Weekly Media Statement
For immediate release
29 September 2017

LATEST DECISIONS BY THE COMPETITION COMMISSION

1. Key decisions on mergers and acquisitions

1.1 Netcare Hospitals (Pty) Ltd v Lakeview Hospital

The Commission has prohibited a merger whereby Netcare Hospitals (Pty) Ltd (Netcare Hospitals) acquired the Lakeview Hospital in December 2016. The merger has already been implemented and Netcare Hospital already owns and controls the Lakeview Hospital.

The Commission uncovered this merger during its investigation of the Netcare Hospitals Group (Pty) Ltd and The Akeso Group merger. On 25 May 2017, the Commission wrote to the merging parties and requested the notification of the merger in order to allow it to assess its competitive effects.

Netcare Hospitals is a provider of private healthcare services and operates private hospital facilities in various parts of South Africa. Of relevance, Netcare Hospitals operates the Netcare Linmed Hospital within the Benoni area and the specialist eye hospital in the Benoni area being Netcare Optiklin.

The Lakeview Hospital is a multidisciplinary private hospital, which offers medical services such as obstetrics, gynaecology, paediatrics, dentistry, orthopaedics and dermatology.

The Commission found that there is a horizontal overlap between the activities of the merging parties in the provision of multidisciplinary private healthcare services in the Benoni area.

The Commission conducted a tariff analysis of the Netcare and Lakeview Hospitals based on a sample of medical aid schemes to determine which hospital had higher tariffs pre-merger. The Commission found that there is a significant difference in tariffs for insured patients between Netcare and the Lakeview Hospital. The Commission's investigation found that the hospital groups, such as Netcare, negotiate tariffs to be applicable in their hospitals on a national basis and Netcare would have a uniform pricing policy across all its hospitals in the country. The Commission thus found that the tariffs at the Lakeview Hospital are likely to generally increase significantly across the various procedures assessed, once the Lakeview Hospital adopts the Netcare tariff schedule. The Commission notes that the price differentials between the tariffs of Netcare and the Lakeview Hospital are substantial and have been more that the consumer price inflation on most procedures. The Commission was of the view that these price increases would be as a direct result of the merger.

Further, the Commission is of the view that the merger results in the removal of the Lakeview Hospital as an effective competitive constraint in the Benoni area. This is because the Lakeview Hospital was a better competitive constraint against the Life Healthcare hospital in the Benoni area in terms of tariffs and the replacement of Lakeview Hospital by Netcare is unlikely to improve competition against Life Healthcare because both Netcare and Life Healthcare are large hospital groups who charge higher tariffs. In essence, the merger has removed a cheaper alternative from the Benoni area and introduced a Netcare hospital with significantly higher tariff rates. This outcome is unlikely to be beneficial for the patients in the Benoni area.

The Commission found that the market for the provision of private healthcare services has high barriers to entry such as regulatory barriers, a shortage of skills and capital barriers. The Commission found that medical aid schemes have limited countervailing power to keep the hospital tariffs low and the entrenchment of Netcare's position as a large player will further weaken the negotiating power of the medical aid schemes against Netcare.

The Commission is therefore of the view that the merger substantially lessens or prevents competition in the Benoni area and results in significantly higher hospital prices for insured patients who utilised the Lakeview Hospital, pre-merger.

The Commission further considered the impact of the merger on the private healthcare industry in the Benoni area. The Commission found that the merger is likely to result in price increases for patients in the Benoni area for private healthcare services. This price increase would be the result of the merger as Netcare has acquired the ability to migrate the Lakeview Hospital (a cheaper hospital) into the Netcare tariff schedule, which is higher than the Lakeview Hospital. This negative effect is substantial as it involves a constitutionally entrenched right of access to health care services. The private healthcare sector is already restricted in access to a small percentage of the population, further price increases would limit access even further. The Commission is thus of the view that the price increases that are likely to arise as a result of the merger in the Benoni area raises a substantial negative effect on the private healthcare sector in the Benoni area. The Commission therefore prohibits the merger.

1.2 Itec Africa (Pty) Ltd and Itec South Africa (Pty) Ltd v Itec Cape Town (Pty) Ltd and Origin Asset Finance (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Itec Africa (Pty) Ltd (Itec Africa) intends to acquire Origin Asset Finance (Pty) Ltd (Origin) and Itec South Africa (Pty) Ltd (Itec SA), a subsidiary of Itec SA, intends acquire Itec Cape Town (Pty) Ltd (Itec Cape Town).

Itec Africa is a holding and investment company. Its main entity is its subsidiary, Itec SA, which provides business solutions including office automation equipment products, consumables, related licenses, spare parts and servicing of the same. The three key aspects relating to the business include importing products, financing and selling of equipment and services as well as on-going service and support of the equipment. Itec SA owns the contractual rights with two principal suppliers, namely Konica Minolta Business Technologies Japan and Lexmark to distribute those products in South Africa.

Itec Cape Town is a distributor of Itec SA's products and operates only in the Western Cape. Itec Cape Town procures products from Itec SA and then on-sells to various end-users. Origin provides asset finance for office automation equipment which includes the rental of goods, equipment, labour savings devices and office automation machinery to customers for the Itec Cape Town dealership.

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

1.3 Bayport Management Ltd v The Real Automotive Finance and Insurance Consulting Company (Pty) Ltd, Peak Hour Consultants (Pty) Ltd, Traffic Global (Pty) Ltd, Green Light Insurance Brokers (Pty) Ltd, Built to Last (Pty) Ltd, Traffic Maintenance Plans (Pty) Ltd and Sugar Magnolia (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Bayport Management Limited (BML) intends to acquire the Real Automotive Finance and Insurance Consulting Company (Pty) Ltd, Peak Hour Consultants (Pty) Ltd, Traffic Global (Pty) Ltd, Green Light Insurance Brokers (Pty) Ltd, Built to Last (Pty) Ltd, Traffic Maintenance Plans (Pty) Ltd and Sugar Magnolia (Pty) Ltd (collectively referred to as the TRAFFIC Group).

The BML Group provides personal unsecured credit and consumer finance solutions. The group operates in Botswana, Columbia, Ghana, Mexico, Mozambique, Tanzania, South Africa, Uganda and Zambia.

TRAFFIC is an underwriting manager that specialises in the management of niche insurance companies and cell captives in the motor and retail industries in South Africa and more recently, in Latin America and the Caribbean. TRAFFIC is responsible for functions of its client operation including management of the entire insurance portfolio; product innovation; policy fulfilment; policy administration; claim administration; financial reporting; data building and analysis thereof, among others.

The transaction is unlikely to substantially prevent or lessen competition in any of the markets wherein the merging parties are active. In addition, the transaction does not raise any public interest concerns.

1.4 The Spar Group Ltd v Greenville Trading 559 CC, in respect of the businesses known as City Centre SuperSpar and Tops

The Commission has approved, without conditions, the proposed merger whereby the Spar Group Ltd (Spar Group) intends to acquire City Centre SuperSpar and Tops which is owned by the Greenville Trading 559 CC.

The Spar Group acquires and sells goods to Spar Guild members. It also operates distribution centres which warehouse and distribute dry goods, perishable goods, liquor and general merchandise to Spar Guild stores. Spar retailers are also able to acquire goods from other wholesalers outside the Spar Guild.

The target firm is a retail supermarket and a liquor store in Polokwane, Limpopo, which sells foodstuffs, toiletries, household products, other similar supermarket–style items and liquor to the general public.

The merger is unlikely to result in a change in competition dynamics in the market as the supermarket is already branded as a Spar supermarket and liquor store. In addition, the proposed transaction does not raise any public interest concerns.

1.5 Anzio Investments (Pty) Ltd v Three Star Cash and Carry (Pty) Ltd

The Commission has approved, without conditions, the proposed merger whereby Anzio Investments (Pty) Ltd (Anzio) intends to acquire Three Star Cash and Carry (Pty) Ltd (Three Star).

Anzio was a hybrid grocery and general merchandise business in Kagiso East in Gauteng. It is now a dormant company. Anzio is controlled by CSH, an investment holding company with controlling interests in companies (hybrid cash and carry and retailers) that offer edible and non-edible grocery products.

Three Star is a hybrid store that serves the wholesale and retail market in the groceries and general merchandise sector. Three Star is located in Rustenburg and caters for a wide range of customers including spaza shops, schools, bed and breakfast establishments and supermarkets.

The proposed transaction is unlikely to substantially lessen or prevent competition in the market for the retail of grocery products. In addition, the transaction does not raise any public interest concerns.

1.6 Schmitz Cargobull AG v GRW Holdings (Pty) Ltd and GRW Sales (Pty) Ltd

The Commission has approved the proposed merger, with conditions, whereby Schmitz Cargobull AG (SCB Group) intends to acquire GRW Sales (Pty) Ltd (GRW Sales) and GRW Holdings (Pty) Ltd (GRW Holdings) (collectively referred to as GRW Group).

The SCB Group is a German manufacturer of standard and customized semi-trailers, trailers and truck bodies. The SCB Group supplies components and parts used to manufacture trailers and provides after sales services. Locally, SCB Group’s activities only involve the supply of components and parts. The SCB Group supplies other trailer manufacturers such as the GRW Group.

The GRW Group is an equipment designer, manufacturer and service provider of a range of trailers and tankers. It serves a wide range of industries including construction, mining, petroleum, chemical, fast-moving consumer goods and perishable temperature-controlled goods. Customers consist of truck operators across Southern Africa, the Middle East, Australia, Europe and the United Kingdom.

Some of the GRW Group’s local suppliers have raised concerns that the transaction could result in SCB purchasing inputs from international suppliers to the detriment of local suppliers - and that this may cause them to retrench some of their employees. The Commission and the merging have therefore agreed to a condition which will ensure that the GRW Group maintains similar levels of local inventory procurement for a period of 12 months following the merger.

1.7 Educor Property Holdings (Pty) Ltd v Delta Property Fund Ltd

The Commission has approved the proposed merger, without conditions, whereby Educor Property Holdings (Pty) Ltd (Educor) intends to acquire Delta Property Fund Limited (Delta) in respect of the rental enterprise known as the Presida Building (Presidia).

A1 Capital (Pty) Ltd (A1 Capital), the ultimate holding company of Educor and Educor Holdings, is a private equity fund active in private higher education and property. Educor Holdings provides private education in Southern Africa under brands including City Varsity, INTEC College and Damelin. Educor is a property acquisition and development company with 25 business properties and shopping malls in Southern Africa.

Delta is a black managed and substantially black owned property company and has been approved by the JSE as a REIT. The target enterprise is an office property situated in the Pretoria CBD.

The proposed transaction is unlikely to substantially prevent or lessen competition in the affected geographic markets. In addition, the proposed transaction does not raise any public interest concerns.

1.8 Julovision (Pty) Ltd and Lifocept (Pty) Ltd v Bittersweet Trade and Invest 55 (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Julovision (Pty) Ltd (Julovision) and Lifocept (Pty) Ltd (Lifocept) intend to acquire Bittersweet Trade and Invest 55 (Pty) Ltd (Bittersweet).

Julovision and Lifocept, companies owned and controlled by private individuals, are special purpose vehicles specifically formed for purposes of the proposed transaction. They therefore have no activities.

Bittersweet is the ultimate holding company of Umcebo, a coal mining firm operating the Wonderfontein coal mine and washing plant. Umcebo's activities relate to producing and supplying thermal coal.

The proposed transaction is unlikely to substantially prevent or lessen competition in any market. The proposed transaction is a BEE transaction and will result in members of historically disadvantaged groups acquiring control of the target firm. In addition, there are no public interest concerns.

1.9 Vuwa Capital Partners (Pty) Ltd v Linde and Wiemann RSA (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Vuwa Capital Partners (Pty) Ltd (Vuwa) intends to acquire Linde and Wiemann RSA (Pty) (Ltd) (Linde and Wiemann).

Vuwa, a BBEE investment company, has two investments in the security and automotive sector. The automotive sector investment is in Stateline Pressed Metals (Pty) Ltd, which supplies pressed components and basic assemblies. These are considerably different from those supplied by Linde and Wiemann.

Linde and Wiemann is a wholly-owned subsidiary of Linde and Wiemann SA (Spain). It supplies products and services for the Mercedes Benz C-class. Parts it supplies/offers to light vehicle manufacturers include car cross beams, rocker assemblies, A-pillars and B-Pillars.

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

1.10 Unitrans Automotive (Pty) Ltd v Clearwater Motors (Pty) Ltd

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby Unitrans Automotive (Pty) Ltd (Unitrans Automotive) intends to acquire the motor dealership business conducted by Clearwater Motors (Pty) Ltd (Clearwater Motors).

Unitrans Automotive is a retail automotive company. Its key product and service offerings are the sale of new and pre-owned vehicles, parts and accessories and after-market service. In addition, the dealerships assist customers with acquiring consumer credit, insurance products, fleet management service and car rentals. Unitrans Automotive operates dealerships throughout South Africa.

Clearwater Motors operates a BMW vehicle dealership in Roodepoort. Its key service offering consists of a service and a parts department. In addition, it offers customers access to financial services related to the purchase of vehicles. Clearwater Motors offers passenger vehicles and does not offer light commercial vehicles and heavy commercial vehicles.

The proposed transaction is unlikely to substantially prevent or lessen competition in any market. In addition, there are no public interest concerns that arise as a result of the proposed transaction.

1.11 Inkunzi Student Accommodation Fund (Pty) Ltd v Hatfield Residences (Pty) Ltd, Varsity Stay (Pty) Ltd, Yellow Spiral Trading (Pty) Ltd, Vaxovert (Pty) Ltd and Edmacap (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Inkunzi Student Accommodation Fund (Pty) Ltd (Inkunzi Student) intends to acquire Hatfield Residences (Pty) Ltd (Hatfield Residence), Varsity Stay (Pty) Ltd (Varsity Stay), Yellow Spiral Trading (Pty) Ltd (Yellow Spiral), Vaxovert (Pty) Ltd (Vaxovert) and Edmacap (Pty) Ltd (Edmacap).

Inkunzi Student is a newly established entity for the purpose of the proposed transaction. Inkunzi Student forms part of the Inkunzi Wealth Group, a financial and investment advisory group which provides financial advice to its clients on various aspects of personal finance.

Hatfield Residences holds the property letting enterprise known as Hatfield Studios, purpose-built student accommodation which houses UP students. Varsity Stay, Yellow Spiral, Vaxovert and Edmacap also hold shares in property letting enterprises which comprise purpose-built student accommodation.

The proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rentable space in the residential property in the Pretoria node and the Johannesburg node. In addition, the proposed transaction does not raise any public interest concern.

1.12 K2017217250 (South Africa) Ltd (Newco) v Rica Cold Meats (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby K2017217250 (South Africa) Ltd (Newco) intends to acquire Rica Cold Meats (Pty) Ltd (Rica).

Africa Agri Opportunities Ltd (AAO) controls Newco and is an agricultural investment firm focusing on agricultural processing development through foreign direct investment.

Rica is controlled by Rica Holdings (Pty) Ltd. The Rica Group’s sole business is to grow as an integrated pork farming and processed meats business by supplying fresh and processed meat countrywide.

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

1.13 African Rainbow Capital (Pty) Ltd v Interaction Market Services Holdings (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby African Rainbow Capital (Pty) Ltd (ARC) intends to acquire Interaction Market Services Holdings (Pty) Ltd (IMSH).

ARC is a black-owned and controlled diversified financial services investment company. It has an investment portfolio which focuses on financial services including life insurance, health care, asset management, general financial services and short-term insurance.

IMSH trades as RSA Group which trades in fresh fruit and vegetables on behalf of its principals.

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

1.14 The Entrepreneurship Development Trust v Izandla Property Fund (Pty) Ltd

The Commission has approved the merger without conditions whereby the Entrepreneurship Development Trust (the ED Trust) intends to acquire Izandla Property Fund (Pty) Ltd (Izandla Property Fund).

The ED Trust holds investments in equity instruments, minority shareholdings and various firms. It was established to undertake and support socio-economic and development initiatives to benefit black people as defined in the BEE Codes of Good Practice.

Izandla Property Fund is a shelf company incorporated to give effect to this transaction. Upon implementation of the proposed transaction, Izandla Property Fund will own the Izandla Portfolio which includes 17 properties comprising rentable office, retail and industrial space.

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

1.15 Vresthena (Pty) Ltd v Vukile Property Fund Ltd in respect of the Hartbeespoort Sediba Shopping Centre

The Commission has approved the proposed merger, without conditions, whereby Vresthena (Pty) Ltd (Vresthena) intends to acquire Hartbeespoort Sediba Shopping Centre (the target property).

Vresthena is an investment holding company and owns a portfolio of retail, commercial and residential properties situated in Gauteng, the Free State and Kwa-Zulu Natal.

Vukile is a listed property fund and has a portfolio of retail, industrial and office space as well as land under development. The target property is retail space in the North West.

The proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of retail property space specifically, convenience centres in the Hartbeeespoort node in the North West. In addition, the proposed transaction does not raise any public interest concerns.

1.16 Shell Downstream South Africa (Pty) Ltd v Sixteen (16) immovable properties owned by the Trustees for the Time Being of the Crowie Trust

The Commission has approved the proposed merger, without conditions, whereby Shell Downstream South Africa (Pty) Ltd (SDSA) intends to acquire the Crowie Trust in respect of 16 immovable properties.

SDSA is involved in acquiring, processing and marketing oil products which comprise a range of fuels, lubricants, bitumen, solvents and other chemicals. SDSA operates Shell branded retail service stations.

The Crowie Trust's sole objective is as an investment property trust. It leases the 16 (sixteen) immovable properties to SDSA.

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

[ENDS]

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