

PRESS RELEASE

11 July 2012

Commission approves Oceana transactions subject to conditions

On 09 July 2012, the Competition Commission (“Commission”) approved two separate but related merger transactions involving Oceana Group Limited (“Oceana”). In the first transaction, Oceana will, through its subsidiary Commercial Cold Storage Group (Pty) Limited (“CCS”), acquire V&A Cold Store (Pty) Ltd (“V&A”). CCS owns and manages cold storage facilities in the main industrial centres and harbours of South Africa. CCS provides commercial cold storage and handling services to the Oceana Group as well as to producers, importers, exporters, traders, wholesalers and retailers primarily in the frozen food industries. V&A is a cold storage facility situated at the Cape Town quayside at the Table Bay harbour that provides handling and cold storage services to various types of products such as fishing and frozen goods.

When assessing a merger, the Commission is required to evaluate whether the particular transaction has the potential to prevent or lessen competition substantially, taking into account all factors relevant to competition in that market. With its ideal location at the quayside, the V&A cold store facility will result in Oceana becoming the dominant player in the cold storage market for loose fish and fish destined for the export market. It will hold over 65% of market share.

The Commission is concerned that this dominance will provide Oceana with the ability to either deny access to cold storage facilities to independent customers or provide access on discriminatory terms. Customers processing loose fish and fish destined for the export market who do not have their own facilities are especially vulnerable to these likely harms.

The large capital investment required to build a cold store facility and lack of space at the harbour to set up new storage facilities or for existing players to expand their cold store operations are factors indicative of high barriers to entry. The ability of new entrants to provide competitive discipline to Oceana’s market conduct after this transaction is thus limited.

In order to address this concern, the Commission has imposed two conditions on the merger. The first condition is for Oceana to ensure that, after the merger, fishing customers

have access to its cold storage facilities on a non-discriminatory basis. The other condition is that Oceana should not differentiate, in its pricing, between any of its subsidiaries and related companies on the one hand, and third parties on the other; save for standard commercial terms, for as long as Oceana has control of V&A. The Commission also requested that Oceana make the conditions known to all its customers.

In the second transaction, Oceana acting through its wholly-owned subsidiaries Oceana Lobster Limited (“Oceana Lobster”) and Blue Continent Products (Proprietary) Limited (“BCP”) will acquire Phambili Fishing (Proprietary) Limited (“Phambili”), Bato Star Fishing (Proprietary) Limited (“Bato Star”) and a number of entities within African Marine Products (Proprietary) Limited (“AMP”). In essence, the transaction involves the acquisition of assets including fishing vessels and fishing rights for horse mackerel, hake, sole and south coast rock lobster.

The Commission is of the view that the proposed transaction is unlikely to result in anti-competitive effects in any of the fish markets involved as long as the third parties that have catching arrangements with the target entities will continue to have access to the fishing vessels and/or if those catching agreements are transferred to Oceana.

The Commission however is concerned about the future of seasonal or short-term contract employees and therefore imposes a condition that no retrenchments of employees may be made as a consequence of the merger for a period of two years.

The Commission and Department of Agriculture Forestry and Fisheries (“DAFF”) have concurrent jurisdiction on the proposed transactions and therefore the Commission’s decision does not supersede that of DAFF. The transactions that have not been approved by DAFF become divisible from the main transaction.

ENDS

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