

## Statement on the decisions of the Competition Commission

To: All Media

Date: 11 June 2015

### 1. Referrals – Cartels

The Commission has taken a decision to refer three cartel cases to the Competition Tribunal (Tribunal) for adjudication.

The **first two referrals** are against each of **Core Relocations (Pty) Ltd and Mini Maxi Movers CC** for price fixing, division of markets and collusive tendering in the market for the supply of furniture removal services.

These two referrals followed the Commission's investigation, which was launched between 2010 and 2011 against 69 furniture removal companies for colluding on furniture removal tenders issued by various government departments and private sector clients. The collusion appears to have started from around 2007 to at least 2014.

The Commission investigations found that Core Relocations was involved in forty-four (44) separate instances of collusive tendering with Cape Express, JH Retief, Pro Pack and Sifikile in respect of relocation tenders. The Commission investigation further found that that Mini Maxi was involved in one (1) instance of collusive tendering with JH Retief.

The Commission is seeking an order declaring Core Relocations and Mini Maxi to be liable for payment of an administrative penalty equal to 10% of their annual turnover for each instance of collusive tendering. The Commission has already settled with fifteen (15) respondents, including Cape Express, JH Retief and Pro Pack. No relief is sought against Sifikile.

The **third referral** is against **Specialised Inserts CC and NC Specialised Fasteners CC** for divide markets by allocating specific type of products and customers.

In May 2015, the Commissioner initiated a complaint against Specialised Inserts CC and NC Specialised Fasteners CC for agreeing not to compete with each other in that Specialised Inserts CC would not enter the market for the manufacturing sheet metal and wire mesh while NC Specialised Fasteners CC would not enter into the market for turned metal products. These firms further agreed not to poach each other's customers.

The Commission is seeking an order declaring NC Specialised Fasteners to be liable for payment of an administrative penalty equal to 10% of its annual turnover. No relief is sought against Specialised Inserts.

## **2. Key decisions on Mergers and Acquisitions**

### **2.1 Large Mergers**

#### **Proposed merger between Drago International Ventures Limited (Drago) and Active TopCo Limited (Active TopCo)**

The Commission has recommended to the Tribunal that the large merger whereby Drago intends to acquire Active TopCo be approved without conditions. Post-merger, Drago will have sole control over Active TopCo.

Drago is a special purpose vehicle incorporated for the purpose of the proposed transaction. Brait SE, which controls Drago, is an investment holding company holding an investment portfolio of unlisted businesses operating in the broad consumer sector. Active TopCo operates a national network of commercial indoor clubs offering a range of fitness and wellness services.

#### **Proposed merger between Boxmore Plastics (SA) (Pty) Ltd (Boxmore) and Astrapak Manufacturing Holdings (Pty) Ltd (Astrapak)**

The Commission has recommended to the Tribunal that the large merger whereby Boxmore intends to acquire certain assets and the associated Cinqpet business owned by Astrapak, be approved without conditions. Post-merger, the Cinqpet business will be absorbed into the Boxmore business.

Boxmore specialises in the design, manufacture, distribution and sale of Polyethylene Terephthalate (PET) products, specifically bottles and pre-forms primarily for the beverage industry. Cinqpet's business is focused on producing PET converted beverage bottles primarily for Gauteng (i.e. Johannesburg, Pretoria and surrounding regions).

#### **Proposed merger between Friedshelf 1577 (Pty) Ltd (Friedshelf), River Lily Investments (Pty) Ltd (River Lily) and Newshelf 702 (Pty) Ltd (Newshelf) – (target firms)**

The Commission has recommended to the Tribunal that the large merger whereby Friedshelf intends to acquire River Lily and Newshelf, be approved without conditions. Post-merger, Friedshelf will have sole control over the target firms.

Friedshelf is a holding company and does not conduct any activities of its own. River Lily and Newshelf are holding companies and save for their pre-existing shareholding in Clientele; these do not conduct any activities. Clientele Life

Assurance Company Limited (Clientele Life) markets, distributes and underwrites insurance and investment products.

## **2.2 Intermediate Mergers**

### **Proposed merger between Neue Halberg-Guss GmbH (Halberg) and Atlantis Foundries (Pty) Ltd (Atlantis), and Mercedes Benz South Africa (MBSA)**

The Commission has approved with conditions, the intermediate merger whereby Halberg intends to acquire Atlantis and the loan book of MBSA. Post-merger Halberg will wholly-own Atlantis.

Halberg develops and produces cast iron cylinder blocks, crank shafts, and engine blocks for, inter alia, passenger car and trucks and industrial engines and supplies these products to all major European car manufacturers.

Atlantis produces automotive castings for the commercial vehicle industry. The products manufactured by Atlantis are principally for export purposes and are supplied to customers in the United States of America, Brazil, the United Kingdom, Germany and China.

The Commission found that the proposed transaction is likely to have a negative effect on the foundry sector should retrenchments occur in Atlantis, a labour opportunity deprived area within South Africa.

To address the concern, the Commission imposed an employment condition preventing any retrenchments as a result of the merger.

In addition to employment, the Commission imposed a condition requiring that the manufacturing plant/facilities of Atlantis are not relocated to premises that are outside of South Africa, for as long as Halberg has control over Atlantis Foundries. This condition ensures that the domestic productive capacity of Atlantis is maintained post-merger. .

### **Proposed merger between Grupo Ferroátlantica S.A. (Grupo F.A.) and Globe Specialty Metals Inc. (GSM)**

The Commission has approved with conditions, the intermediate merger whereby Grupo F.A. intends to acquire GSM. Post-merger, Grupo Villar Mir S.A. (GVM), the holding company of Grupo F.A. will have sole control over GSM.

In South Africa, the activities of Grupo F.A. are conducted through its subsidiary, Silicon Smelters (Pty) Ltd (SS), which supplies part of its inputs for the manufacture of silicon metal, ferrosilicon (FeSi) and microsilica – microsilica is a by-product of the production of both silicon metal and FeSi.

In South Africa, GSM owns Silicon Technology (Pty) Ltd (Siltech), which is incorporated in accordance with the company laws of South Africa. Siltech manufactures FeSi and microsilica.

In terms of the transaction, GVM will form a new wholly-owned subsidiary to be known as HoldCo, which will have a wholly owned subsidiary known as MergerSub. GSM will integrate with MergerSub. The proposed transaction is global and was also with other competition authorities.

There is a horizontal overlap in relation to the production of FeSi and by implication microsilica, as the process involving the production of FeSi gives off microsilica as a by-product. In addition, the activities of the merging parties overlap vertically in the proposed transaction as Siltech sources a significant portion-of its silica needs from SS. Furthermore, SS produces charcoal and wood that is required by Siltech as a reductant for the production of FeSi. SS further produces electrode paste, also a key input required by Siltech for the production of FeSi.

The merger is likely to raise competition as well as public interest concerns. Competition concerns are twofold. First, these arise in the supply of FeSi where the merged will be the only producer in South Africa. Although the Commission found that large customers of FeSi in South Africa are able to import the product, there are purchasers of small volumes who find it infeasible to do so. Second, there are vertical concerns Siltech is currently sourcing silica rock and electrode paste from third party suppliers, who could be foreclosed of a customer as a result of the merger. Public interest concerns are likely to arise as the merger could lead to consolidation and rationalisation of the merged entity's operations and impact negatively on the national metallurgical sector.

To address these concerns, the Commission imposed conditions requiring the merged entity to do the as follows:

- Continue sourcing silica rock and electrode paste from the identified local suppliers.
- Continue to operate the Siltech FeSi production facility in Newcastle, Kwazulu Natal, and invest as needed to maintain the facility for as long as the merged entity operates the facility.
- Implement a pricing remedy to address concerns from customers procuring small volumes of FeSi.

### **Proposed merger between China National Tire & Rubber Co. Ltd (CNRC) and Pirelli & C S.p.A (Pirelli)**

The Commission has approved without conditions, the intermediate merger whereby CNRC intends to acquire Pirelli. Post-merger, CNRC will have sole control over Pirelli.

CNRC is globally active in the research, development, production and distribution of tyres, rubber products and other related products. CNRC's major products include original equipment manufacturers and replacement tyres for heavy vehicles and passenger cars.

In South Africa, Pirelli through its subsidiary, Pirelli Tyre, distributes truck and bus tyres, motor vehicle tyres, motorsport tyres and motorcycle tyres through a network of independent retailers who then on-sell the tyres to end-user customers.

**Proposed merger between Fairvest Property Holdings Limited (Fairvest) and Redefine Properties Ltd (Redefine)**

The Commission has approved without conditions, the intermediate merger whereby Fairvest intends to acquire Redefine in respect of the property letting enterprises known as Middestad Centre and Mega Park (the target properties). Post-merger, Fairvest will acquire sole control over the target properties.

Fairvest is a property investment holding and Real Estate Investment Trust, with a unique focus on retail assets weighted toward non-metropolitan and rural shopping centres, as well as convenience and community centres in high growth nodes, close to commuter networks. The target properties are retail properties in Bloemfontein, Free State Province.

**Proposed merger between Tortello Investments No.154 (Pty) Ltd, to be renamed Land O Lakes HoldCo SA (Pty) Ltd (LOL SA) and Shanike Investments No. 235 (Pty) Ltd (Villa HoldCo)**

The Commission has approved without conditions, the intermediate merger whereby LOL SA intends to acquire Villa HoldCo. Post-merger, LOL SA will have direct control of Villa HoldCo and indirect control over the business of the Villa Group.

Land O' Lakes does not have presence in South Africa besides the establishment of the shelf company LOL SA. Land O' Lakes is a member-owned co-operative which produces an extensive range of agricultural supplies, dairy-based food products for consumers, foodservice professionals and food manufactures, as well as providing production and business services.

Villa HoldCo is a holding company that has previously not traded and was established for the purpose of restructuring the Villa Group. The Villa Group produces and is a wholesale supplier of off-patent, generic crop protection products to dealers (retailers) covering all the major crop groups throughout South Africa.

**Proposed merger between Canon South Africa Proprietary Limited (Canon South Africa) and Bid Industrial Holdings Proprietary Limited (Bid Industrial Holdings)**

The Commission has approved without conditions, the intermediate merger whereby Canon South Africa intends to acquire Bid Industrial Holdings, which is conducted through the agency of Bid Information Exchange Proprietary Limited

(BIE), trading as Océ South Africa. Post-merger, Canon South Africa will control and operate the business of Bid Industrial Holdings.

Canon South Africa provides products such as inkjet printers, scanners, faxes, personal copies, multifunctional devices, calculators, consumables, multimedia projectors as well as a full range of photo and video products. BIE trading as Océ South Africa also distributes a limited range of Canon branded products.

**Proposed merger between Wispeco Holdings (Pty) Ltd (Wispeco) and Pressure Die Cast (Pty) Ltd (PDC) and Cedar Point Trading 372 (Pty) Ltd (Cedar)**

The Commission has approved without conditions, the intermediate merger whereby Wispeco intends to acquire PDC and Cedar. Post-merger, Wispeco will have control over PDC and Cedar.

Wispeco is a manufacturer and distributor of aluminium extrusions and consists of four main operating units including re-melt billet production, aluminium extrusions, finishing and stockist divisions. PDC and Cedar are jointly controlled by the Trevor Sweeney Family Trust and the Fitzsimons Family Trust.

PDC is a non-ferrous foundry with customers active in the several industries, including Fire protection, LED lighting and Plumbing. Cedar is a property holding company, which owns the property on which the PDC factory is located.

**Proposed merger between EOH Mthombo (Pty) Ltd (EOH Mthombo) and BSVA Integrated Services (Pty) Ltd (BSVA)**

The Commission has approved without conditions, the intermediate merger, whereby EOH Mthombo intends to acquire BSVA from BankservAfrica. Post-merger EOH Mthombo will control BSVA.

EOH is an investment and management company. Through its subsidiaries EOH Holdings provides services and products in three major areas, namely, Consulting, Technology (Software and Infrastructure) and Outsourcing.

BSVA's Financial Solutions unit (BSVA FS) is responsible for developing, marketing, installing and implementing BSVA's retail banking systems on a 'software as a service' basis. Another subsidiary, BSVA ICT, is responsible for maintaining and supporting BSVA's retail banking system as well as providing managed information and communication technology services both to external clients and to BankservAfrica.

**Proposed merger between Halliburton Company (Halliburton) and Baker Hughes Incorporated (Baker Hughes)**

The Commission has approved without conditions, the intermediate merger whereby Halliburton intends to acquire Baker Hughes. Post-merger, Halliburton will have sole control over Baker Hughes.

Halliburton and Baker Hughes are service companies that provide oilfield products and services to the global energy industry throughout the phases of an oil or gas reservoir.

#### **Proposed merger between Cavalier Livestock (Pty) Ltd (Cavalier Livestock) and GWK Vleis Meat (Pty) Ltd (GWK Vleis)**

The Commission has approved without conditions, the intermediate merger whereby Cavalier Livestock intends to acquire GWK Vleis, in respect of its sheep procurement division (the Target Business). Post-merger, Cavalier Livestock will have sole control over GWK Vleis.

Cavalier Livestock is active in the farming and the provision of feedlot facilities. It is also active in the procurement/sourcing of livestock (cattle and sheep) through a national footprint with internal field personnel and agents in almost every province of South Africa. The Target Business procures sheep from private farmers for GWK Vleis' feedlots and abattoir operations.

#### **Proposed merger between Lion Match Properties (Pty) Ltd (Lion Match) and Sasol South Africa (Pty) Ltd (Sasol)**

The Commission has approved without conditions, the intermediate merger whereby Lion Match intends to acquire the candle manufacturing business and assets used by Price's Candles. Post-merger, Lion Match will have sole control over Sasol's Price Candles' division.

Lion Match manufactures, packages and distributes safety matches, polishes, and is responsible for sale and marketing of fire-lighters. Price's Candles is operated as a division of Sasol (formerly known as Sasol Chemical Industries (Pty) Ltd).

### **2.3 Small mergers**

#### **Proposed merger between NJG Close Corporation (NJG) and MICC Properties (Pty) Ltd (MICC Properties)**

The Commission has approved without conditions, the small merger whereby NJG intends to acquire Kokstad Game Centre from MICC Properties. Post-merger, NJG will become the sole owner of the Kokstad Game Centre.

NJG is a shelf close corporation and has not traded before. The members of NJG have personal property interests in retail properties in the Kokstad area. They have a diverse property portfolio including office and retail property.

MICC Properties is ultimately controlled by Vukile Property Fund Limited (Vukile). Both Vukile and MICC Properties are primarily involved in property letting. The property to be transferred from MICC Properties is Kokstad Game Centre, a community shopping centre, in Kokstad, KwaZulu-Natal Province.

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