

Statement on the decisions of the Competition Commission

To all media

Date: 11 February 2016

1. Key decisions on Mergers and Acquisitions

1.1 Mergers approved with conditions

Proposed merger between Totalgaz Southern Africa (Pty) Ltd (Totalgaz) and Kaya Gas (Pty) Ltd (Kaya Gas)

The Competition Commission (Commission) has approved with conditions, the intermediate merger in terms of which Totalgaz intends to acquire the Liquid Petroleum Gas storage, supply and distribution business of Kaya Gas. **See Annexure A.**

Proposed merger between Tegeta Exploration and Resources (Pty) Ltd and Optimum Coal Mine (Pty) Ltd and six others

The Commission has recommended to the Tribunal that the proposed large merger between Tegeta Exploration and Resources (Pty) Ltd (Tegeta) and Optimum Coal Mine (Pty) Ltd (OCM) and six other target firms¹ be approved with conditions. On completion of the transaction, Tegeta will acquire control over the target firms.

Tegeta and OCM are involved in, among other things, the production of thermal coal which is largely supplied to some of Eskom power stations. Tegeta is owned by Oakbay Investments (Pty) Ltd and Mabengela Investments (Pty) Ltd. OCM is controlled by Optimum Coal Holdings (Pty) Ltd (OCH). Both OCM and OCH are in business rescue.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the thermal coal market. The merging parties are smaller players in this market and face competition from larger rivals such as Anglo American, Exxaro Coal and South 32 Ltd. Thus, there are credible alternative suppliers of thermal coal that will continue to constrain the merging parties post-merger.

However, the Commission found that the proposed merger raises public interest concerns, in particular the likelihood of job losses. In this regard, the Commission has recommended that the proposed transaction be approved on condition that the merging parties will not retrench any employees of the target firms as a result of the merger.

¹ The other target firms are Optimum Coal Terminal (Pty) Ltd (“OCT”), Koorfontein Mine (Pty) Ltd, Optimum Nekele Mining and Exploration (Pty) Ltd, Optimum Vlakfontein Mining and Exploration (Pty) Ltd, Optimum Overvaal Mining and Exploration (Pty) Ltd and Optimum Mpefu Mining and Exploration (Pty) Ltd.

1.2 Mergers approved without conditions

Proposed merger between Alstom Transport Holdings SA Proprietary Limited (Alstom) and Opiconsivia Investments 265 Proprietary Limited (Opiconsivia Investments 265)

The Commission has recommended to the Tribunal that the large merger whereby Alstom intends to acquire Opiconsivia, which trades under the name Commuter Transport & Locomotives Engineering Proprietary Limited (CTLE), be approved, without conditions. Post-merger, Alstom will control CTLE.

The Commission is of the view that the proposed transaction is unlikely to raise competition concerns as Alstom and CTLE do not compete in the South African rail industry.

Alstom operates throughout the world and is active in the supply of a complete range of systems, equipment and services in the railway sector. Its railway product range includes rolling stocks such as passenger and freight coaches, locomotives, railway signalling, train control systems, train equipment, rail infrastructure and associated services.

CTLE carries out overhauling, refurbishing and upgrading of the South African passenger and freight rail rolling stock.

Proposed merger between Indluplace Properties Limited (Indluplace) and Clidet No. 947 (Pty) Ltd (Clidet), Sugar Creek Trading 289 (Pty) Ltd (Sugar Creek)

The Commission has recommended to the Tribunal that the large merger whereby Indluplace intends to acquire nine property letting enterprises known as The Housing Fund Portfolio owned by Clidet and Sugar creek, be approved without conditions. Post-merger, Indluplace will own the Housing Fund Portfolio.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets, as the merged entity's market share remains low post-merger. Further, the merged entity will continue to face competition from numerous firms that own affordable residential properties in the affected markets.

Indluplace is a property investment company that invests in residential properties with a focus on affordable housing.

The Housing Fund Portfolio comprises of residential properties in the affordable housing price range in the Gauteng, Mpumalanga and Western Cape Provinces.

Proposed merger between Government Employees Pension Fund (GEPF) and Mining Oil and Gas Services Proprietary Limited (MOGS)

The Commission has recommended to the Tribunal that the large merger whereby GEPF, through Kuseni SPV Propriety Limited (Kuseni SPV), intends to acquire MOGS be approved, without conditions. Post-merger, Kuseni SPV will have joint control over MOGS.

The Commission found that there is no overlap in the activities of the merging parties, thus is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

The GEPF manages and administers retirement and other benefits for government employees. Kuseni SPV - is a special purpose vehicle formed solely for the purpose of the proposed transaction and does not currently conduct any operations. MOGS is a South African based company that provides various services to the mining (gold, coal and platinum), oil and gas sectors.

Proposed merger between Winter Robin Investments 26 Proprietary Limited (JVCO) and Waterfall Business Estate

The Commission has recommended to the Tribunal that the large merger whereby JVCO intends to acquire Pocket 24 of the Waterfall Business Estate (Pocket 24 Development Right) and a portion of Pocket 3 of the Waterfall Business Estate (Pocket 3 Development Right) be approved, without conditions. Post-merger, JVCO will have sole control over the Development Rights.

The Commission found that the merged entity will continue to be constrained by a number of competing properties. Given the availability of alternative competing properties within each of the relevant markets, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

JVCO is a financial services group with offices around the globe including South Africa, the United Kingdom, Europe, India, Australia, the United States of America and other African countries.

Proposed merger between FedEx Acquisition B.V. (FedEx Acquisitions) and TNT Express N.V. (TNT Express)

The Commission has approved without conditions, the intermediate merger whereby FedEx intends to acquire TNT Express. Post- merger, FedEx will control TNT. The Commission is of the view that this transaction is unlikely to lead to a substantial lessening of competition.

FedEx Acquisition is a newly incorporated company for the purposes of the proposed transaction.

TNT is a small package business along with air and ground freight business and industry-specific logistics solutions.

Proposed merger between In2Food Group (Pty) Ltd (In2Food) and Echo Berry Ventures (Pty) Ltd (Echo Berry)

The Commission has approved without conditions, the intermediate merger whereby In2Food intends to acquire Echo Berry. Post-merger, In2Food will control Echo Berry.

The Commission found that there is no overlap in the activities of the merging firms in South Africa. The proposed transaction results in a vertical overlap. However, the Commission found that the proposed transaction is unlikely to result in customer foreclosure. Therefore, the proposed transaction is unlikely to substantially prevent or lessen competition.

In2Food is a business that provides convenient food solutions to its customers and operates its business from various branches in South Africa.

Echo Berry is a farm which grows, imports and distributes fresh and frozen strawberries in South Africa. Echo Berry also provides staging services, which is a process that involves the storing and transporting of other farmers' grapes and blueberries.

2. Exemptions applications

The Commission has rejected another set of exemption applications relating to professional services in the Built Environment.

The exemption applications were filed during the course of 2014 by the built environment professional councils, namely: the Engineering Council of South Africa (ECSA), the South African Council for the Quantity Surveying Profession (SACQSP), the South African Council for the Architectural Profession (SACAP), the South African Council for Property Values Profession (SACPVP), the South African Council for the Landscape Architectural Profession (SACLAP) and the South African Council for the Project and Construction Management Profession (SACPCMP).

The exemption applications relate to the publication of the fee guidelines, which the abovementioned member councils sought to be exempted in terms of Schedule 1 from the provisions of Chapter 2 of the Competition Act, No. 89 of 1998, as amended (the Act).

In refusing to grant an exemption, the Commission concluded that the member councils' fee guidelines in their current form are likely to harm competition in the following ways:

- The publication of the fee guidelines by the professional councils amount to indirect price-fixing in contravention of section 4(1)(b)(i) of the Act. The

Commission concluded that persons offering their services within the built environment will make use of the fee guidelines as benchmark when negotiate their fees with consumers. This reduces price competition and could also results in prices within the built environment being set above the competitive level to the detriment of consumers.

- Further the publication of the fee guidelines is not in line with international best practice. A review of international best practice conducted by the Commission revealed that building industry in other jurisdictions are moving away from the practice of publishing the fee guidelines. This is an attempt by building industries in those countries to increase price competition in the market.

3. Non Referrals – the Commission has taken a decision to non-refer (i.e. not to prosecute) the following complaints:

- a) Cheylene Aucamp vs. Maureen Irving – *The Commission found that the conduct complained of does not amount to a contravention of the Competition Act.*
- b) Mr. Keith Nell vs. Profact Marketing – *The Commission found that the conduct complained of does not amount to a contravention of the Competition Act.*
- c) Muthivhi Ndivhuwo Samuel and Samuel Dlamini vs. Nutshani Emos and PRASA Park Station – *The Commission has accepted the complainant's decision to withdraw the complaint.*
- d) Sagifon Technologies vs. Eskom – *The Commission has accepted the complainant's decision to withdraw the complaint.*
- e) Modiko Technologies CC vs. Ubuntu Technology (Pty) Ltd– *The Commission found that the conduct complained of does not amount to a contravention of the Competition Act.*
- f) Neo Belynda Tiro vs. Printer Manufacturing Companies – *The Commission found that the conduct complained of does not amount to a contravention of the Competition Act.*

Ends

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