

## **Statement on the decisions of the Competition Commission**

To: All Media

Date: 25 February 2015

### **1. Key decisions on mergers and acquisitions**

#### **1.1 Large Mergers**

##### **Proposed merger between Growthpoint Properties Limited (Growthpoint) and Acucap Properties Limited (Acucap)**

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

Growthpoint is a property investment holding company with a portfolio consisting of rentable retail space, rentable office space and rentable industrial space. Acucap is a property loan stock company that invests in retail property situated in major urban centres.

##### **Proposed merger between Ethos Private Equity Fund VI (Ethos Fund VI) and two business divisions of Nampak Products Limited (Nampak), namely: Nampak Corrugated and Nampak Tissue (target businesses)**

The Commission has recommended to the Competition Tribunal that the large merger whereby Ethos Fund VI intends to acquire Nampak Corrugated and Nampak Tissue, be approved without conditions. Post-merger, Ethos Fund VI will have control over the target businesses.

Ethos Fund VI is a private equity investment fund that encompasses various local and foreign limited investors. Nampak Corrugated is active in the manufacturing of corrugated packaging in South Africa. Nampak Tissue is active in the manufacturing of tissue paper products and other related household products in Southern Africa.

##### **Proposed merger between Sasfin Bank Ltd (Sasfin Bank) and Fintech (Pty) Ltd (Fintech)**

The Commission has recommended to the Competition Tribunal that the large merger whereby Sasfin Bank intends to acquire Fintech, be approved with conditions. Post-merger, Sasfin Bank will have sole control over Fintech.

The Sasfin Group provides banking and financial services through various business segments. Fintech offers asset rental finance solutions to businesses and equipment suppliers.

The Commission found that the proposed transaction raises public interest concerns in that eight (8) positions are likely to be negatively affected. In order to address the effect the proposed transaction may have on

employment, the Commission recommends that a condition be imposed that no more than 8 (eight) retrenchments will occur as a result of the proposed transaction.

## **1.2 Intermediate Mergers**

### **Proposed merger between Bounty Brands (Pty) Ltd (Bounty Brands) and Musgrave Agencies cc (Musgrave)**

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

Bounty Brands is an investment holding company and does not provide any products or services. Relevant to the transaction are three of its subsidiaries that are active in the importation and distribution of UK branded FitFlop footwear; street and skateboard themed footwear and sport nutrition supplements in South Africa.

Musgrave is primarily involved in the importation and distribution of branded clothing apparel. The brands include Jeep, Utility, SARU, EFC, Bloodline, Calibre and Shotgun. Musgrave distributes its products to a number of leading retailers throughout the country.

### **Proposed merger between Bounty Home and Care Proprietary Limited (Bounty Home and Care) and Empowerment Opportunity Group Proprietary Limited (EOG)**

The Commission has approved without conditions, the intermediate merger whereby Bounty Home and Care intends to acquire EOG. Post-merger, Bounty Home and Care will exercise sole control over EOG.

Bounty Home and Care is an investment holding company and does not provide any products or services. Relevant to the proposed transaction, are the following activities of its subsidiaries active in the manufacture and supply of cosmetics, fragrances and skin care services. EOG markets and distributes Rooibos-based skin care products, fragrances, cosmetics and health care products.

### **Proposed merger between Puma Energy Africa Holdings B.V. (Puma Energy Africa), Drakensberg Oil Proprietary Limited (Drakensberg Oil) and DP Drakensberg Properties (Pty) Ltd (Drakensberg Properties) – (the Drakensberg Companies)**

The Commission has approved without conditions, the intermediate merger whereby Puma Energy Africa intends to acquire the Drakensberg Companies. Post-merger, Puma Energy Africa will have sole control over the Drakensberg Companies.

The Puma Group is a global provider of fuel, lubricants and other oil products. Within South Africa, the Puma Group (through its subsidiary) is active in the bulk supply of refined petroleum products.

Drakensberg Oil is active in the wholesale and resale of petroleum products (including petrol and diesel) to commercial customers in KwaZulu-Natal and Mpumalanga Provinces. Drakensberg Properties is active in the renting out of investment property.

### **1.3 Termination of Conditions**

#### **Termination of conditions imposed in the merger between Ziningi Properties (Pty) Ltd and Rentable Enterprise known as UMzimkhulu Mall owned by Thina Bantu Trading (Pty) Ltd**

On 30 July 2014, the Commission approved the above merger subject to certain public interest conditions. The conditions obliged Ziningi to negotiate that the exclusivity clauses in the relevant lease agreements be removed and that if such negotiations succeed, submit a copy of the newly signed lease agreements to the Commission.

The merging parties have since advised the Commission that the deal fell through after the Commission approved the transaction. In the end, the mall was not transferred to the purchaser, and therefore there was no need for Ziningi to negotiate with Shoprite to remove the exclusivity clauses as contemplated in the Conditions.

#### **Termination of conditions imposed in the merger between the trustees for the time being of the Mergence Africa Property Investment Trust and Shoprite Pretoria North, Ziyabuya Shopping Centre, Gezina Galleries, Blackheath Pavilion, Woodmead Square and Woodmead Value Mall**

On 05 November 2014, the Commission approved the above merger subject to certain public interest conditions. The conditions obliged Mergence Africa Property Investment Trust to negotiate with Shoprite in respect of the current effective lease agreements, in the utmost good faith, to have the exclusivity clause in the lease agreements in respect of the Ziyabuya Shopping Centre and Gezina Galleries removed.

Upon examining submissions by the merged entity, the Commission is satisfied that there has been sufficient compliance with the conditions.

#### **Termination of conditions imposed in the merger between Mergence Africa Property Investment Trust and Redefine Properties Limited in respect of a portfolio of 6 property letting enterprises**

On 05 November 2014, the Commission approved the above merger subject to certain public interest conditions. The conditions obliged Mergence Africa Property Investment Trust to negotiate with Shoprite and Pick 'n Pay in

respect of six (6) property letting enterprises, in the utmost good faith, to have the exclusivity clause in the lease agreements removed.

Upon examining the information received, the Commission is satisfied that Mergence Africa Property Investment Trust has in the utmost good faith undertaken reasonable commercial endeavours, to negotiate respectively with Shoprite and Pick 'n Pay to remove the exclusivity clauses and have thus complied with the Conditions.

### **Termination of conditions imposed in the merger between Octodec Investments Limited (Octodec) and Premium Properties Limited**

On 05 November 2014, the Competition Tribunal approved the above merger subject to certain public interest conditions.

The conditions obliged Octodec to negotiate with Pick 'n Pay, Spar Hatfield and Tops Spar Hatfield in respect of current effective lease agreements, in the utmost good faith, to have the exclusivity clause in the lease agreements removed.

Upon examining the information received, the Commission is satisfied that Octodec has in the utmost good faith undertaken reasonable commercial endeavours, to negotiate respectively with the affected parties to remove the exclusivity clauses and have thus complied with the conditions.

### **Termination of conditions imposed in the merger between Wispeco (Pty) Ltd and Xline Aluminium Solutions (Pty) Ltd**

On 15 November 2011, 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 offered the Grade G employees alternative positions.

Upon examining submissions by the merged entity, the Commission is satisfied that there has been sufficient compliance with the conditions

## **2. Non Referrals**

### **2.1 The Commission has taken a decision to non-refer the following cases on the basis of lack of evidence:**

1. Harry Greenberg v Belgotex.
2. The South African Battery Importers Association v First National Battery, Powertech Batteries, Dixon Batteries; Powertech t/a Willard Batteries; and the South African Battery Manufacturers of South Africa.

**END**

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