

Statement on the decisions of the Competition Commission

To: All Media

Date: 18 December 2014

1. Key decisions on mergers and acquisitions

1.1 Large Mergers

Proposed merger between Exxaro Resources Limited (Exxaro) and Total Coal South Africa (Pty) Ltd (Total Coal)

The Commission has recommended to the Tribunal that the proposed merger between Exxaro and Total Coal be approved without conditions. Post-merger, Total Coal will be wholly owned by Exxaro.

Exxaro has interests in the coal mining, base metals, titanium dioxide, ferrous and the energy markets and currently has business interests in South Africa, Botswana, Republic of Congo, Inner Mongolia, the United States, the Netherlands and Australia.

Total Coal is active in the production of thermal coal from three mines in which it is a joint venture partner and operator.

Proposed merger between Old Mutual Life Assurance Company (South Africa) Limited (OMLACSA) and Safe Farm Ventures (Pty) Ltd (SFV)

The Commission has recommended to the Tribunal that the proposed merger between OMLASCA and SFV be approved without conditions. This transaction was prior implemented by the parties in June 2013 without the requisite approval of the Commission.

In terms of this transaction OMLASCA increased its shareholding on SFV from 22% to 50%, effectively acquiring the exercise of joint control over SFV with Southern African Fruit Exports Limited. OMLASCA is a subsidiary of the Old Mutual Group which is involved in the financial services sector and provides insurance, banking and investment services. SFV is a property investment firm.

The prior implementation of the merger will be investigated separately.

Proposed merger between Ethos Private Equity Fund VI (Ethos VI) and TP Hentiq 6128 (Proprietary) Limited (Auto Zone Business)

The Commission has recommended to the Tribunal that the proposed merger between Ethos VI and Auto Zone Business be approved without conditions. Post-merger, Ethos would have sole control over the Auto Zone Business.

Ethos is a private equity firm which, through various private equity funds, makes investments on behalf of investors. AutoZone is a wholesaler and retailer of a wide range of aftermarket automotive parts which it supplies throughout South Africa to its franchisees, independent stores, workshops, fleets and various outlets such as engineering shops and chain stores.

In this merger, the Commission was concerned about the dilution of the Black Economic Empowerment status post-merger. The merging parties subsequently tendered undertakings committing to entering into another transaction to address the concern. As such Ethos will warehouse at least 15% of its shareholding interest in the Auto Zone Business with the view to disposing of this interest, through a transaction entity, to one and / or more entities that are majority owned and controlled by one or more HDIs within 12 (twelve) months from the approval date of the merger..

Furthermore, Ethos will endeavour to ensure that the B-BBEE rating of the Auto Zone Business does not reduce below Level 4 after the merger implementation date and that it will also take reasonable steps to improve the B-BBEE Level 4 rating of the business.

Proposed merger between Attacq Waterfall Investment Company Proprietary Limited (AWIC) and Micawber 832 Proprietary Limited (Micawber)

The Commission has recommended to the Tribunal that the proposed merger between AWIC and Micawber be approved without conditions. Post-merger, AWIC will exercise sole control over Micawber.

AWIC is controlled by the Attacq Group which comprises of property development firms that develop and manage assets and properties classified as commercial, retail, industrial and residential properties throughout South Africa and internationally.

Micawber owns a Grade B office property (target property) leased to the PWC Trust in terms of a Lease Agreement that will terminate in 30 June 2021.

1.2 Intermediate Mergers

Proposed merger between the Industrial Development Corporation of South Africa Limited (IDC) and Auspex Hotels and Leisure Management Company Proprietary Limited (Auspex)

The Commission has approved without conditions the merger between the IDC and Auspex. Post-merger, IDC will take sole control of Auspex.

The IDC is a national development finance institution setup to promote economic growth and industrial development. Auspex owns 140 sectional title

units in a 5 star hotel known as “the Radisson Blu Hotel” located in Port Elizabeth, in the Eastern Cape Province.

This transaction arises out of a default payment of a loan by Auspex to the IDC in terms of which the shareholders of Auspex pledged all of the ordinary shares in Auspex to the IDC as security for the obligations arising therefrom.

Proposed merger between CAX Holdings, LLC (CAX) and AXT Acquisitions Holdings Inc. (AXT)

The Commission has approved without conditions the proposed merger between CAX and AXT. Post-merger, CAX will have sole control over AXT.

CAX is a wholly owned subsidiary of CAX Parent, LLC which has been established as a special purpose vehicle for the purpose of this transaction and does not conduct any activities. AXT is an investment holding company of the AXT Group. In South Africa, the AXT Group imports axles, axle components, planetary axles, brakes, and aftermarket parts for specialty trucks, military vehicles and off-highway machines used in the construction, material handling, forestry, mining and agriculture markets.

Proposed merger between Spirit Mezzanine Investments Proprietary Limited (SMI) and the business of Multiknit Proprietary Limited (Multiknit)

The Commission has approved without conditions the proposed merger between SMI and Multiknit. SMI is a newly formed company which has Spirit Capital and MCP as private equity investors and shareholders in the newly formed entity. These private equity investors consider Multiknit to be an attractive investment opportunity.

In terms of this transaction, Multiknit will purchase the share held by certain of the shareholders in Multiknit, resulting in the exit of two financial investors and certain retiring members of management.

Multiknit will then dispose of its entire business to Spirit Mezzanine; and Spirit Capital, MCP and certain remaining management of Multiknit will subscribe for shares in Spirit Mezzanine.

Proposed merger between FPG Holdings Proprietary Limited (FPG) and Hyprop Investments Limited (Hyprop)

The Commission has approved without conditions the proposed merger between FPG and Hyprop. Post-merger, FPG will have sole control of all the properties, fixed assets, leases, tenant deposits and goodwill in respect of the target properties owned by Hyprop.

The FPG Group is a private property fund involved in construction of commercial (classified as office, retail and industrial properties) and residential property located in the Western Cape, Northern Cape, Gauteng and North West Provinces. The target properties of Hyprop comprise of a lifestyle centre, a décor centre, a fuel station, a retail motor dealership and fast food drive-thru centres that are situated in Brackenfell in the Western Cape Province.

Proposed merger between Clover SA (Pty) Ltd and Nkunzi Milkway (Pty) Ltd (Nkunzi)

The Commission has prohibited the proposed intermediate merger whereby Clover S.A. (Pty) Ltd (Clover SA) intends to acquire the fresh dairy business of Nkunzi Milkway (Pty) Ltd (Nkunzi).

Post-merger, Clover would have sole control over Nkunzi. Clover is a branded consumer goods company in the food and beverage industry in South Africa and certain other African countries. Nkunzi primarily manufactures fresh dairy products.

The merger raises both competition and public interest concerns and is likely to substantially lessen competition.

1.3 Referrals

Referral against Afristruct for collusive tendering in the New Tapping Fume tender

The Commission has referred a case of collusive tendering against Afristruct Projects (Pty) Ltd (Afristruct) and Stefanutti Stocks Limited (Stefanutti). The firms are suppliers of construction services including building and civil engineering services.

In terms of the collusive tendering agreement, Stefanutti and Afristruct agreed that Afristruct will put in a bid price higher than the bid price that Stefanutti would submit in the New Tapping Fume tender. This was done to ensure that Stefanutti win the tender. The collusive tendering agreement further entailed that in return for agreeing to submit a higher price, Stefanutti will pay Afristruct a loser's fee of R200 000 after the tender was awarded to Stefanutti. The tender was awarded to Stefanutti.

The Commission's investigation found that there is evidence that Stefanutti and Afristruct colluded in contravention of section 4(1) (b) (iii) of the Competition Act 89 of 1998, as amended ("Act") when bidding for the New Taping Fume project. No relief is sought against Stefanutti.



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Referral against Giuricich for collusive tendering in the Mondi Reel tender

The Commission has referred a case of collusive tendering against Giuricich Coastal Projects (Pty) Ltd (“Giuricich”) and Grinaker- LTA, a division of Aveng Africa Limited (“Grinaker”) in respect of the Mondi Reel Handling project (“**the Mondi Reel project**”) to the Tribunal for prosecution. The firms are suppliers of construction services including building and civil engineering services.

In terms of the collusive tendering agreement, Grinaker agreed to provide Giuricich with a higher tender price than the price which Grinaker would submit to the client. This was to ensure that Giuricich does not win the Mondi Reel project. Following the agreement, Giuricich submitted a higher tender price and the project was awarded to Grinaker.

The Commission’s investigation found that there is evidence that Giuricich and Grinaker colluded in contravention of section 4(1) (b) (iii) of the Competition Act 89 of 1998, as amended (“Act”) when bidding for the Mondi Reel project. No relief is sought against Grinaker.

Referral against Power Construction (West Cape) Pty Ltd, Power Construction (Pty) Ltd and Haw and Inglis (Pty) Ltd

The Commission has referred a case of collusive tendering against Power Construction (West Cape) (Pty) Ltd, Power Construction (Pty) Ltd and Haw and Inglis (Pty) Ltd. The firms are suppliers of civil engineering services in South Africa.

In terms of the collusive agreement, Power Construction (West Cape) agreed with Haw and Inglis that Power Construction (West Cape) would submit a cover price for the tender for periodic maintenance of the National Route N1 from Touws River to Laingsburg.

The Commission’s investigation found that there is evidence that Power Construction (West Cape) and Haw and Inglis colluded in contravention of section 4(1) (b) (iii) of the Competition Act 89 of 1998, as amended (“Act”) when bidding for the tender.

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