Weekly Media Statement
For Immediate Release
12 November 2020

The Competition Commission of South Africa (CCSA) held its ordinary weekly meeting on Tuesday 10 November 2020, to review and take decisions on matters brought before the Commission by members of the public and corporate applicants, in terms of the Competition Act (89 of 1998). These matters include but are not limited to complaints, mergers and acquisitions.

LATEST DECISIONS BY THE COMPETITION COMMISSION

1.1 Fortyellow (Pty) Ltd t/a Fortwood (Fortwood)/ DSV Real Estate Johannesburg (Pty) Ltd (DSV)

The Commission has recommended that the Competition Tribunal (Tribunal) approve the proposed transaction whereby Fortwood intends to acquire DSV without conditions.

Fortwood is a special broad-based black economic empowerment ("B-BBEE") vehicle established for the purpose of this transaction and does not currently control any firm. Fortwood is ultimately controlled by Fortress REIT Limited ("Fortress"). Fortress is a public company listed as a Real Estate Investment Trust on the Johannesburg Securities Exchange Limited ("JSE"). Fortress is not directly or indirectly controlled by any firm. Fortwood and all the firms controlling it will hereinafter be collectively referred to as the "Acquiring Group". The Acquiring Group is constituted of property ownership firms with a portfolio of approximately 292 immovable properties and rental enterprises in all nine provinces of South Africa. The Acquiring Group's diversified portfolio is spread across the logistics or industrial, retail and office sectors.

DSV's business is constituted of its sole underlying asset, being the immovable property to be developed into a separate and distinct rental enterprise which will be known as "DSV Park" once complete, situated at Serengeti Boulevard, Kempton Park, Gauteng ("Target Property").

DSV Group's intention is to develop the Target Property into lettable industrial and office space, with a subsequent sale to realise developmental profits. The sale will be subject to the acquiring firm signing a long-term lease with the DSV Group, allowing the DSV Group usage of the property. The Target Property is a prime grade distribution facility currently under construction, which upon completion will have a total gross lettable area of some 142,129m2, to primarily be used as light industrial space measuring 127,251m2, with an ancillary 14,878m2 P-Grade office component.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.2 RMB Investments and Advisory Pty Ltd (RMBIA) and Redefine Properties Ltd (Redefine)/ The Trustees for the time being of Truzen 89 Trust in respect of the letting enterprise known as Mall of the South (Target Property)

The Commission has recommended that the Tribunal approve the proposed transaction whereby RMBIA and Redefine intends to acquire the Target Property without conditions.

RMBIA is an investment company and its main business is the acquisition and holding of assets for investment purposes. FirstRand does not own any retail property, however for completeness it is submitted that FirstRand owns certain office properties that are utilised internally for its business divisions within the FirstRand Group

The second primary acquiring firm is Redefine. Redefine is a Real Estate Investment Trust ("REIT") which is listed on the JSE and is not controlled by any firms. Redefine's property portfolio comprises a diverse range of properties comprising office, retail, residential and industrial space situated throughout South Africa.

The Trustees for the time being of Truzen 89 Trust, in respect of the Target Property. The Target Property is a regional centre comprising of 72 070m2 of gross lettable area ("GLA") and is situated on the corner of Swartkoppies Road and Kliprivier Drive, Aspen Lakes Extension 12, in the Gauteng Province.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.3 Corvest 12 Pty Ltd (Corvest 12)/ The Alternative Power (Pty) Ltd (Alternative Power)

The Commission has recommended that the Tribunal approve the proposed transaction whereby Corvest 12 intends to acquire Alternative Power without conditions.

Corvest 12 is an on-balance sheet provider of private equity for mid-sized management buy-outs, leveraged buyouts, development capital and funded black economic empowerment solutions, and ultimately forms part of the FirstRand Group, which through its various financial services franchises provides a universal set of transactional, lending, investment and insurance products and services.

Alternative Power manufactures and sells energy drinks, energy bars and energy rolls under the brand “Switch”, to wholesalers, distributors and retailers. However, it does not sell any of its products directly to end customers. Alternative Power trades throughout South Africa, focusing on Gauteng, Limpopo, and Mpumalanga. It also exports its products to certain neighbouring countries from time to time.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.4 Main Street 1788 Proprietary Limited (Main Street)/ Octotel Proprietary Limited (Octotel)

The Commission has recommended that the Tribunal approve the proposed transaction whereby Main Street intends to acquire Octotel without conditions.

Main Street is a special purpose company incorporated in South Africa. Main Street is ultimately controlled by Actis LLP (Actis), a limited liability partnership registered in England which is not controlled by any firm. Actis is a global private equity investment group with a multi-asset investment strategy. Its investment focus is primarily in the consumer, healthcare, financial services, industrial, energy, education and real estate sectors.

Octotel is a firm incorporated in South Africa. Octotel operates an open access fibre network. Its activities in this regard include the building, owning, maintaining and leasing of fibre networks, with a focus on providing Fibre to The Home ("FTTH") and Fibre to The Business ("FTTB"). Octotel operates in the greater Cape Town metropole. It operates as an independent fibre provider and rolls out its fibre network in partnership with community and local internet service providers.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.5 Macsteel Service Centres SA (Pty) Ltd (MSCSA)/ Certain assets of Robor (Pty) Ltd (in liquidation) (Robor Assets)

The Commission has conditionally approved the proposed merger whereby MSCSA intends to acquire Robor Assets.

MSCSA produces and distributes a broad range of steel products including carbon steel, stainless steel, speciality steels and aluminium products. MSCSA’s tubes and pipes division (MT&P) is the most relevant for this transaction. The products produced by MT&P are the standard Tubes and Pipes (T&P), limited to small bore products. This includes structural steel tubes and straight-line steel pipes. Structural steel tubes are typically used as a construction element and form of support in built structures, mining support systems, fencing, hi-tensile scaffolding and furniture. Steel pipes are used for the transmission (conveyance) of liquids, oils and gasses. MT&P also offers value added products.

Pursuant to a liquidation order granted by the South Gauteng High Court in September 2019, Robor has been put in liquidation. The Robor Assets are primarily the assets which form part of Robor's tube and pipe operations. These assets comprise those used in the manufacturing business previously supplying standard small-bore T&P and open sections. In addition, the Robor Assets also include assets previously supplying value-added products.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets.

With respect to public interest considerations, particularly employment, the Commission received employment concerns in relation to pre-merger retrenchments.

In this regard, the merging parties agreed to conditions that (i) the Merging Parties shall fill the Available Vacancies with the employees that MSCSA has retrenched during the above mentioned processes, and in the event that none have the required qualifications, skills, know-how and experience, with the Robor Employees with the required qualifications, skills, know-how and experience (ii) the Merging Parties shall fill all vacancies that arise beyond the Available Vacancies for a period of 3 years post Implementation Date with the Affected Employees with the required qualifications, skills, know-how and experience. Where former MSCSA employees are unable to fill any such vacancies, the Merging Parties will give first preference to the Robor Employees, with the required qualifications, skills, know-how and experience to fill such vacancies for a period of 3 (three) years from the Implementation Date.

1.6 Arie Nel Pharmacy (Pty) Limited (Arrie Nel)/ Pharmed Pharmaceuticals (Pty) Limited (Pharmed)

The Commission has conditionally approved the proposed merger whereby Arrie Nel intends to acquire Pharmed.

Arrie Nel is a vertically integrated pharmaceutical wholesaler and retailer. Arrie Nel wholesales pharmaceutical products to its network of retail pharmacies as well as to independent pharmacies and medical professionals).

Pharmed is a wholesale distributor of pharmaceutical products to independent pharmacies, hospitals and doctors.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets.

As regards employment, the merger is likely to save jobs given that Pharmed is currently in facing financial difficulties. The merging parties and the relevant trade unions have agreed to conditions that enshrine the merged entity’s commitment to retaining as many jobs as possible post the implementation of the merger. The merger does not raise any other public interest concerns.

1.7 Villa Holdings (Pty) Ltd (Villa) / Intelichem (Pty) Ltd (Intelichem)

The Commission has conditionally approved the proposed merger whereby Villa intends to acquire Intelichem.

Villa Group is a supplier of crop protection solutions to distributors in South Africa. Its primary business is the wholesale of off-patent agrochemicals to dealers. The Villa Group is also involved in the research of off-patent or soon to be off-patent products as well as the development of new unique mixtures of off-patent products and the trialling thereof at the group's trial farms in Wellington and Nelspruit; the importation and transportation of products (finished products and raw materials / active ingredients) into South Africa; the warehousing of products at warehouses at Kempton Park, Olifantsfontein and Paarl; the distribution of products to customers; and the administration (support) and marketing of the above.

Intelichem Group is a supplier of agrochemicals in South Africa. Its primary business is in the retail of agrochemicals, but it also operates to a limited extent as a wholesaler. In addition to agrochemicals, the Intelichem Group is also a retailer of seed (mainly vegetable seed and oil seed) in South Africa as well as specialised plant nutrition products through agents to growers. Intelichem Group is also involved in the following activities: the research of off-patent or soon to be off-patent products as well as the development of new unique mixtures of off-patent products and the trialling thereof; the importation and transportation of products (finished products and raw products or active ingredients) into South Africa; the conversion of active ingredients into finished products by formulating these products at the group's Germiston formulation plant; the warehousing of products across South Africa and the administration (support) and marketing of the above; the distribution of products to growers from a retail perspective and to customers from a wholesale perspective; and providing advice and technical services to growers from a retail perspective.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. However, the merger raised some public interest concerns in that some employees would be retrenched. In order to address these concerns, the Commission imposed conditions placing a moratorium on the retrenchment of employees for a period of time. The merger was approved subject to those conditions.

1.8 Avacare Shared Services CMA (Pty) Ltd (Avacare)/ Barrs Pharmaceuticals Industries (Pty) Ltd (Barrs) and Josdel Property No 150 (Pty) Ltd (Josdel)

The Commission has unconditionally approved the proposed merger whereby Avacare intends to acquire Barrs and Josdel.

Avacare controls numerous firms in South Africa which are active in the pharmaceutical industry. These firms include Supra Healthcare Cape Town, Supra Healthcare KZN, Innovata Pharmaceuticals, amongst others. Avacare, the firms controlling it as well as its subsidiaries will collectively be referred to as the “Acquiring Group”. Avacare Global and Innovata own various entities globally that manufacture, procure and distribute pharmaceuticals products.

Barrs is involved in the manufacturing, packaging and supply of orthodox and complementary products which are either “over the counter” or prescription medicines. Josdel owns the property on which Barrs manufactures and packages its products.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.14 GHB Holdings (Pty) Ltd (GHB Holdings) / Topigs SA (Pty) Ltd (Topigs)

The Commission has unconditionally approved the proposed merger whereby GHB Holdings intends to acquire Topigs.

GHB Holdings, through GHB Farms, operates two pig farms; Kaalfontein farm and Rooipoort farm in Bronkhorstspruit, Gauteng where it farms and grow pigs. Eskort, another subsidiary of GHB Holdings, is active in production and supply of processed pork products. At this level, Eskort procures pigs from pig farmers such as GHB Farms or Topigs and slaughters the pigs to produce processed pork products such as sausages and bacon.

Topigs is active in the production and distribution of genetic material for commercial pig farmers in the South African and African markets. As a by-product of genetics production, Topigs also produces baconers (these are pigs that are considered fit for being made into bacon and ham), which are sold for slaughter to abattoirs in the South African market.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.15 Network International Holdings Plc (NIH)/ 3G Direct Pav Holdings Limited (DPO Holdings)

The Commission has unconditionally approved the proposed merger whereby NIH intends to acquire DPO Holdings.

In South Africa, NIH provides issuer processing services for payment card transactions on behalf of issuing banks.

DPO Holdings provides a payments gateway or virtual point of sale that enable merchants with online stores to offer their customers the ability to pay for transactions various means such as payment cards, mobile money or vouchers.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.16 CNH Industrial SA (Pty) Ltd (CNHISA)/ Parts of Invicta Holdings Limited (Invicta)

The Commission has unconditionally approved the proposed merger whereby CNHISA intends to acquire Invicta.

CNH Industrial is a capital goods company engaged in the design, production, marketing, sale and financing of agricultural and construction equipment, trucks, commercial vehicles, buses and specialty vehicles for firefighting, defence and other uses, as well as engines, transmissions and axles for vehicles and engines for marine and power generation applications. Of relevance to the proposed transaction is that CNH Industrial commercializes the New Holland Agriculture and New Holland Construction brands and the Case IH and Case CE brands in South Africa. These brands include agricultural and construction equipment and related spares. More specifically, the New Holland Agriculture and New Holland Construction brands are made available in South Africa through CNHISA and its various dealers or distributors in South Africa, including Invicta.

Invicta's business is primarily related to the sale and support of the Case HI and Case CE brands in South Africa (on behalf of CNH Industrial), as well as certain business activities related to the after-sales support of equipment and the sale of OEM and (to a limited extent) non-OEM related spares (including but not limited to New Holland Agriculture and New Holland Construction spares). Invicta is also involved in the sale of certain equipment, implements, and spares not necessarily associated with CNH Industrial brands.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.17 Noble Spectatus Fund 7 (Pty) Ltd (Noble 7)/ Cresta Crossing owned by the Blackheath Rendezvous Co-ownership (the "Target Property")

The Commission has unconditionally approved the proposed merger whereby Noble 7 intends to acquire the Target Property.

Noble 7 is controlled by Noble Spectatus Fund Proprietary Limited ("NSF"). NSF and its subsidiaries (including Noble 7) invest in commercial property with a property portfolio in the Western Cape, Gauteng and Limpopo.

The Target Property comprises a rentable retail space situated at corner Beyers Naude Drive and Northcliff, Waterval Estate, Johannesburg, Gauteng.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.18 Milprops 365 (Pty) Ltd (Milprops)/ Metboard (Pty) Ltd in respect of the letting enterprise known as Maitland Industrial Park (Metboard)

The Commission has unconditionally approved the proposed merger whereby Milprops intends to acquire Metboard.

The Milprops Group is a private property investment and development group which holds a portfolio of retail, office and industrial properties situated exclusively in the Western Cape Province.

Metboard operates as a subsidiary of Growthpoint Properties Limited (“Growthpoint”). Growthpoint is a property investment holding company listed on the JSE and is classified as a Real Estate Investment Trust. The issued share capital of Growthpoint is widely held by a number of institutional shareholders which do not control the management and strategic direction of Growthpoint. Growthpoint's property portfolio consists of rentable retail, office and industrial space. Growthpoint invests in retail property situated in major urban centres and retains the character of a diversified fund through investments in quality office nodes and in industrial parks. For purposes of the current transaction, only Maitland Industrial Park is relevant. Maitland Industrial Park is situated at 733 Voortrekker Road, Maitland, Cape Town, Western Cape and comprises rentable light industrial space.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that the proposed transaction does not raise any public interest concerns.

1.19 Amrichprop 8 Properties (Pty) Ltd (Amrichprop 8) and Amrichprop 2 Properties (Pty) Ltd (Amrichprop 2)/ Annuity Properties (Pty) Ltd (Annuity) in respect of the property known as Langeberg Mall (Langeberg Mall)

The Commission has unconditionally approved the proposed merger whereby Amrichprop 8 and Amrichprop 2 intends to acquire Langeberg Mall from Annuity.

The Amrichprop Group conducts business as investors in retail and commercial income generating properties. It has a portfolio consisting of 10 rental enterprises in retail and office space located in the Western Cape, Gauteng and North West Provinces. The Armrichprop Group's portfolio of retail property mainly consists of convenience centres (3 centres in total), neighborhood centres (4 centers in total) and a community centre known as Willowbridge Shopping Centre in Tygervalley.

Langeberg Mall is controlled by Annuity. Langeberg Mall is classified as a minor regional shopping centre situated at Louis Fourie Road, Voorbaai, Mossel Bay, Western Cape.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant markets. The Commission further found that 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 Lucky Novukuza v KBC Health and Safety (Pty) Ltd, Richards Bay Coal Terminal (Pty) Ltd, Richards Bay Minerals – Rio Tinto and Tronox (Pty) Ltd

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

2.2 Sizwe Medical Fund v Registrar of Medical Schemes

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

2.3 Breakers (Pty) Ltd t/a Sakhile Mining Supply v Aquapump (Pty) Ltd t/a Liquid Movers

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

2.4 Stable Brands Proprietary Limited v LA Group Proprietary Limited

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

2.5 Department of Correctional Services (Mr. Netshimbupfe) v LC Packaging and Johnny Bags

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

2.6 Reginald Kgwedi v Retail stores – supermarkets or food outlets

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

2.7 Lengau Foods (Thabo Abel Thekiso) v Awethu Breweries (Tony Ford)

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

3. Withdrawal of complaints: The Commission has taken a decision to accept the withdrawal of the following complaint

3.1 Mrs Iebtiesaam Manuel v Mountain Road Primary School (Cape Town)

The Commission has taken a decision to accept the withdrawal of this complaint

Members of the public can now lodge their complaints by SMS/WhatsApp @084 743 0000

[ENDS]

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