

Statement on Competition Commission Meeting of 25 November 2014

To: All Media

Date: 27 November 2014

1. Key decisions on mergers and acquisitions

1.1 Large Mergers

Proposed merger between Anglo American Plc and Samancor Holdings Proprietary Limited, Groote Eylandt Mining Company Proprietary Limited and Samancor AG

The Commission has recommended that the merger involving the acquisition by Anglo American Plc (Anglo American) of joint control over Samancor Holdings Proprietary Limited, Groote Eylandt Mining Company Proprietary Limited (GEMCO) and Samancor AG (collectively referred to as Samancor), be approved, without conditions.

Samancor is a joint venture in which BHP Billiton Plc (BHP Billiton) and Anglo American have a shareholding of 60% and 40%, respectively. BHP Billiton enjoys sole control over Samancor. Post-merger, Samancor will continue to be 60% owned by BHP Billiton and 40% owned by Anglo American, however both parties would have joint control over Samancor.

The Commission's investigation found that there is no horizontal overlap in the activities of Anglo American and the Samancor joint venture. The Commission also considered BHP Billiton's activities, other joint ventures between Anglo American and BHP Billiton as well as potential areas of overlap between Anglo American and BHP Billiton outside of the Samancor joint venture.

The Commission found that the proposed transaction is not likely to substantially prevent or lessen competition in the affected markets, namely; the production of manganese ore and production of manganese alloys. The proposed transaction also does not raise any public interest concerns.

1.2 Intermediate Mergers

Proposed merger between Taste Holdings and AKJ Holdings

The Commission has approved, without conditions, the merger between Taste Holdings Limited (Taste Holdings) and AKJ Holdings (Pty) Ltd (AKJ Holdings). In terms of the Sale of Shares Agreement, Taste Holdings intends to acquire 100% of the entire issued share capital in AKJ Holdings. Following the implementation of the proposed transaction, Taste Holdings will have sole control over AKJ Holdings.

The Taste Group owns corporate NJW Jewellery Stores that sell watches and jewellery whilst AKJ Holdings own Arthur Kaplan Stores that sell jewellery and

watches. Therefore the proposed transaction presents a horizontal overlap in the sale of jewellery and watches.

The Commission considered the activities of the merging parties in the market for the sale of jewellery and watches and found that the merging parties' post-merger market share remains low.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified market. Furthermore, the proposed transaction does not raise concerns on public interest grounds.

Proposed merger between Vukile Property Fund Limited and Maake Plaza (Pty) Ltd in respect of a lease of the retail centre known as Maake Plaza

The Commission has approved, without conditions, Vukile's acquisition of Maake Plaza. Vukile owns retail, office and industrial properties throughout the country. Maake Plaza is a community shopping centre situated at the corner of Main and Lydenburg road, Lenyenye, in the Limpopo Province.

The proposed transaction involves the acquisition by Vukile of a 40% interest in Maake Plaza from Maake Plaza (Pty) Ltd. Vukile is increasing its shareholding in Maake Plaza from 30% to 70%. Vukile does not own any retail property in the vicinity of Lenyenye. As such, there is no geographic overlap in the activities of the merging parties.

The Commission found that the proposed transaction is thus unlikely to substantially prevent or lessen competition in the market for the provision of convenience centres. In addition, the proposed transaction is unlikely to raise any public interest concerns.

Proposed merger between Wasteman Holdings (Pty) Ltd, and Waste Giant General Waste (Pty) Ltd (WGGW), Tantus Trading 180 (Pty) Ltd, and Waste Investment Holdings (Pty) Ltd (WGIH)

The Commission has approved, without conditions, the merger transaction in terms of which Wasteman intends to acquire 100% of the issued share capital in each of WGGW, Tantus 180 and WGIH.

The merging parties are broadly active in the collection, removal, and disposal of all types of hazardous and general waste. WGGW does not control any entity other than the Gauteng-based waste collection business division which it acquired from Wasteman in 2012. Tantus 180 does not control any entity, save for the piece of land located in Robinson Deep in the south of Johannesburg, Gauteng, which is currently being used as a general waste landfill business (GLB) site. This piece of land is currently leased to WGGW, which it uses as an unlined GLB (Genesis landfill). WGIH holds share capital in dormant firms.

The activities of the merging parties do overlap in the market for the disposal of highly hazardous waste. The Commission, however, found that the proposed



transaction is unlikely to substantially prevent or lessen competition in the affected market. The proposed transaction also does not raise any public interest concerns.

Proposed merger between EMC Corporation and VCE Company LLC

The Commission has approved, without conditions, the proposed transaction between EMC Corporation and VCE Company LLC. The proposed transaction is an international transaction notified to the Commission by virtue of the merging parties' activities in South Africa. The transaction has been notified to the competition authorities in Germany, Brazil and Ireland. To date, clearance for the transaction has been obtained in Ireland.

EMC is an international company headquartered in the United States of America and is active globally in the market for the development, marketing and sale of a range of information technology infrastructure and virtual infrastructure technologies and solutions.

VCE is an international company headquartered in the United States of America. VCE sources inputs such as server, network equipment, storage and unified infrastructure manager components and software from EMC and Cisco (parent companies) to assemble, market, sell and service pre-integrated and pre-configured datacentre infrastructure solutions (sometimes called converged infrastructure solutions).

Post-merger, EMC will have increased shareholding in VCE from 60% to 90% by acquiring Cisco's 25% interest and Intel's 5% interest in VCE. Cisco will have a non-controlling interest in VCE and Intel will no longer have a shareholding in VCE.

The Commission considered the activities of the merging parties and found that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected markets in South Africa. In addition, the proposed transaction is unlikely to result in any vertical foreclosure concerns. Furthermore, the proposed transaction does not raise any public interest concerns.

Proposed merger between Voltro 88 (Pty) Ltd (Voltro) and Propsky 3 Properties (Pty) Limited (Propsky); and 32 Kentucky Fried Chicken (KFC) outlets and KFC properties Business

The Commission has approved, without conditions, the acquisition of KFC outlets and the KFC properties business by Voltro and Propsky respectively. The primary target firms are 32 KFC outlets and associated assets (the KFC stores) and (KFC properties business) consisting of 15 premises on which various KFC outlets are operated as well as the head office and training centre. All these properties are situated in the Eastern Cape Province.

The proposed transaction is divided into two interdependent transactions, namely; one involving the acquisition by Voltro of the KFC stores business, and the other involving the acquisition by Propsky of the KFC properties business. Post-merger, Voltro will control the KFC stores business whilst Propsky will control the KFC properties business.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition, as there is no overlap in the activities of the merging entities. The proposed transaction raises no public interest concerns.

1.3 Small Mergers

Proposed merger between Mpact Limited (Mpact) and Pyramid Holdings (Pty) Ltd (Pyramid)

The Commission has approved, without conditions, the acquisition of Pyramid by Mpact. The transaction was implemented in January 2014. The Commission, however, requested the merging parties to file the merger notification pursuant to Nampak enquiring about the merger and its likely impact on competition in the paper bags and sack market.

Mpact produces a range of packaging products and has two principal business divisions, being plastic packaging and paper packaging divisions. Mpact, through its subsidiary Detpak (Pty) Ltd, is also active in the manufacturing of paper bags and sacks.

Pyramid is a company located in Gaborone, Botswana. It is involved in the manufacturing of paper bags and sacks. Pyramid produces a range of paper bags and sacks ranging from 500g to 50kg.

Based on the activities of Pyramid and Mpact, there is a horizontal overlap as the merging parties are active in the manufacturing and supply of paper bags and sacks. The proposed merger also has a vertical effect as Mpact supplies Pyramid with baywhite that is used in the production of paper sacks and bags, which Pyramid produces in Botswana and sells in South Africa through its two agents.

The Commission found that it is unlikely that the proposed transaction will lead to substantial lessening or prevention of competition. The proposed transaction does not raise public interest concerns.

1.4 Termination of Conditions

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

Termination of Conditions imposed in the merger between Robor (Pty) Ltd and KMG Steel Services Centres (Pty) Ltd

On 25 May 2011, the Commission approved the above merger subject to certain public interest conditions relating to employment. The conditions required that no more than 134 employees be retrenched for a period of 24 months following the approval date of the merger.

Upon examining the information submitted by the merged entity, the Commission is satisfied that the merged entity has complied with the conditions in that there was no retrenchment of more than 134 employees for a period of 24 months after approval of the merger.

Termination of Conditions imposed in the merger between Weir Group (Overseas Holdings) Ltd and Warman Africa (Pty) Ltd

On 10 March 2008, The Commission approved the above merger subject to certain public interest conditions relating to employment, investment, SME and BEE.

The merged entity was required to submit to the Commission an annual written report from its group internal audit function setting out the extent to which it was meeting the undertakings on investment, maintaining the Warman outsourcing model, strengthening relationships with third party suppliers and creating additional jobs.

Upon examining the information submitted by the merged entity, the Commission is satisfied that the merged entity has complied with the conditions.

2. Complaints

2.1 Referrals

Complaint referral against Leo Constantin Pistorius No; Kalkor (Pty) Ltd; CML Taljaard & Son (Pty) Ltd; PBD Boeredienste (Pty) Ltd; Grasland Ondernemings (Pty) Ltd and Fertilizer Society of South Africa (FSSA)

The Commission has taken a decision to refer a case of price fixing against six manufacturers and distributors of aglime in the South African market. On 21 December 2009, the Commissioner initiated a complaint against Leo Constantin Pistorius No; Kalkor (Pty) Ltd; CML Taljaard & Son (Pty) Ltd; PBD Boeredienste (Pty) Ltd; Grasland Ondernemings (Pty) Ltd and Fertilizer Society of South Africa (FSSA).

The Commission found that in or about January 1995 until May 2008, the manufacturers agreed on a commission payable by each of them to fertilizer companies that employ agents to market, sell, and distribute aglime. The respondents used FSSA as a platform for the above conduct.

During the period between January 1995 and May 2008, the manufacturers met annually and agreed to fix the rates of the agents' commission. The

meetings were generally held prior to, during an adjournment of, or after the Annual General Meeting of the FSSA (AGM), and these took place at the offices of the FSSA and other restaurants outside the premises of the FSSA.

The manufacturers make use of the services of representatives, agricultural specialists (including agronomists) and free agents to market, sell and distribute their aglime to farmers. The representatives are employed by suppliers of fertilizer (Fertilizer Companies) such as Sasol Nitro, a division of Sasol Chemical Industries Limited, Yara S.A. (Pty) Ltd and Omnia Fertilizer (Pty) Ltd.

The representatives and agronomists are employed to work as agents of the fertilizer companies. The free agents work independently and are not employed by fertilizer companies. The representatives and agronomists are paid a monthly salary by fertilizer companies and receive a commission paid to them by manufacturers.

2.2 Initiations

Initiation of a complaint against Parmalat SA (Pty) Ltd

The Commission has approved that the Commissioner initiates a formal complaint against Parmalat SA (Pty) Ltd for alleged abuse of dominance. The initiation arises from information obtained during the investigation of exemption applications filed by the Southern Africa Milk Co-operative Limited (Samilco) on behalf of its members. Through the exemption applications, Samilco seeks to be exempted from certain provisions of Chapter 2 of the Act.

Information obtained by the Commission during the course of its assessment of Samilco's exemption applications revealed that Parmalat operates a bonus scheme which it uses to reward milk farmers for the continuous supply of raw milk in the Western and Eastern Cape Provinces.

The Commission is of the view that the alleged conduct by Parmalat may: (i) amount to an exclusionary act which has anti-competitive effects in contravention of section 8(c) of the Act; and (ii) have the effect of inducing a supplier not to deal with a competitor, in contravention of section 8(d)(i) of the Act.

Initiation of a complaint against Eberspaecher; Faurecia; Tenneco; Friedrich; Cornaglia and Calsonic

The Commission has approved that the Commissioner initiates a complaint in a case of price fixing, market allocation, and bid rigging against Eberspaecher Exhaust GmbH & Co KG (Eberspaecher); Faurecia Corporation (Faurecia); Tenneco GmbH (Tenneco); Friedrich Boysen GmbH & Co. KG ("Friedrich"); Cornaglia S.P.A. Divisione Cor.Tubi (Cornaglia) and Calsonic Kansei (Calsonic).



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Information available to the Commission suggests that the firms, being competitors in the market for the manufacture and supply of motor vehicle exhaust systems to Original Equipment Manufacturers (OEM), agreed and/or were party to a concerted practice to fix prices that they would quote to OEM's, to allocate customers and to tender collusively in respect of requests for quotations issued by the OEM's for the manufacture and supply of motor vehicle exhaust systems. The conduct described above is alleged to have commenced around the 2001 period and is ongoing.

The exhaust systems may be distributed or supplied in South Africa in various ways including; directly to an OEM located in South Africa for installation in motor vehicles which are manufactured and supplied in South Africa; or from an exhaust systems supplier located outside of South Africa which then exports exhausts systems and/or components thereof to South Africa for assembly in motor vehicles manufactured and supplied in South Africa. Another way could be through an OEM located outside of South Africa which assembles vehicles outside of South Africa and then ships the finished motor vehicles to South Africa for sale in South Africa.

3. Consent Agreements

Reliable Removals Consent Agreement

The Commission had previously invited all the furniture removals firms to settle incidents of cover quoting arising from the furniture removals investigation which the commission undertook at the beginning of the year. In terms of the invitation to settle, firms would not be required to settle according to the number of instances of collusion.

Reliable Removals has admitted to colluding in less than 10 incidences of cover quoting, and was implicated in 6 incidences of collusive tendering.

Reliable Removals agreed and undertook to pay an administrative penalty in the amount of R90 563.88 (ninety thousand five hundred and sixty three rands and eighty-eight cents). This administrative penalty represents 4% of its annual turnover for the financial year ended February 2013.

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For more information:

Mava Scott, Spokesperson

012 394 3527/ 076 095 2350/ MavaS@compcom.co.za

Themba Mathebula, External Communication Coordinator

012 394 3325/ 084 896 0860/ thembama@compcom.co.za