

Statement on Competition Commission Meeting of 2 December 2014

To: All Media

Date: 4 December 2014

1. Key decisions on mergers and acquisitions

1.1 Large Mergers

Proposed merger between Denel and BAE's LSSA

The Commission has recommended to the Competition Tribunal (Tribunal) that the merger involving Denel SOC Limited (Denel) and BAE Systems Land Systems South Africa Proprietary Limited (LSSA) be approved without conditions.

Denel controls various other firms and intends to acquire 100% shares of the LSSA. Denel is a manufacturer of defence equipment including a full range of aerospace, landward and marine defence products. LSSA is involved in the design, development, industrialisation and manufacture of combat and operationally-proven mine protected armoured vehicles as well as support and maintenance of these vehicles.

The Commission found that the transaction is unlikely to lead to a substantial prevention or lessening of competition. The transaction is unlikely to raise public interest concerns.

Proposed merger between Vukile Property Fund Limited (Vukile) and Synergy Income Fund Limited (Synergy)

The Commission has recommended to the Tribunal that the merger involving the acquisition of Synergy by Vukile be approved without conditions. Vukile currently holds 39% shares in Synergy and as such, is increasing its shareholding in Synergy.

Vukile owns retail, office and industrial properties throughout the country. Synergy is a property investment fund that has a portfolio comprising of retail property classified as community and neighbourhood centres located in the Free State, Limpopo, Mpumalanga, North West and KwaZulu-Natal Provinces.

The Commission considered the activities of the merging parties in the provision of rental space in convenience centres and found that a geographic overlap exists in KwaZulu-Natal, specifically within a 10 km radius of the Kwa-Mashu Shopping Centre. The Commission, however, concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the affected market, as the merged entity's post-merger market share remains low.

The Commission also noted a potential public interest concern with respect to the existence of an exclusivity clause in the Lease Agreement of the Kwa-Mashu Shopping Centre, in favour of Spar Group (Pty) Ltd (Spar). This concern was however addressed in the Commission's investigation in 2011 when Synergy initially acquired 100% interest in the Kwa-Mashu Shopping Centre. As part of this transaction, the Commission imposed a condition on Synergy requiring it to negotiate with Spar, for the removal of the exclusivity clause contained in the Lease Agreement upon its expiry in 2015.

The obligations placed upon Synergy in terms of the conditions will be passed on to Vukile should it acquire the Kwa-Mashu Shopping Centre. The Commission also found that the proposed transaction is unlikely to raise concerns on other public interest grounds.

Proposed merger between Applethwaite Farm (Pty) Ltd (Applethwaite) and Sikisa Trading Corporation (Pty) Ltd (Sikisa), [acquiring firms] and Theewaterskloof Holdings (Pty) Ltd (TWK), Boskloof Fruit & Timber Industries (Pty) Ltd (Boskloof) and Novo Packhouse (Pty) Ltd (Novo) [target firms]

The Commission has recommended to the Tribunal that the above merger be approved, without conditions. The primary acquiring firms intend to acquire 100% of the issued share capital of TWK, Boskloof and Novo. In terms of this transaction, Applethwaite will acquire 100% of the issued share capital of TWK and Boskloof whereas Sikisa will acquire 100% of the issued share capital of Novo. Following the implementation of the proposed transaction, TWK and Boskloof will be 100% owned by Applethwaite and Novo will be 100% owned by Sikisa.

The Capespan Group which is a holding company of Applethwaite offers logistics services to national and international clients through a number of its subsidiaries. Applethwaite is a farm in the Western Cape Province which produces apples and pears (pome fruits) that are supplied throughout the country and international markets. Sikisa used to operate a mango packhouse in Tzaneen in the Limpopo province that has been moth-balled for a number of years.

TWK and Boskloof own farms that produce pome fruits, plums and timber in the Western Cape Province. Novo operates a fruit storage and packing business focusing on apples, pears, nectarines, peaches and plums at its facility also situated in the Western Cape Province.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. It is also unlikely to result in any vertical foreclosure or public interest concerns.

Proposed merger between Nunorex Proprietary Limited (Newco) and Sunspray Food Ingredients Proprietary Limited (Sunspray), and Depco Proprietary Limited (Depco)

The Commission has recommended to the Tribunal that Newco's acquisition of the whole business of Sunspray including its wholly owned subsidiary, Depco, be approved, without conditions. Post-merger, Newco will have sole control over Sunspray and Depco.

The primary acquiring firm is Newco, a newly formed company for the purposes of the proposed transaction. Sunspray is a food ingredient spray-painting company and specialises in the manufacture and marketing of various food ingredients. It also provides blending and packing services.

The Commission considered the activities of the merging parties and found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market, as there is no overlap in their activities. The proposed transaction does not raise any public interest concerns.

1.2 Intermediate Mergers

Proposed merger between Ridgeback Acquisition LLC (Ridgeback) and the Procter & Gamble pet care assets in South Africa (P&G pet care assets)

The Commission has approved, without conditions, the merger between Ridgeback and P&G pet care assets. In terms of this transaction, Ridgeback will acquire all intangible assets consisting of rights under one distribution agreement, a technology patent and other intellectual property rights that are held globally by P&G pet care assets. Ridgeback is a United States of America firm created for the purposes of the proposed transaction. P&G pet care assets is wholly owned by the Procter & Gamble Company (P&G). P&G's South African subsidiaries, Mars RSA and Royal Canin sell pet food throughout the country.

The Commission found that the proposed transaction will result in a horizontal overlap between the activities of the merging parties. The overlap is in respect of dry dog food, wet dog food, dry cat food and wet cat food. There are however, a number of alternative suppliers in the market, confirmed by market participants. Customers will thus have various alternative suppliers to source their pet food requirements from. In addition, the Commission found that barriers to enter the affected markets are relatively low.

In addition, the proposed transaction does not raise public interest concerns.

Proposed merger between Lombard Life Limited (Lombard Life) and Guardrisk Life Limited (Guardrisk)

The Commission has approved, without conditions, the merger between Lombard Life and Guardrisk in terms of which Lombard Life intends to transfer long-term insurance policies (including the rights and obligations relating to the policyholders and the assets and liabilities relating to the policies) to Guardrisk. Post-merger, Guardrisk will have sole control over the long-term insurance policies.

Lombard Life is a registered financial services provider that provides short-term and long-term insurance, financial services and run-off business services. Guardrisk is part of the MMI Holdings Limited, a South African based financial services group that develops markets and distributes a variety of products such as long and short-term insurance, asset management, savings, investments, healthcare administration and employee benefits. MMI Holdings operates through brand names such as Metropolitan, Momentum and Eris.

The merged entity will have a post-merger market share of 14.38% within the broad market for the provision of long-term insurance, with a minimal market share accretion of 0.02%.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of long-term insurance. There are no public interest concerns arising from the proposed transaction.

Proposed merger between ZF North America (ZFNA) and TRW Automotive Corporation (TRW)

The Commission has approved, without conditions, the merger between ZFNA and TRW, in terms of which ZFNA intends to acquire the entire issued share capital of TRW.

The ZFNA is a global supplier of automotive products and industrial applications. In South Africa, the ZFNA is involved in the supply of original spare parts, maintenance and repair of transmissions, steering systems and axles. Relevant for the assessment of the proposed transaction is the manufacture, supply of light vehicle (LV) control arms to Original Equipment Manufacturers (OEMs) and LV shock absorbers to the Independent Aftermarket (IAM).

TRW operates through 4 business segments, namely: chassis systems (steering systems, control arms, slip control etc.), electronics (driver assist systems, safety electronics, etc.), occupant safety (airbags, seat belts, etc.) and automotive components (body controls and fasteners).

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the markets for the supply of LV control arms

to OEMs and the supply of LV control arms to the IAM in South Africa, given the merging parties' low market share. The proposed transaction does not raise any public interest concerns.

Proposed merger between Makrogate Limited (Makrogate) and the rental enterprise owned by Capegate Crescent Development Proprietary Limited (Capegate)

The Commission has approved the above merger without conditions. Makrogate is a newly incorporated company and therefore does not provide any goods or services in South Africa or internationally. Makrogate is controlled by Hoemstead Group Holdings Ltd (Hoemstead). The target enterprise comprises of a 6,5963 hectares property that is used for the retail and wholesale activities of Masstores in the Cape Gate Precinct, Cape Town.

The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition. The proposed transaction does not raise any public interest concerns.

1.3 Termination of Conditions

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

Termination of conditions imposed in the merger between Seton SA (Pty) Ltd and Feltex Automotive Division

On 11 August 2009, the Commission approved the above merger subject to certain public interest conditions relating to employment. The purpose of the conditions was to ensure that the merged entity provided about 74 affected employees an opportunity to acquire skills that will empower them to be re-employed or start their own business post-retrenchment.

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

Termination of conditions imposed in the merger between Shoprite Checkers S.A. (Pty) Ltd and Metcash Seven Eleven (Pty) Ltd & a portion of the Friendly Distribution Division of Metcash Trading Africa (Pty) Ltd

On 26 August 2011, the Tribunal approved the above merger subject to certain public interest conditions relating to employment.

The conditions provided that: *“Metcash shall find alternative employment for the remaining 8 employees, who have not yet been retrenched or have not been provided with alternative employment. With respect to 18 employees who have applied for retrenchments but whose applications have not yet been accepted*

by Metcash, Metcash shall also find them alternative employment unless Metcash accepts such applications for voluntary retrenchments.”

Upon examining the information received from the merged entity, the Commission is satisfied that the entity has complied with the conditions in that Metcash accepted the voluntary retrenchments which the employees opted for.

1.4 Non-referral

Non-referral against GD Irons and Group Five in the Villa Mall project

The Commission has taken a decision to non-refer a case of collusive tendering against GD Irons Construction (Pty) Ltd (GD Irons) and Group Five Limited (Group Five) in collusive conduct relating to tendering for the Villa Mall construction project (Villa Mall).

Non-referral against Granbuild in the Bokomo project

The Commission has taken a decision to non-refer a case of collusive tendering against Granbuild (Pty) Ltd (Granbuild) in collusive conduct relating to the Bokomo Weetbix Factory tender (Bokomo project).

Non-referral against WBHO and Stefanutti in the Lebone Project

The Commission has taken a decision to non-refer a case of collusive tendering against WBHO and Stefanutti in respect of the Lebone College project for Tau Pride contract (Lebone College project).

2. Finalised complaints

Charles Grevelink VS Daan Bosman, Dries Wiese, Nikkie Cilliers, Charl Sonderson, Handre Van Wyk, Micky Philips, Rikus Van Der Merwe, Kosie Esterhuizen and Philip Strauss

The Commission has decided to non-refer a complaint involving the Sheep Breeders Society. The complainant is a dorper sheep breeder from Middelburg in the Eastern Cape and a member of the Dorper Sheep Breeders' Society of South Africa (Sheep Breeders Society). The Respondents are all dorper sheep breeders in the Eastern Cape area and members of the Sheep Breeders Society.

The Commission concluded that the agency agreement is not likely to contravene the Act provided that an agent that has been appointed by several principals deals with each principal separately and independently.

Damon Empire Trading VS the Department of Correctional Services (Northern Free State and Gauteng Regional office)



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The Commission has decided to non-refer a complaint against the Department of Correctional Services as it does not fall within the bounds of the Competition Act.

The complainant alleges that the Department has refused to approve its request for a price increase in respect of the contract it has concluded with the Department for the supply of bread to different correctional service centres.

The Commission found that this is a contractual matter and there are no competition law issues.

Eubelus Dion Yellapen VS Kimberlee Klair Properties

The Commission has decided to non-refer the above complaint as it does not fall within the bounds of the Competition Act. The Respondent is the principal estate agent of Kimberlee Klair Properties, an estate agency involved in the business of real estate sales, property management and mortgage bonds.

The Commission investigated this complaint and decided that this matter could be best dealt with by the Estate Agency Affairs Board (EAAB), which has jurisdiction over such matters.

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