



competition commission
south africa

Statement on the decisions of the Competition Commission

Date: 13 May 2016

1. Key decisions on Mergers and Acquisitions

1.1 Mergers approved with conditions

Proposed merger between Southern Sun Hotels (Pty) Ltd (SSH) and Hospitality Property Fund Limited

The Competition Commission (Commission) has recommended to the Competition Tribunal (Tribunal) that the large merger whereby SSH intends to acquire HPF be approved with conditions.

SSH, which is owned by Tsogo Sun Holdings Limited, operates various hotels throughout South Africa under several brand names, including Southern Sun, Garden Court, SunSquare and Sun1. HPF is a Real Estate Investment Trust which owns hotel properties and provides leasing services to third party hotel operators.

The Commission found that in various geographic areas assessed, including Sandton, Durban, Port Elizabeth and Cape Town, the merging parties will continue to face competition from other hotel properties in the 3, 4 and 5 star grading. These hotel properties are owned and operated by the Protea Group, Holiday Inn, Premier Group and Legacy Hotels, amongst others.

Given that HPF currently leases hotel properties to SSH's competitors, the Commission is of the view that the merged entity is likely to have the ability and incentive to exclude such competitors by not renewing their lease agreements post-merger. SSH may also have the incentive to take over operations of HPF hotels upon termination of lease agreements. In order to address this concern, the Commission has recommended to the Tribunal that the Commission be notified when SSH intends to take over operations of HPF hotels.

The Commission also found that SSH is likely to have access to competitively sensitive information about its competitors through HPF. This is likely to facilitate collusion between various hotels. It is for this reason that the Commission has recommended to the Tribunal that the proposed merger be approved subject to conditions preventing SSH from accessing its rivals' competitively sensitive information.

1.2 Mergers approved without conditions

Proposed merger between FirstRand Life Assurance Ltd (FirstRand) and MMI Group Ltd (MMI Group) in respect of long-term insurance policy book

The Commission has recommended to the Tribunal that the large merger whereby FirstRand intends to acquire all the policies underwritten (Target Business) by the MMI Group be approved without conditions.

FirstRand is active in the financial services sector which includes retail banking, broking, assets or investment management, corporate finance, interest rate management, project finance, mortgage lending as well other banking solutions. The long-term insurance policy book is part of the MMI Group.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition as the merging parties face competition in the market for the provision of individual long term insurance services. Also, the Commission found that there are no public interest issues arising from the proposed merger.

Proposed merger between PaKHouse Fruits (Pty) Ltd (PaKHouse Fruits) and Fruits du Sud (Pty) Ltd (FDS)

The Commission has approved without conditions the intermediate merger whereby PaKHouse Fruits intends to acquire FDS. Post-merger, the BKB group will control FDS.

PaKHouse Fruits is a holding company and trades through its subsidiary, Bet-El Fruits which functions as a marketing and export agent of fresh fruit from South Africa. It also supplies local retailers and wholesalers with fresh fruit from major supply regions of the Western Cape. FDS specialises in the procurement, packaging and distribution of sun dried raisins for sale in the local and export markets.

The Commission found that the proposed merger is unlikely to substantially prevent or lessen competition in any market as there is no overlap between the activities of the merging parties. Further, the proposed merger does not raise any public interest concerns.

Proposed merger between Chinwendu Trading Proprietary Ltd (Chinwendu) and CMH Luxury Motors (Lyndhurst) Proprietary Ltd in respect of BMW motor dealership

The Commission has approved without conditions the intermediate merger whereby Chinwendu intends to acquire the BMW Motor dealership from Lyndhurst.

Chinwendu is a wholly owned subsidiary of Legacy Holding (Pty) Ltd, which sells new and used BMW/MINI motor vehicles and motorcycle, as well as BMW/MINI parts. The BMW Motor Dealership sells new and used motor vehicles passenger (not commercial) BMW/MINI motor vehicles. It also provides BMW/MINI parts, accessories, services and repair in the Menlyn area, Pretoria.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition as the merging parties face competition from other dealerships, including dealerships of competing brands.

Proposed merger between Hengtong Optic-Electric International Company Ltd (Hengtong) and Aberdare Cables Proprietary Ltd (Aberdare)

The Commission has approved without conditions the intermediate merger whereby Hengtong intends to acquire Aberdare.

Hengtong is a manufacturer of power, fibre optics, fibre optic cables, power cables, telecommunication cables, optical fibre preform, optical fibre drawing, power supply material and peripherals, electron components and telecommunication equipment related products. Aberdare is a power cable manufacturer and supplier.

The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. Further, the proposed merger does not raise any interest concerns.

Proposed merger between Rapfund Investments Proprietary Ltd (Rapfund) and Irene Estate Agencies Proprietary Ltd (Irene) in respect of the property letting enterprise known as Southdowns Shopping Centre

The Commission has approved without conditions the intermediate merger whereby Rapfund intends to acquire the property letting enterprise known as Southdowns Shopping Centre from Irene.

Rapfund is a property investment company with a diversified portfolio of commercial and retail properties. Southdowns Shopping Centre is a community shopping centre that is located in Centurion, Pretoria, in the Gauteng Province.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market as there are alternative players in the market that will continue to constrain the merged entity post-merger. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between CGL Custodian Trust No 124 (CGL Trust), Texmex 03 Proprietary Ltd (Texmex) and Xinergistix Proprietary Ltd (Xinergistix)

The Commission has approved without conditions the intermediate merger whereby CGL Trust and Texmex intends to acquire Xinergistix.

CGL Trust and Texmex do not provide any products and services. The CGL Trust is only active through its shareholding in Xinergistix. Xinergistix is a transport and logistics firm that provides both local and cross-border customised cargo transportation and refrigeration services.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market as the transaction is unlikely to change the structure

of any market. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Kloof Century Resi Joint Venture (Kloof Century JV) and Burgundy Estate Joint Venture's residential letting business located at erf 778 Burgundy (BEJV)

The Commission has approved without conditions the intermediate merger whereby Kloof Century JV intends to acquire BEJV.

Kloof Century JV is created for purposes of acquiring property for holding, development, lease and eventual sale. Erf 778 Burgundy is a portion of land that is being developed by BEJV that will consist of 190 residential units in a security estate that are available for residential leasing.

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 residential property as there is no geographic overlap between the merging parties. Further, the proposed merger does not raise any interest concerns.

Proposed merger between Slip Knot Investment 777 Proprietary Ltd (SKI) and Capital Propfund 1 Proprietary Ltd (CP1) in respect of an immovable property and letting enterprise known as Caxton House

The Commission has approved without conditions the intermediate merger whereby SKI intends to acquire the immovable property and letting enterprise known as Caxton House from CP1.

SKI is engaged in the development and leasing of commercial and industrial investment properties and owns a portfolio of 105 properties throughout South Africa. CP1 owns Caxton House which is an immovable property and letting enterprise that is classified as Grade B/C office property.

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 addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Kimberley Ekapa Mining Joint Venture (KEM JV) and the processing and treatment plant and related mining assets held by Ekapa Minerals Proprietary Ltd (Ekapa Minerals), the processing and treatment plant, right to operate the Tailings (through the Kimberley Miners Forum) and related mining assets held by Super Stone Mining Proprietary Ltd (Super Stone), the right to operate and conduct mining activities at the Kimberley Underground Mines held by Crown Resources Proprietary Ltd (Crown Resources)

The Commission has recommended to the Tribunal that the large merger whereby Crown Resources, Ekapa Minerals and Super Stone intend to acquire KEM JV be approved without conditions.

Crown Resources controls Kimberley Underground Mines Joint Venture. Ekapa Minerals and Super Stone are ultimately controlled by Ekapa Mining. Ekapa Minerals controls a number of firms in South Africa. KEM JV is a newly established joint venture and therefore does not control any firm.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. In addition, the transaction raises no public interest concerns.

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

- a) **Visa request CC. vs VFS Global Proprietary Limited** – *The Commission found that the conduct complained of does not contravene the Competition Act.*
- b) **Yusuf Shaik v Easigas & Oryx Energies** - *The Commission found that the conduct complained of does not contravene the Competition Act.*

Ends

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