

Weekly Media Statement
For Immediate Release
25 April 2018

LATEST DECISIONS BY THE COMPETITION COMMISSION

1. Key decisions on mergers and acquisitions

1.1 Remgro International Holdings (Pty) Ltd v Capevin Holdings Ltd

The Commission has recommended to the Tribunal that the proposed merger be approved, with conditions, whereby Remgro International Holdings (Pty) Ltd (Remgro) intends to acquire Capevin Holdings Limited (Capevin), thereby acquiring Capevin, Remgro-Capevin Investments (Pty) Ltd (RCI) and Distell Group Limited (Distell) (the proposed transaction).

Remgro is an investment holding company. It holds interests in companies that operate across industries including banking, healthcare, industrial, infrastructure, media, sport, food and home care. Remgro's interest in the liquor market is through its indirect shareholding in RCI that holds shares in Distell.

Capevin is an investment holding company that holds an indirect shareholding interest in Distell through RCI. RCI is an investment holding company that holds a shareholding interest in Distell. RCI is controlled by RIH and Capevin. Distell is a leading producer and marketer of wines, spirits, ciders and other ready-to-drink beverages.

The Tribunal previously approved the Public Investment Corporation's (PIC, duly authorised representative of the Government Employees Pension Fund) acquisition of a 26.5% stake in Distell. That acquisition was subject to the PIC divesting of 20% of its 26.5% stake in Distell to a Black Economic Empowerment (BEE) purchaser/s by 12 July 2017 (Divestiture Condition).

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

However, the Commission was concerned that the implementation of the proposed transaction was likely to negatively impact the fulfilment of the Divestiture Conditions and consequently, the public interest, in a number of ways. Firstly, the Divestiture Condition specifically pertains to the PIC's shareholding in Distell, however, upon the implementation of the proposed transaction, the PIC would no longer hold shares in Distell, but in New Distell. Further, the Commission found that the proposed transaction would result in a dilution of the PIC's shareholding in New Distell compared to the PIC's shareholding in Distell, thus impacting the divestiture to the prospective BEE purchaser/s. Consequently, the Commission found that the implementation of the proposed transaction had the potential to undermine the Divestiture Condition's original purpose, being the promotion the participation of firms controlled by historically disadvantaged persons in the South African economy.

In order to remedy the above concerns, the Commission recommended that the approval of the proposed transaction be subject to conditions to ensure that the Divestiture Conditions can be implemented post the implementation of the proposed transaction. Further, the conditions ensure that any prospective BEE purchaser/s will not be prejudiced by the aforesaid dilution. The Commission found that the proposed transaction is unlikely to raise any other public interest concerns.

1.2 Pioneer Foods Ltd v Heinz Foods SA (Pty) Ltd

The Commission has recommended to the Tribunal that the proposed merger be approved, with conditions, whereby Pioneer Foods Proprietary Limited (Pioneer Foods) intends to acquire Heinz Foods South Africa Proprietary Limited (HFSA) from Heinz South Africa Proprietary Limited (Heinz SA).

Pioneer Foods is a wholly-owned subsidiary of Pioneer Foods Holding Limited which is controlled by Pioneer Food Group Limited. Pioneer Foods operates in the markets for the production of essential foods, groceries and beverages.

HFSA is a food manufacturing and distribution joint venture established in 2003 by Heinz SA and Pioneer Foods. The joint venture was unconditionally approved by the Tribunal in 2003. HFSA currently markets the Heinz range of ketchups, soups and baked beans locally. It also produces and markets Wellington's range of sauces and condiments and also distributes John West, Today and Mama's products.

The Commission found that the proposed transaction will have a negative impact on employment in that it is likely to result in certain employees being retrenched. In order to minimise the negative impact of the proposed transaction on employment, the Commission recommended to the Tribunal that the proposed transaction be approved subject to the condition that the merging parties may not retrench any unskilled employees (and employees with a qualification less than Grade 12) within two years of the merger being implemented. Although certain skilled and semi-skilled employees are likely to be retrenched as a result of the proposed transaction, the Commission further imposed a condition that this number should not exceed 27, and in the event that the retrenchments take place, the affected employees shall enjoy preference in respect of any suitable positions that may become vacant within 12 (twelve) months of the retrenchment date.

1.3 Premier Fishing SA (Pty) Ltd v Talhado Fishing Enterprise (Pty) Ltd

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby Premier Fishing SA (Pty) Ltd (Premier Fishing) intends to acquire Talhado Fishing Enterprises (Pty) Ltd (Talhado Fishing).

Premier Fishing is the largest black owned and managed food and fishing company in South Africa. It is active in fishing for rock lobster, octopus, squid, abalone farm, pilchards, hake, general food products and environmentally friendly agri-biotechnology products. Premier operates four fishing vessels and is authorised by DAFF to utilise its vessels in the harvesting of squid which is processed at sea and on land and is sold as frozen product to customers in Europe under the Sea Diamond brand.

The target group is only involved in harvesting, processing and marketing of squid with both sea and land based freezing facilities. Squid obtained by the target group is processed at sea and on land and is sold as frozen product to customers in Europe and the Far East under the Talhado brand.

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

1.4 NCT Forestry Cooperative Ltd v The 22 Properties and associated assets being disposed of by Silicon Smelters (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby NCT Forestry Cooperative Limited (NCT) intends to acquire the 22 properties and associated assets (target assets) currently owned and controlled by Silicon Smelters (Pty) Ltd (Silicon Smelters).

NCT is a marketing cooperative that attends to the needs of private and independent timber growers who form the base of its membership. NCT's primary product is hardwood timber destined for pulpwood. It produces wood chips at its facilities in Richards Bay and Durban.

Silicon Smelters' main business is to develop, produce, manufacture, market, sell and service silicon metal and derivative products. The target assets produce timber which is used by Silicon Smelters in its smelting operations. The target assets have been utilised for planting, growing, maintenance and harvesting of trees for the supply of wood chips used directly in the furnaces and for charcoal production that is used as a carbon reductant, both being used in the smelters of Silicon Smelters.

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.

1.5 Ansys Ltd v Law Trusted Third Party Services (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Ansys Limited (Ansys) intends to acquire Law Trusted Third Party Services (Pty) Ltd (Law Trust).

Ansys produces, develops, distributes and integrates digital technology solutions and products in order to enhance consumer safety, productivity and connectivity. The majority of Ansys' business operations are carried out in the rail, mining and industrial telecommunications sectors. Within the cybersecurity space, Ansys provides cybersecurity tokens such as the high security ID (HSID) and the SOLID webKey.

Law Trust is an information technology developer and provider of cybersecurity solutions. Cybersecurity is a segment in the Information Technology industry that involves the protection of systems, networks and data from cyber-attacks. Law Trust offers a wide range of products and services in various areas of the cybersecurity industry.

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.

1.6 C2 Computer Investment (Pty) Ltd v KMSA Holdings (Pty) Ltd

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby C2 Computer Investments (Pty) Ltd (C2) intends to acquire KMSA Holdings (Pty) Ltd (KMSA).

C2 is an investment holding company which controls firms that are active in the provision of services and information technology (IT) platforms to business, particularly within the motor industry. C2 conducts its operations through its subsidiaries with their core services and IT platforms being marketing, branding, micro dotting and online sales platform for vehicles.

The KMSA Group is an official importer of motorcycle products and motorcycles such as Kawasaki, AEON and SYM. The products sold by the KMSA Group include road bikes, motocross bikes, commercial bikes, scooters and utility vehicles. In addition, KMSA is a distributor and retailer of motor vehicle brands and other related products. In addition, KMSA is involved in the logistics market.

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.

1.7 Sanlam Life Insurance Ltd v The Main Straight (Pty) Ltd in respect of The Main Straight Office Park

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby Sanlam Life Insurance Limited (Sanlam Life) intends to acquire The Main Straight (Pty) Ltd (The Main Straight) in respect of the letting enterprise known as the Main Straight Office Park.

Sanlam Life is wholly owned by Sanlam Limited (Sanlam Limited). Sanlam Limited owns a portfolio of commercial and industrial properties in the Western Cape and Gauteng Provinces. Sanlam Life owns a number of Grade A, B, C and P office properties in Gauteng.

The target property is an office park (Main Straight Office Park) situated in Bryanston which comprises rentable space classified as a Grade P office property. The target property is an office park which consists of 5 (five) office blocks.

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.

1.8 Eden Meadows Foodllane (Pty) Ltd and Eden Terrace Foodlane (Pty) Ltd v Intepax (Pty) Ltd t/a Pick n Pay Meadows and Sag Business Investments CC t/a Pick n Pay Edenglen

The Commission has approved the proposed merger, without conditions, whereby Eden Meadows Foodlane (Pty) Ltd (Eden Meadows) and Eden Terrace Foodlane (Pty) Ltd (Eden Terrace) intend to acquire Intepax (Pty) Ltd t/a Pick n Pay Meadows and Sag Business Investments CC t/a Pick n Pay Edenglen.

Eden Meadows and Eden Terrace are wholly-owned by AJP Group Foodlane Holdings (Pty) Ltd, a recently incorporated entity. AJP Group Foodlane forms part of the AJP Group which is made up of a number of entities. AJP Group controls a variety of other firms.

The Pick n Pay Meadows and Pick n Pay Edenglen stores are Pick n Pay franchise stores, which offer retail grocery and food products to customers as part of the broader national Pick n Pay offering.

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.

1.9 Bompass Road Investments (Pty) Ltd v Carnival City Development (RF) (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Bompass Road Investments (Pty) Ltd (Bompass Road) intends to acquire Carnival City Development (RF) (Pty) Ltd (CCD).

Bompass Road is a property development and investment company which provides an offering in the residential property development market by virtue of its shareholders, Renprop and Probuild. Probuild is a building and civil contractor, offering services in the property development market. Probuild's joint venture partnerships with Renprop are involved in developing commercial office parks and residential projects, including CCD.

CCD is primarily engaged in acquisition of land, installation of infrastructure, engineering services, construction and development and disposal of sectional title structures. The joint venture partnership between Probuild and Renprop, known as Space Developments, is involved in the development of a number of commercial office parks and upmarket residential projects, including CCD.

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.

1.10 Sanlam Life Insurance Ltd v Sweet Sensation 25 (Pty) Ltd in respect of Erf 150 & 151 Elandshaven Extension 4 and ELDACC (Pty) Ltd in respect of Erf 147 & 148 Elandshaven Extension 4

The Commission has approved the proposed merger, without conditions, whereby Sanlam Life Insurance (Sanlam Life) intends to acquire ELDACC (Pty) Ltd (ELDACC) with respect to erfs 147 and 148 Elandshaven Extension 4 (ELDACC target property) and Sweet Sensation 25 (Pty) Ltd (Sweet Sensation) with respect to erfs 150 and 151 Elandshaven Extension 4 (Sweet Sensation target property).

Sanlam Life is owned by Sanlam Limited. Sanlam Limited controls a number of firms and has a number of subsidiaries involved in property investment. Sanlam Life is a property holding company which owns a variety of rentable properties which can be categorized into, retail property, industrial property, office property and other properties which include properties such as residential, motor related outlets, hotels and leisure properties. The target properties offer industrial rentable space situated in Germiston.

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.

1.11 MSAHoldings (Pty) Ltd v Gino's Corner (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby MSAHoldings (Pty) Ltd (MSA) intends to acquire Gino's Corner (Pty) Ltd (Gino's).

MSA owns retail properties housed in South Africa. Gino's Corner is a property letting enterprise which consists of only one asset, being a P Grade Office building situated in Sandton.

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.

1.12 Talis Investment Partners (Pty) Ltd v Atterbury Property Fund South Africa (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Talis Investment Partners (Pty) Ltd (BEECo) intends to acquire Atterbury Property Fund South Africa (Pty) Ltd (APF-SA).

BEECo is a property holding company with property in Gauteng and Mpumalanga. Talis is a property investment company comprising of the Talis group of companies. The Talis group of companies are 100% black-owned and managed diversified investment, fleet management and IT service entities.

APH is a private property investment, development and asset management firm which holds and manages a property portfolio comprising residential, commercial, retail, industrial and mixed-use properties. The target firm's property portfolio includes property in Gauteng, Western Cape and Polokwane.

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.

1.13 Ziningi Properties (Pty) Ltd v Zeta Property Holdings (Pty) in respect of the property letting enterprises known as Alberton Centre and Truworths Union Castle Property

The Commission has approved the proposed transaction, without conditions, whereby Ziningi Properties (Pty) Ltd (Ziningi) intends to acquire two letting enterprises known as Alberton Centre and Truworths Union Castle Property (target properties) controlled by Zeta Property Holdings (Pty) Ltd.

Ziningi is involved in the leasing of fixed property including retail, office, and residential developments in South Africa.

The Alberton Centre comprises rentable retail space, situated in Alberton and can be classified as a value Centre. The Truworths Union Castle Property comprises rentable retail space in the Cape Town CBD.

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.

1.14 Pocowave (Pty) Ltd v Solethu Marine Services (Pty) Ltd

The Commission has approved the proposed merger, without conditions, whereby Pocowave (Pty) Ltd (Pocowave) intends to acquire a minority stake in Solethu Marine Services (Pty) Ltd (SMS).

Pocowave is a newly registered special purpose vehicle, owned by Access World (RF) (Pty) Ltd which is ultimately owned by Glencore plc (Glencore). Access World provides transport, logistics and certain ancillary services in relation to the transportation and shipment of commodities in South Africa. Glencore controls various subsidiaries and companies worldwide, which are mostly involved in coal mining.

SMS is involved in the bulk loading and offloading of trains and break bulk warehousing, specifically in relation to iron ore and manganese in the Northern and Western Cape. SMS's business activities in the Postmasburg area are limited to that of bulk loading operator of a Postmasburg Common User Facility established by Transnet for various junior iron ore miners in the Northern Cape. SMS also provides ancillary services such as warehousing and vessel loading of the manganese for export.

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.

Issued by:

Sipho Ngwema, Head of Communications

On behalf of: The Competition Commission of South Africa

Tel: 012 394 3493 / 081 253 8889

Email: SiphoN@compcom.co.za

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