

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

To: All Media

Date: 26 January 2015

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

#### **1.1 Large Mergers**

##### **Proposed merger between DRA International Limited (DRAI) and Taggart Global South Africa Investments Holdings (Pty) Ltd (Taggart)**

The Commission has recommended to the Tribunal that the large merger whereby DRAI intends to acquire Taggart from Forge Group Limited (FGL), be approved without conditions. Post-merger, Taggart will be solely controlled by DRAI.

The DRAI group is a multinational consulting firm, which provides engineering, procurement and construction management services. Taggart is a wholly-owned subsidiary of Forge Group Limited (FGL), a company in liquidation and incorporated in accordance with the laws of Australia.

##### **Proposed merger between Bytes People Solutions (BPS) and Inter-Active Technologies (Pty) Ltd (IAT)**

The Commission has recommended to the Tribunal that the large merger whereby BPS, an unincorporated division of Bytes Technology Group South Africa (Pty) Ltd (Bytes), intends to acquire sole control of IAT, be approved, with conditions. Post-merger, Bytes will exercise sole control over IAT.

BPS is a professional provider of talent management services. The services provided include training, business processing outsourcing (BPO), talent management and assessment service. IAT also operates in the BPO arena, offering services such as contact centres, communication, professional and training services.

In relation to the effect on employment, the Commission found that the proposed transaction will result in fewer retrenchments than would otherwise have been the case if IAT had to be liquidated, as it is struggling financially. The liquidation of IAT would result in the retrenchment of 1137 employees, which constitutes the full staff complement of the business. Therefore, considering the circumstances which led to the sale of IAT, the proposed transaction offers an opportunity to save jobs. The Commission imposed conditions to ensure that there will be no additional job losses as a result of the proposed transaction.

## 1.2 Intermediate Mergers

### **Proposed merger between Accelerate Property Fund Limited (Accelerate) and the Shoprite-Checkers Distribution Centre**

The Commission has approved, without conditions, the intermediate merger whereby Accelerate intends to acquire an immovable property known as the Shoprite-Checkers Distribution Centre, situated at 1 and 9 Bolt Avenue, Montague Gardens, in the Western Cape Province (the Bolt Avenue Property). Post-merger, Accelerate will have sole control over the Bolt Avenue Property.

Accelerate is a property investment holding firm that has a portfolio of 51 properties comprising of 33 rentable retail, 15 office and 3 light industrial properties located in the Western Cape, KwaZulu-Natal and Limpopo Provinces. The Bolt Avenue Property is a light industrial property used as a warehouse and distribution centre.

### **Proposed merger between Noordfed Eiendoms Beperk (Noordfed) and Empangeni Milling Proprietary Limited (Empangeni)**

The Commission has approved, with conditions, the intermediate merger whereby Noordfed intends to acquire the white maize milling business of Empangeni. Post-merger, Noordfed will exercise sole control over Empangeni. Both firms are involved in the production and distribution of white maize milling products.

In the absence of the proposed merger, 215 employees would likely face retrenchment due to financial difficulties faced by both firms. In order to limit the number of the employees likely to be affected, the Commission imposed conditions that the merged entity shall ensure that the retrenchment of employees is limited to 75 affected employees in Empangeni and 3 affected employees in Noordfed.

### **Proposed merger between Tajari Motors (Pty) Ltd (Tajari Motors) and Sandown Motors Fourways**

The Commission has approved, without conditions, the intermediate merger whereby Tajari Motors intends to acquire Sandown Motors Fourways, as a going concern. Post-merger, Tajari Motors will have sole control over Sandown Motors Fourways.

Tajari Motors is a special purpose firm that does not conduct any activities. Sandown Motors Fourways is a dealership that sells new and used Chrysler, Jeep, Dodge, Fiat, Fiat Professional and Alfa passenger vehicles (including small vehicles, luxury vehicles, speciality vehicles, sport utility and minivans) and light commercial vehicles.

**Proposed merger between Turnberry Rubicon LP (United Kingdom) (Turnberry) and SPX Flow Technology (Pty) Ltd (SPX Flow)**

The Commission has approved without conditions, the intermediate merger whereby Turnberry intends to acquire a stake in SPX Flow. As a result of the proposed transaction, Turnberry will have sole control over SPX Flow.

Turnberry is a holding company that conducts financing transactions. It does not sell any product or provides any services in, or from South Africa. SPX Flow designs, manufactures and installs engineered solutions used to process, blend, meter and transport fluids. SPX Flow also supports global food and beverage, power & energy and industrial markets.

**Proposed merger between SKF South Africa (Pty) Ltd (SKF SA) and Lincoln Lubrication SA (Pty) Ltd (Lincoln SA)**

The Commission has approved without conditions, the intermediate merger wherein SKF SA intends to acquire 100% of the shares in Lincoln SA.

SKF SA supplies a full range of lubrication equipment and systems, including lubricants, manual lubrication tools (both grease and oil based), automatic lubrication systems (including single and multi-point automatic lubricators), lubrication system components, and lubrication management tools. Lincoln SA supplies and installs lubrication systems manufactured by Lincoln GmbH.

**Proposed merger between Morolo Family Trust (Morolo Trust) and Wheatfield Investments No. 262 (Pty) Ltd (Wheatfield 262) and Aka Holdings**

The Commission has approved, without conditions, the intermediate merger whereby Aka Holdings intends to buy back shares from the RJ Khoza Family Trust. Post-merger, the Morolo Trust and Wheatfield 262 will each continue to exercise joint control over Aka Holdings.

The Morolo Trust is an investment firm that only holds direct investment in Mooiland, Gunsboro, Wheatfields 271 and Aka Holdings. Wheatfields 262 is a long-term investment holding company that holds long-term non-controlling minority equity investments. Aka Holdings is an investment holding firm that owns 100% of the issued shares of Aka Hotel.

**Proposed merger between Yanfeng Automotive Trim System Company Limited (Yanfeng) and Johnson Controls Automotive South Africa (Pty) Ltd (JCSA)**

The Commission has approved, without conditions, the intermediate merger whereby Yanfeng intends to acquire control over JCSA. The proposed transaction is an international transaction between the Yanfeng Group

(incorporated in China) and JCI (incorporated in the USA). In South Africa, JCI's operations are conducted by JCSA.

The Yanfeng Group comprises of firms that produce automotive interior and exterior motor vehicle components that include, seating, electronics and safety systems at its manufacturing facilities located in North America, India and China.

JCSA manufactures door panels and instrumental panels (dashboard) for Original Equipment Manufacturers (OEMs) at its facilities located in Pretoria and East London.

**Proposed merger between In 2 Food Group (Pty) Ltd (In2Food) and the business of Garon Foods CC trading as Garon Specialities (Garon)**

The Commission has approved, without conditions, the intermediate merger whereby In2Food intends to acquire the business of Garon as a going concern. Post-merger, In2Food will have sole control over the business of Garon.

In2Food manufactures and supplies convenient food products to retailers. It supplies its food products to Woolworths and McDonalds South Africa. Garon is a manufacturing company that supplies seafood products and condiments. It specialises in smoked fish such as mackerel, snoek and haddock.

**Proposed merger between Mergence Africa Property Investment Trust (MA Trust) and Eagle's Nest**

The Commission has approved, without conditions, the intermediate merger whereby the MA Trust intends to acquire the entire immovable property and rental enterprise of Eagle's Nest from Eagle Creek as a going concern. Post-merger, Eagle's Nest will be solely controlled by the MA Trust.

Eagle's Nest is constituted of four warehouse properties with a total estimated gross lettable area of approximately 24,310m<sup>2</sup> and is situated between Struanway and Uitenhage Roads, New Brighton, Port Elizabeth, Eastern Cape Province.

**Proposed merger between Secura Investments Sàrl (Secura) and Betafence Holding NV**

The Commission has approved, without conditions, the intermediate merger whereby Secura, which is controlled by CVC Capital Partners SICAV-FIS S.A. (CVC), intends to increase its shareholding in Betafence Holding NV. Post-merger, Secura will have sole control over Betafence Holding NV.

Secura is a recently incorporated company for the purposes of the proposed transaction and therefore does not provide any goods or services. Betafence

Holding NV is an international holding company headquartered in Belgium. Betafence Holdings SA provides fencing solutions for perimeter protection and wire mesh products for a variety of industrial applications.

**Proposed merger between Sumitomo Corporation Africa Proprietary Limited (SCA) and Summit Wind Power South Africa Proprietary Limited (SWPSA)**

The Commission has approved, without conditions, the intermediate merger wherein SCAF intends to acquire sole control over SWPSA.

SCAF and Sumitomo act as agents in South Africa between buyers and sellers, both locally and internationally, in sourcing of commodities ranging from motor vehicles, wood chip, foodstuffs, steel products, machinery, construction, financing equipment, ferrous and non-ferrous metals.

**Proposed merger between Ascendis Health Limited (Ascendis) and Lexshell 834 Investments (Pty) Ltd (Lexshell)**

The Commission has approved, without conditions, the intermediate merger between Ascendis and Lexshell. In terms of the proposed transaction, Ascendis intends to acquire Lexshell. Post-merger, Ascendis will control Lexshell, the Scientific Group (Pty) Ltd (SG) and its Science Division.

Ascendis forms part of a larger group of health and care brand companies, offering a variety of nutrition and care products for humans, plants and animals. Lexshell, through its subsidiary, SG, distributes medical devices and specialises in preventative care through in vitro diagnostic services that primarily involve the inspection and testing of blood cells, tissues and bodily fluids.

**Proposed merger between Tellumat (Pty) Ltd (Tellumat) and Structured Connectivity Solutions (Pty) Ltd (SCS), and Chrystalpine Investments 9 (Pty) Ltd (Chrystalpine) (Target Firms)**

The Commission has approved, without conditions, the intermediate merger wherein Tellumat intends to acquire the Target Firms. Following the implementation of the proposed transaction, Tellumat will have sole control over the Target Firms.

Tellumat is involved in the design, manufacture, distribution and installation of own and imported electronic technology products and custom solutions for the aviation, telecommunications, defence and contract manufacturing industries. SCS is a project management company assisting businesses with the design layout of their information and communication technology ("ICT") infrastructure. Chrystalpine is an investment holding company that does not provide any products or services.

### **Proposed merger between Newshelf 1289 Proprietary Limited (Newshelf 1289) and Teraco Data Environments (Pty) Ltd (Teraco)**

The Commission has approved, without conditions, the intermediate merger whereby Newshelf 1289 intends to acquire Teraco. Post-merger, Teraco will be solely controlled by Newshelf 1289.

Newshelf 1289 is a newly formed company and therefore does not provide any goods or services. Teraco is a provider of data centre services to a range of customers including network providers, service providers, enterprise clients and others.

### **Proposed merger between BCL Investments (Pty) Ltd (BCL) and Norilsk Nickel Africa (Pty) Ltd (NNAf)**

The Commission has approved, without conditions, the intermediate merger wherein BCL intends to acquire 100% shareholding in NNAf. Post-merger, BCL will acquire sole control over NNAf

NNAf is involved in prospecting, exploration, extraction, refining and metallurgical processing of minerals, as well as in production, marketing and sale of base and precious. BCL is a newly formed investment firm with mining operations in Botswana but it has no operations in South Africa.

## **1.3 Small mergers**

### **Proposed merger between Amka Products (Pty) Ltd (Amka) and Unilever PLC and Unilever South Africa Proprietary Limited in respect of the Mousson bubble bath Business in South Africa**

The Commission has approved, without conditions, the small merger whereby Amka Products intends to purchase the Mousson bubble bath business from Unilever PLC and Unilever South Africa. Post-merger, Amka will acquire sole control over the Mousson bubble bath business and the Mousson brand.

Amka is involved in the supply of a diverse portfolio of fast moving consumer goods (FMCGs) including the research, development, marketing, manufacture and supply of branded hair care, personal care and homecare products.

Unilever PLC is a worldwide supplier of FMCGs offering food, refreshment, home care and personal care products to the market. Unilever PLC provides activities in South Africa through Unilever South Africa.

## **2. Finalised Complaints**

### **Datagenics Proprietary Limited V Telkom SOC Limited**

The Commission has decided to non-refer the above complaint in terms of which the complainant alleged that Telkom contravened the Constitution and failed to conform to the Public Finance Management Act 1 of 1999 as amended (the PFMA) by not adhering to the prerequisite of having an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.

The complainant is a networking company, offering specialized and professional networking services and products. The Commission investigated this complaint and advised the complainant to approach the Public Protector as a Chapter 9 institution within the Constitution competent of dealing with the alleged conduct.

The Commission also recommends that the complainant approach ICASA as the relevant body overarching the telecommunications industry in South Africa as well as the National Treasury as the custodians of the PFMA.

**Granulated Bafana Cement (Pty) Ltd V Mittal Steel Saldanha (Pty) Ltd, Pretoria Portland Cement Company Ltd, Lafarge South Africa Holdings (Pty) Ltd; Multipurpose Cement cc and Afrisam Ltd**

The Commission has decided to non-refer the above complaint in terms of which the complainant alleged that a long-term agreement to supply raw iron granulated slag (“slag”), which is the core ingredient in the production of cement, concluded between the respondents, has the effect of lessening competition and preventing smaller entities from expanding in the market.

The complainant is a small cement producing entity seeking to increase its production capacity.

The Commission investigated this complaint and found that the agreement for the supply of slag between the respondents does not lead to a substantial lessening of competition and is also not an exclusionary act.

**Ms. Mamolopa Gladys Mofokeng V Famous Brands Ltd (Mugg & Bean Franchise)**

The Commission has decided to non-refer the above complaint in which the complainant alleged that Famous Brands refused to give her the confirmation letter that was required by the Airport Company of South Africa (ACSA) in order to tender for the Mugg & Bean franchise at OR Tambo International Airport (ORTIA).

The complainant asserted that Famous Brands refused to grant her the confirmation letter in order to protect the incumbent franchisee at ORTIA, and effectively preventing competition between potential bidders and limiting the ability of bidders to tender for retail outlets at ORTIA

The Commission investigated this complaint and found that the alleged conduct fails to substantiate a contravention of the Act.

**Mantelli's Biscuit Factory V Air Chefs (SOC) Ltd and Anglo Vaal Industries (AVI)**

The Commission has decided to non-refer the above complaint in which the complainant, specialising in smaller runs of niche biscuits and cookies, alleged that the Respondents are preventing it from supplying the South African Airways (SAA) with dry snacks, and is of the view that the conduct is anti-competitive.

The Commission investigated this complaint and found that the complainant was not in any way being prevented from supplying SAA by the respondents.

**For more information:**

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