



Weekly Media Statement
For Immediate Release
26 July 2018

LATEST DECISIONS BY THE COMPETITION COMMISSION

1. Key decisions on mergers and acquisitions

1.1 British American Tobacco Holdings South Africa (Pty) Ltd (BAT Holdings SA) and Twisp (Pty) Ltd (Twisp)

The Commission has recommended a prohibition of the proposed large merger in terms of which BAT Holdings SA intends to acquire Twisp.

BAT Holdings SA is a leading cigarette manufacturer and supplier globally. It supplies over 200 cigarette brands worldwide. In addition to traditional cigarettes, BAT also produces and supplies other tobacco products including fine cut (a roll-your-own tobacco product), snus and cigars. Internationally, BAT is also a leading supplier of e-cigarettes including in Europe and the United States. Twisp is a South African based supplier of bespoke vaping products (e-cigarettes). The company was established in 2008 and is known as the leading e-cigarette brand in South Africa. Twisp's products are distributed through its branded kiosks, retail outlets and online channels. Twisp's suite of vaping products comprise of various bespoke e-cigarette devices, flavours and accessories. The hardware for the devices is procured by Twisp from international manufacturers who work with Twisp's design team to tailor the devices to Twisp's specifications. The flavours are created by Twisp's in-house flavour specialist and produced by a third party on behalf of Twisp.

The Commission found that there are separate markets for the supply of cigarettes and e-cigarettes. The Commission therefore assessed the effects of this transaction in the (i) national market for the supply of cigarettes and (ii) national market for the supply of e-cigarettes including devices, e-liquids and accessories.

The Commission found that the proposed transaction results in the removal of a potential competitor. Given BAT's presence in the e-cigarette market internationally, the Commission found that BAT could have potentially entered the South African e-cigarette market absent this transaction and it would have

been in a position to compete effectively against Twisp, the largest and dominant e-cigarette supplier in the country. Therefore, the merger is likely to result in unilateral effects which may manifest in the form of an increase in prices of e-cigarettes in future (or a reduction in the rate of price reductions that could potentially occur with BAT's entry) and/or a reduction in the quality or rate of innovation of e-cigarette products offered post-merger.

The Commission also considered the extent to which the instant transaction is likely to lead to exclusionary portfolio effects post-merger. In particular, the Commission found concerns relating to exclusionary practices relating to shelf space by BATSA that may be perpetuated as a result of the proposed merger.

The Commission received a number of concerns from third parties regarding the proposed transaction. Following the investigation, the Commission found that the proposed merger results in a substantial prevention of competition. Further, the proposed merger raises significant public interest concerns. There were no efficiency justifications or remedies that have been submitted which can alleviate the concerns arising. For this reason, the Commission recommends that the proposed transaction be prohibited.

1.2 Khumonetix (Pty) Ltd (Khumonetix) v Auckland Investments 22(Pty) Ltd (Auckland Investments), Blane and Company sales (Pty) Ltd (Blane & Company), Wideprops 97 (Pty) Ltd (Wideprops 97), Red Gold Investments 7 (Pty) Ltd (Red Gold) and Dreamfair properties 11 (Pty) Ltd (Dreamfair Properties) in respect of a portfolio of industrial properties (Target Portfolio)

The Commission has recommended to the Competition Tribunal (Tribunal) that the proposed merger be approved, without conditions, whereby Khumonetix intends to acquire the Target Portfolio from the Target Firms.

Khumonetix is a newly established entity which has been incorporated for the purposes of the proposed transaction.

The Target Firms are owned by common shareholders and in turn, control the Target Portfolio. The Target Portfolio is comprised of nine letting enterprises classified as a light industrial property, which are situated in Jet Park, Glen Marais and Silverton.

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

1.3 THM Africa (Pty) Ltd (TMH Africa) v DCD Rolling Stock, A Division Of DCD Group (Pty) Ltd (DCD Rolling Stock)

The Commission has approved, without conditions, the proposed transaction whereby TMH Africa, intends to acquire DCD Rolling Stock.

TMH Africa is a newly established entity and does not conduct any business in South Africa. TMH International is an international original equipment manufacturer and provides a complete range of rolling stock services and is not currently active in the South African market. Alstom, an ultimate controller of TMH is a global player in the rail transport industry, providing a range of commuter solutions (from high-speed trains to metros, trams and e-buses), personalised services (maintenance and modernisation), as well as offerings dedicated to passengers and infrastructure, digital mobility and signalling solutions. In South Africa, Alstom is active in the manufacture of rolling stock and components of rolling stock, and the maintenance and refurbishment of rolling stock through Gibela and Alstom Ubunye.

DCD Rolling Stock is active in the designing, manufacturing, assembling, testing and commissioning of rolling stock for OEMS including bogies, diesel locomotives, passenger coaches, freight wagons and EMU's. DCD also provides integrated design package solutions and refurbishes and services a complete range of rolling stock products. The rolling stock that are refurbished include bogies, diesel locomotives, couplers, draw gears and the renewal parts and servicing for all products.

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

1.4 Futuregrowth Asset Management (Pty) Ltd (Futuregrowth) (acting as agent for Old Mutual Assurance Company (South Africa) Ltd) (OMLACSA) v Citiq Treasury (Pty) Ltd (Citiq Treasury) and Citiq Property Services (Pty) Ltd (Citiq)

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby Futuregrowth intends to acquire Citiq Treasury and Citiq.

Futuregrowth is controlled by Old Mutual Investment Group (South Africa) Holdings (Pty) Ltd (OMIG). OMIG and OMLACSA form part of the larger group of financial and investments services firms, ultimately controlled in South Africa by Old Mutual Group Holdings (South Africa) (Pty) Ltd (OMGH). Futuregrowth has investments in various industries including insurance and property. The Futuregrowth Group controls a property portfolio comprised of office, retail, residential and industrial space throughout South Africa.

Citiq Treasury is a holding company for a number of property owning firms including CPS, Citiq Residential (Pty) Ltd, Citiq Commercial Property Proprietary Limited and Citiq Students (Pty) Ltd. CPS provides property management services.

The Commission found that 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.

1.5 D Capital Fund 1 (Pty) Ltd (the Fund) v Proconics (Pty) Ltd (Proconics)

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby the Fund intends to acquire Proconics.

The Fund is jointly controlled by Dlonlobala Capital (Pty) Ltd and Corvest 200 (Pty) Ltd. Proconics is an electrical and instrumentation, control and mechanical engineering and design company that also offers Engineering Procurement and Construction services. In addition, Proconics also provides the following services, project management; construction management; front end engineering design and commissioning support.

The main business activities of Proconics can be divided into three main areas of expertise; delivery of engineering specialist services including scoping, testing, commissioning and maintenance support; concept, basic and detailed engineering and design; and project delivery including project management, procurement and construction management.

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

1.6 Boxwood Property Investment Fund (Boxwood Property Investment) En Commandite Partnership (ECP) v Ascension Properties Ltd in respect of a portfolio of properties (Ascension Properties)

The Commission has approved, without conditions, the proposed transaction whereby Boxwood Property Investment, intends to acquire Ascension Properties.

Boxwood Property Investment is a newly established firm which has not traded previously and is structured as an ECP. Currently, Boxwood Property Investment does not own any properties.

Ascension Properties is controlled by Rebasis Property Fund Limited (Rebasis). Rebasis has a diversified property portfolio comprising of retail, office and industrial properties throughout South Africa.

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

1.7 Texton Property Fund Ltd (Texton) v The immovable properties and rental enterprises known as Crossroads, Execujet Hangar, Madrid Road and Montreal Road (Target Properties)

The Commission has approved, without conditions, the proposed transaction whereby Texton, intends to acquire the Target Properties.

Texton Group is a property holding and investment company investing directly in a diversified portfolio of income-producing immovable properties and rental enterprises. In terms of the gross lettable area, a majority of the Texton Group's South African property portfolio is constituted of office properties, some retail properties and to a lesser extent, industrial properties. The Texton Group's industrial properties are situated in Gauteng and North West.

The Target Properties comprise of a portfolio of four immovable properties and rental enterprises, all of which are classified as light industrial properties and are situated in Cape Town, Western Cape Province.

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

1.8 HIS Fund II SA Rental Trust 2 (Trust 2), v Extensions 14 & 16 and portions 534 & 551 of the Little Manhattan Development in Lotus Gardens Pretoria West (Little Manhattan)

The Commission has approved, without conditions, the proposed transaction whereby Trust 2, intends to acquire Little Manhattan.

The primary acquiring firm is HIS Fund II SA Rental Trust 2 ("Trust 2"), a South African trust. Trust 2 is controlled by HIS Fund II SA PVE ("Fund II"), an en-commadite partnership established in terms of the company laws of South Africa. Fund II is controlled by HIS Fund II SA GP (Pty) Ltd ("Fund II GP"), the general partner in the en-commandite partnership, which is a private company incorporated in terms of the company laws of South Africa. Fund II GP is ultimately controlled by International Housing Solutions S.a.r.l ("IHS S.a.r.l"). Trust 2 does not control any firms.

IHS S.a.r.l provides affordable housing in the main city centres, of Johannesburg, Bloemfontein, Pretoria North, Centurion, Mpumalanga, amongst others. However, HIS S.a.r.l does not own any residential property in Pretoria West.

Little Manhattan comprises affordable housing units and the remaining land located in Lotus Gardens, Pretoria West.

The Commission found that 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.

1.9 SA Water Works (Pty) Ltd (SAWW) v Sembcorp Utilities South Africa (Pty) Ltd (SUSA) and Sembcorp Siza Water (RF) Pty Ltd (Siza Water)

The Commission has approved, without conditions, the proposed transaction whereby SAWW, intends to acquire SUSA and Siza Water.

SAWW is a special purpose vehicle and does not currently trade. It is controlled by Mergence Investment Managers (Pty) Ltd which is in turn controlled by Mergence Africa Holdings (Pty) Ltd (the “Mergence Group”). The Mergence Group’s activities include investments in the transport, energy and utility, communication and development infrastructure sectors.

SUSA controls the concessionaire appointed to provide water and sanitation services, infrastructure, and administration to the residents of the Mbombela District municipality in Mpumalanga. Siza Water provides water and sanitation services to the Illembe District municipality located in KwaZulu-Natal.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. 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 Economic Boilers v National Regulator for Compulsory Specifications and South African Bureau of Standards

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

2.2 Holiday Invest (Pty) Ltd v the Holiday Club and the whole vacation ownership industry

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

2.3 Mr Leon Havenga v Midstream Estate

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

[ENDS]

Issued by:

Sipho Ngwema, Head of Communications

On behalf of: The Competition Commission of South Africa

Tel: 012 394 3493 / 081 253 8889

Email: SiphoN@compcom.co.za

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