

Statement on Competition Commission Meeting of 11 November 2014

To: All Media

Date: 12 November 2014

1. Key decisions on mergers and acquisitions

1.1 Approved Mergers

Lewis Stores Proprietary Limited and Ellerine Furnishers Proprietary Limited trading as Beares

The Commission has recommended to the Competition Tribunal to approve the acquisition Beares by Lewis Stores, with conditions. The merging parties shall not retrench any employees as a result of the merger and shall also offer job opportunities to the employees retrenched by Ellerines, at the Beares shops.

In terms of this transaction, Lewis will acquire 63 Beares stores that have been identified as viable by the Business Rescue Practitioners. Therefore, considering the circumstances which led to the sale of Beares, the proposed transaction offers an opportunity to save at least 393 jobs that will be taken over by Lewis as a result of the proposed transaction.

CSAV Germany Container Holding GmbH, Hamburger Gesellschaft für Vermögens - und Beteiligungsmanagement mbH and Kühne Maritime GmbH

The Commission has approved, without conditions, the intermediate merger whereby CSAV Germany Container Holding GmbH (CG Hold Co), Hamburger Gesellschaft für Vermögens - und Beteiligungsmanagement mbH (HGV) and Kühne Maritime GmbH (Kühne Maritime) intend to joint acquire over Hapag Lloyd AG (HL AG). Post merger, CSAV will (via CG Hold Co) have an indirect shareholding of 30% in HL AG, while HGV will directly hold 25.81% and Kühne Maritime 19.72% in HL AG.

The proposed transaction is subject to jurisdiction in South Africa due to the merging parties each having subsidiaries and activities in South Africa. Apart from South Africa, the proposed transaction has been notified to the competition authorities in Brazil, Chile, China, Costa Rica, Ecuador, the EU, Mexico, South Korea, Turkey, Ukraine and United States of America. According to the merging parties, clearance has been obtained in all of these jurisdictions.

The Commission considered the activities of the merging parties and found that there is a horizontal overlap arising from the proposed transaction as both between HL AG and CSAV in the provision of container liner shipping business globally and in South Africa. The Commission however found that the proposed transaction is unlikely to substantially prevent or lessen competition in the container liner shipping market in all affected trade routes as the merged entity's market share remains low post-merger. Furthermore, the proposed transaction does not raise any public interest concerns.



Man-Dirk Proprietary Limited and SA Tool Proprietary Limited

The Commission has approved, without conditions, the merger of Man-Dirk Proprietary Limited and SA Tool Proprietary Limited. Man-Dirk intends to acquire 100% of the entire issued share capital of SA Tool. Post-merger, Man-Dirk will have sole control over SA Tool.

SA Tool is a provider of tools, safety and welding products to the construction, manufacturing, mining, engineering, and petro-chemical industries. The core product categories supplied by SA Tool include power tools and accessories; broach cutters; drills, taps, dies and cutters; abrasives; hand tools; fasteners; hydraulics; welding products; electrical and cable; personal protective equipment; cleaning equipment; lubricants, and adhesives, and spares.

The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the markets in which the merging parties compete.

Hudaco Trading (Proprietary) Limited and Partquip Group (Proprietary) Limited

The Commission has approved, without conditions, the intermediate merger whereby Hudaco intends to acquire the entire issued share capital of Partquip. Hudaco and its subsidiaries ("the Hudaco Group") specialise in the importation and distribution of selected high quality industrial and security products in South Africa, which include *inter alia*, batteries, conveyor belting products, vehicle exhausts, automotive filtration products, industrial hoses, seals, OEM and non-OEM bearings and accessories, closed-circuit television equipment and hydraulic gear pumps. These products are distributed throughout South Africa through various operating divisions of Hudaco Trading. Certain of the operating divisions manufacture the parts they distribute (e.g. Bosworth, The Keymak Division).

Partquip is an importer and distributor of quality aftermarket auto parts, wheels, 4x4 modification parts and accessories to the Southern African aftermarket industry. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the markets where the merging parties compete. The Commission has not received any evidence that suggests that the transaction will have a negative impact on any public interest issues.

Pivotal Fund Limited and Portion 113 Weltevreden Proprietary Limited

The Commission has approved, without conditions, the merger between Pivotal Fund Limited and Portion 113 Weltevreden Proprietary Limited. In terms of the Sale Agreement, Pivotal intends to acquire property interests from Portion 113. Pivotal is a property investment and development fund with a property portfolio comprising of office, retail, and vacant land under development in Johannesburg and Pretoria.

The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rentable Grade A office properties.

Robert Bosch GmbH and BSH Bosch und Siemens Hausgerate GmbH and Siemens-Electrograde GmbH

The Commission approved the proposed merger of the aforementioned parties without conditions. In terms of the proposed transaction, Bosch intends to increase its shareholding in BSH from 50% to 100% and acquire sole control over BSH. The proposed transaction also encompasses the right in favour of BSH to continue using the “Siemens” brand on the basis of an exclusive long-term trademark licence for domestic appliances.

Africom Commodities (Pty) Ltd and Enviro Crop Protection (Pty) Ltd, Enviro Industries (Pty) Ltd, RT Chemicals (Pty) Ltd

The Commission has approved the merger of the aforementioned parties without conditions. Africom Group produces and retails fertilizers and farming equipment used for the agricultural sector. Africom also provides project management services related to corporate farming. The Target Firms comprise of firms that manufacture and distribute a range of crop protection chemicals for weed control, herbicides, and pesticides.

In terms of the Sale of Shares Agreement, Africom intends to acquire 100% of the issued share capital and claims of the Target Firms (i.e. Enviro Crop Protection, Enviro Industries, and RT Chemicals).

1.2 Breach of Conditions

Alleged breach of conditions in the large merger between Sibanye Gold Limited and Newshel 1114 (Pty)

On 5 February 2014, the Competition Tribunal (the Tribunal) approved the above merger subject to certain public interest conditions relating to employment. The Conditions were, in the main that, the Merging Parties shall not retrench any employees, as a result of the merger for a period of two years following the Merger Implementation Date.

On 16 September 2014 the Commission received a letter from the Merging Parties informing the Commission that Sibanye had served a notice in terms of section 189 of the Labour Relations Act of 1995 on all relevant employees (“the S189 Notice”). Subsequently, on 5 November 2014 the Commission received a formal complaint from the National Union of Mineworkers (“NUM”) alleging that the above conduct is in breach of the Conditions for carrying out merger related retrenchments before the two (2) year moratorium has expired.

Upon examining the information received, the Commission is satisfied that the merged entity has prima-facie breached the Conditions. The merged entity has been served with the CC19 Notice of Breach.

1.3 Termination of Conditions

The Commission has considered and approved the following cases for termination of conditions:

Termination of Conditions imposed in the merger between Steinhoff Southern Cape (Pty) Ltd & P.J Van Reenen (Pty) Ltd

On 21 April 2011, the Commission approved the above merger subject to certain public interest conditions relating to employment. The Conditions required that the Merging Parties do not retrench any employee for a period of 3 years due to redundancies as a result of duplication of positions arising from the merger. The Merging Parties' submissions indicate that the Conditions have been complied with as they did not retrench any employees as a result of the merger for a period of 3 years.

Upon examining the information received by the Commission, the Commission is satisfied that the Merging Parties have complied with the Conditions in that they did not retrench any employee for a period of 3 years as a result of the merger.

Termination of Conditions imposed in the merger between Le Groupe Lactalis & Parmalat S.P.A

On 5 August 2011, the Commission approved the above merger subject to certain public interest conditions relating to employment. The Conditions required the Merging Parties not to retrench any employee as a result of the merger for a period of 12 months after approval and to thereafter report to this Condition in six monthly intervals.

The Merging Parties submitted two reports which show that a total of 14 retrenchments had occurred since the merger was approved. The Commission satisfied itself that these retrenchments did not occur as a result of the merger after it inspected various strategy documents submitted by the Merging Parties as well as the section 189 proceedings which involved consultation with employees in anticipation of the retrenchments based on operational requirements. In addition, the Merging Parties showed that they hired an additional 15 employees over this 12 month period in which the merger Condition had been imposed.

2. Enforcement

Referral: All power cable producers which are members of the Association of Electric Cable Manufacturers of South Africa.

The Commission has taken a decision to refer a complaint against all the members of the Association of Electric Cable Manufacturers of South Africa (“AECMSA”), which are power cable manufacturers. This complaint was investigated as part of the investigations against power cable manufacturers for fixing prices of power cables, dividing of markets and tendering collusively in contravention of section 4(1)(b)(i)(ii)&(iii) of the Competition Act 89 of 2008, as amended (“the Act”).

The Commission’s investigations found that all the members of AECMSA, which are cable manufacturers agreed, under the auspices of AECMSA, on price escalation formula to be used as basis for increasing prices quoted when bidding for short and long term tenders for the supply of power cables. This formula effectively fixed the level of price increases or decreases to be applied to power cables in short and long term tenders when the price of input materials goes up or down.

The members of the AECMSA, which are power cable manufacturers include among others South Ocean Electric Wire Company (Pty) Ltd, Aberdare Cables (Pty) Ltd, Alvern Cables (Pty) Ltd, South Ocean Electric Wire Company (Pty) Ltd, Tulisa Cables (Pty) Ltd, Alcon Marepha (Pty) Ltd, CBI-electric: African Cables (Pty) Ltd, Kewberg Cables & Braids (Pty) Ltd, Malesela Taihan Electric Cable (Pty) Ltd, Norco Cables (Pty) Ltd, Phoenix Power Cables (Pty) Ltd and Silcom (Pty) Ltd.

Tenders for the construction of 2010 FIFA World Cup Stadia Referral: WBHO and others

The Commission has taken a decision to refer a case of collusive tendering in respect of tenders for the construction of 2010 FIFA World Cup stadia against WBHO Construction (Pty) Ltd, Group Five Construction Ltd, Murray & Roberts Limited, Stefanutti Stocks Holdings Limited and Basil Read (Pty) Ltd. All these firms except Murray & Roberts, which was granted leniency, did not settle this case under the Construction Fast Track Settlement Process.

The Commission’s investigations found that these firms colluded when bidding for tenders for the construction of 2010 FIFA World Cup Stadia by, among others, allocating tenders among themselves and agreeing on profit margins to be achieved from these tenders in contravention of section 4(1)(b)(iii) of the Act.

3. Complaints

3.1 Finalised Complaints

B&H Plumbing Supplies (Pty) Ltd v Plumblink SA (Pty) Ltd and City Heat Geysers CC

The Complainant alleged that Plumblink is threatening customers not to procure geysers from it (B&H), and influencing customers not to buy other brands of geysers that are in competition with City Heat branded geysers. The complainant further alleged that City Heat is refusing to supply it (B&H) with geysers.

B&H sells a range of sanitary ware, basins, baths, geysers, gutters, PVC pipes, and other plumbing related products. Plumblink is involved in the retailing of plumbing material and sanitary ware through its retail stores located throughout South Africa. City Heat is a manufacturer, a wholesaler and also repairs a wide range of industrial & domestic geysers, tea urns and safety trays.

The Commission found that the conduct is unlikely to have significantly harmed competition as City Heat is not dominant in the market for the manufacturing of copper geysers. The Commission also found that the conduct was unlikely to have resulted in a substantial lessening of competition as other retailers were and are still able to source copper geysers from City Heat. The matter has been non-referred as the alleged conduct is unlikely to have significantly harmed competition.

Avusa Entertainment Investments Proprietary Limited, Trading as Nu Metro Cinemas, a wholly owned subsidiary of Subconcept Proprietary Limited v Primedia Proprietary Limited, trading as Ster Kinekor Theatres

Nu Metro's complaint relates to a restraint of trade clause contained in two separate sets of Confidentiality and Restraint of Trade Agreements concluded between Ster-Kinekor and its former employee. The employee joined Ster-Kinekor in a management role in September 2009.

The employee subsequently resigned from Ster-Kinekor on 28 February 2014 to join Nu Metro. Following his departure, Ster-Kinekor lodged an urgent application in the North Gauteng High Court seeking to enforce the restraints against the employee. Judgment was granted in favour of Ster-Kinekor and the employee was subsequently interdicted and restrained for a period of 12 months, calculated from 28 February 2014, from remaining in Nu Metro's employ.

Nu Metro, in its complaint to the Commission, alleges that the restraints against the employee are unfair, unnecessary and unreasonable. The Commission analysed the complaint and found it does not have the requisite jurisdiction to preside over the matter, which is an employer-employee issue and is contractual.

Mr Sandile Njilo v The Financial Services Board

Mr Njilo, who is the CEO of Africa Vukani, complained of a conflict of interest amongst various financial services companies, which may result in the exclusion of independent Financial Service Providers (FSP). Mr Njilo argued that there is an unfair regulatory environment within the retirement fund industry and that the Financial Advisory and Intermediary Services Act (FAIS Act) is not being properly enforced and monitored.

The Commission decided to non-refer the case and refer it to the FSB as the regulatory body of the financial services industry.

3.2 New Complaints

Madibeng Times v North West Province Communication Department

The Complainant is a community paper based in the North West Province. It alleges that it is unfairly subjected to restrictive business practices by the Department of Health and most local government departments in the area due to the fact that public notices are not being published in its newspaper. The Respondent is said to be using newspapers owned by competitors when issuing out public notices.

Frisbee Trade and Invest 1142 CC t/a SA LPG Energy v Engen

The Complainant supplies LPGas which it procures from the Engen refinery in KZN. The Complainant has apparently been sourcing LPGas from Engen since 2013. It has grown gradually over the years. It alleges that there have been issues of supply with Engen in the past. In particular, the Complainant alleges that Engen supplies LPGas to bigger oil companies and only the excess gets supplied to it. It alleges that as a result of this it is not able to get all its product requirements from Engen.

ENDS

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