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Statement on Competition Commission Meeting of 18 November 2014

To: All Media

Date: 20 November 2014

1. Key decisions on mergers

Approved mergers

The Commission has approved the following mergers:

Leo Constellation Limited and The global over the counter consumer healthcare business of Novartis AG

The proposed merger involves Leo Constellation Limited (to be renamed GlaxoSmithKline Consumer Healthcare Holdings Limited (GSK Healthcare) and the global over the counter business of Novartis AG (Novartis). In terms of the merger, GlaxoSmithKline Plc (GSK) and Novartis will transfer some of their respective over the counter pharmaceutical products into GSK Healthcare. GSK will acquire 63.5% interest in GSK Healthcare with Novartis acquiring the remaining 36.5%. Following the implementation of the proposed transaction, GSK will have sole control over GSK Healthcare. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market where the parties compete.

Novartis AG and GlaxoSmithKline plc's oncology business

The proposed merger involves Novartis AG and GlaxoSmithKline plc's oncology businesses. In terms of this transaction, Novartis will acquire the business relating to a portfolio of 13 oncology products of GlaxoSmithKline Plc (GSK). Novartis markets a range of oncology pharmaceuticals for the treatment of, amongst others, breast cancer and neuroendocrine tumours of pancreatic origin, leukaemia, acute lymphocytic leukaemia, gastrointestinal stromal tumours, retinal cell carcinoma, colorectal cancer.

GSK supplies 3 oncology products through Aspen Pharmacare (Pty) Ltd for the treatment of breast cancer, metastatic carcinoma of the ovary, treatment of recurring or persistent carcinoma of the cervix, palliative treatment, small cell lung, management of nausea and vomiting induced by cytotoxic chemotherapy and radio therapy.

Post-merger, the GSK oncology business will form part of the Novartis portfolio. The Commission is of the view that the proposed transaction is unlikely to substantially

prevent or lessen competition in the national market for the supply of oncology products.

GlaxoSmithKline plc and the global human vaccines business of Novartis AG

The merger is between GlaxoSmithKline Plc and the global human vaccines business of Novartis AG. In terms of this transaction, GSK will acquire the global human vaccines business of Novartis AG excluding the Novartis influenza business outside China. Post-merger, the Novartis human vaccines business will form part of the GSK portfolio.

GSK imports paediatric and adult vaccines against a range of infectious diseases such as, the prevention of hepatitis A, hepatitis B, invasive disease caused by influenza, chickenpox, diphtheria, pertussis, tetanus, rotavirus, cervical cancer, streptococcus pneumonia, and others.

The global human vaccine business of Novartis comprises of all research and development relating to the human vaccine business with all permits, licences, certificates, clearances, registrations, trade-marks and goodwill and other authorisations or consents issued.

The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

Scangroup Ltd acting through its subsidiary WPP Percy Ltd (WPP Group) and Experiential Marketing (Pty) Ltd (EMPL Group)

The proposed merger is between Scangroup Ltd and Experiential Marketing (Pty) Ltd. In terms of this transaction, Scangroup Ltd, acting through its subsidiary WPP Percy Ltd, will acquire 78.4% of the issued share capital of Experiential Marketing (Pty) Ltd. Post-merger; the WPP Group will acquire control of the EMPL Group. Scangroup has operations across Sub-Saharan Africa and offers a comprehensive and integrated range of advertising and communications services including brand/creative advertising, media investment management, marketing consultancy, digital advertising, public relations and public affairs, data investment management, experiential marketing and other ancillary services. The WPP Group also provides, through various operating companies, media buying services.

The EMPL Group is involved in strategic consulting, brand engagement, sponsorship consulting, special events, social programs, market research, public relations, sales promotion and retail marketing. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

Capespan (Pty) Ltd and Aspen International Services

The proposed merger is between Capespan (Pty) Ltd and Aspen International Services. In terms of the sale of shares and claims agreement, Capespan will acquire the shareholding and loan claims held by Mr. Gary Alan van Niekerk in and against Aspen. The proposed merger will result in Capespan holding 75% of the issued shares in Aspen and accordingly a controlling shareholder of Aspen.

Capespan is a holding company of shares. It provides certain management services including legal, corporate, treasury, group finance and executive services to its subsidiary companies. The Capespan Group is involved in the international procurement and marketing of fruit, the provision of logistical services as part of its export services, the operation of depot, storage and port terminal facilities and fruit farming activities.

Aspen is involved in the clearing and forwarding industry, specifically for the facilitation of direct fruit exports from South Africa. Other commodities include value added food products, liquor, packaging and plastics. Aspen's services can be categorised as logistical services (transportation of stock from cold stores to vessels) and export documentation services.

The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

Ticapax (Pty) Ltd and Rappa Holdings (Pty) Ltd

The proposed merger is between Ticapax (Pty) Ltd and Rappa Holdings (Pty) Ltd. In terms of this transaction, Ticapax will acquire 50% of the issued share capital of Rappa Holdings from the Janad Trust; and 50% of the issued share capital of Rappa Holdings from the Rynic Trust. Further, the Rynic Trust will subscribe for 26% of the issued share capital of Rappa Holdings. The proposed transaction will therefore result in Ticapax acquiring control over Rappa Holdings.

Ticapax is a newly incorporated company and does not provide any goods or services. Rappa Holdings extracts gold from carbonaceous raw materials procured from mine producers such as AngloGold Ashanti Limited, Gold Fields Limited, Harmony Gold Mining Company Limited and Sibanye Gold Limited in South Africa.

The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.



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Janwertick Investments (Pty) Ltd and the General Motors franchise business of Anderson Motors Ladysmith (Pty) Ltd

The merger is between Janwertick Investments (Pty) Ltd and the General Motors franchise business of Anderson Motors Ladysmith (Pty) Ltd. In terms of the memorandum of agreement, Janwertick will acquire the General Motors franchise business of Anderson Motors Ladysmith which comprises of fixed assets, workshop, licences and stock among others, as a going concern. Janwertick will not acquire any direct interest in Anderson Motors Ladysmith (Pty) Ltd. Post-merger; Janwertick will have sole control over the General Motors franchise business of Anderson Motors Ladysmith.

Janwertick is an investment company that operates a General Motors (GM) dealership located in Newcastle (KwaZulu-Natal). The GM dealership operated by Janwertick sells new and used light commercial and passenger vehicles, spare parts and accessories for Opel, Isuzu and Chevrolet vehicles.

The GM franchise business operated by Anderson Motors Ladysmith sells new and used light commercial and passenger vehicles, spare parts and accessories for Opel, Isuzu and Chevrolet vehicles. The General Motors franchise business of Anderson Motors Ladysmith also provides after sales services and repairs for Opel, Isuzu and Chevrolet vehicles.

The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

Mergers Approved with Conditions

Shogun Holding Und Finanz AG and Free State Buying Association Ltd (Kemco) and the businesses of Alpha Pharm East Cape Holdings (Pty) Ltd (APEC) and Alpha Pharm KwaZulu-Natal (Pty) Ltd (APKZN)

The Commission has approved with conditions, the merger between Shogun Holding Und Finanz AG and Free State Buying Association Ltd and the businesses of Alpha Pharm East Cape Holdings (Pty) Ltd and Alpha Pharm KwaZulu-Natal (Pty) Ltd.

In terms of the proposed transaction, the stock, staff and fixed assets of APEC and



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APKZN will be incorporated into Kemco. Shogun will then acquire 51% shareholding in Kemco which will include the businesses of APEC and APKZN by virtue of APEC and APKZN's prior disposal of their businesses to Kemco, in exchange for Kemco shares. Post-merger, Shogun will control the Alpha Pharm Group consisting of Kemco, APEC and APKZN.

Shogun does not conduct business in South Africa. However, its subsidiary Actor Holdings is active in the South African market through Actor Pharma and Mirren. Actor Pharma supplies its own scheduled and unscheduled pharmaceutical products to the wholesale market.

Kemco operates as a wholesaler of pharmaceuticals, supplying scheduled and non-scheduled medicines to member pharmacies and non-member pharmacies. APKZN operates as a wholesale chemist supplying scheduled and unscheduled medicines. APEC operates as a pharmaceutical wholesaler, supplying scheduled medicines and patent products to pharmacies, doctors and hospitals.

The conditions imposed relate to public interest concerns involving effect on employment of certain of the staff members post-merger. As such, the merging parties have agreed to a condition that limits the effect on employment to those 20 skilled employees occupying middle and senior management positions in the Procurement, Information Technology, Human Resources, Sales and Marketing, Operations Management, Finance and Administration departments.

2. New Complaints and Referrals

Isipani Construction (Pty) Ltd

The Commission has decided to refer a case against Isipani Construction (Pty) Ltd to the Competition Tribunal for their alleged involvement in collusive tendering in the construction sector.

This follows an investigation of the firms that did not participate in the construction fast track settlement process but were nonetheless implicated in cases during the phase two investigations which ensued after the construction fast track settlement process.

Massmart Holdings Limited v Shoprite Checkers Proprietary Limited, Pick n Pay Retailers Proprietary Limited and Spar Group Limited



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The Commission has noted a new complaint by Massmart Holdings Limited against Shoprite Checkers Proprietary Limited, Pick n Pay Retailers Proprietary Limited and the Spar Group Limited. The complaint relates to the long term exclusive lease agreements between these retailers and landlords of shopping malls, which in the view of Massmart Holdings; violate certain provisions of the Competition Act.

The Commission has decided to incorporate this complaint to similar cases currently being investigated and proceed with further investigations in this regard.

Charlene Mulder v Scarlet Dawn Trading 282 cc T/A Devco Electrical and Mechanical Wholesalers, The Delphic Oracle 80 cc T/A Promac Trading, The Business Zone 2154 cc T/A Uni-Trade

The Commission has decided not to refer the complaint by the Directorate of the Provincial Forensic Services of the Western Cape. The Directorate alleged that Devco, Promac and Uni-Trade may be engaging in corrupt and fraudulent activities in the market for the provision of maintenance related items at the Tygerberg Academic hospital in the Western Cape.

This has been done through the practice of submitting various price quotations at the hospital as though they were from different entities competing with each other for the tender. In this instance, one of them quoted with a lower price and the rest with higher prices to ensure that the lowest bidder is awarded the tender. It has since been uncovered by the Forensic Services Directorate that these companies in fact belong to the same person.

The Commission is of the view that the alleged conduct does not amount to a contravention of any provisions of the Competition Act but may, if proved true, amount to fraud. The matter has been referred back to the Forensic Services Directorate.

3. Appeal

Mondi v Competition

The Commission has noted the judgment of the North Gauteng High Court in the above matter. The High Court handed down its judgment on 12 November 2014. The judgment permits disclosure of documents which formed the basis of the Commission's decision to initiate a complaint during the investigation stage of a complaint in a review application. Given the significance of the precedent set by court on the Commission's investigations, the Commission has decided to appeal the matter to the Supreme Court of Appeal.



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