



**competition commission**  
*south africa*

**Weekly Media Statement**  
**For Immediate Release**  
**30 May 2018**

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

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

#### **1.1 Hudaco Trading (Pty) Ltd (Hudaco) v The Boltworld Business (Boltworld)**

The Commission has approved, with conditions, the proposed merger whereby Hudaco intends to acquire Boltworld.

Hudaco imports and distributes branded industrial, automotive and electronic consumable products through various operating divisions. The operating division of Hudaco relevant for the purposes of assessing the proposed transaction is Rutherford, which imports and distributes a vast range of industrial fasteners and allied products. Industrial fasteners constitute a wide range of products which include nails, screws, bolts, sockets and zips, irrespective of their size and application. Boltworld is an importer and wholesale distributor of industrial fasteners and ancillary products based in Brakpan on the East Rand.

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

However, the Commission found that the proposed merger raised employment concerns as the merging parties proposed to retrench a number of employees arising from duplications of certain roles. However, the merging parties were not able to demonstrate that the retrenchments proposed had been determined subject to a rational process and pursuant to consultation with the affected employees. The Commission was particularly concerned that some of the employees earmarked for retrenchment were semi-skilled or unskilled workers who would struggle to find alternative employment in the short-term.

In order to address this concern, the Commission approved the proposed merger subject to conditions placing a moratorium on merger specific retrenchments for a period of 2 years from the date of implementation of the proposed merger. In addition, the proposed transaction does not raise any other public interest concerns.

#### **1.2 Robertsons Holdings (Pty) Ltd (Robertsons) v Silver 2017 (Pty) Ltd (Newco)**

The Commission has recommended to the Tribunal that the proposed merger be approved, with conditions, whereby Robertsons intends to acquire Newco.

Robertsons is owned by Hunt Leuchars & Hepburn Holdings (Pty) Ltd (HL&H), a company ultimately controlled by Remgro Limited (Remgro). Remgro is an investment holding company with interests in a

wide variety of industries including food, liquor and home care; banking; healthcare; insurance; industrial; infrastructure; and media and sports.

Newco is a newly incorporated entity established for the purpose of housing the business currently conducted by ULSA, pertaining to the manufacture, sale and distribution of its spreads products (the ULSA spreads business). The ULSA spreads business comprises that portion of the business conducted by ULSA which relates to the manufacture, marketing, sales and distribution of margarine products under the Rondo, Stork, Rama, Flora and Marvello brands; meadowland brand, which is a dairy cream alternatively used in the food services industry for multiple applications (including cooking, poring and whipping sweet or savoury dishes); and Flora cooking oil.

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

However, the Commission found that the proposed merger raised employment concerns as it is likely to result in job losses within ULSA's remaining business operations, i.e., not within the ULSA spreads business (the spreads business employees will be transferred to Robertsons). In order to address this concern, the Commission recommended to the Tribunal that the proposed merger be approved subject to conditions requiring the merging parties not to retrench any employees post-merger. In addition, the proposed transaction does not raise any other public interest concerns.

Further, the target business, i.e., the ULSA spreads business, is a respondent in the in a pending cartel investigation, and this matter is currently before the Tribunal. The Commission notes that as a result of the proposed merger, a respondent in the Commission's cartel investigation will be effectively owned by a new and unrelated party. The Commission is concerned that the approval of the proposed transaction should not result in any potential administrative penalty against the target business being avoided since the target business will be controlled by a different entity. As such, the Commission recommended to the Tribunal that the proposed transaction be approved subject to a condition that makes it obligatory for ULSA (i.e., the seller of the target business in this instance) to remain liable for the payment of any administrative penalty that may be imposed by the Tribunal post-merger. The Commission is of the view that this condition is necessary in order to avoid approving a transaction that may result in the enforcement of Tribunal order being frustrated, should such order be imposed.

### **1.3 Sea Harvest Group Ltd (Sea Harvest Group) and Sea Harvest Corporation Ltd (Sea Harvest Corporation) v Viking Fishing Holdings (Pty) Ltd (Viking Holdings) and Viking Aquaculture (Pty) Ltd (Viking Aquaculture).**

The Commission has recommended to the Tribunal that the proposed merger be approved, with conditions, whereby Sea Harvest Corporation intends to acquire certain fishing rights and assets used in operating the fishing business of Viking Fishing Holdings.

Sea Harvest is a vertically integrated firm in the South African fishing industry. Its principal business activities involve fishing or harvesting of Cape Hake and Shark Bay prawns as well as processing and marketing of value-added frozen and chilled seafood products. These processed seafood products include skin-on and skinless fillets, natural portions and coated or battered products. With regard to harvesting, Sea Harvest owns and operates fishing vessels, which are used to catch and process Cape Hake, Shark Bay prawns and other by-catch species such as kingklip and monk.

Viking Holding is vertically integrated in the South African fishing industry and its activities consist of fishing rights and fishing vessels, seafood processing facilities and cold storage. With regard to fishing rights and

fishing vessels, Viking Holdings owns and operates fishing vessels that are used for harvesting hake, pilchards, anchovies, prawns, horse mackerel and West Coast rock lobster. Viking Holdings also owns and operates seafood processing facilities in Mossel Bay, the Cape Town Harbour and the Mossel Bay Harbour. These facilities mainly process pilchards, hake, squid and by-catch species such as snoek, monk and kingklip.

The Commission found that the proposed merger does not lead to a substantial lessening of competition. Nonetheless, the Commission found that Brimstone Investment Corporation Limited, a public company which ultimately controls Sea Harvest, also has a non-controlling shareholding interest in Oceana, a competitor of Sea Harvest. The Commission found that, post-merger, there was a risk that competitively sensitive information could be shared between Sea Harvest and Oceana through Brimstone, a common shareholder. The Commission has therefore recommended that the Tribunal impose conditions which will ensure that Brimstone does not appoint the same directors to the boards of Sea Harvest and Oceana, respectively.

#### **1.4 Cell C Ltd and Cell C Service Provider Company (Pty) Ltd (Cell C SP) v Glozell Service Provider (Pty) Ltd (GSP)**

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby Cell C SP intends to acquire certain assets of GSP relating to the Cell C post-paid subscribers. The GSP assets being acquired relates to Cell C post-paid subscriber base.

Cell C is South Africa's third largest Mobile Network Operator and operates through a variety of subsidiaries including Cell C SP. Cell C SP, is active in the retailing of a variety of products and services including, handsets, sim cards, accessories and pre- and post-paid cell phone contracts. GSP is an independent Service Provider providing post-paid as well as prepaid services including pre-paid airtime, electricity and handsets.

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 significant public interest concerns.

#### **1.5 Philafrica Foods (Pty) Ltd (Philafrica Foods) v Zutco (Pty) Ltd – Heibron – Free State and Pakworks (Pty) Ltd – Heibron – Free State (the Target Group)**

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby Philafrica Foods intends to acquire the Target Group.

Philafrica Foods is controlled by AFGRI Holdings Proprietary Limited (AFGRI Holdings). The AFGRI Group is an agricultural commodity trading company that operates through four focused operating divisions, including Philafrica Foods. Philafrica Foods is an investment company involved in food processing and owns and operates maize mills, wheat mills, an oilseed crushing, extraction and refining plant and animal feeds manufacturing plants spanning all animal categories.

The Target Group is involved in the contract manufacturing of savoury snacks on behalf of a third party. The Target Group does not manufacture any other savoury snacks.

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

## **1.6 Bachique 715 (Pty) Ltd (BEE Holdco) v Macquarie Equities South Africa (Pty) Ltd (MESA)**

The Commission has approved the proposed merger, without conditions, whereby BEE Holdco intends to acquire MESA from Macquarie Holdings South Africa (MHSA).

BEE Holdco is ultimately controlled by Mazi Holdings (Pty) Ltd (Mazi Holdings) and AWB Capital (Pty) Ltd (AWB Capital). Mazi Holdings is in turn controlled by Malungelo Zilimbola Trust (Trust). AWB Capital is controlled by AMB Holdings (Pty) Ltd (AMB Holdings). The Mazi Group is black-owned and black-managed asset management group. It provides various investment management services to both institutional and individual investors. Further, the Mazi Group also operates a portfolio of hedge funds.

The AMB Group is an authorised financial services provider licensed by the Financial Services Board in South Africa. The AMB Group provides innovative financial solutions to emerging and established corporates and institutions both domestically and internationally in Africa and Europe. MESA is a Johannesburg Stock Exchange (JSE) registered brokerage firm and is licensed as a trading service provider. Its services include concluding and publishing equities research, care and agency trading, and electronic execution and facilitation of trading on the JSE. MESA trades in equity securities for large institutional investors on a commission basis and does not conduct any trade for its own account.

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

## **1.7 Business Connexion (Pty) Ltd (BCX) v NGA Africa (Pty) Ltd (NGA)**

The Commission has approved the proposed transaction, without conditions, whereby BCX intends to acquire NGA.

BCX is an information and communication technology services (ICT) provider in South Africa. It offers a wide variety of ICT services which include managed network (VPN) services, on-site support, data centre services, application development, hardware maintenance, ICT outsourcing, project management, systems integration, business consulting services and the resale of business management software and support services. The business management software services include, the provision of accounting, payroll, human resources, enterprise planning and customer relationship management system solutions and application software.

NGA provides various business management services and software, with a particular focus on human resources. The business management software and related services include inter alia (i) HR technology consulting services, (ii) HR and payroll solutions, (iii) and cloud services.

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

## **1.8 Duferco Distribution Services (South Africa) (Pty) Ltd (DDS) v NLMK International BV (NLMK)**

The Commission has approved the proposed merger, whereby NLMK intends to acquire DDS, without conditions.

NLMK is involved in the manufacture of steel products, including hot rolled steel coils and hot rolled steel plates in quenched and tempered conditions, which are subsequently distributed globally and in South Africa. DDS is involved in the distribution of various forms of steel products in South Africa. Essentially DDS is a steel merchant with the capabilities to conduct value addition such as cutting and bending of various types of steel products.

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

### **1.9 Naledi Forging (Pty) (Naledi Forging) Ltd v DCD Ringrollers (DCD RR), a division of DCD Group (Pty) Ltd (DCD)**

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby Naledi Forging intends to acquire DCD RR, a division of DCD.

Naledi Forging is an exclusive and licensed distributor of imported MG Valdunes and MA steel forged wheels and related products in South Africa. It imports and supplies the South African market with solid steel forged wheels and related products. Solid steel forged wheels are a type of complete wheel which does not utilise a tyre. These products include freight and heavy haul forged wheels, passenger and locomotive forged wheels and wheel sets. DCD RR is active in the manufacture and fitment of solid metal tyres for trains (tyres are a component of a complete wheel, which tyres are fitted onto solid metal disks to form an alternative type of complete wheel used on trains). The wheels upon which the tyres are fitted onto are typically used in light rail applications such as in the mining industry, mainline trains, trams and metro trains (passenger rail trains).

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

### **1.10 VKB Agri Processors (Pty) Ltd (VKB Agri) v VKB Flour Mills (Pty) Ltd (VKB Flour)**

The Commission has recommended to the Tribunal that the proposed merger be approved, without conditions, whereby VKB Agri intends to acquire VKB Flour.

The VKB Group is focused on agricultural economic inputs, mechanisation, handling and marketing of grain, financing and investing. It also operates maize mills, manufactures and distributes packaging material in respect of agricultural produce, operates seed processing plants, operates animal feed mills and chicken abattoir as well as holds a SAFEX license.

VKB Flour is active in the manufacture and supply of wheat flour as well as bread and other bakery products.

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

### **1.11 Pearl Island Trading (Pty) Ltd (PIT) v Hungry Lion Fast Foods (Pty) Ltd (HLFF)**

The Commission has approved the proposed transaction, without conditions, whereby PIT intends to acquire HLFF.

PIT currently only has interest in HLFF and does not have any other trading business activities aside from its shareholding interest in HLFF. HLFF trades as quick service restaurants with a special focus on chicken meals with a limited array beverages, side dishes such as chips and salads, and sweets.

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

### **1.12 New Seasons Investments Holdings (Pty) Ltd (New Seasons) v Nodus Equity (Pty) Ltd (Nodus Equity)**

The Commission has approved the proposed transaction, without conditions, whereby New Seasons intends to acquire Nodus Equity.

New Seasons is an investment holding company holding investments in various sectors of the economy. Nodus Equity and its entities' are mainly investment holding firms, which are invested in firms that provide the following products and services: manufacturing and trading in quality paint, mainly for industrial purposes; retail of weaves, wigs, braids and beauty products; and printing and distribution of yellow and white pages directories and online yellow pages services.

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

### **1.13 Rovest (Pty) Ltd (Rovest) v Broodkraal Landgoed (Pty) Ltd (BKL)**

The Commission has approved the proposed transaction, without conditions, whereby Rovest intends to acquire BKL.

Sandrivier is the only company within the Rovest Group of companies with operational business activities. Sandrivier's core business is the production of plums and nectarines (stone fruit), primarily destined for sale in the international market.

BKL is a producer of table grapes for the export market.

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

### **1.14 Luvon Investments (Pty) Ltd & PHG Somerset Value Mall (Pty) Ltd (Luvon) v Park Road Trading 7 (Pty) Ltd (Park Road) in respect of its interest in the target property known as Bright Water Commons (Target Property)**

The Commission has approved the proposed transaction, without conditions, whereby Luvon intends to acquire Park Road in respect of the Target Property.

Luvon is a property investment fund, which invests in a diversified portfolio of commercial and retail properties in Gauteng, Limpopo, Northern Cape, Mpumalanga and North West. It is involved in the management and letting of commercial and retail properties and the development of such properties. Luvon's controlling shareholder is a property holding company and is involved in the development, management and letting of commercial and retail properties.

Park Road is a property holding company, involved in the management and letting of retail property. The Target Property is a shopping mall, with a GLA of 42 244m<sup>2</sup> and can be described as a regional shopping center situated in Randburg, Gauteng.

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

### **1.15 North Block Complex (Pty) Ltd (NBC) v Exxaro Coal Mpumalanga (Pty) Ltd (ECM)**

The Commission has approved the proposed transaction, without conditions, whereby NBC intends to acquire ECM in respect of its mining and processing business of the North Block Complex (Transferred Business).

NBC is a newly incorporated company and does not have any activities currently. The controlling shareholder of NBC produces thermal coal in South Africa.

The Transferred Business is a mine that produces thermal coal from open pit operations. The coal thus produced is predominantly used for power generation and over the years has been primarily produced for sale to the domestic market.

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

### **1.16 Spectrum Security Products (Pty) Ltd (SSP) v The Spectrum Security division of Connoisseur Electronics (Pty) Ltd (Connoisseur) t/a Spectrum Communications (Target Business)**

The Commission has approved the proposed transaction, without conditions, whereby SSP intends to acquire Connoisseur.

SSP is a newly-incorporated company which does not conduct any business activities. Spirit Capital, through its strategic business units, being Corporate Finance and Principal Investments, provides corporate advisory services and conducts investment activities for its own account by way of co-investments into private companies. Spirit Capital also provides other non-transactional services, including business valuations and investment analyses.

The Target Business supplies a range of portable analogue and digital two-way radios, which ensure reliable communications between users, and it provides various customised communication solutions to governments, public security organisations, transportation industries and enterprise and business sectors. The Target Business also distributes a range of security equipment and products including; door answering units, video entry security systems, intercom, video, audio and apartment systems. It further distributes

infrared beam sensors, motion detectors, alarm panels, keypads, peripheral equipment and CCTV cameras

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

### **1.17 Vertex Holdco LLC (Vertex) v Verifone Systems Inc. (VeriFone)**

The Commission has approved the proposed transaction, without conditions, whereby Vertex intends to acquire VeriFone.

Vertex managed by Francisco Partners. Francisco Partners is a private equity firm exclusively focused on investments in software and technology-enabled businesses. Two companies controlled by Francisco Partners are active in the payment services sector, and specifically in the supply of card-not-present payment gateways in South Africa which are NMI and 2Checkout.

VeriFone is primarily active in the design, manufacture and supply of point of sale (POS) payment devices (POS terminals) for card payments. VeriFone's core business activity is the manufacture of POS terminals and the provision of related field services such as installation, repair and warranty of such devices. It also offers certain ancillary software solutions such as estate management, security, payment gateway services, and merchant acquiring services in a limited number of countries (outside of South Africa). The only ancillary software services provided by VeriFone in South Africa are in relation to estate management.

The Commission found that the proposed transaction is unlikely to prevent or lessen competition in any market in South Africa. In addition, the Commission found that the proposed transaction will not result not have a negative effect on employment.

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

### **2.1 Tikane Moses Pudikabekwa v H Bham and ABSA Bank Ltd**

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

### **2.2 Amo Smith v First National Bank Ltd**

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

### **2.3 Tshele Litabe v Telkom Ltd**

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

### **2.4 Carel Moller v Multichoice**

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

### **2.5 Abraham Colin Landam v Ford Motor Company of Southern Africa and NGK Spark Plugs SA (Pty)Ltd**

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

**2.6 Franco Tyres CC v Bridgestone South Africa (Pty) Ltd**

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

**2.7 Unistel Medical Laboratories (Pty) Ltd v National Zoological Gardens, a division of the National Research**

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

**2.8 Sifiso Dlamini v PRASA**

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