



Weekly Media Statement
For immediate release
5 October 2017

LATEST DECISIONS BY THE COMPETITION COMMISSION

1. Key decisions on mergers and acquisitions

1.1 K2014202010 (Pty) Ltd v African Star Grain and Milling (Pty) Ltd

The Commission has prohibited the proposed merger whereby K2014202010 (Pty) Ltd (Holdco) intends to acquire African Star and Milling (Pty) Ltd (African Star).

Holdco is owned by a consortium comprising Louis Dreyfus Company Africa (Pty) Ltd (LDCA) and DH Brothers Industries (Pty) Ltd t/a Willowton (Willowton). LDCA is controlled by Louis Dreyfus Company BV (LDC). LDC is a global trader of commodities and a processor of agricultural goods. Key commodities traded by LDCA are wheat, beans, rice, edible oils, oilseeds (sunflower and soya) and sugar. Willowton is one of South Africa's sunflower seed refiners which sells fast moving consumer goods including edible oils, products derived from edible oils, soaps, candles, beauty products and toiletries. It sells its products under the Sunfoil, Sunshine D, D'lite, Crown, Nuvolite and Allsome rice brands.

African Star mills wheat. It packages and supplies it to wholesalers and retailers. It also produces wheat bran as a by-product of wheat milling and produces negligible amounts of grits from yellow maize. The flour produced at the African Star mill is supplied to wholesalers and retailers.

The Commission found that in addition to the pre-existing structural link between LDCA and Willowton (through Allsome Brands) in the market for the cleaning and packaging of rice, LDCA (through Epko Oil) and Willowton are also competitors in the market for the crushing of sunflower seeds pre-merger.

The Commission further found that the proposed transaction introduces another link between LDCA and Willowton in the wheat market in that LDCA and Willowton will become co-shareholders in the wheat market, wherein Willowton is currently not active. This market is adjacent to other markets wherein the merging parties hold multiple shareholding interests and cross-directorships.

The Commission is concerned that the proposed transaction will enhance and facilitate coordination because both parties will have the ability to appoint directors to the board of African Star post-merger. LDCA (through Epko Oil) and Willowton, being competitors in the market for sunflower seed crushing, will post-merger have board representation in African Star, thereby having an opportunity to interact in a manner which is likely to make the exchange of competitively sensitive information relating to the sunflower seed crushing market and other adjacent markets more plausible.

The Commission is therefore concerned that African Star is likely to be a platform for information exchange to the detriment of competition in the sunflower seed crushing market and other adjacent markets. The Commission notes that the structure of the sunflower seed crushing market is conducive to collusive conduct because it is characterised by high levels of concentration with few key players, a high degree of product homogeneity, high barriers to entry and high transparency supported by extensive multi-market contact.

Further, the Commission is currently investigating a cartel in the market for refined, edible cooking oils, baking fats and margarine, which is in the same sunflower seed value chain. The Commission is of the view the new link between LDCA and Willowton presented by the proposed transaction is likely to facilitate and enhance collusion not only in the sunflower seed crushing market but also the wheat market, which in itself has a history of collusion.

The Commission cannot rule out the ability of the proposed transaction to enhance and facilitate collusion in other adjacent markets such as the maize milling market, due to the high risk of information sharing presented by the merging parties' multiple cross directorships and shareholding across the grain milling markets.

1.2 Mylan NV v Meda AB

The Commission has approved the proposed merger, without conditions, whereby Mylan NV (Mylan) intends to acquire Meda AB (Meda).

Mylan, through its South African subsidiaries, offers services in relation to the marketing and supply of pharmaceutical products to both the private sector and the state. Mylan supplies oral contraceptives to the state as well as oral solid dosages. Mylan also specializes in distributing and marketing anti-retro viral medication to both the state and the private sector.

Meda supplies and markets pharmaceutical products to the state as well as the private sector. Meda focuses on the respiratory, dermatology and pain/inflammation therapeutic areas. In terms of prescription medication, Meda has a particular focus on doctors, nurses and other medical professionals at specialist clinics and general surgeries.

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

1.3 Firefly Investments 326 (Pty) Ltd v Bayport Financial Services 2010 (Pty) Ltd

The Commission has recommended to the Tribunal that the proposed merger be approved, with conditions, whereby Firefly Investments 326 Proprietary Limited (Firefly Investments) intends to acquire Bayport Financial Services 2010 Proprietary Limited (BFSSA).

Firefly Investments is a newly established entity for purposes of the proposed transaction. Firefly Investments will be wholly owned by the Government Employees Pension Fund (GEPF), which is represented by the Public Investment Corporation (SOC) Limited as its duly authorised agent. Firefly does not control any firm. GEPF is Africa's largest pension fund with investments in various classes of assets

including equities, property and fixed income. On the other hand, Firefly Investments does not provide any goods and/or services.

BFSSA is a non-banking financial institution specialising in the provision of unsecured personal loans in South Africa, predominantly to the growing middle classes. BFSSA acts as the originator of unsecured and developmental loans for Bayport Securitisation (RF) Limited.

The Commission was concerned that the PIC has multiple minority shareholding interests in several entities which compete with Bayport Financial Services. Therefore the Commission recommended the approval of this transaction subject to the conditions that there be no cross-directorships in relation to the Directors appointed to the PIC to the Board of the target firm as well as those appointed in the entities which compete with the target firm.

1.4 Dimension Data Protocol BV v Hatch Investments (Mauritius) Ltd

The Commission has recommended to the Tribunal that the proposed merger be approved, with conditions, whereby Dimension Data Protocol BV (Dimension Data) intends to acquire Hatch Investments (Mauritius) Limited (Hatch).

Dimension Data is an Information Technology (IT) services provider that offers end-to-end IT solutions for its clients in South Africa, the Middle East and the rest of Africa. In South Africa, Dimension Data operates through various subsidiaries and divisions that specialize in IT and communication services. Dimension Data offers its clients a wide range of services including professional, consulting, support, managed, procurement and supply chain services. The services offered are systems integration, internet service solutions, enterprise resource planning services, digital services and automotive services.

Hatch through its subsidiary, Nihilent, provides enterprise transformation consulting services in South Africa. These comprise enterprise transformation and change management, digital transformation and enterprise IT services. Although Nihilent offers services that include elements of traditional IT services, Nihilent is a specialised consulting firm that applies scorecards and alignment, design thinking, user experience and usability modelling, machine learning, analytics, statistical modelling and similar methodologies in conceptualising and delivering solutions to their clients.

The merger is approved subject to public interest conditions relating to employment and impact on an industrial sector or region.

1.5 Sanlam Investment Holdings (Pty) Ltd v First World Trader (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Sanlam Investment Holdings (Pty) Ltd (SIH) intends to acquire First World Trader (Pty) Ltd (FWT).

SIH is a wholly-owned subsidiary of Sanlam Limited (Sanlam), a public company listed on the JSE. SIH and its subsidiaries are referred to as the Sanlam Group, a diversified financial service provider. SIH offers investment management and consulting services within the Sanlam Investment Cluster.

FWT is controlled by Purple Group Limited (TPG), a JSE listed company. FWT is a financial service provider that offers stockbroking-like services through the online “*EasyEquities*” trading platform, an online platform that enables investors to buy and sell directly in publicly traded companies.

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.

1.6 Kutana Steel (Pty) Ltd v Saint-Gobain Pipelines South Africa (Pty) Ltd

The Commission has approved the proposed merger, without conditions whereby Kutana Steel (Pty) Ltd (Kutana Steel) intends to acquire Saint-Gobain Pipelines South Africa (Pty) Ltd (SGPL).

Kutana Steel is a wholly owned subsidiary of Kutana Capital (Pty) Ltd (Kutana Capital). The Kutana Group is an investment company that targets investments in a diverse range of business segments including media, telecoms, IT, property and related services, financial services, industrial products and services, steel industry, resources and energy and agricultural and food services.

SGPL is a manufacturer of cast iron products. SGPL manufactures manhole covers and frames as well as storm water grating. SGPL also manufactures a range of cast iron cookware products including iron potjie pots, pans and casseroles. Its iron cookware products are supplied under the BestDuty and Chef Supreme brand names.

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.

1.7 Shamwari Holdings (Pty) Ltd v Shamwari Wildlife (Pty) Ltd and others

The Commission has approved the proposed merger, without conditions, whereby Shamwari Holdings (Pty) Ltd (Shamwari Holdings) intends to acquire Shamwari Wildlife (Pty) Ltd (Shamwari Wildlife), Shamwari Properties (Pty) Ltd (Shamwari Properties), Shamwari Hospitality (Pty) Ltd (Shamwari Hospitality), Bayethe Hospitality (Pty) Ltd (Bayethe) and Frenetic Investments (Pty) Ltd (Frenetic).

Shamwari Holdings is a special purpose vehicle entity controlled by Ithra South Africa and owned by Ithra Africa One Person Company LLC (Ithra South Africa). Ithra South Africa is a holding company incorporated in Dubai, United Arab Emirates (UAE) and is controlled by Ithra Africa and owned by Investment Corporation of Dubai One Person Company LLC (Ithra Africa). Ithra Africa is ultimately controlled by the Investment Corporation of Dubai (ICD), an investment company owned by, and the principal investment arm of the Government of Dubai.

ICD invests in firms across a variety of sectors, especially in the finance and investment sector; the transportation sector; the energy and industrial sector; the real estate and construction sector; the hospitality and leisure sector; and the retail and other holding sectors. In South Africa, through Emirates together with their subsidiaries, they form the Emirates Group. Emirates operates over 3500 flights per week from its hub at Dubai International Airport to more than 150 destinations in over 80 countries across six continents.

The target firms are collectively referred to as the "Shamwari entities". They are all subsidiaries of and are controlled by Business Venture Investments No. 1251 (Pty) Ltd (BVI), a private company registered in South Africa and controlled by Dubai World, an investment company owned and controlled by the Government of Dubai which is incorporated in Dubai.

Shamwari Hospitality is the 'hospitality management company' that oversees the marketing of Shamwari Game Reserve and its lodges as a safari destination, sales and guest reservations, management of the lodge. Shamwari Wildlife is the 'wildlife and conservation management company' that owns the animals on the reserve which are fundamental to the provision of game viewing experiences at Shamwari Game Reserve. Shamwari Properties is a property holding company which owns and rents to Shamwari Hospitality various pieces of land that comprise Shamwari Game Reserve. Bayethe is the hospitality management company of the Bayethe Lodge. The services are outsourced to and provided by Shamwari Hospitality and the lodge is marketed as part of the Shamwari Game Reserve. Frenetic is the owner of the land, buildings and the other improvements upon which the Bayethe Lodge offers luxury tented accommodation is situated. The Shamwari Entities provide tourism services and conservation initiatives insofar as they operate the Shamwari Game Reserve.

The proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of short-term accommodation. In addition, the proposed transaction does not raise any public interest concerns.

2. Non Referrals: The Commission has taken a decision to non-refer (not to prosecute) the following cases:

2.1 Freddie Nyathela, President South African Roadies Association v Attie Van Wyk Founder & Chairperson of Big Concerts

The Commission is of the view that the conduct complained of does not contravene the Competition Act.

2.2 Anonymous v 36 Direct Pay South Africa (Pty) Ltd and Virtual Card Services (Pty) Ltd

The Commission is of the view that the conduct complained of does not contravene the Competition Act.

2.3 Garth Olivier v Jeep South Africa

The Commission is of the view that the conduct complained of does not contravene the Competition Act.

2.4 Alcon Laboratories SA & Furniture v Kfml Holdings

The Commission is of the view that the conduct complained of does not contravene the Competition Act.

[ENDS]

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