



competition commission
south africa

Statement on the decisions of the Competition Commission

Date: 03 November 2016

1. Key decisions on Mergers and Acquisitions

Proposed merger between ResHub (Pty) Ltd (ResHub) and Hospitality Property Fund Limited (HPF), the business and underlying properties of the Sandton Sun, the Intercontinental Sandton Towers, the Garden Court Sandton City and the Sandton Convention Centre property (Three Transferred Hotels)

The Commission has recommended the approval, without conditions, of the large merger whereby ResHub and HPF intend to acquire the Three Transferred Hotels to the Tribunal.

HPF is a Real Estate Investment Trust. HPF is wholly-owned by Southern Sun Hotels (Pty) Ltd (SSH). ResHub is controlled by Southern Sun Hotel Interests (Pty) Ltd (SSHI) which, in turn, is a wholly-owned subsidiary of SSH. SSH is an indirectly wholly-owned subsidiary of Tsogo Sun.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the affected markets. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Richards Bay Alloys Proprietary Limited (RBA) and The Business of Tata Steel Kwazulu-Natal (Pty) Ltd (Tata Steel KZN Business)

The Commission has recommended to the Tribunal an approval, without conditions, in the large merger whereby RBA intends to acquire Tata Steel KZN Business.

RBA is a global asset manager and provides financial solutions for the ferroalloy, metal mineral, mining and energy industries. Tata Steel KZN is under liquidation and is thus currently under the control of joint liquidators.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Fortress Income Fund Limited (Fortress) and Lodestone REIT Limited (Lodestone)

The Commission has recommended to the Competition Tribunal (Tribunal) an approval, without conditions, in the large merger whereby Fortress intends to acquire Lodestone.

Fortress owns a property portfolio comprising industrial, retail, and office properties in the Gauteng, Western Cape, KwaZulu-Natal, Mpumalanga, Eastern Cape, Limpopo, Free State and North West provinces. Lodestone owns a property portfolio comprising industrial, retail and residential properties in the Gauteng, North West, KwaZulu-Natal, Limpopo, Western Cape, Northern Cape and Mpumalanga provinces.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets. In addition, the proposed transaction does not raise public interest concerns.

Proposed merger between K2016379893 (South Africa) (Pty) Ltd (Bidco) and Universal Industries (Pty) Ltd (Unicorp)

The Commission has recommended to the Tribunal an approval, without conditions, in the large merger whereby Bidco intends to acquire Unicorp.

Bidco is a newly established firm for the purposes of the proposed transaction and as such does not provide any goods and services. The controlling firms of Bidco are investment holding companies with investments in the industrial sector, financial sector, media industry, technology sector and the leisure sector. Unicorp is a South African manufacturer and distributor of commercial food preparation and storage equipment mainly to the food retail, wholesale, hospitality, manufacturing and related industries.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between South African Investment Partnership III (SAIP III), Capitalworks Fund II SPV Partnership (Capitalworks Fund) and IQ Group Holdings Proprietary Limited (IQGH)

The Commission has approved, without conditions, the intermediate merger whereby SAIP III and Capitalworks Fund intend to acquire IQGH.

SAIP III and Capitalworks Fund are private equity investors that seek to invest in a diversified portfolio of privately negotiated equity or equity related investments. IQGH is an investment holding company and also provides management consulting services.

The Commission found that the proposed transaction does not result in any horizontal overlap and that there is no vertical relationship between the activities of the merging parties. As such, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition. The proposed transaction also does not raise any public interest concerns.

Proposed merger between African Pioneer Group (Pty) Ltd (African Pioneer) and Seven Bridges Trading 23 (Pty) Ltd t/a Caltex Eastern Cape Marketer (Seven Bridges)

The Commission has approved, without conditions, the intermediate merger whereby African Pioneer intends to acquire Seven Bridges.

African Pioneer is a private investment holding company and holds interests in the food & beverages, gaming and leisure, petroleum and renewable energy sectors. Seven Bridges

is the master franchisor for approximately one hundred (100) Caltex retailers in the Eastern Cape.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market as there is no overlap between the activities of the merging parties. In addition, the proposed transaction is unlikely to raise any public interest concerns.

Proposed merger between K2016316243 (South Africa) (Pty) Ltd (BEE SPV) and Wescoal Holdings Limited (Pty) Ltd (Wescoal)

The Commission has approved, without conditions, the intermediate merger whereby BEE SPV intends to acquire Wescoal.

BEE SPV is a newly incorporated firm established for the purposes of holding shares in the target firm and as such it does not provide any products or services. Simeka is a private company focused on private investments in Africa and it has investments in the mining, healthcare and real estate industries.

Wescoal is an investment and management company with operating subsidiaries engaged in the exploration, mining, processing, supply, sales and distribution of coal and coal-related products.

The Commission found that the proposed transaction is unlikely to change the structure of any market as there will be no accretion in market share in any market. Therefore, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Ellmog Investment (Pty) Ltd (Ellmog Investments) and Redefine (Pty) Ltd (Redefine) in respect of 222 Smit Street (the Target Property)

The Commission has approved, without conditions, the intermediate merger whereby Ellmog Investments intends to acquire the Target Property from Redefine.

Ellmog Investments is a newly incorporated entity and does not have any products or services. The Eric Ellerine Trust is a property investment and trading company and its property portfolio includes retail, office and specialised retail properties. The Target Property is a Grade B office property that is located in Braamfontein, Johannesburg, in the Gauteng Province.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rentable space in office property. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Unitrans Automotive (Unitrans Automotive), a division of Pepkor Trading (Pty) Ltd (Pepkor Trading) and The Messina Toyota Trust in respect of the Business of Messina Toyota (Messina Toyota)

The Commission has approved, without conditions, the intermediate merger whereby Unitrans Automotive intends to acquire Messina Toyota.

Unitrans Automotive represents Pepkor Trading's automotive retail activities and its key product and service offerings are the sale of new and pre-owned passenger and light commercial vehicles, parts and accessories and after-market services. Messina Toyota is a Toyota franchised motor vehicle dealership located in Musina in the Limpopo Province.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the sale of used passenger and light commercial vehicles and the provision of after sales services such as parts and accessories, service and repair of vehicles as the above mentioned markets appear to be competitive. In the sale of new passenger and light commercial vehicles in Musina and the surrounding areas, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition, as there are alternative players in the market. Furthermore, the proposed transaction does not raise any public interest concerns.

Proposed merger between Unitrans Automotive (Unitrans Automotive), a division of Pepkor Trading (Pty) Ltd (Pepkor Trading) and The Koos Nel Group comprising of Nel Auto (Pty) Ltd, Jacques Nel Auto (Pty) Ltd and Waterberg Inspectacar (Pty) Ltd (Waterberg Inspectacar)

The Commission has recommended to the Tribunal an approval, without conditions, in the large merger whereby Unitrans Automotive intends to acquire the Koos Nel Group.

Unitrans Automotive represents Pepkor Trading's automotive retail activities and its key product and service offerings are the sale of new and pre-owned passenger and light commercial vehicles, parts and accessories and after-market services. The Koos Nel Group operates three (3) motor vehicle dealerships in Mokopane, in the Limpopo Province.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the sale of new passenger and light commercial vehicles. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Capital Propfund (Pty) Ltd (Capital), JR209 Investments (Pty) Ltd (JR209), in respect of the vacant land and immovable property and letting enterprise to be constructed on Portion 61 (a portion of Portion 8) of the farm Witfontein 16, in the City of Ekurhuleni, Gauteng (Witfontein)

The Commission has recommended to the Tribunal an approval, without conditions, in the large merger whereby Capital intends to acquire Witfontein from JR209.

Capital is a property ownership group which holds properties such as industrial, office, retail and development and miscellaneous use properties. The primary target property is Witfontein, which is vacant land. Witfontein is intended to be developed into lettable light industrial property.

The Commission found the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of light industrial property. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Islandsite Investments One Hundred and Eighty (Pty) Ltd (Islandsite), Coalcor Mining (Pty) Ltd and Klipbank Mining (Pty) Ltd in respect of underground mining equipment and machinery, and contracts to mine coal at Optimum Mine's Boschmanspoort and Pullenshope Sections respectively (Assets)

The Commission has approved, without conditions, the intermediate merger whereby Islandsite intends to acquire the Assets.

Islandsite holds a mining right to mine coal and is thus active in the market for the production and supply of coal.

The Commission found that the proposed transaction is effectively an insourcing arrangement where the Acquiring Group will do its own underground mining internally instead of utilising the services of a third party on an outsourced basis. Therefore, the Commission found that the proposed transaction is unlikely to result in any competition concerns. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Italite Investments Properties Limited (Italite) and Redefine Properties Limited in respect of the property letting enterprise known as Redefine Makhado Crossing Retail Centre (Makhado Crossing)

The Commission has approved, without conditions, the intermediate merger whereby Italite intends acquire Makhado Crossing.

The Acquiring Group is an international specialist bank and asset manager that provides a diverse range of financial products and services in South Africa. The Acquiring Group also owns and controls various properties, which are held by different entities within the Investec group. Makhado Crossing is a community shopping centre that is located at Louis Trichardt, in the Limpopo Province.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the provision of rentable space in convenience centres as there is no geographical overlap between the activities of the merging parties. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Wendel SE (Wendel) and Tsebo Holdings Proprietary Limited (Tsebo)

The Commission has recommended to the Tribunal an approval, without conditions, in the large merger whereby Wendel intends to acquire Tsebo.

Wendel controls several companies which have operations or sales in South Africa. The Tsebo Group is primarily involved in the business of providing facilities management solutions, catering, cleaning and security.

The Commission found that the proposed merger is unlikely to result in substantial prevention or lessening of competition. Furthermore, the Commission found that the proposed merger does not raise public interest issues.

2. **Non Referrals – The Commission has taken a decision to non-refer (i.e. not to prosecute) the following cases**
- a) **Carnilinx (Pty) Ltd and Fair -Trade Independent Tobacco Association vs. Japan Tobacco International** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
 - b) **Louw Du Plessis Inc vs. The Erinvale Home Owners Association and Erinvale Golf Club** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
 - c) **Mohamed Moosa vs. Coopers Trust, Thomson Wilks Attorneys, Master of the High Court Pretoria and Nedbank** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
 - d) **Salmon Barkhuizen vs. Market Master of Scottburgh Flea Market** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
 - e) **The National Community Radio Forum vs. National Association of Broadcasters and Broadcasting Research Council of South Africa** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
 - f) **Timello Mosothoane Department of Health Free State Province vs. Lomaen Medical, Alged Trust and AGFA HealthCare** - *The Commission found that the conduct complained of does not contravene the Competition Act.*

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For more information:

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