



competition commission
south africa

Weekly Media Statement

For Immediate Release

12 May 2021

The Competition Commission of South Africa (CCSA) held its ordinary weekly meeting on Tuesday 11 May 2021, 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 NMI Durban South Motors (Pty) Ltd (NMI DSM) / Barloworld South Africa (Pty) Ltd (Barloworld SA)

The Commission has recommended that the Competition Tribunal (Tribunal) approve the proposed transaction whereby NMI DSM intends to acquire the Barloworld Motor Retail Business from Barloworld SA, with conditions.

NMI DSM's principal business consists of the retailing of new and pre-owned vehicles, supplemented by vehicle servicing and parts departments. It owns various dealerships which include: Mercedes Benz Umhlanga; Mercedes Benz Pinetown; NMI DSM Umhlanga; Mercedes Benz Commercial Vehicle Durban; Garden City Motors Shelley Beach; Garden City Motors Pietermaritzburg; Garden City Motors Mbombela; Garden City Commercial Motors Mbombela; and NMI DSM Mbombela. The brands represented by NMI DSM are: Mercedes-Benz; Jeep; Smart; Fuso; Freightliner; Western Star; GWM; Haval and Mitsubishi.

The Barloworld Motor Retail Business includes trading in new and used motor vehicles, after-sales services including the service of motor vehicles and the sales of parts and accessories, finance and insurance products and other miscellaneous items as well as the provision of customer services and other ancillary matters thereto which is conducted and/or undertaken

through the dealerships, allied businesses and support structures located on the premises. The Barloworld Motor Retail Business operates leading motor vehicle franchise and non-franchise dealerships in South Africa and Botswana. The products include the sale of new and used vehicles with supporting finance and insurance products, and aftermarket services including parts sales. The brands Barloworld represents include Caterpillar, Avis, Budget, Mercedes Benz, Toyota, Volkswagen, Audi, BMW, Ford, and Mazda, among others.

The merging parties submit that the proposed transaction will not result in any job losses. In addition, at the date of transfer, all the rights and obligations in relation to the employment contracts that existed between the Seller and the employees at the time of transfer will continue.

Both the employees of NMI DSM and the Barloworld SA are represented by trade unions. The Commission engaged with the respective trade unions who did not raise any objections to the proposed transaction.

The Commission notes that the merging parties provided an unequivocal statement that the proposed transaction will not result in any retrenchments. The Commission further notes that the employees of the Barloworld Motor will be transferred to NMI DSM. As such, the Commission is of the view that the proposed transaction is unlikely to result in any job losses.

The Commission found that pre-merger, the Barloworld Motor Retail Business participates in Barloworld's Supplier Development Programme ("SDP") which ensures that black owned and women owned qualifying small enterprises are afforded the maximum opportunity to participate in providing products and services to Barloworld. The DTIC and the Commission raised concerns regarding the fact that the merger will result in the target firm no longer being party to the Barloworld SDP.

Following engagements on this matter, the Commission proposed to the merging parties that the merger be approved subject to a condition which will ensure that the merged entity will continue to form part of the Barloworld SDP while it develops its own SDP. The merged entity will then implement its own SDP. The merging parties accepted this proposition and agreed that the merger could be approved subject to conditions which will ensure that the merged entity will continue to participate in the Barloworld's SDP for a period of 2 (two) years following the implementation date. Furthermore, during the 2-years period, the merged entity will establish its own SDP which it will operate for a period of at least 8 years.

In addition, the proposed transaction does not raise any other public interest concerns. The Commission therefore recommends that the proposed transaction be approved with conditions.

1.2 Revego Africa Energy Fund Partnership Managers (Pty) Ltd, an en commandite partnership acting through Revego General Partner (Rf) (Pty) Ltd in its capacity as General Partner (Revego) / Aurora Wind Power (Rf) (Pty) Ltd (Aurora)

The Commission has recommended that the Tribunal approve the proposed transaction whereby Revego intends to acquire Aurora, without conditions.

Revego is wholly owned by Revego Fund Managers (Pty) Ltd (“RFM”), RFM is controlled by Investec Bank Limited (“Investec”) with the remaining shares held by Entrepreneurship Development Trust, H1 Holdings (Pty) Ltd and Dzana Investments (Pty) Ltd. Investec is a public company listed on the Johannesburg Stock Exchange (“JSE”) Limited and is not controlled by any one shareholder. Investec controls several firms including Investec Asset Management Holdings (Pty) Ltd, Investec Asset Management (Pty) Ltd, Investec Property (Pty) Ltd and Investec Investments (Pty) Ltd. Revego does not directly or indirectly control any firm in South Africa.

The Acquiring Group is a fund management company, incorporated in 2018, which is responsible for the management of the Fund Partnership which has been established in South Africa as an en commandite partnership comprising the General Partner and Revego. Revego manages third party funds and provides intermediary services on a discretionary basis. As a fund manager, Revego is responsible for sourcing and managing of investments in operating renewable energy projects in South Africa and the broader sub-Saharan Africa. The Acquiring Group has no other interests in renewable energy projects, nor does Revego or RFM. However, Revego intends, through the Fund Partnership, to acquire equity instruments in several renewable energy projects. In this regard, the acquisition of Aurora entails the first in a series of renewable energy project acquisitions in which the Fund Partnership will invest. Furthermore, Investec also has a minor interest in one other renewable energy project, Kathu Solar Park, a 100MW concentrated solar power project located in the Northern Cape.

Aurora is a company responsible for the development, construction, operation, and maintenance of the 94 MW West Coast One wind farm situated in Vredenburg, Western Cape in terms of a non-negotiable, standardized Power Purchase Agreement (PPA). Aurora is one of 112 renewable energy IPP projects which form part of the broader Renewable Energy Independent Power Producers Procurement Programme which is operated and underwritten by The Department of Mineral Resources and Energy.

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 Revego Africa Energy Fund Partnership Managers (Pty) Ltd (the Fund Partnership), an en commandite partnership, represented by Revego General Partner (RF) Proprietary Limited in its capacity as General Partner (Revego) / Genesis Khobab Wind (RF) (Pty) Ltd (Genesis Khobab); Genesis Loeriesfontein Wind (RF) (Pty) Ltd (Genesis Loeriesfontein); and Genesis Noupoot Wind (RF) (Pty) Ltd (Genesis Noupoot)

The Commission has recommended that the Tribunal approve the proposed transaction whereby Revego intends to acquire Genesis Khobab, Genesis Loeriesfontein and Genesis Noupoot, without conditions.

Revego is a fund management company, which manages third party funds and provides intermediary services on a discretionary basis. As a fund manager, Revego is responsible for sourcing and managing of investments in operating renewable energy projects in South Africa and the broader sub-Saharan Africa. Pre-merger, the Fund Partnership has no other interests in renewable energy projects, nor does Revego or RFM. However, Revego intends, through the Fund Partnership, to acquire equity instruments in several renewable energy projects.

Revego is also currently in the process of acquiring a 49.5% shareholding in Aurora Wind Power (RF) (Pty) Ltd (“Aurora”), a renewable energy company responsible for the development, construction, operation, and maintenance of the 94 MW West Coast One wind farm situated in Vredenburg, Western Cape. The General Partner is an entity which has been established to act as the general partner of the Fund Partnership and does not have any other interests.

Genesis Khobab, Genesis Loeriesfontein, and Genesis Noupoort, are special purpose vehicles that have been established with the sole purpose of holding a non-controlling 15% interest in wind farm projects in the Northern Cape, being Project Khobab, Project Loeriesfontein and Project Noupoort, respectively. Project Khobab and Project Loeriesfontein are two projects located outside of Loeriesfontein in the Northern Cape (140MW each), and Project Noupoort is a 85MW wind farm project located outside the town of Noupoort in the Northern 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.

1.4 M&G FA Limited (M&G) / Prudential Portfolio Managers (South Africa) (Pty) Ltd (PPMSA)

The Commission has recommended that the Tribunal approve the proposed transaction whereby M&G intends to acquire PPMSA, without conditions.

M&G is a company incorporated in the United Kingdom. M&G is a wholly owned subsidiary of M&G plc, which is publicly traded on the London Stock Exchange. In South Africa, M&G has a shareholding in PPMSA, the target firm in the instant transaction. M&G and its controllers will collectively be referred to as the Acquiring Group.

The Acquiring Group is a leading international savings and investments business, managing investments for both individuals and for large institutional investors, such as pension funds. M&G plc has a single corporate identity and two customer-facing brands: i) Prudential, for savings and insurance customers in the United Kingdom and Europe and for PPMSA's asset management in South Africa; and ii) M&G Investments, for asset management clients globally (excluding South Africa, as this is performed by PPMSA). Other than its shareholding in PPMSA, M&G does not control any firm in South Africa and has no operations in South Africa. As part of the global investment portfolio of its United Kingdom life assurance business, the M&G group has

investments in certain South African securities, such as listed shares and fixed interest instruments. These investments are mainly managed by PPMSA.

In South Africa, PPMSA and its subsidiaries operate in the investment management (or asset management) industry and manages assets on behalf of investors, which includes institutional investors (pension and provident funds) and retail investors (individuals).

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 Old Mutual Alternative Investments (Pty) Ltd (OMAI) / ACTOM Investments Holdings (Pty) Ltd (ACTOM)

The Commission has recommended that the Tribunal approve the proposed transaction whereby OMAI intends to acquire ACTOM, without conditions.

OMAI and all the firms controlling it directly or indirectly are collectively referred to as the Old Mutual Group. The Old Mutual Group is a diversified African financial services group that offers a broad spectrum of financial solutions to retail and corporate customers in 14 countries. The Old Mutual Group is the ultimate holding company for several subsidiaries operating across various lines of business in the financial services industry, including amongst others, life assurance products, short-term insurance, savings, property, asset management, banking, and lending. The activities of the Old Mutual Group are categorised into the following divisions, namely, personal, wealth, business development, corporate and institutional or investment management.

The ACTOM Group is involved in the manufacture, repair, maintenance, and distribution of electromechanical equipment in Africa. The activities of the ACTOM Group are categorised into the following divisions, namely, ACTOM energy, distribution transformers, electrical equipment, engineering projects and construction, high voltage equipment and medium voltage and protection.

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.

1.6 IQ Business Pty Ltd (IQ Business) / Tamirox (Pty) Ltd (Tamirox)

The Commission has recommended that the Tribunal approve the proposed transaction whereby IQ Business intends to acquire Tamirox, without conditions.

IQ Business controls Genex Insights (Pty) Ltd and Nudge Now (Pty) Ltd. IQ Business and the firms that it directly or indirectly control and all the firms that control it will be referred to as the Acquiring Group. IQ Business is an independent management consulting firm in South Africa. IQ Business provides solutions to challenges businesses face through assisting teams to design and implement solutions (“consulting”), deploying its employees to fill a skills gap (“contracting”) and leveraging methodologies, best practices and benchmarks developed internally or from its partners (“research”). IQ Business provides the above solutions through the following practices, namely, process Innovation, technology enablement, regulatory, analytics, sustainability (RAS), human performance, strategic advisory.

Tamirox is a private company incorporated in accordance with the laws of South Africa. Tamirox holds controls (IQT Business Solutions (Pty) Ltd (“IQTBS”). Tamirox is a holding entity and does not have any business activities. ITQBS is a niche consulting and software development ICT company that develops and maintains bespoke solutions for its clients. ITQBS drives and supports its client through the provision of custom build software solutions and outsourced or co-sourced development services. The clients of ITQBS range from leading banks, insurance companies and healthcare administrators.

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.

1.7 Convergence CTSA (Pty) Ltd (CTSA) / CTrack Africa Holdings (Pty) Ltd (CTrack Africa Holdings)

The Commission has unconditionally approved the proposed merger whereby CTSA intends to acquire CTrack Africa Holdings.

CTSA is a special purpose vehicle established for the purposes of the proposed transaction and, therefore, has no activities. CPDIF is a new fund, still to be formed, which will focus on investing in digital infrastructure across sub-Saharan Africa including fibre networks, wireless, data centres, 5G, cloud, the Internet of Things, edge computing and fintech platforms.

Convergence Partners is an investment management firm focused on the technology, media and telecommunications sector in Africa. The portfolio companies controlled by funds managed by Convergence Partners are active in selected industries, including information technology solutions, wireless network solutions, business-to-business solutions and services, internet services, and customer experience management and engagement services.

The Target Group is a telematics SaaS (software as a service) vendor, providing fleet management, vehicle tracking and recovery and insurance telematics solutions.

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.

1.8 Cidron Aida Bidco Limited (Aida Bidco) / Advanz Pharma Corporation Limited (Advanz Pharma)

The Commission has unconditionally approved the proposed merger whereby Aida Bidco intends to acquire Advanz Pharma.

Aida Bidco is an investment vehicle created for the purposes of the proposed transaction and, as such, does not conduct any business activities. Its controlling entity, Nordic Capital is a global private equity firm which focuses on investments in medium sized and large companies primarily in the Nordic region and selected Northern European sectors. Nordic Capital invests across a broad array of industries but has a particular focus on Healthcare, Technology & Payments, Financial Services, Industrial & Business Services and consumer products.

Advanz Pharma is the holding company of the Advanz Pharma Group, which is active in the development and supply of pharmaceutical products. Advanz Pharma is an international pharmaceutical company with a strategic focus on Europe, owning or licensing a broad portfolio of branded and generic prescription medicines which are sold to wholesalers, hospitals and pharmacies in over 90 countries. Its portfolio includes over 200 niche generic and established branded medicines in a number of therapeutic areas, including endocrinology, ophthalmology, urology, anti-infectives, pain management, central nervous system disorders, and intensive care medicines.

Advanz Pharma's medicines are manufactured through an out-sourced manufacturing network and marketed through a combination of direct sales and local distribution relationships. Advanz Pharma does not have any inhouse manufacturing capabilities globally or in South Africa. Advanz Pharma outsources manufacturing to contract manufacturing firms, predominantly in Western Europe.

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.

1.9 Seche Holdings SA (Pty) Ltd (Seche Holdings) / Spill Tech Group Holdings (Pty) Ltd (Spill Tech)

The Commission has conditionally approved the proposed merger whereby Seche Holdings intends to acquire Spill Tech.

The Acquiring Group offers holistic waste management solutions and provides integrated specialised services such as material or energy recovery from hazardous and non-hazardous waste, treatment of thermal and chemical waste and storage of all types of waste. Globally, the Acquiring Group is mainly active in France and has a presence in America, rest of Europe, Asia, Qatar, Africa and Russia.

In South Africa, the Acquiring Group provides waste management solutions to various sectors through Interwaste. Interwaste is active throughout the waste management value chain with a focus on logistics and specialised waste management services. The logistics part of the business involves waste transportation, waste classification and laboratory services, on-site waste management services and waste recycling. Specialised services include industrial cleaning and soil rehabilitation. Interwaste operates through 35 operational centres throughout South Africa and neighbouring countries.

Interwaste also owns and operates advanced waste management facilities for waste recycling, recovery, treatment and disposal. Interwaste has 32 operational sites and 3 landfills (located in Gauteng and Mpumalanga).

Spill Tech is a specialist hazardous waste spill response business offering services including industrial cleaning; hazardous spill response clean-up and remediation; super sucker services; hydrocarbon spill contaminated soil rehabilitation and COVID-19 decontamination services. Spill Tech also provides insurance to customers transporting hazardous goods and potential pollutants, and the storage of fuels, chemicals and other potential pollutants that covers the cost incurred during clean-up and rehabilitation in the event of an environmental accident. Spill Tech has 16 branches in all 9 (nine) provinces in South Africa.

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 notes that the merging parties are currently in the process of negotiating an empowerment transaction which will ultimately maintain the current Level 1 BBBEE status of the target firm. The Commission takes the view that in order to ensure that the empowerment transaction is attained, it is important in this case to impose a condition along the principles envisaged by the parties of maintaining the empowerment levels of the target firm following the instant merger.

In order to ensure the enforcement and creation of an empowerment ownership in the merged entity, the merging parties have agreed to an empowerment condition.

1.10 Thoma Bravo, L.P. (Thoma Bravo) / Calypso Group Lux S.C.A. (Calypso Group Lux) and Calypso Manco S.à.r.l. (collectively “Calypso”)

The Commission has unconditionally approved the proposed merger whereby Thoma Bravo intends to acquire Calypso.

Thoma Bravo is a private equity investment firm focused on the software and technology-enabled services sectors.

Calypso is a global provider of application software and services in the treasury and capital markets, to support financial institutions in trading, investment management, risk management, post trade processing, collateral management, clearing, and treasury.

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.

1.11 Depoway Proprietary Limited (Depoway) / T Portion 8 of the Farm Duizendannex 816 KS (Target Property)

The Commission has unconditionally approved the proposed merger whereby Depoway intends to acquire the Target Property from Moolgem Proprietary Limited (“Moolgem”).

Depoway is a special purpose vehicle incorporated for the purpose of this proposed transaction and does not control any firms. Depoway and all the firms controlled by its shareholder are referred to as the Acquiring Group. The Acquiring Group's property portfolio comprises retail properties across South Africa except for Limpopo and Kwa-Zulu Natal. The Acquiring Group therefore does not own any retail properties in Limpopo, where the Target Property is located.

The Target Property is classified as a neighborhood shopping centre as outlined by the Independent Property Databank of South Africa Proprietary Limited (IPD). The Target Property comprises approximately 10 766m² of rentable retail 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.

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

2.1 Rajesh Inderjeeth on behalf of Family Inderjeeth Investments (Pty) Ltd trading as Hi-Q Midrand v Hi-Q Automotive (Pty) Ltd and Goodyear South Africa

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

2.2 Nathaniel Kubie v Spar Boundary Road Eldorado Park

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

2.3 M.S. Naicker v Willowton Oil Mills

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

2.4 Ansu Ellis v Chick Cosmetics

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

2.5 Solomon Ntsoe v The Glass Recycling Company Consol Glass

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

2.6 Elizabeth Miya v Joyce, the Secretary at Glenview Primary School

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

2.7 Busani Sikhosana v Nedbank

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

2.8 Muhammad Bham on behalf of Ashsons Outfitters CC and Mohammed Moosa on Behalf of Holiday Makers Shop v Adidas South Africa (Pty) Ltd

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 Shane de Beer v Directors of Zotos Property Management (Pty) Ltd, the franchisor or franchisee of SupaQuick Bonero Park, the directors of Bentel Properties or owners of K90 Centre and the owners of Creative Wheels CC Boksburg.

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]

Issued by:

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