion on the vertical assessment*

[24] Based on the above, the main theory of harm emanating from the Commission's findings and the concerns expressed by third parties is that of input foreclosure, namely that post-merger (i) the merger parties will stop supplying untreated transmission poles to customers and as such foreclose these firms; and (ii) the merger parties will stop supplying untreated mining timber from customers, resulting in the foreclosure of these firms.

[25] To address the above-mentioned foreclosure concerns, the Commission and the merger parties proposed a set of behavioral remedies. The Tribunal directed the Commission to canvass the conditions with the various customers.

[26] Considering the concerns raised by some of the customers and after testing the proposed revised conditions, the Tribunal imposed conditions which will ensure, *inter alia*, the following:

26.1. Security of supply for a large customer of the TWK group in respect of mining timber (untreated and unsawn) for a further [REDACTED]

---

<sup>3</sup> [REDACTED]

- 26.2. Negotiations (in good faith) by the TWK group with the target firms' existing customers (as named in the confidential conditions), with the aim of entering into a supply agreement in respect of mining timber (untreated and unsawn), untreated transmission poles, untreated and treated building and fencing poles and pulp logs, for a period of [REDACTED] and based on Commercial Terms and Industry Norms.
- 26.3. The continuation, by the TWK group, through BedRock, of the purchase of mining timber (final product) from third party mills on a spot basis for a period of [REDACTED]
- 26.4. The continuation of existing price structures, by the TWK group, with the target firms' existing customers (as named in the confidential conditions) for pulp logs and negotiations (in good faith) on any price increases for the duration of the supply agreements.

[27] Therefore, the Tribunal was satisfied that the imposed conditions assuage the input foreclosure concerns and as such, it is unlikely that the proposed transaction will result in a substantial prevention or lessening of competition in the relevant markets.

### **Public interest**

[28] With regards to employment, the merging parties submitted that the proposed transaction does not raise any public interest concerns in South Africa as the target firms are based in eSwatini. Notwithstanding, the employees in eSwatini will be transferred to SFC's operations in eSwatini.

[29] Further, the Commission was satisfied that the proposed transaction raised no other public interest concerns. We found no reason to disagree with the Commission's findings.

## Conclusion

[30] In light of the above, the proposed transaction was approved subject to the conditions attached hereunder as “**Annexure A**”.

  
\_\_\_\_\_

Ms Mondo Mazwai

06 April 2021

\_\_\_\_\_

Date

**Mr AW Wessels and Dr T Vilakazi concurring.**

Tribunal case managers : Duduetsang Mogapi and Kgothatso Kgobe.

For the merging parties : Marianne Wagener and Julia Sham-Guild of Norton  
Rose Fulbright Attorneys for the acquiring firm.

: Paul Coetser of Werksmans Attorneys for the target  
firms.

For the Commission : Raksha Darji and Themba Mahlangu



**NON-CONFIDENTIAL**

**ANNEXURE A**

**IN THE LARGE MERGER BETWEEN**

**SHISELWENI FORESTRY COMPANY LIMITED (TWK)**

**AND**

**PEAK TIMBERS LIMITED AND PEAK FOREST PRODUCTS (PTY) LTD**

**TRIBUNAL CASE NUMBER: LM120Sep20**

---

**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. **[confidential]**;
- 1.4. **[confidential]**;
- 1.5. **"BedRock"** means BedRock Mining Support (Pty) Ltd, a subsidiary of TWK;
- 1.6. **[confidential]**;
- 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"** mean 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"** mean these conditions contained in this Annexure "A";
- 1.11. **"Days"** mean 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 **[confidential]** and Peak entered into on **[confidential]** for the supply of Mining Timber (not sawn and untreated), which TWK will continue until the end of the agreement in **[confidential]**;
- 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 it and **[confidential]** for a further **[confidential]** until the end of **[confidential]**;

## NON-CONFIDENTIAL

- 1.14. **[confidential];**
- 1.15. **[confidential];**
- 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”** mean 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. **[confidential];**
- 1.19. **[confidential];**
- 1.20. **[confidential];**
- 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”** mean 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. **[confidential];**
- 1.27. **“Month”** means a calendar month;
- 1.28. **[confidential];**
- 1.29. **[confidential];**
- 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”** mean logs that are cut to various lengths for different pulpwood mills;
- 1.33. **[confidential];**
- 1.34. **[confidential];**
- 1.35. **[confidential];**
- 1.36. **[confidential];**
- 1.37. **“Target Firms”** mean Peak and PFP;
- 1.38. **[confidential];**

## NON-CONFIDENTIAL

- 1.39. **“Treated Building and Fencing Poles”** mean poles that have been treated for use in the building and fencing market;
- 1.40. **“Treated Transmission Poles”** mean poles produced for the 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. **[confidential]**;
- 1.44. **[confidential]**;
- 1.45. **“Untreated Transmission Poles”** mean hardwood poles produced for pole treating plants that produce treated transmission poles;
- 1.46. **“Untreated Building and Fencing Poles”** mean small diameter poles produced for treating plants, which in turn produce poles for the building and fencing market;
- 1.47. **[confidential]**; and
- 1.48. **“Woodchips”** mean 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 CONDITIONS

- 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 **[confidential]** on **[confidential]** 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 **[confidential]**, in good faith, to extend this Existing Agreement by a further

## NON-CONFIDENTIAL

**[confidential]**, 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 **[confidential]** will be based on Commercial Terms and Industry Norms.

- 3.1.2. The annual contract volumes of Mining Timber (not sawn and untreated) offered to **[confidential]** for the Extended Supply Period will be not less than the average volumes of Mining Timber (not sawn and untreated) that **[confidential]** has purchased over the **[confidential]** prior to the renegotiation of the Extended Supply Period.
- 3.1.3. TWK reserves the right to not supply **[confidential]** for accepted commercial reasons, including but not limited to credit risk, breach, hardship and force majeure.
- 3.1.4. TWK 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 **[confidential]** from the Approval Date, with Peak's existing customers (which are set out in clause 3.1.7 below). The terms of any supply agreements entered into will be based on Commercial Terms and Industry Norms.
- 3.1.5. 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 **[confidential]** since 2018.
- 3.1.6. 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.
- 3.1.7. The relevant existing customers of Peak for the supply of Mining Timber (not sawn and untreated) are:
  - 3.1.7.1. **[confidential]**; and
  - 3.1.7.2. **[confidential]**.
- 3.1.8. 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 **[confidential]**, 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.

## NON-CONFIDENTIAL

3.1.9. 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 **[confidential]** 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 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 **[confidential]** from the Approval Date, with Peak's existing customers (which are set out in clause 3.3.4 below). The terms of any supply agreements entered into will be based on Commercial Terms and Industry Norms.

3.3.2. 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 **[confidential]** since 2018.

3.3.3. 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.

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

3.3.4.1. **[confidential]**;<sup>1</sup>

3.3.4.2. **[confidential]**;

3.3.4.3. **[confidential]**;

3.3.4.4. **[confidential]**;

3.3.4.5. **[confidential]**; and

3.3.4.6. **[confidential]**.

### 3.4. **Untreated Building and Fencing Poles**

3.4.1. TWK 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 **[confidential]** from the Approval Date, with Peak's existing customers (which are set out in clause 3.4.4 below). The

---

<sup>1</sup> **[confidential]**.

## NON-CONFIDENTIAL

terms of any supply agreements entered into will be based on Commercial Terms and Industry Norms.

3.4.2. 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 have purchased from Peak over the last **[confidential]** since 2018.

3.4.3. 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.

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

3.4.4.1. **[confidential]**;

3.4.4.2. **[confidential]**;

3.4.4.3. **[confidential]**;<sup>2</sup>

3.4.4.4. **[confidential]**;

3.4.4.5. **[confidential]**;

3.4.4.6. **[confidential]**;

3.4.4.7. **[confidential]**;

3.4.4.8. **[confidential]**;

3.4.4.9. **[confidential]**;

3.4.4.10. **[confidential]**;

3.4.4.11. **[confidential]**; and

3.4.4.12. **[confidential]**.

### 3.5. Treated Building and Fencing Poles

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

---

<sup>2</sup> **[confidential]**.

## NON-CONFIDENTIAL

this agreement, TWK supply **[confidential]** per annum of Treated Building and Fencing Poles to **[confidential]**.

### 3.6. Pulp Logs

- 3.6.1. TWK 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 **[confidential]** from the Approval Date, with Peak's existing customers (which are set out in clause 3.6.5 below). The terms of any supply agreements entered into will be based on Commercial Terms and Industry Norms.
- 3.6.2. 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 **[confidential]** since 2018.
- 3.6.3. 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.
- 3.6.4. 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 3.6.5 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.
- 3.6.5. The relevant existing customers of Peak for the supply of Pulp Logs are:
  - 3.6.5.1. **[confidential]**;
  - 3.6.5.2. **[confidential]**;
  - 3.6.5.3. **[confidential]**;
  - 3.6.5.4. **[confidential]**; and
  - 3.6.5.5. **[confidential]**.

### 3.7. Saw logs

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

## NON-CONFIDENTIAL

### 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 customers 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 **[confidential]**, 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 supplied to 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 supplied to **[confidential]** for the preceding year, in terms of clause **3.7** above.
- 4.2.2.3. An annual breakdown of the pricing for Mining Timber (not sawn and untreated) 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 the reason/s 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 to by the managing director of the Merged Entity, attesting to the accuracy of the entire contents of the report.
- 4.2.4. The Commission may request any additional information from the Merging Parties which the



## **NON-CONFIDENTIAL**

Commission from time to time deems necessary for the monitoring of compliance with these Conditions.

### **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](mailto:mergerconditions@compcom.co.za)