Weekly Media Statement
For Immediate Release
15 August 2019

LATEST DECISIONS BY THE COMPETITION COMMISSION

1.1 LAW SOCIETY OF THE NORTHERN PROVINCES REPEAL FEE RULES, GUIDELINES THAT BREACH COMPETITION ACT

The Commission and the Law Society of the Northern Provinces reached a consent settlement agreement in which the law society agreed to repeal its anti-competitive rules and guidelines. The agreement was subsequently confirmed by the Tribunal as an order on 25 July 2019.

The agreement follows a complaint that was lodged by a law firm Dykes Inc (“Dykes”) in May 2009 and an exemption application that was made by the Law Society of South Africa (“LSSA”) which was filed with the Commission by the LSSA on 21 July 2004.

The exemption application was brought in respect of the following main categories of the attorneys’ professional rules, namely rules on professional fees; reserved work; organisational forms and multi-disciplinary practices; and advertising, marketing and touting. The LSNP rules were also included in the exemption application.

In December 2009, the Commission made its final determination on the exemption application by deciding not to grant LSSA the exemption. This was a few months after the Dykes complaint was filed. The Commission found that the rules had an adverse effect on competition and were not reasonably required to maintain professional standards or the ordinary function of the profession.
The Commission also found that the rules were too restrictive and overbroad. In particular, in respect of the rules relating to: professional fees, reserved work, advertising, marketing and touting, and organisational forms and multi-disciplinary practices, the Commission found that these rules contravene section 4(1)(b)(i), alternatively section 4(1)(a) of the Act.

Dykes Inc contended in its complaint filed with the Commission that the LSNP professional rules which its directors were accused of contravening, were the very same rules that the LSSA, mandated by the LSNP, applied for exemption.

In the Dykes complaint, it is alleged, inter alia, that: various LSNP rules were in contravention of sections 4(1)(b)(i) or 4(1)(b)(ii), alternatively section 4(1)(a) of the Act insofar as they restricted the attorneys’ ability to engage in procompetitive advertising and marketing activities, as well as bid for any kind of legal work from any existing or potential client. Subsequently, the Commission investigated and found that indeed rules relating to reserved work, professional fees, organisational forms and multidisciplinary practices, marketing and advertising. The Commission further found that the rules constituted price fixing and market allocation, alternatively the fixing of trading conditions.

On 9 October 2012, the NGHC ordered that the LSNP’s rules, guidelines and rulings relating to touting, fee-sharing and office-sharing be referred to the Tribunal for determination based on section 65(2)(b) of the Act.

In May 2012, the Commission and the LSSA entered into an agreement known as the May 2012 Agreement. In terms of this agreement, the LSSA and its constituent law societies agreed that the competition concerns raised during the exemption application would be taken into account when the new rules for the legal profession were drafted. The LSSA and the law societies also agreed to engage with and consult with the Commission in the development of the new rules.

Furthermore, the May 2012 agreement stipulated that the below-mentioned law societies’ rules, for which exemption had been sought, would remain valid and enforceable. The May 2012
agreement was however subject to the caveat that the rules would be interpreted and applied by the law societies in a manner that complied with the Act. In summary:

1.1. With respect to the rules relating to professional fees, the existing rules would apply provided that minimum tariffs would not be enforced. Attorneys could charge fees below the minimum tariffs where those were prescribed.

1.2. With respect to touting, the existing rules would apply except any restriction on advertising that conforms with the general advertising standards in that it is truthful and not misleading to the public would be lifted.

1.3. With respect to reserved work and multidisciplinary practices, the status quo would continue, pending the promulgation of the new rules.

1.4. In the interim, and before the promulgation of the new Legal Practice Bill, the LSSA undertook to engage with the Commission on matters concerning competition issues. If there was doubt whether conduct offended competition law principles, the law societies would consult with the Commission on those cases.

The LSNP confirmed that it, together with the other law societies and the LSSA, had reviewed its rules to inter alia address the Commission’s concerns identified during the exemption application process. On 26 February 2016, the LSSA promulgated new uniform rules for the attorneys’ profession that came into effect on 1 March 2016 (Government Gazette No. 39740).

The LSNP also confirmed that it had acted in compliance with the May 2012 agreement between the LSSA and the Commission and had not sought to apply any of the rules contrary to the agreement.

1.2 Pele SPV 13 (Pty) Ltd (Pele SPV 21) v CPV Power Plant No 1 (Pty) Ltd (CPV)

The Commission has unconditionally approved, the proposed merger whereby Pele SPV 21 intends to acquire CPV.

Pele SPV 21 is a special purpose vehicle established for the purposes of the proposed transaction and does not have any operations. Pele Green Energy is a power producer involved in the development and operation of renewable energy projects including wind and solar.
CPV is a renewable energy project company established for the purposes of constructing, operating and maintaining the Touwsrivier Solar Energy Project, situated in the Western Cape.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.3 Colossal Africa Consortium (Colossal SPV) v Aveng Infraset, a division of Aveng Africa Proprietary Limited (Aveng Africa)

The Commission has unconditionally approved the proposed merger whereby Colossal SPV intends to acquire Aveng Africa.

Colossal SPV through Colossal Africa supplies various steel products including sheet and plate steel, section steel, reinforcement steel, tubing, stainless steel, aluminium and speciality steel. Colossal Africa also offers various steel processing services, including multi-axle bending, decoiling, plasma cutting, laser cutting, slitting and more. The Acquiring Group operates in the rail and energy sector, providing specialised services such as industrial painting, sandblasting and insulation. Furthermore, the Acquiring Group supplies rail grinding and rail turnouts.

Aveng Infraset manufactures and supplies a diverse range of precast concrete products throughout the Southern African region from its factories located in South Africa, Swaziland, Zambia and Mozambique. Aveng Infraset has six operating branches in South Africa in Brakpan, De Aar, Effingham, Rossway, Wadeville and Pietermaritzburg.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any employment or public interest concerns.

1.4 3M Company (3M) v Acelite. Inc (Acelity)

The Commission has unconditionally approved, the proposed merger whereby 3M intends to acquire Acelity.

3M is a diversified technology company and its business is segmented into four major groups: (i) Safety & Industrial; (ii) Transportation & Electronics; (iii) Health Care; and (iv) Consumer.
Through its consumer division, 3M SA offers a range of retail-use bandages, island bandages, and films (Nexcare brand), as well as ankle, shoulder and other support straps (Futuro brand).

Acelity is a global advanced wound care company. In South Africa, Acelity’s advanced wound care business is conducted through its subsidiary, Systagenix.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.5 Hulamin Systems (Pty) Ltd (Hulamin Systems) v The aluminium rolling slab business of Isizinda Aluminium (Pty) Ltd (Slab Business)

The Commission has recommended that the Competition Tribunal (Tribunal) approve the proposed transaction whereby Hulamin Systems intends to acquire Slab Business of Isizinda Aluminium without conditions.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.6 Retail Capital (Pty) Ltd (Retail Capital) v First Asset Finance (Pty) Ltd (FAF)

The Commission has unconditionally approved the proposed merger whereby Retail Capital intends to acquire FAF.

Retail Capital is active in the provision of financial services to various industries, including but not limited to, hospitality and retail.

FAF is a financier of SMEs in South Africa. FAF advances cash to SMEs based on projected credit card sales of that business.
The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any employment or public interest concerns.

1.7 Manxman Investments (Pty) Ltd (Manxman Investments) v Heritage Mall Kathu (Pty) Ltd in respect of the retail enterprise known as Heritage Mall Kathu (Heritage)

The Commission has unconditionally approved the proposed merger whereby Manxman Investments intends to acquire Heritage Mall.

Manxman is a property investment holding company with a property portfolio comprising of retail, residential and office properties in the Gauteng, Mpumalanga, Free State, Limpopo and Eastern Cape provinces.

The Heritage Mall comprises rentable retail (community centre) space, rentable B grade office and vacant land, all of which is situated at the corner of Frikkie Meyer Street and Rooisand Boulevard, Kathu, Northern Cape.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any employment or public interest concerns.

1.8 Flying Cockrell Company (Pty) Ltd (Flying Cockrell) v BRSW Mining Consulting Services (Pty) Ltd (BMS)

The Commission has unconditionally approved the proposed merger whereby Flying Cockrell intends to acquire BMS without conditions.

Flying Cockrell has been established specifically for the purposes of the proposed transaction and currently does not have any business activities or investments in South Africa or globally.

BMS, through its various subsidiary companies, provides a diversified mining solution to the coal mining industry. Its services include contract or outsourced mining for both opencast and underground coal operations in South Africa.
The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any employment or public interest concerns.

1.9 Clearlake Capital Group (Clearlake), L.P. and TA Associates Management, L.P. (TA) v DigiCert Parent, Inc. (DigiCert)

The Commission has unconditionally approved, the proposed merger whereby Clearlake and TA intend to acquire DigiCert without conditions.

The Clearlake Group, through its subsidiaries, is active in software and technology-enabled services, energy, industrials, food and consumer products. The portfolio of companies controlled by the TA Group are active in selected industries including business services, consumer, financial services, healthcare and technologies.

DigiCert is a global provider of enterprise security technology and/or software solutions with an emphasis on scalable high assurance digital certificates.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any employment or public interest concerns.

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