



## **Weekly Media Statement**

**For Immediate Release**

**09 July 2018**

### **LATEST DECISIONS BY THE COMPETITION COMMISSION**

#### **1. Key decisions on mergers and acquisitions**

##### **1.1 Zaad Holdings Ltd (Zaad) v Hygrotech Properties (Pty) Ltd (Hygrotech)**

The Commission has recommended to the Competition Tribunal (Tribunal) that the proposed merger be approved, without conditions, whereby Zaad intends to acquire Hygrotech.

Zaad is controlled by Zeder Investments Limited (Zeder). Zeder is an investment holding company with diversified investments across the agri-business spectrum, ranging from strategic agri-inputs to fast moving consumer goods. Hygrotech Group, is active in the production, processing and distribution of agricultural seeds. It is also active in the production and distribution of soft agrochemical products and fertilisers, such as foliar feeds, adjuvants, buffers and wetters.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the national markets for the distribution of vegetable crop seeds and pasture/forage crop seeds. In addition, the proposed transaction does not raise public interest concerns.

##### **1.2 BASF SE Germany (BASF) v The Divestment Business of Bayer AG (Bayer)**

The Commission has recommended to the Tribunal that the proposed merger be approved, with conditions, whereby BASF intends to acquire the Divestment Business of Bayer.

In South Africa, BASF has operations ranging from chemicals, performances products, functional materials and solutions and agricultural solutions. BASF, through its agricultural solutions business is active in the crop protection sector, where it produces fungicides, insecticides and herbicides that can be used to protect a variety of crops (cereals, corn, and oilseed rape rice). Its product portfolio consists only of selective herbicides. BASF sells non-selective herbicides globally (glyphosate based products). In

addition, BASF also supplies seed treatment products in South Africa (mainly fungicide based). BASF also commercialises several biological seed treatment products for soybean seeds in South Africa.

The Divestment Business produces and supplies Canola (oil seed rape) and vegetable seeds. It also manufactures and sells the non-selective glufosinate ammonium based herbicide which is commercialised under the brand name Basta in South Africa. In addition, the Divestment Business also supplies seed treatment comprising insecticidal seed treatments as well as mixtures of insecticidal and nematode control seed treatments which are used for the treatment of maize seeds in South Africa.

The Divestment Business also includes the Liberty and the Liberty Link technologies. The Liberty and Liberty Link technologies relate to the non-selective glufosinate ammonium herbicide and genetically modified traits that render crops resistant against glufosinate ammonium. Bayer's Liberty Link technology confers plants with tolerance to Bayer's glufosinate-ammonium non-selective herbicide, Liberty, collectively referred to as the Bayer Liberty Link system. The Liberty Link system is currently not commercialised in South Africa.

The Commission recommends that the proposed transaction be approved subject to the condition obliging the merging parties to commercialise the Liberty Link technology and Liberty products in South Africa, or alternatively, license the Liberty Link technology and associated Liberty technology to a third party to commercialise should the merging parties be unable to do so. This provision is to ensure that South Africa will directly benefit from the commercialisation of the Liberty Link system in South Africa. Additionally, the merging parties must offer a 25% discount to small emerging farmers on the Poncho seed treatment product when procured directly by small emerging farmers which should apply for a period of three years.

### **1.3 Candur Active Value Investments (Pty) Ltd (CAVI), v The House of Busby (Pty) Ltd (New House of Busby)**

The Commission has approved, without conditions, the proposed transaction whereby CAVI, intends to acquire New House of Busby.

CAVI, through its subsidiary, NewSosco is active in the manufacture and wholesale distribution of ladies clothing to South African retailers. NewSosco manufacturers' ladies clothing under in-house brand for Edgars, Miladys, Foschini, Truworths, Makro and Queenspark. CAVI is active in the manufacture and wholesale distribution of perfumes, make-up and related beauty products under its own brand names and also hold rights to distribute and sell certain license brands in South Africa. The products include, sun screen or protection products, self-tanning products, haircare styling sprays, perfumes and fragrances, lip ice wax and lip protection, decongestant, skincare products and mosquito repellents.

Busby wholesale is responsible for the design, manufacture, and wholesale distribution of clothing (ladies and man clothing), luggage, handbags, accessories, eyewear and footwear for its own brand names and private labels. In addition, Busby wholesale is also active in the local, non-branded wholesale sector. Non-branded (private) labels offered by Busby wholesale include handbags (mainly in PU or PVC and cotton, straw and canvas), wallets and back to school bags (including tog bags, pencil cases and lunch bags). The House of Busby (under its Saks division) manufactures products for retailers under their in-house brands, specifically ladies underwear, active wear, sleep wear, scarves, gloves, hats, belts and handbags. Further, Busby supplies its products to other retail stores across the country, such as Truworths and Edgars. Busby Retail trades the House of Busby's products under eighteen international and coal brands, such as Guess, Aldo, 3INA, Forever New and Women's Secret, amongst others.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the wholesale distribution of ladies clothing. In addition, the proposed the transaction is unlikely to result in any job losses or raise any public interest concerns.

#### **1.4 Uitkomst Colliery (Pty) Ltd (Uitkomst), v The Business of Khethekile Mining (Pty) Ltd (KM)**

The Commission has approved, without conditions, the proposed transaction whereby Uitkomst, intends to acquire the business of Khethekile Mining (Target Business) from KM.

The Target Business comprises of three components, firstly, all the mining equipment owned by KM and utilized in providing services to Uitkomst. Secondly, all the mining equipment that is leased by KM and is utilized in providing services to the acquiring firm. Thirdly, all the mining stores and spares owned by KM and utilized in providing services to Uitkomst.

Uitkomst operates in the mining industry and more specifically, engages in coal exploration, development and mining in South Africa. In addition, Uitkomst's key projects include the current or future mining of coking and thermal coal and supplying same to the market. The Target Business provides contract mining services to Uitkomst, being the acquiring firm in the instant transaction. The Target Business does not provide contract mining services to any other firm.

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.

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

### **2.1 Darryl Samuels v McCarthy Toyota Edwin Sales (TFS) and Standard Bank (VAF)**

The Commission is of the view that the conduct complained of does not contravene the Competition Act.

## **2.2 Paul O’Sullivan v Breitling Watch Dealers in RSA**

The Commission is of the view that the conduct complained of does not contravene the Competition Act.

**[ENDS]**

### **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](mailto:SiphoN@compcom.co.za)

### Find us on the following social media platforms:

Twitter: @CompComSA

Instagram: Competition Commission SA

Facebook, LinkedIn and YouTube: The Competition Commission South Africa