

ANNEXURE A: CONDITIONS
IN THE LARGE MERGER INVOLVING:
SHOPRITE SUPERMARKETS PROPRIETARY LIMITED
AND
MASSMART HOLDINGS LIMITED
CT CASE NUMBER: No: LM071Sep21

1. DEFINITIONS

In this document, the expressions used below will have the appropriate meanings assigned to them and the related expressions will bear the following meanings:

- 1.1 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.2 **“Approval Date”** means the date on which the Merger is approved in terms of the Act;
- 1.3 **“Commission”** means the Competition Commission of South Africa;
- 1.4 **“Conditions”** mean the merger conditions included in this Annexure A (read with Annexure B and Annexure C);
- 1.5 **“CSI”** means Corporate Social Investment;
- 1.6 **“Days”** mean any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **“Divestiture”** means the sale, either collectively or individually, of the Divestiture Stores to a Purchaser or Purchasers;
- 1.8 **“Divestiture Agreement”** means the written sale and purchase agreement(s) to be entered into between Massmart and the Purchaser(s);
- 1.9 **“Divestiture Period”** means a period of 12 months from the Approval Date, within which Massmart must conclude the Divestiture with a Purchaser(s);
- 1.10 **“Divestiture Stores”** mean the Highly Problematic Stores comprising: Cambridge Botshabelo, Cambridge Thaba Nchu, Cambridge Nkandla, Cambridge Ladybrand, Cambridge Mitchell’s Plain, Rhino Qumbu; Cambridge Nongoma; Cambridge/Savemoor Tembisa; Rhino Ulundi and Cambridge

Evaton grocery supermarket stores currently operated by Massmart as grocery outlets;

- 1.11 **“The dtic”** means the Department of Trade Industry and Competition;
- 1.12 **“ESD”** means Enterprise Supplier Development;
- 1.13 **“Framework Agreement”** means the agreement between the dtic and Shoprite which was signed on 12 April 2022 and in which Shoprite, *inter alia*, makes the public interest commitments included in these Conditions;
- 1.14 **“Foods”** mean dry and edible groceries, including vegetables and flowers;
- 1.15 **“Fruitspot”** means a wholesaler and distributor of fresh and cut fruit and vegetables and which forms part of the Target Business;
- 1.16 **“General merchandise”** means locally produced consumer goods including but not limited to small appliances, toys, outdoor equipment, and stationery products;
- 1.17 **“Government”** means the Government of the Republic of South Africa;
- 1.18 **“HDPs”** mean historically disadvantaged persons within the meaning of the Act;
- 1.19 **“Highly Problematic Stores”** mean the 10 (ten) stores identified by the Commission comprising: Cambridge Ladybrand, Cambridge Nongoma, Cambridge/Savemoor Tembisa, Cambridge Thaba (Botshabelo), Cambridge Thaba Nchu, Cambridge Evaton, Cambridge Nkandla, Cambridge Mitchells Plain, Rhino Ulundi, and Rhino Qumbu;
- 1.20 **“IDC”** means the Industrial Development Corporation of South Africa Limited;
- 1.21 **“Implementation Date”** means the date on which the Merger is implemented by Shoprite and Massmart (which will be no later than 3 (three) months following the Approval Date);
- 1.22 **“Independent retailer”** means privately owned single or multiple store operations that do not belong to, or form part of, the larger chains or retail groups in South Africa and are owned and operated by small-and-medium businesses, or firms controlled or owned by HDPs as contemplated in section 12A(3)(c) of the Act;
- 1.23 **“LRA ”** means the Labour Relations Act, No. 66 of 1995 (as amended);

- 1.24 **“Massfresh Meats”** means a processor and distributor of meat and meat products situated in Benoni and Durban and which forms part of the Target Business;
- 1.25 **“Massmart”** means Massmart Holdings Limited, the firm selling the Target Business;
- 1.26 **“Massmart Wholesale”** means Makro, Cash & Carry, Shield, The Fruitspot, Massfresh Meats, and Wumdrop;
- 1.27 **“Merger”** means the proposed acquisition by Shoprite Supermarkets of the Target Business as notified to the Commission under Case No. 2021Aug0045 excluding the Divestiture Stores;
- 1.28 **“Merged Firm”** means the combination of Shoprite Group and the Target Business pursuant to the Merger;
- 1.29 **“Merging Parties”** mean Shoprite Group and the Target Business;
- 1.30 **“Micro Caterer”** means a sole trader or private company providing food and refreshments in the events and gatherings arena, with an annual turnover of less than R5 million (in accordance with the amended schedule of the Small Enterprise Definition as contained in the National Small Enterprise Act, No. 102 of 1996, as proclaimed in Government Gazette, 399 of 15 March 2019) (this amount escalating in line with annual inflation in South Africa over time);
- 1.31 **“Micro Farmer”** means a farmer or grower where the receipt of product delivered to Shoprite over a 12-month period is less than R1 million in 2022 (this amount escalating in line with annual inflation in South Africa over time);
- 1.32 **“Minister”** means the Minister of Trade, Industry and Competition of the Republic of South Africa;
- 1.33 **“Purchaser”** means the identified purchaser or purchasers of the Divestiture Store(s) which must be an independent third party/ies unrelated to Shoprite, is an SMME and/or an HDP and possesses the necessary financial resources, proven technical expertise, and incentive to develop the Divestiture Store(s) as a viable and competitive force in the identified geographic areas where each of the Highly Problematic Stores are situated;
- 1.34 **“NewCo SPV”** means a special purpose vehicle to be established by Shoprite which will *inter alia* facilitate the Shoprite ESOP’s shareholding in Shoprite

Supermarkets and be mandated to invest in enterprise supplier development opportunities identified by the Shoprite Group;

- 1.35 “**Shoprite**” means Shoprite Checkers Proprietary Limited;
- 1.36 “**Shoprite ESOP**” means the employee share ownership trust to be established by Shoprite Group for the benefit of qualifying employees of Shoprite and the Target Business;
- 1.37 “**Shoprite Foundation**” means a non-profit discretionary trust to be established by the Shoprite Group focusing on corporate social investment and/or enterprise supplier development;
- 1.38 “**Shoprite Group**” means Shoprite Holdings Limited, the ultimate acquiring firm in the Merger and all firms controlled by it for the purposes of the Act;
- 1.39 “**Shoprite Supermarkets**” means Shoprite Supermarkets Proprietary Limited, a newly established firm created specifically for the purpose of acquiring the Target Business;
- 1.40 “**Shoprite Suppliers**” mean existing suppliers of goods or services to Shoprite Group that are not SMME suppliers;
- 1.41 “**SMME**” means small businesses and medium-sized businesses as described in the Act;
- 1.42 “**Spaza shops**” mean informal retailers offering convenience shopping to households, and are owned and operated by small-and-medium-sized businesses, or firms controlled or owned by historically disadvantaged persons as contemplated in section 12A(3)(c) of the Act;
- 1.43 “**South Africa**” means the Republic of South Africa;
- 1.44 “**Target Business**” means the businesses being disposed of by Massmart for which Shoprite has applied to the competition authorities for approval, excluding the Divestiture Stores;
- 1.45 “**Tribunal**” means the Competition Tribunal of South Africa;
- 1.46 “**Tribunal Rules**” mean the Rules for the Conduct of Proceedings in the Tribunal;

- 1.47 **"Trustee"** means one or more natural or legal person(s) appointed in terms of clause 4, who is independent of Massmart, and is charged with the duty of monitoring and executing the Trustee's Mandate;
- 1.48 **"Trustee Divestiture"** means the sale by the Trustee of the Divestiture Stores in terms of clause 5.
- 1.49 **"Trustee Divestiture Period"** means the period of 6 (six) months following the expiry of the Divestiture Period or in terms of clauses 5.5 and 5.7;
- 1.50 **"Trustee's Mandate"** means the duties of the Trustee as set out in Annexure B to the Conditions;
- 1.51 **"Trustee Team"** means advisors, assistants and other personnel appointed by the Trustee to assist the Trustee in the execution of his/her mandate to the extent reasonably required; and
- 1.52 **"YES Programme"** means a joint initiative by the private sector and Government to facilitate South Africa's youth to gain work experience through employment placements.

2. **LOCAL COMPETITION**

- 2.1 To address the competition concerns identified in relation to the Highly Problematic Stores, the Highly Problematic Stores will be excluded from the Merger and will remain with Massmart.
- 2.2 Massmart will within the Divestiture Period enter into Divestiture Agreement(s) in respect of the Divestiture Stores with a Purchaser(s).

3. **DIVESTITURE OF THE DIVESTITURE STORES**

- 3.1 Following the Approval Date and subject to receipt of the Commission's approval pursuant to clause 3.3, Massmart shall divest of the Divestiture Stores on reasonable commercial terms to a Purchaser(s) within the Divestiture Period.
- 3.2 In the event that Massmart is not able to divest of the Divestiture Stores to a Purchaser as contemplated in clause 3.1 above within the Divestiture Period, the Trustee shall seek to divest of the Divestiture Stores within the Trustee Divestiture Period and subject to the provisions as set out in clause 5 below.

- 3.3 Should Massmart reach agreement to dispose of the Divestiture Stores in terms of clause 3.1 above, Massmart shall prior to concluding any sale agreement with the Purchaser(s):
- 3.3.1 Submit, in writing, the name of the Purchaser(s) together with any relevant documentation in respect of the Purchaser(s) that the Commission may request, for approval by the Commission within 10 (ten) Days after such submission by reference to the definition of "Purchaser" contained in clause 1.33 hereof (which shall not be unreasonably withheld), and the Purchaser(s) shall provide the Commission with an affidavit deposed to by a senior official of the Purchaser(s) confirming the accuracy of all information relating to the Purchaser(s).
- 3.3.2 In the event that the Commission rejects any proposed Purchaser, it shall provide written reasons for such rejection, and Massmart shall within 5 (five) Days notify the Commission of another proposed Purchaser in writing for the Commission's approval on the above basis, which approval may not be unreasonably withheld.
- 3.4 The Divestiture (or any part thereof) must be notified to the Commission, in the prescribed form, as a merger, irrespective of whether the mandatory thresholds for notification of mergers contemplated by the regulations to the Act, are met.
- 3.5 For the avoidance of doubt, the Divestiture Agreement(s) cannot be implemented by the Purchaser(s) until the merger contemplated in clause 3.4 above has been approved by the Commission or Tribunal (as the case may be) with or without conditions.
- 3.6 Within 30 (thirty) calendar days from the Approval Date, Massmart must confirm to the Commission in writing, the total number of employees employed at each of the Divestiture Stores and their positions at each Divestiture Store as at the Approval Date.
- 3.7 Within 30 (thirty) calendar days of the conclusion of the Divestiture(s), Massmart must confirm to the Commission in writing, the total number of employees employed at each Divestiture Store and their positions at each Divestiture Store on the date of the Divestiture's conclusion.

4. THE APPOINTMENT OF THE TRUSTEE

- 4.1 Within 30 (thirty) calendar days from the Approval Date, Massmart shall propose to the Commission a nominee to be appointed as Trustee in accordance with the Conditions, to *inter alia* monitor and report to the Commission concerning Massmart's compliance with clause 6 and to divest of the Divestiture Stores, if so required, in terms of clause 5.
- 4.2 The proposal shall contain such information as is necessary for the Commission to determine whether the proposed Trustee is suitable to execute the Trustee's Mandate and shall include, *inter alia*, the proposed Trustee's contact details and curriculum vitae.
- 4.3 The Trustee shall be independent of the merging parties, shall possess the necessary qualifications and expertise to carry out his or her mandate (including experience in the grocery retail sector) and shall, at the date of appointment, not be exposed to any conflict of interest.
- 4.4 The Trustee and Trustee's partner firms' relationship with the merging parties for the previous 12 months must be disclosed to the Commission in writing.
- 4.5 The Commission shall within 15 (fifteen) calendar days of receipt of the nominee appointment in terms of clause 4.1, approve or reject the proposed Trustee in writing, which should not be unreasonably withheld or delayed. Should the Commission reject the proposed Trustee, the Commission must provide written reasons explaining the rejection of the proposed Trustee.
- 4.6 If the proposed Trustee is rejected on reasonable grounds and on good cause shown, Massmart, shall submit the names of at least 2 (two) more proposed Trustees within 5 (five) Days of obtaining the Commission's reasons for rejecting the proposed Trustee.
- 4.7 Massmart 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**.
- 4.8 If the Commission, acting reasonably and on good cause shown, rejects all further proposed Trustees, the Commission shall appoint a Trustee within 30 (thirty) calendar days of rejecting the further proposed Trustees.
- 4.9 The Trustee and Trustee Team shall be appointed subject to Massmart's internal processes (including Massmart's standard anti-corruption, compliance and third party intermediary global policies).

4.10 Massmart shall pay the reasonable fees and expenses of the Trustee and the Trustee Team (to the extent reasonably required) on the terms and conditions agreed upon in writing between Massmart and the Trustee.

5. **TRUSTEE DIVESTITURE: SALE OF THE DIVESTITURE STORES**

5.1 A written mandate shall enable the Trustee to perform such actions as are necessary to enable the Trustee to discharge of his or her mandate under the Conditions, including the power to appoint advisors and execute the Trustee's Mandate attached hereto as **Annexure B**.

5.2 The Trustee will have an exclusive mandate to dispose of the Divestiture Stores within the Trustee Divestiture Period, in accordance with the provisions of **Annexure B** hereto.

5.3 A certified copy of the written mandate shall be submitted to the Commission within 10 (ten) Days of the Trustee's appointment.

5.4 If Massmart fails to dispose of the Divestiture Stores within the Divestiture Period, the Trustee Divestiture Period shall commence and the Trustee shall be mandated to divest of the Divestiture Stores to a Purchaser(s).

5.5 If Massmart fails to comply with any of its obligations set out in clause 6 below, the Trustee Divestiture Period shall commence.

5.6 If at any time the Trustee has any concern or reason to doubt Massmart's full compliance with any or all of its obligations in terms of these conditions and annexures, the Trustee shall immediately advise Massmart and the Commission in writing of such doubts or concerns and make recommendations to Massmart and the Commission regarding how such doubts or concerns may be remedied without delay.

5.7 If Massmart fails to take steps to remedy the Trustee's doubts or concerns regarding full compliance with any or all of Massmart's obligations in terms of these conditions, and annexures, within 10 (ten) calendar days of receiving written notice of such doubts or concerns, then the Trustee Divestiture Period will commence immediately.

5.8 The Trustee shall use his or her best endeavours to divest of the Divestiture Stores on reasonable commercial terms [**CONFIDENTIAL INFORMATION REDACTED**]

5.9 Once the Trustee has divested of the Divestiture Stores, the parties to that Divestiture Agreement must use their reasonable commercial endeavours to

procure that at the closing date of such Divestiture, the Divestiture Agreement becomes unconditional and that the Divestiture is implemented as soon as practically possible after the signature date of the relevant agreements. This shall be included as a provision of the Divestiture Agreement.

5.10 Should the Trustee fail to conclude the Divestiture in terms of clause 5 within the Trustee Divestiture Period, the Trustee may apply to the Commission on good cause shown for a maximum of 1 (one) further period to do so, which period shall not exceed 6 (six) months. The Commission's consent to an extension may not be unreasonably withheld.

5.11 The Trustee shall inform the Commission of the identity of the Purchaser(s) mentioned in terms of clause 5.4 and shall:

5.11.1 Submit, in writing, the name of the Purchaser(s) together with any relevant documentation in respect of the Purchaser(s) that the Commission may request, for approval by the Commission within 10 (ten) Days after such submission by reference to the definition of "Purchaser" contained in clause 1.33 hereof (which shall not be unreasonably withheld), prior to concluding any sale agreement with the Purchaser(s);

5.11.2 In the event that the Commission rejects any proposed Purchaser, it shall provide written reasons for such rejection, and the Trustee shall notify the Commission of another proposed Purchaser in writing within 5 (five) calendar days for the Commission's approval on the above basis, which may not be unreasonably withheld; and

5.11.3 The Purchaser(s) shall provide the Commission with an affidavit deposed to by a senior official of the Purchaser(s) confirming the accuracy of all information relating to the Purchaser(s).

5.12 For the avoidance of doubt, any Divestiture under the Trustee must be notified to the Commission, in the prescribed manner and forms, as a merger filing, irrespective of whether the minimum merger notification thresholds contemplated in the regulations to the Act, are met.

6. OBLIGATIONS OF MASSMART IN RESPECT OF THE DIVESTITURE

6.1 Massmart must provide a detailed plan to the Commission within 30 (thirty) calendar days from the Approval Date, setting out how Massmart intends on complying with clauses 6.2 to 6.2.6 below. The Commission and the dtic may request any additional information to ensure compliance.

6.2 Massmart must during the Divestiture Period and Trustee Divestiture Period:

6.2.1 Preserve and maintain the economic and competitive value, independence and marketability of the Divestiture Stores in the ordinary course of business;

6.2.2 Provide necessary funding, including working capital, for the viable operation of the Divestiture Stores;

6.2.3 Extend any supply arrangements and/or enter into new supply arrangements with suppliers to ensure continued uninterrupted supply and security of supply to the Divestiture Stores;

6.2.4 Extend any lease agreements, and enter into any lease agreements that may be necessary to ensure the continued operation of the Divestiture Stores;

6.2.5 Ensure that the Divestiture Stores are managed with reasonable care and skill, pursuant to good business and commercial practices; and

6.2.6 Refrain from carrying out any act outside of the ordinary course of business that may be of such a nature as to, in a significant adverse way, alter the economic value or the competitiveness of the Divestiture Stores or which could alter the commercial strategy in respect of such business in a significantly adverse way.

6.3 Massmart must provide such information as is requested by the Trustee to enable it to monitor and report to the Commission concerning Massmart's compliance with clause 6.

6.4 In respect of the Divestiture Stores, Massmart must:

6.4.1 Take all reasonable steps to not directly or indirectly discourage any employee from commencing, continuing or seeking employment with or providing services to the proposed Purchaser(s); and

6.4.2 Take all reasonable steps to ensure that effective on the date of Divestiture, employees are released from any non-compete or similar restraint of trade obligation, to the extent that such an obligation would otherwise prevent the person from performing his or her contemplated role in relation to the Divestiture Stores.

7. **EMPLOYMENT**

7.1 Post-merger, all employees of the Target Business shall be transferred to Shoprite Group in accordance with section 197 of the LRA, on no less

favourable terms of employment (including without limitation with respect to wages, working conditions and/or benefits) compared to those which currently apply to such employees.

- 7.2 The Merged Firm shall not conduct any retrenchments as a result of the Merger.
- 7.3 All employees related to the Divestiture Stores shall be retained and remain employed by the Massmart group on the same terms and conditions of employment as applicable prior to the Merger. Massmart shall not retrench any such employees during the Divestiture Period (or any extension thereof in terms of these Conditions) or during the Trustee Divestiture Period.
- 7.4 For the avoidance of doubt, retrenchments do not include (i) voluntary retrenchment and/or separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (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 or poor performance.
- 7.5 Shoprite Group undertakes to procure the creation of at least 18 500 additional permanent employment opportunities at Shoprite Group's operations in South Africa over a 5-year period from the Implementation Date as follows:
- 7.5.1 1 000 indirect permanent employment opportunities including as an outcome of Shoprite Group's commitments to increase its procurement of products supplied by SMME's; and
- 7.5.2 17 500 direct permanent employment opportunities which will be created based on Shoprite's annual planned store opening programme and will take place in the ordinary course of business.
- 7.6 At the end of the 5 (five) year period from the Implementation Date and as a result of the implementation of the Merger and the undertakings in clause 7.5 above, Shoprite Group anticipates that it will employ at least 153 400 employees in South Africa. Shoprite records that the only anticipated deviation from this total may relate to a change in business model within the Fruitspot and Massfresh Meats businesses through the potential outsourcing of these businesses. Prior to Shoprite proceeding with any such change of business model, Shoprite undertakes to notify the Minister and representatives of the employees. If Shoprite and the Minister are unable to reach agreement

regarding the variation of Shoprite's undertaking to employ at least 153 400 employees, which variation may be requested based on changes to the business model as set out above, or substantial, material and unforeseeable changes in the macroeconomic environment or circumstances that substantially prevent the planned growth strategy of Shoprite, Shoprite must take appropriate steps in accordance with clause 16 of these Conditions.

8. **GREATER SPREAD OF OWNERSHIP**

8.1 The Shoprite Group commits to establishing and implementing the Shoprite ESOP within 60 (sixty) calendar days of the Implementation Date.

8.2 The Shoprite ESOP will have the following main parameters, the details of which are set out more fully in the Framework Agreement attached hereto as **Annexure C** –

8.2.1 The Shoprite ESOP is an evergreen scheme and capital, net of the repayment of the notional vendor finance (“NVF”) rate, which will be retained as a perpetual self-funded vehicle.

8.2.2 The Shoprite ESOP is structured as a dividend only scheme with dividends distributed to participants.

8.2.3 The Shoprite ESOP will be funded through a combination of a 10% discount on Shoprite shares acquired by the Shoprite ESOP as well as a NVF share.

8.2.4 A NVF rate of **[CONFIDENTIAL INFORMATION REDACTED]** (**[CONFIDENTIAL INFORMATION REDACTED]** lower than the Shoprite Group's borrowing rate of **[CONFIDENTIAL INFORMATION REDACTED]**) will apply and will be settled through dividends. This will create equity in the amount of **[CONFIDENTIAL INFORMATION REDACTED]** billion over **[CONFIDENTIAL INFORMATION REDACTED]** years at a share price growth of **[CONFIDENTIAL INFORMATION REDACTED]** per annum.

8.2.5 Employees will be required to have been in the employ of the Shoprite Group in excess of 2 (two) years before being eligible to join the Shoprite ESOP. For the avoidance of doubt, employees of the Target Business that have been employed at the Target Business for more than 2 (two) years will immediately be eligible to join the Shoprite ESOP

following implementation of the Merger, which number is approximately 85 170 employees at commencement date of the scheme. Employees that are part of any other long term incentive scheme will not be eligible to join the Shoprite ESOP.

8.2.6 Shoprite confirms that employee shareholders will receive at least an estimated [**CONFIDENTIAL INFORMATION REDACTED**] of the total dividends accruing to the 40 million shares in year 1 (one), the remaining dividends being used to defray the cost of the vendor funding facility, it being agreed that the portion allocated for which a dividend is payable to employees may be increased by Shoprite, but not be reduced.

8.2.7 The trustees of the Shoprite ESOP will comprise a maximum of 4 (four) persons, and Shoprite will appoint 2 (two) trustees and 2 (two) trustees will be appointed by the employees of Shoprite.

8.2.8 The Shoprite ESOP employee representatives shall, as representatives of a shareholder of Shoprite and NewCo SPV, be entitled to nominate a director to the boards of Shoprite and NewCo SPV; and Shoprite undertakes to procure that such nominee/s be appointed to the boards of the two companies.

8.3 The Shoprite ESOP will hold 40 million shares in Shoprite which constitutes [**CONFIDENTIAL INFORMATION REDACTED**] of the value of Shoprite. Employees participation in the Shoprite ESOP shall be by way of holding units. Each unit held will be equivalent to a share in Shoprite Holdings, for dividend calculation purposes.

8.4 The Shoprite ESOP shall hold at least [**CONFIDENTIAL INFORMATION REDACTED**] shareholding in NewCo SPV, which will, in turn, have a [**CONFIDENTIAL INFORMATION REDACTED**] shareholding interest in Shoprite Supermarkets.

8.5 Employees' participation in the Shoprite ESOP will have zero cost implications to employees.

9. LOCALISATION

9.1 Shoprite Group has implemented a policy to only import goods for resale in circumstances where the goods are not produced in South Africa or where there is a shortage of supply of locally produced goods at competitive prices.

9.2 It is recorded that in the fiscal year ended June 2021, [**CONFIDENTIAL INFORMATION REDACTED**] of Shoprite's total purchases comprised of imported goods and [**CONFIDENTIAL INFORMATION REDACTED**] of its Foods requirements was imported. The balance of Shoprite's total purchases and purchases of its Foods requirements, was locally produced. Shoprite commits to retain these levels of procurement of locally produced goods.

9.3 Using Shoprite Group's annual procurement spend as at the Implementation Date as the benchmark, Shoprite Group commits to increase its procurement of South African produced Foods, by an additional [**CONFIDENTIAL INFORMATION REDACTED**] million annually (excluding VAT and at current cost prices). This target will be met within a period of [**CONFIDENTIAL INFORMATION REDACTED**] years post the Implementation Date.

9.4 Using Shoprite Group's annual procurement spend as at the Implementation Date as the benchmark, Shoprite Group shall take all reasonable steps to further localise the procurement of South African manufactured General merchandise.

10. TARGET BUSINESS SUPPLIERS

10.1 Shoprite undertakes to maintain the supply agreements with SMME and HDP owned suppliers (and current suppliers of no-name or in-store brands) that currently supply the Target Business on terms and conditions which are no worse than currently offered by Massmart (and that take into account the additional benefits to SMMEs and HDP owned suppliers set out in the Framework Agreement). The undertaking is made subject to the SMME and

HDP owned suppliers meeting Shoprite's general food quality and safety criteria and trading in the ordinary course of business.

11. TARGET BUSINESS LEASES

11.1 Shoprite Group shall waive any exclusivity provisions in any Target Business leases that will transfer to the Shoprite Group upon implementation of the Merger.

12. RETAILER AND SUPPLIER DEVELOPMENT

12.1 Shoprite undertakes to invest additionally in the development of independent retailers and spaza shops, Micro Caterers, SMME suppliers and Micro Farmers. Shoprite will prioritize and concentrate the focus of the programmes described in clauses 12.2.1 to 12.2.3 on HDPs.

12.2 Shoprite Group shall commit to expend at least R[**CONFIDENTIAL INFORMATION REDACTED**] million over a [**CONFIDENTIAL INFORMATION REDACTED**] year period from the Implementation Date, in the following programmes, developed jointly with the dtic:

12.2.1 R[**CONFIDENTIAL INFORMATION REDACTED**] million to develop independent retailers, spaza shops and Micro Caterers through, *inter alia*, the provision of volume and settlement discounts, subsidisation of delivery fees and technical support and making available data and related IT infrastructure to facilitate ease of procurement.

12.2.2 R[**CONFIDENTIAL INFORMATION REDACTED**] million to develop SMME suppliers and Micro Farmers and for the early settlement of invoices of SMME suppliers and Micro Farmers (with no more than R [**CONFIDENTIAL INFORMATION REDACTED**] of such sum being placed in a fund for joint supplier development initiatives with the IDC).

12.2.3 R[**CONFIDENTIAL INFORMATION REDACTED**] million to develop Micro Farmers through, *inter alia*, access to distribution centres, packaging, refrigerator trucks, technical support and early settlement of invoices.

12.3 Such expenditure shall not be redirected from any existing, planned or other expenditure and will constitute new funding. In addition, Shoprite will not seek to recover such expenditure, or any portion thereof, within or after the [**CONFIDENTIAL INFORMATION REDACTED**]

- 12.4 Shoprite will not be in breach of the Conditions nor will it be required to discharge the full value of the commitment in paragraph 12.1 above, should independent retailers, spaza shops and Micro Caterers not participate in the intended programmes referred to in paragraph 12.2 above. In such event, Shoprite will work with the dtic to identify alternate and equivalent programmes aimed at the target group for the deployment of the resources, and which will be agreed upon by the dtic and Shoprite.
- 12.5 As part of its role in providing a route to market for SMME suppliers, Shoprite undertakes to enter into discussions with and to use all appropriate endeavours (including leveraging on their infrastructure) to procure that the Shoprite Suppliers develop, assist and provide SMMEs with the opportunity to operate sustainable businesses and effectively participate in the supply and value chain associated with the Shoprite Group.
- 12.6 Without limitation, Shoprite undertakes to work with and procure that the largest 50 (fifty) Shoprite Suppliers will take all reasonable steps to ensure that their CSI and ESD efforts and spend are targeted at developing SMMEs to supply products, goods and services to the Shoprite Group.
- 12.7 Shoprite Group will develop and implement an internal policy confirming the Shoprite Group's commitment in clause 12.6. The internal policy will also record Shoprite's approach in providing qualifying SMMEs with favourable trade terms relating to settlement discounts, advertising costs, stock responsibility and rebates.
- 12.8 Shoprite Group commits to settlement of any invoices submitted by any suppliers and Micro Farmers pursuant to this Condition, within 7 (seven) calendar days from receipt of the invoice.

13. **SKILLS DEVELOPMENT**

- 13.1 Shoprite Group commits to enrolling 450 additional students to its existing SMME mentorship programme over a 5 (five) year period from the Implementation Date.
- 13.2 Shoprite Group commits to enrolling 600 additional students to the Government's YES programme over a 5 (five) year period from the Implementation Date, at an additional cost of R[**CONFIDENTIAL**

INFORMATION REDACTED] million to Shoprite Group which cost shall be incurred over a 5 (five) year period from the Implementation Date.

13.3 Shoprite Group shall continue to contribute at least R[**CONFIDENTIAL INFORMATION REDACTED]** million per annum over the 5 (five) year period from the Implementation Date to the Shoprite Academy to enhance internal training and skills development within the Shoprite Group.

14. **MONITORING**

14.1 Shoprite will notify the Commission and the Minister in writing of the Implementation Date within 5 (five) Days of the Implementation Date.

14.2 Shoprite Group shall inform the Commission and the Minister in writing of the implementation of the Shoprite ESOP within 5 (five) Days of its occurrence.

14.3 Shoprite Group and Massmart shall, within 10 (ten) Days of the Implementation Date, publish a non-confidential version of the Conditions on their South African websites for a period of 1 (one) year from the Implementation Date.

14.4 Within 10 (ten) Days of the Implementation Date, Shoprite Group shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, Shoprite Group shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.

14.5 Within 10 (ten) Days of the Implementation Date, Massmart shall circulate a non-confidential version of the Conditions to the Target Business' employees, their employee representatives and trade unions as well as to the Target Business' existing SMME and HDP suppliers. As proof of compliance herewith, Massmart shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.

14.6 As proof of compliance with clauses 14.3 to 14.5 above, each of Shoprite Group and Massmart shall within 5 (five) Days of publishing and circulating the Conditions, submit to the Commission an affidavit by a senior official attesting to their compliance with the publishing and circulating of the Conditions.

14.7 Within 60 (sixty) Days of the Implementation Date, Shoprite Group shall provide the Commission and the Minister, in writing, with the number of employees within the Shoprite Group, as well as full details of its employment

and that of Shoprite, at the Implementation Date, as contemplated in clause 7.6 above.

- 14.8 Within 60 (sixty) calendar days of the Implementation Date, Shoprite Group shall provide the Commission and the Minister with written details of its relevant annual procurement spend to enable the monitoring of Shoprite Group's obligations under clause 9 above.
- 14.9 Within 60 (sixty) calendar days of the Implementation Date, Shoprite Group shall provide the Commission and the Minister, in writing, details of the Target Businesses' suppliers as at the Approval Date and as at the Implementation Date. This will enable the Commission to monitor Shoprite Group's obligations under clause 10 above.
- 14.10 Within 60 (sixty) calendar days of the Implementation Date, Shoprite Group shall provide the Commission, in writing, details of the leases transferred to Shoprite Group upon the Implementation Date. This will enable the Commission to monitor Shoprite Group's obligations under clause 11 above.
- 14.11 Within 60 (sixty) calendar days of the Implementation Date, Shoprite Group shall provide the Commission and the Minister, in writing, with full details of any existing, planned or other expenditure as at the Implementation Date. This will enable the Commission to monitor Shoprite Group's additional commitments under clause 12.2 above.
- 14.12 Within 60 (sixty) calendar days of the Implementation Date, Shoprite Group shall provide the Commission and the Minister, in writing with details of the existing number of learners enrolled in the Government's YES programmes and Shoprite Group's SMME Mentorship programme. This will enable the Commission to monitor Shoprite Group's obligations under clause 13 above.
- 14.13 Within 60 (sixty) calendar days of the Implementation Date, Shoprite Group shall provide the Commission and the Minister with a copy of the policy developed pursuant to clause 12.7 above.
- 14.14 Within 45 (forty-five) calendar days of each anniversary of the Approval Date up until the 5th (fifth) anniversary of the Implementation Date, Shoprite Group

shall provide a suitable and appropriately detailed annual report to the Commission regarding Shoprite Group's compliance with the Conditions.

- 14.15 The report referred to in clause 14.14 above shall be accompanied by an affidavit attested to by a senior official of Shoprite Group attesting to the accuracy of the annual report and full compliance of these Conditions in the year to which the reports relate.
- 14.16 The Commission may request the Merging Parties to provide any documents which the Commission considers necessary for monitoring compliance with the Conditions.

15. **APPARENT BREACH**

- 15.1 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 Merging Parties of these Conditions, the breach 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 Tribunal Rules.

16. **VARIATION**

- 16.1 Should either Shoprite or Massmart seek to vary the Conditions, it shall make a proposal to the Commission and the Minister to consent to a waiver, relaxation, modification and/or substitution of any aspect of the Conditions, which consent shall, if made on good cause, not be unreasonably withheld. In the event of the Commission, the Minister Shoprite and/or Massmart agreeing upon the waiver, relaxation, modification, or substitution of any aspect of the Conditions, these parties shall make application to the Tribunal for approval by it of such waiver, relaxation, modification, or substitution of any one or more of the Conditions. In the event of the Commission and/or the Minister withholding its consent to a waiver, relaxation, modification and/or substitution of any one or more of the Conditions, Shoprite and/or Massmart shall be entitled to apply to the Tribunal for an order waiving, relaxing, modifying or substituting of any one or more of the Conditions. The Commission and/or the Minister shall be entitled to oppose such application.
- 16.2 The Commission shall be entitled to apply to the Tribunal, on good cause shown, for the relaxation, modification, or substitution of any aspect of the

Conditions. Shoprite, Massmart and the Minister shall be entitled to oppose such application.

17. **GENERAL**

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

TRUSTEE'S MANDATE

1. INTRODUCTION

- 1.1. The Trustee shall act on behalf of the Commission to monitor Massmart's compliance with clause 6.1 pending the Divestiture and to give effect to the Divestiture during the Trustee Divestiture Period in terms of **Annexure A** of the Tribunal's order.
- 1.2. The key objective of the appointment of the Trustee is for the Trustee is to monitor Massmart's compliance with clause 6.1 of **Annexure A** pending the Divestiture, and that the Divestiture Stores are divested to a proposed Purchaser(s) who meets the criteria as set out in **Annexure A**. The Trustee will perform its duties mentioned above, and as contained in this Trustee Mandate, in respect of the Tribunal's order.

2. DUTIES OF THE TRUSTEE

- 2.1 The Trustee shall until the termination of his/her mandate carry out the following duties:
 - 2.1.1 Monitor the steps that Massmart is taking to maintain the continued economic viability, competitiveness and marketability of the Divestiture Stores and to report to the Commission that they are managed in the ordinary course of business, pursuant to good business practices.
 - 2.1.2 Observe and advise the Commission as to the development of the procedure for selecting the proposed Purchaser(s) for the Divestiture Stores and the progress of the negotiations between Massmart and the proposed Purchaser(s).
 - 2.1.3 Observe and advise the Commission as to whether the proposed Purchaser(s) with whom Massmart intends to negotiate is likely to satisfy the requirements as set out in **Annexure A**.
 - 2.1.4 Use his/her best endeavours to divest of the Divestiture Stores on reasonable commercial terms [**CONFIDENTIAL INFORMATION REDACTED**] to a Purchaser(s) that meets the criteria in terms of **Annexure**

A during the Trustee Divestiture Period should Massmart not dispose of the Divestiture Stores during the Divestiture Period.

3. REPORTING OBLIGATIONS OF THE TRUSTEE PRIOR TO THE TRUSTEE DIVESTITURE PERIOD

- 3.1 A detailed work plan describing how the Trustee intends to monitor compliance with the Conditions relevant to the Trustee's mandate must be drawn up in consultation with Massmart and submitted to the Commission within 10 (ten) Days of the Trustee's appointment.
- 3.2 Within 10 (ten) Days of every third month, or as otherwise agreed with the Commission, the Trustee shall submit a written report to the Commission.
- 3.3 The report shall cover the Trustee's progress in the fulfilment of his/her obligations under the mandate and the compliance of Massmart with the Conditions imposed upon it in **Annexure A** relevant to the Trustee's mandate.
- 3.4 The report shall cover *inter alia* the following:
 - 3.4.1 The operational and financial performance of the Divestiture Stores, assessed during any particular time period;
 - 3.4.2 The available finance and working capital of the Divestiture Stores, as assessed during any particular time period;
 - 3.4.3 Supply arrangements with suppliers to ensure continued uninterrupted supply and security of supply to the Divestiture Stores;
 - 3.4.4 Any lease agreements extended or entered into to ensure the continued operation of the Divestiture Stores;
 - 3.4.5 Monitoring of the preservation of the economic viability, marketability and competitiveness of the Divestiture Stores;
 - 3.4.6 A list of proposed Purchasers and a preliminary assessment of each of them;
 - 3.4.7 The progress of negotiations with proposed Purchasers;

- 3.4.8 Any issues or concerns regarding the divestiture of Divestiture Stores.
- 3.4.9 Massmart's compliance with its obligations to manage the Divestiture Stores in the ordinary course of business and with reasonable care and skill;
- 3.4.10 To the extent necessary, motivation for the utilisation, associated costs and details of professional advisors appointed by the Trustee; and
- 3.4.11 Any particular issue as set out in the work plan.
- 3.5 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 Massmart in terms of **Annexure A** of the Tribunal's order relevant to the Trustee's mandate, the Trustee shall immediately advise Massmart and the Commission in writing of such doubts or concerns and make recommendations to Massmart and the Commission regarding how such doubts or concerns may be remedied without delay.
- 3.6 If Massmart fails to take steps to effectively remedy the Trustee's doubts or concerns regarding full compliance with any or all of Massmart's obligations in terms of **Annexure A**, within 10 (ten) calendar days of receiving written notice of such doubts or concerns, then the Trustee Divestiture Period will commence immediately.
- 3.7 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 3.2.

4. ASSISTANCE BY MASSMART TO THE TRUSTEE

- 4.1. Massmart shall provide a quarterly report, within 5 (five) Days of every third month, to the Trustee setting out its compliance with its obligations as set out in clause 6.1 of the conditions in **Annexure A** above.
- 4.2. Massmart shall provide to the Trustee, or cause to be provided, all assistance and information required by the Trustee to carry out this mandate, including all relevant information and (copies of) documents as well as access to

appropriate personnel. Massmart shall cover all of its own expenses arising from the provision of such assistance.

4.3. Massmart shall be responsible for the performance of their employees and agents and for the accuracy and completeness of all data and information provided to the Trustee.

4.4. Massmart shall provide the Commission with affidavits deposed to by a senior official of Massmart confirming the accuracy of all information provided to the Trustee.

5. REPORTING OBLIGATIONS OF THE TRUSTEE DURING THE TRUSTEE DIVESTITURE PERIOD

5.1. A detailed work plan describing how the Trustee intends to divest of the Divestiture Stores must be drawn up within 10 (ten) calendar days from the commencement of the Trustee Divestiture Period and submitted to the Commission and Massmart.

5.2. The Trustee must provide the Commission with an itemised list of tangible and intangible assets associated with the Divestiture Stores, including an assessment of the state of the assets, within 30 (thirty) calendar days of the commencement of the Trustee Divestiture Period.

5.3. Every 90 (ninety) calendar days from the commencement of the Trustee Divestiture Period until the end of the Trustee Divestiture Period or as otherwise agreed with the Commission, the Trustee shall submit a written progress report to the Commission detailing the Trustee's efforts to dispose of the Divestiture Stores, sending Massmart a copy at the same time. This report shall be accompanied by a duly commissioned affidavit from the Company Secretary of Massmart attesting to the accuracy of the report. The Trustee shall provide the Commission with any further details required by it with regards to such report.

5.4. The report shall cover the Trustee's progress in the fulfilment of his or her

obligations under the Trustee's Mandate and compliance by Massmart with the Conditions imposed in Annexure A relevant to the Trustee's mandate and in particular the following:

- 5.4.1 A list of proposed Purchasers and a preliminary assessment of each of them;
- 5.4.2 State of negotiations with proposed Purchasers;
- 5.4.3 Any issues or concerns regarding the Divestiture of the Divestiture Stores;
- 5.4.4 To the extent necessary, motivation for the utilisation, associated costs and details of professional advisors appointed by the Trustee; and
- 5.4.5 Any particular issues as set out in the work plan.

6. DIVESTITURE PERIODS

- 6.1 For purposes of this Trustee's Mandate, the Divestiture Period and the Trustee Divestiture Period shall be the applicable time period specified in **Annexure A**.
- 6.2 In the event that Massmart has not concluded the Divestiture Agreement within the relevant Divestiture Period, or has not complied with its obligations in terms of clauses 6 in Annexure A, then the Trustee shall execute his/her mandate in accordance with the written mandate referred to in **Annexure A**.

7. ESTIMATED FEES AND EXPENSES

- 7.1 Massmart shall pay the reasonable fees and expenses of the Trustee and the Trustee Team. The Trustee and Massmart may, prior to or immediately following approval of the Trustee by the Commission, negotiate and agree a reasonable rate of fees and expenses for the Trustee and the Trustee Team.

8. REPLACEMENT, DISCHARGE AND RE-APPOINTMENT OF TRUSTEE

- 8.1 The Commission may at any time, after consultation with the Trustee, order that the Trustee be removed, if the Trustee has not acted in accordance with the Trustee's Mandate.
- 8.2 The new Trustee shall be appointed in accordance with the procedure referred to in **Annexure A**.

9. TERMINATION OF THE MANDATE

9.1 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.

10. CONFIDENTIALITY

10.1 The Trustee's report and any other document generated by the Trustee in relation to his/her mandate will be confidential and for the sole use of the Trustee, the Commission and Massmart.

10.2 The Trustee shall present the draft reports to Massmart in advance of its submission of these reports to the Commission in order that Massmart may review the factual content of the report and provide their comments.

10.3 Any unresolved disagreement between the Trustee and Massmart concerning the content of the draft report must be noted in the final report submitted to the Commission.