



competition commission
south africa

Statement on the decisions of the Competition Commission

Date: 19 December 2016

1. Key decisions on Mergers and Acquisitions

1.1 Mergers approved with conditions

Proposed merger between Arrowhead Properties Limited (Arrowhead) and Synergy Income Fund Limited (Synergy)

The Competition Commission (Commission) has recommended to the Competition Tribunal (Tribunal) that the proposed transaction be approved, with conditions, whereby Arrowhead intends to acquire Synergy.

Arrowhead owns a diverse portfolio of retail, commercial, industrial and residential properties throughout South Africa. Synergy is a real estate investment trust listed on the Johannesburg Securities Exchange. In addition, Synergy is controlled by Vukile Property Fund Limited (Vukile).

The Commission found that Synergy may be used by Vukile and Arrowhead as a platform to exchange competitively sensitive information regarding Vukile's and Arrowhead's properties that are outside Synergy. In order to remedy the abovementioned concern, the Commission recommended the imposition of the condition to address the concerns.

Proposed merger between Allcool Investments (Pty) Ltd (Allcool) and Fast Gear Trading (Pty) Ltd (Fast Gear)

The Commission has approved, with conditions, the intermediate merger whereby Allcool intends to acquire Fast Gear.

The Commission identified a concern around the sharing of competitively sensitive information. In order to remedy the abovementioned concern, the Commission imposed conditions to address the concern.

Proposed merger between KAP Diversified Industrial (Pty) Ltd (KAP) and Safripol Holdings (Pty) Ltd (Safripol)

The Commission has recommended to the Tribunal that the proposed transaction be approved, with conditions, whereby KAP intends to acquire Safripol.

KAP is an investment company which invests in a number of industrial businesses mainly falling within two segments, diversified logistics and diversified industrial. Safripol is a producer of polymers, namely high-density polyethylene (HDPE) and Polypropylene.

The Commission found that the proposed transaction is likely to substantially prevent or lessen competition as a result of input foreclosure in relation to the supply of HDPE. In order to remedy the abovementioned concern, the Commission recommended the imposition of supply conditions.

Proposed merger between SMG Tygervalley (Pty) Ltd (SMG), McCarthy Limited, in respect of the BMW and Mini motor dealership and related approved repair centre (ARC), BMW Fordicks Tygervalley (McCarthy Fordicks Tygervalley)

The Commission has approved, with conditions, the intermediate merger whereby SMG intends to acquire McCarthy Fordicks Tygervalley.

The SMG group consist of companies that own a total of nine motor dealerships that are located in Durban, Pietermaritzburg, Cape Town and Shelly Beach. In addition, the SMG group also owns two retail motor properties which are let out to two of the Sean McCarthy Trust's motor dealerships. BMW Fordicks Tygervalley sells used and new passenger vehicles, spare parts, provides after sales services and vehicle repair services.

The Commission found that proposed transaction raised concerns relating to employment. In order to remedy the abovementioned concern, the Commission imposed conditions to address the concerns.

1.2 Mergers approved without conditions

Proposed merger between Abbott Laboratories (Abbott) and Alere Incorporated (Alere)

The Commission has approved, without conditions, the intermediate merger whereby Abbott intends to acquire Alere.

Abbott has business operations in more than 50 countries worldwide and focuses on the discovery, development, manufacture and sale of a broad and diversified line of health products. This includes In Vitro Diagnostics Products (IVD Products). In addition, Abbott also manufactures and supplies Point Of Care (POC) analyser or product to hospitals. In South Africa, Abbott operates as a distributor of IVD products to laboratories (i.e. National Health Laboratory Services, Ampath Laboratories (Ampath), Pathcare Laboratories (Pathcare) and blood banks. Alere has manufacturing plants in Japan, Germany, South Korea, China and the USA. The company supplies its products in a number of countries throughout the world. Alere manufactures and supplies a broader set of POC diagnostics and services for infection disease, cardio-metabolic disease and toxicology testing.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the affected markets. In addition, the Commission found that the proposed transaction does not raise employment concerns given that no employees would be retrenched as a result of the proposed transaction. The proposed transaction does not raise any other public interest concerns.

Proposed merger between Lenmed Health (Pty) Ltd (Lenmed) and eThekwini Hospital and Heart Centre (Pty) Ltd (eThekwini)

The Commission has approved, without conditions, the intermediate merger whereby Lenmed intends to acquire eThekwini.

The Lenmed Group is a South African hospital group providing patient healthcare services in Africa through the management and ownership of hospitals and other related health services. In South Africa, the Lenmed Group has an interest in approximately 1383 beds through nine hospitals located throughout the country. In the KwaZulu-Natal province, Lenmed operates two hospitals namely Lenmed La Verna hospital which is located approximately 250km from the eThekwini hospital and Lenmed Shifa hospital which is located approximately 10km from eThekwini hospital. eThekwini provides private hospital services to the Durban community and has approximately 324 beds.

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

Proposed merger between Clover Pride (Pty) Ltd (Clover Pride) and the Olive Pride business (the Target Business) of Southern Canned Products (Pty) Ltd (SCP)

The Commission has approved, without conditions, the intermediate merger whereby Clover Pride intends to acquire the Target Business of SCP.

The Clover Group is a branded consumer goods company active in the food and beverage industry in South Africa and other African countries. In addition, Clover Group is active in the processing of milk and dairy products, processing of soy products as well as carbonated soft drinks, the import, export, distribution, marketing and selling of bulk ingredient products and the provision of sales, merchandising and distribution services. The Target Business is controlled by SCP and is active in the import, production and sale of olives (including pitted green olives, pimiento (red pepper) paste stuffed in green olives, pitted black olives in brine and pitted green olives in brine), premium extra virgin oil, and blends of seed oils and extra virgin olive oil.

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

Proposed merger between Main Street 1438 (Pty) Ltd (Main Street) and Little Green Beverages (Pty) Ltd (LGB)

The Commission has recommended to the Tribunal that the proposed transaction be approved, without conditions, whereby Main Street intends to acquire LGB.

Main Street is a special purpose vehicle (SPV) and is controlled by Ethos Fund VI. In addition, Ethos Fund VI is a private equity investment fund that comprises various local and foreign investors. LGB and its subsidiaries are involved in the production, packaging and distribution of branded and private label beverages in Southern Africa. Its own brands include Refreshhh! It also manufactures the brands Soda T and Dokta on behalf of Masscash. LGB produces 19 different flavours in various pack sizes.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition. In addition, the Commission found that the proposed transaction is unlikely to have a negative impact on any of the public interest grounds.

Proposed merger between TriAlpha Investment Vehicle and Kouga Wind Farm (Pty) Ltd (Kouga)

The Commission has recommended to the Tribunal that the proposed transaction be approved, without conditions. TriAlpha Investment Vehicle intends to acquire Kouga.

TriAlpha Investment is comprised of Special Purpose Vehicles (SPV). In addition, TriAlpha Investment Vehicle also controls Renewable Energy I (Intikon K Co). Intikon is an SPV which controls Jasper Power Company (Jasper), Letsatsi Power Company (Letsatsi) and Lesedi Power Company (Pty) Ltd (Lesedi). These are solar photovoltaic projects under the Renewable Energy Independent Power Producer Procurement Programme (REIPPP). Jasper, Letsatsi and Lesedi are all independent power producers (IPPs) that have entered into 20 year Power Purchase Agreement (PPA) with Eskom to generate and supply a total of 203 MW of electricity. Kouga is ring-fenced IPPs that operate renewable energy producing plants pursuant to the award of a right to do so by the Department of Energy under the REIPPPP, a license from the National Electricity Regulator of South Africa (NERSA) and the conclusion of a PPA with Eskom on a take-or-pay basis. The Project Companies generate electricity by means of on-shore wind technology and solar photovoltaic technology. Eskom is the sole customer of each target firm.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets in South Africa. No retrenchments are expected to occur as a result of the implementation of the proposed transaction. In addition, the proposed transaction does not raise any other public interest concerns.

Proposed merger between Brenntag Pte Ltd (Brenntag) and EPChem International Pte Ltd (Epchem)

The Commission has approved, without conditions, the intermediate merger whereby Brenntag intends to acquire Epchem.

Brenntag supplies speciality chemical products to a wide range of industries including pharmaceuticals, food and beverages and personal care. Epchem exports speciality chemical products to South Africa. In addition, Epchem supplies wax related products that include GTL hard wax, GTL medium wax and paraffin wax in South Africa. These products are generally used by the adhesives and sealants, candles, coatings, personal care and polymers industries.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the affected markets. In addition, the Commission found that the proposed transaction will not raise employment concerns given that no employees would be retrenched as a result of the proposed transaction. Epchem does not have employees in South Africa. The proposed transaction is unlikely to raise any other public interest concerns.

Proposed merger between Kgalagadi Alloys (Pty) Ltd (Kgalagadi Alloys) and Kalagadi Manganese (Pty) Ltd (Kalagadi Manganese)

The Commission has recommended to the Tribunal that the proposed transaction be approved, without conditions, whereby Kgalagadi Alloys intends to acquire Kalagadi Manganese.

Kgalagadi Alloys is a shelf company which has no operations or business activities. Kalagadi Manganese owns new order mining rights covering an area of approximately 6,300 hectares and spanning three farms in the Kalahari Basin.

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 KGIC Merger Corporation (Merger Sub) and Guardian Industries Corp. (Guardian)

The Commission has approved, without conditions, the intermediate merger whereby Merger Sub intends to acquire Guardian.

Merger Sub is controlled by Koch Industries Inc (KII). KII owns a diverse group of companies involved in refining and chemicals and biofuels, forest and consumer products, fertilizers, polymers and fibres, electronic components, process and pollution control equipment and technologies, commodity trading, minerals, energy, ranching and investments. Guardian is active worldwide in manufacturing flat glass and fabricated glass products, coated injection moulded plastic parts for automotive and other applications. In South Africa, Guardian is active in the market for the supply of flat glass, and supplies clear glass, coated glass and tinted glass.

The Commission considered the activities of the merging parties found that there is no overlap. Therefore, the transaction is unlikely to substantially prevent or lessen competition. Furthermore, the proposed transaction does not raise any public interest concerns.

Proposed merger between Sakhumnotho Property Holdings (Pty) Ltd (Sakhumnotho) and 323 Festival Street (Pty) Ltd (Festival Street)

The Commission has approved, without conditions, the intermediate merger whereby Sakhumnotho intends to acquire Festival Street.

The Sakhumnotho Group is an entirely black-owned and managed diversified investment group, whose objective is to invest in the real estate, financial services, mining and oil, and gas sectors. Festival Street was incorporated for the purpose of holding a property letting enterprise known as Tshedimosetso House (Tshedimosetso House). Tshedimosetso House is an office building which is situated at 1035 Frances Baard Street (corner Festival Street), Hatfield, Pretoria and comprises 17,004 m² of rentable Grade A office space.

The Commission considered the activities of the merging parties and found that there is no overlap because the acquiring group does not own any properties. Therefore, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition. The Commission further found that the proposed transaction is unlikely to result in any job losses and does not raise any public interest concerns.

Proposed merger between Arbitrage Property Fund (Pty) Ltd (Arbitrage), Redefine Properties Limited (Redefine) in respect of a portfolio of properties known as Pier Place, Maynard Mall, Glenashley Views, Edgars Wynberg, Standard Bank George, Berg River Park and 12 Nourse Avenue and (Sale Portfolio)

The Commission has approved, without conditions, the intermediate merger whereby Arbitrage intends to acquire the Sale Portfolio from Redefine.

Arbitrage is a property investment company, which holds a diversified property portfolio consisting of commercial, industrial and retail properties in the Gauteng, North West and the Western Cape Provinces. The Sale Portfolio comprises of six properties.

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

Proposed merger between Nisela Capital (Pty) Ltd (Nisela) and Murray & Roberts Limited (MUR), in respect of its Genrec Division (Genrec)

The Commission has approved, without conditions, the small merger whereby Nisela intends to acquire Genrec from MUR.

Nisela is an asset management, private equity and advisory firm. Genrec is a supplier of steel fabrication solutions and undertakes, amongst others, high, medium and heavy structural steel fabrication, structural steel project services, steel erection and site services.

The Commission considered the activities of the merging parties and found that the proposed transaction does not result in an overlap because Nisela is not active in the supply of steel fabrication solutions. In addition, the Commission found that the proposed transaction does not raise any public interest concerns.

Proposed merger between Avolon Holdings Limited (Avolon) and C2 Aviation Capital Inc. (C2 Aviation)

The Commission has approved, without conditions, the intermediate merger whereby Avolon intends to acquire C2 Aviation.

Avolon is a global aircraft leasing company focused on acquiring, leasing, managing and selling commercial aircraft. C2 Aviation is a global aircraft leasing company, with a focus on supplying aircraft leasing to the commercial aviation sector.

The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap because both parties provide global aircraft leasing services. However, the Commission found that the proposed transaction does not result in a geographic overlap, as Avolon does not conduct any business activities in South Africa. The proposed transaction does not raise any public interest concerns.

Proposed merger between K2016491554 (South Africa) (Pty) Ltd (Newco) and Awesome Snacks (Pty) Ltd (AE-AMD)

The Commission has approved, without conditions, the intermediate merger whereby Newco intends to acquire Awesome Snacks.

Newco is a newly formed shelf company. Awesome Snacks is a manufacturer and distributor of savoury snacks, puffed maize, naks and powdered drinks.

The Commission considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap. In addition, the proposed transaction does not raise any public interest concerns.

Proposed merger between Rhone Capital LLC (Rhone) and Zodiac Pool SA (Pty) Ltd (Zodiac)

The Commission has approved, without conditions, the intermediate merger whereby Rhone intends to acquire Zodiac.

Rhone is a private equity firm specialising in the middle market leverage buyouts, recapitalisations and partnership financings. In addition, Rhone is active through five firms in South Africa that include Garda World, Neovia, ASK, CSM Bakery Solutions and Orion. Garda World provides domestic and international protective services and cash security services. Neovia is a logistics and supply chain service provider. It provides warehouse management and fulfilment services, distribution solutions and other logistics services. ASK is a manufacturer of foundry chemicals. The company's products comprise a range of foundry resources such as binders, coatings, feeders, filters and release agents, as well as metallurgical products including inoculants, inoculation wires and master alloys for iron casting.

CSM Bakery Solutions is a manufacturer and supplies bakery ingredients, semi-finished and finished bakery products. Orion is a producer of carbon black which is used principally in the production of specialty pigments and the reinforcement of rubber used to manufacture tyres and mechanical rubber goods. Carbon black is derived from an oil based feedstock. Zodiac is active in the manufacture of swimming pool equipment globally. In South Africa, Zodiac operates through its subsidiary, Zodiac SA. Zodiac SA is involved in the supply of pool products.

The Commission considered the activities of the merging parties and found that there is no overlap, as the acquiring group is not active in the supply of pool products in South Africa. In addition, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. The proposed transaction does not raise any public interest concerns.

Proposed merger between Platinum Hospitality Corporation (Pty) Ltd (PHC) and Lorcom 201 (Pty) Ltd (Lorcom)

The Commission has approved, without conditions, the intermediate merger whereby PHC intends to acquire Lorcom.

PHC is an investment holding company. It controls entities which own immovable properties which are utilised to run Protea Hotels in George (Western Cape), OR Tambo Airport (Gauteng), Sea Point (Western Cape), Cape Town and Tygervalley (both in the Western Cape). Lorcom conducts its business as a hotel operator. It operates and manages Protea Hotel Fire & Ice Menlyn, Pretoria. Lorcom operates the Protea Hotel Menlyn Fire & Ice for its risk and financial reward.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition. In addition, the Commission found that the proposed transaction is unlikely to raise any public interest concerns.

Proposed merger between Foxburgh Capital (Pty) Ltd (Foxburgh) and Insure Group Managers Limited (Insure)

The Commission has approved, without conditions, the intermediate merger whereby Foxburgh intends to acquire Insure.

Foxburgh provides corporate finance and strategic advisory services to entrepreneurs and companies. Insure provides premium handling services, including debit order collections and premium disbursement, the financing of annual insurance premiums and broker acquisition financing. Insure provides premium handling services, including debit order collections and premium disbursement, the financing of annual insurance premiums and broker acquisition financing. Insure is a non-insurer.

The Commission considered the activities of the merging parties and found that the proposed transaction does not result in an overlap because the acquiring group is not active in the insurance market as either an insurer or an intermediary. Therefore, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. Further, the Commission found that the proposed transaction does not raise any public interest concerns.

Proposed merger between Afrimat Limited (Afrimat), Diro Iron Ore (Pty) Ltd (Diro Iron Ore) and Diro Manganese (Pty) Ltd (Diro Manganese)

The Commission has approved, without conditions, the intermediate merger whereby Afrimat intends to acquire Diro Iron Ore and Diro Manganese.

The Afrimat group supplies the steel industry with metallurgical dolomite; the construction industry with a variety of aggregate products, concrete manufactured products, bricks or blocks and ready-mix concrete; and the agricultural industry with agricultural lime. In addition, the Afrimat group provides various related services such as drilling and blasting, contract crushing and screening and transporting of bulk materials. Diro Iron Ore and Diro Manganese are holders of mining rights which permit the mining of manganese ore and iron ore in a mining area situated in the Magisterial District of Kuruman, in the Northern Cape Province.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. In addition, the Commission found that the proposed transaction is unlikely to raise any other public interest concerns.

Proposed merger between Bidvest Bank Limited (Bidvest Bank) and Fulcrum Group (Pty) Ltd (Fulcrum)

The Commission has recommended to the Tribunal that the proposed transaction be approved, without conditions, whereby Bidvest Bank intends to acquire Fulcrum.

The Bidvest group is involved in the automotive, electrical, financial services, freight, commercial products, office and print and services industry. Fulcrum provides premium handling services, including debit order collections and premium disbursements.

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

Proposed merger between Amdec Investments (Pty) Ltd (Amdec) and Culemborg Investment Properties (Pty) Ltd (Culemborg Investment Properties)

The Commission has recommended to the Tribunal that the proposed transaction be approved, without conditions, whereby Amdec intends to acquire Culemborg Investment Properties.

The Amdec group is a privately-owned property development and investment business. It owns a portfolio of immovable properties and property letting enterprises and actively operates within the property development sphere in South Africa, focusing on residential estates, office space and mixed use developments. Culemborg Investment Properties is a speciality retail property letting enterprise, which operates and lets its property premises and is located in Christiaan Barnard Street in the Culemborg district of Cape Town in the Western Cape Province. In addition, Culemborg Investment Properties' speciality retail property is let to several tenants who operate as motor dealerships or showrooms.

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 Setso Heldco (Pty) Ltd (Setso Holdco) and Setso Property Fund (Pty) Ltd (Setso)

The Commission has recommended to the Tribunal that the proposed transaction be approved, without conditions, whereby Setso Holdco intends to acquire Setso.

Setso Holdco is controlled by African Rainbow Capital (ARC). ARC is a diversified financial services investment company and is active through its subsidiaries inter alia in the following: short-term insurance brokering; mortgage originator and financial services; and asset management. Setso is controlled by Pivotal, as part of an internal structure, Pivotal will transfer the Target Properties to Setso. Setso is a newly established firm created for the purposes of this transaction. The Target Properties comprises a portfolio of 12 Grade A office properties and 4 retail properties that are located in the Gauteng and Western Cape Provinces.

The Commission considered the activities of the merging parties and found that there is no overlap, as the acquiring group is not active in the provision of office and retail properties in South Africa. Therefore, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. Further, the proposed transaction does not raise any public interest concerns.

Proposed merger between Firefly Investments 326 (Pty) Ltd (Firefly Investments) and Bayport Financial Services 2010 (Pty) Ltd (BFSSA)

The Commission has recommended to the Tribunal that the proposed transaction be approved, without conditions, whereby Firefly Investments intends to acquire BFSSA.

Firefly Investments is jointly controlled by Government Employees Pension Fund (GEPF) represented by the Public Investment Corporation (PIC), BFSSA Management Trust (Management Trust), Mvunonala Holdings (Mvunonala) and Legal Exchange Corporation (Lexcorp). GEPF's core business is to manage and administer pensions and other benefits for government employees in South Africa. It operates in various markets as it invests in four main classes of assets which are equities, fixed income, properties and Isibaya Fund. Lexcorp offers personal legal expense insurance, commercial legal expense insurance, provides comprehensive legal advice, recovery of insurance claims, legal advice and assistance telephonic call centre services and financial counselling and assistance call centre services. Mvunonala is a holding company of the Mvunonala group of companies set up to ensure the unity and control of subsidiaries established within the different parts of the financial services. The Management Trust is a trust which will be set up by BFSSA.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the broader market for the provision of long-term insurance. In addition, the proposed transaction is unlikely to raise any public interest concerns.

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

- a) **Anonymous vs. Cochrane Steel International (Pty) Ltd** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
- b) **Ccophrex Holdings (Pty) Ltd vs. Glencore Rhovan Operations Mine** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
- c) **Nu Africa Duty Free Shops (Pty) Ltd vs. Distell Group Ltd** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
- d) **Fieldworx (Pty) Ltd v Ipsos (Pty) Ltd** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
- e) **Paul Salter vs. Telkom SA SOC Ltd** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
- f) **Matthews Malope vs. Crest Chemicals, AECI, Brenntag Joint Company** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
- g) **Val-U-Flavours (Pty) Ltd T/A Val-U-Chem v Ingredion SA (Pty) Ltd** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
- h) **Roshan Samir vs KwaZulu-Natal Law Society** - *The Commission found that the conduct complained of does not contravene the Competition Act.*
- i) **Annette Kotzian vs. Neighbourhood** - *The Commission found that the conduct complained of does not contravene the Competition Act.*

Ends

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