Weekly Media Statement

For Immediate Release

19 August 2021

The Competition Commission of South Africa (CCSA) held its ordinary weekly meeting on Tuesday 17 August 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) as amended. These matters include but are not limited to complaints, mergers and acquisitions.

LATEST DECISIONS BY THE COMPETITION COMMISSION

1.1 Digital Infrastructure Investment Holdings (Pty) Ltd (DIIH) / Metro Fibre Networx (Pty) Ltd (MetroFibre)

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

DIIH was formed as a special purpose vehicle to facilitate investments by funds managed by African Infrastructure Investment Managers ("AIIM")in MetroFibre in 2020 and does not conduct independent operations. AIIM is a subsidiary of Old Mutual Alternative Investment Holdings (Pty) Ltd. AIIM develops and manages private equity infrastructure funds designed to invest in long-term institutional unlisted equity in African infrastructure projects.

The Acquiring Group provides individuals, businesses, corporates and institutions with long-term savings protection, investment and lending solutions. The Acquiring Group also operates as an insurance company providing life, health and disability insurance services.

MetroFibre was launched in 2010 and operates as a provider of Fibre-To-The-Home (FTTH) and Fibre-To-The-Business (FTTB). MetroFibre has expanded its service offering to both residential and corporate customers in line with its strategic objective of being a diversified operator. MetroFibre owns and manages its core network which is a globally compliant Carrier Ethernet 2.0 open access network.

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 substantial public interest concerns.

1.2 Cape Harvest Food Group (Pty) Ltd (Cape Harvest) BM Food Group (Pty) Ltd (BM Food)

The Commission has recommended that the Tribunal approve the proposed transaction whereby Cape Harvest intends to acquire BM Food, without conditions.

Cape Harvest is a wholly-owned subsidiary of Sea Harvest Group Limited (“Sea Harvest”). Sea Harvest is directly controlled by Brimstone Investment Corporation Limited (“Brimstone”). Brimstone is a Level 1 B-BBEE contributor. Brimstone controls several firms in South Africa. Cape Harvest and all the other firms that are controlled by Brimstone are hereafter referred to as the Acquiring Group.

The Acquiring Group is a producer and supplier of dairy products and seafood products in South Africa. With respect to the supply of seafood, the Acquiring Group produces and supplies frozen and non-frozen seafood to the retail and non-retail channels. The Acquiring Group also produces and supplies dairy products including cheese to retail and non-retail channels in South Africa.

BM Food Group is an importer and manufacturer of specialised foods, supplying food to the retail and non-retail channels. BM Food Group supplies non-frozen seafood to the non-retail channel as well as cheese to the retail and non-retail channels 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 further found that the proposed transaction does not raise any substantial public interest concerns.

1.3 Aria Property Group (Pty) Ltd (Aria Property) / Redefine Properties Limited (Redefine) in respect of the property letting enterprise known as Riverside Mall

The Commission has unconditionally approved the proposed merger whereby Aria Property intends to acquire the property letting enterprise known as Riverside Mall from Redefine.

Aria Property's business entails the ownership and in house management of investment property assets, predominantly within the Western Cape, with the intention of earning rental income and generating capital growth. Aria Property has a diversified portfolio of properties, which include retail, office, industrial, residential, school and resort portfolios.

Riverside Mall is a neighbourhood retail centre situated in Rondebosch, Cape Town, Western Cape comprising rentable retail space and rentable grade B office space. Riverside Mall is owned by Redefine.

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 substantial interest concerns.

1.4 Pacific Paramount Properties Pty Ltd (Pacific Paramount Properties) / Redefine Properties Limited in respect of Shoprite Park (Redefine)

The Commission has unconditionally approved the proposed merger whereby Pacific Paramount Properties intends to acquire ShopRite Park from Redefine.

Pacific Paramount Properties and its affiliates are active in a variety of real estate activities including facilities management and industrial, retail and office property.

ShopRite Park is a minor regional centre situated at Parow East, Cape Town.

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 substantial public interest concerns.

1.5 AIH Limited (AIH)/ Kwikspace Modular Buildings (Pty) Ltd (Opco)

The Commission has conditionally approved the proposed merger whereby AIH intends to acquire Opco.

AIH is a private equity fund with investments in the packaging, food and beverage sectors.

Opco manufactures mobile prefabricated modular buildings in South Africa, which it then sells or rents to customers. The modular buildings can be assembled into complete buildings on site and can be used for several purposes, including construction camps, events, classrooms, offices, ablution facilities, clinics, and accommodation.

The Commission found that the merger does not raise any competition concerns. However, the merging parties and the Commission have agreed to conditions to promote a greater spread of ownership at Opco, as contemplated in section 12A(3)(e) of the Competition Act No. 89 of 1998 (as amended).

1.6 The SPAR Group Ltd (Spar Group) / Anadon Foods CC (Anadon) in respect of Kuilsriver SUPERSPAR & TOPS

The Commission has unconditionally approved the proposed merger whereby Spar Group intends to acquire the business known as Kuilsriver SUPERSPAR and TOPS which is owned by Anadon.

The Spar Group operates as the franchisor of the Spar brand in South Africa. In that regard, the Spar Group operates its own Spar branded retail franchises, whilst others are owned and operated by third party franchisees.

The Spar Group is also a wholesale supplier of dry goods, perishable goods, liquor, general merchandise and personal care products which it supplies to Spar franchise retail stores.

Kuilsriver SUPERSPAR and TOPS business (“the Target Business”) operates a retail supermarket and liquor store. In that regard, Kuilsriver SUPERSPAR is a supermarket that retails Fast-Moving Consumer Goods. Kuilsriver TOPS is a liquor business that retails beer, spirit, wine, spirit cooler, liqueurs and aperitifs, cigarette, general merchandise products and airtime.

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 substantial public interest concerns.

1.7 Afrihost SP (Pty) Ltd (Afrihost) / Cool Ideas Service Provider (Pty) Ltd (Cool Ideas)

The Commission has unconditionally approved the proposed merger whereby Afrihost intends to acquire Cool Ideas.

Afrihost is an internet services provider (“ISP”) that provides various internet related services, including retail supply of internet access services to residential and small businesses, voice over internet protocol (“VoIP”) services, data hosting services and ancillary services (e.g., website design, internet marketing, internet domains), and mobile voice and data services (as a re-seller).

Cool Ideas is an ISP that provides retail internet access services to house users, small businesses and large business.

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 GMI Property Group (Pty) Ltd (amongst others (GMI) / Olympic Park Trading 171 Pty) Ltd (Olympic Park) and Sky City Mall (Pty) Ltd (Sky City)

The Commission has unconditionally approved the proposed merger whereby GMI intends to acquire Olympic Park and Sky City.

GMI is currently a dormant company, which is intended to be an investment holding company of the Target Firms' properties, post the implementation of the transaction. Gerdro is a dormant company, which does not conduct any business nor hold any assets at present. 4DC is a special purpose holding company which does not conduct any business. Sapia is also a special purpose holding company which does not conduct any business. The subsidiaries of 4DC and Sapia are not relevant for the purposes of the proposed transaction as they do not compete with the Target Firms as they are involved in (i) office properties, (ii) marketing and distribution of health and beauty brands, and (iii) wholesaling and retailing of meat.

Olympic Park and its subsidiaries own four community centres being (i) Maokeng Mall, (ii) Steilloop Mall, (iii) Tibani Mall and (iv) Mahwelereng Mall. Sky City only owns one community centre which is Sky City Mall.

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 substantial public interest concerns.

1.9 Traditio- Privatstiftung (Traditio PS) and CHILDREN OF ELISABETH-Privatstiftung (COE PS) / Kapsch TrafficCom AG (KTC)

The Commission has unconditionally approved the proposed merger whereby Traditio PS and COE PS intends to acquire KTC.

Traditio PS and COE PS are private foundations under the Austrian Private Foundations Act. Traditio PS and COE PS do not directly conduct any business activities in South Africa.

KTC controls a number of firms across various jurisdictions. KTC controls (directly and indirectly) the following firms in South Africa: Electronic Toll Collection (Pty) Ltd (“ETC”), Kapsch TrafficCom South Africa (Pty) Ltd (“KTC SA”) and Kapsch TrafficCom South Africa Holding (Pty) Ltd (“KTC SA Holding”).

KTC and its subsidiaries provide the following services:

i. Tolling / Electronic Toll Collection (“ETC”) - The Kapsch group’s ETC activities include projects for the implementation, maintenance, and operation of systems that include electronic toll collection as well as manual toll systems and toll services.
ii. Intelligent Mobility Solutions (“IMS”) - The Kapsch group’s IMS activities include tolling services, demand management and connected vehicles, projects for the control of commercial vehicles and electronic vehicle registration as well as intelligent parking solutions and systems for intermodal mobility.

Other than through their interests in the Kapsch group and its subsidiaries, the primary acquiring firms, Traditio PS and COE PS, do not conduct any other activities in the area of traffic management (the target firm’s business).

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 substantial public interest concerns.

1.10 Financière Verdi I SAS (Financiére Verdi I) / Altan Pharma Limited (Altan Pharma)

The Commission has unconditionally approved the proposed merger whereby Financiére Verdi I intends to acquire Altan Pharma.

Financiére Verdi I and all the firms controlling it directly or indirectly and all the firms that it controls will be referred to as the Acquiring Group. The only entity within the Acquiring Group that provides activities that are relevant to the proposed transaction is Ethypharm. Ethypharm is a specialty pharmaceutical company focused on the central nervous system (pain, addiction and depression) and critical care. Ethypharm does not have a presence in South Africa, however, it sells pharmaceutical products (on a supply and distribution basis) to a third-party pharmaceutical company namely, Equity Pharmaceuticals. There is a supply agreement between Ethypharm and Equity Pharmaceuticals for the following products; (i) Phenobarbital Sodium BP (Antiepileptics product); (ii) methadone; and (iii) acetylcysteine. The products are supplied to Equity Pharmaceuticals on an exclusive basis for a period of five years (which is renewable upon mutual consent from the parties).

Altan Pharma and all firms it controls directly or indirectly are referred to as the Target Group. The Target Group is a specialty European pharmaceutical company which, develops, manufactures and markets specialty generic injectable pharmaceutical products for the hospital and other provider segments. The Target Group has no physical presence in South Africa. It sells a limited portion of its broader product range to customers in South Africa by way of various license and supply agreements with other pharmaceutical companies with a presence 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 further found that the proposed transaction does not raise any substantial public interest concerns.

1.11 Vinci S.A. (Vinci) / Cobra, Servicios, Comunicaciones y Energía Sociedad Limitada Unipersonal (ACS ES)

The Commission has unconditionally approved the proposed merger whereby Vinci intends to acquire ACS ES.

Vinci is a French concessions and construction company founded in 1899. Vinci operates globally with subsidiaries and branches in more than 120 countries across the world, including South Africa. Vinci is active in the fields of concessions and construction (mainly motorways and airports) building, public works and civil engineering, electrical engineering, air-condition engineering, mechanical engineering and roadworks.

ACS ES is mainly active in Spain and Latin America in the field of applied industrial engineering. Its activities are focused on the development, construction, maintenance and operation of renewable energy, industrial and mobility infrastructures through an extensive group of companies. The business operations of ACS ES are divided into two main business areas: (i) Industry support services and (ii) Integrated projects.

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 substantial public interest concerns.

1.12 Liberty Coal (Pty) Ltd (Liberty Coal) / Optimum Coal Mine (Pty) Ltd (OCM) and Optimum Coal Terminal (Pty) Ltd (In Business Rescue) (OCT)

The Commission has unconditionally approved the proposed merger whereby Liberty Coal (Pty) Ltd (Liberty Coal) intends to acquire Optimum Coal Mine (Pty) Ltd (OCM) and Optimum Coal Terminal (Pty) Ltd (OCT). Both OCM and OCT are currently in business rescue. Both OCM and OCT shall collectively hereafter be referred to as the Target Assets. Post-merger, the Target Assets will be owned and controlled by Liberty Coal.

Liberty Coal is a special purpose vehicle incorporated for the purposes of implementing this transaction. Accordingly, the primary acquiring firm is not active in any market and does not offer any products or services in South Africa. None of the entities associated with Liberty Coal, directly or indirectly, control any firms in South Africa or active in any markets in South Africa.

The proposed merger results from TCL (the ultimate holding company of Liberty Coal) acquiring the debt of Centaur Ventures Limited (CVL) in OCM. TLC's acquisition of CVL's debt claims against OCM results in TCL 'stepping into the shoes' of CVL as OCM's creditor. In other words, TCL became one of the creditors of OCM during the business rescue process.

Before going into business rescue, OCM and OCT were owned by Tegeta Exploration and Resources (Tegeta). The shareholders of Tegeta were Oakbay Resources Limited, Mabengela Investment (Pty) Ltd, Elgasolve (Pty) Ltd and Fidelity Enterprises Limited. OCM operated a large-scale opencast and underground coal mining and related coal processing business located in the Mpumalanga province (Optimum Collieries). Through the activities of Optimum Collieries, OCM produced thermal coal for sale to the domestic market and the international market. OCT on the other hand was mainly an export arm of the OCM mining activities through its export allocation at the Richards Bay Coal Terminal (RBCT).

In its assessment, the Commission found that there were alternative firms that were interested in acquiring the Target Assets. However, the Business Rescue Practitioners (BRPs) considered their offers and concluded that they were not viable. The BRPs have argued that in the absence of the present transaction, the Target Assets would likely be placed in liquidation.

In respect of competition assessment, the Commission found that the proposed merger does not raise any horizontal or vertical overlap between the activities of the merging parties. Therefore, the Commission concluded that it is unlikely that the proposed merger will lead to significant lessening or prevention of competition in any market in South Africa.

With respect to public interest, the Commission found that ownership by the Historically Disadvantaged Persons (HDPs) in the Target Assets will be approximately 30%. This will include ownership by employees by virtue of the Employee Participation Trust and the surrounding community by virtue of the Community Trust.

The Commission further found that the proposed merger will lead to direct and indirect job creation in and around the Optimum Collieries which will present employment opportunities to the previous employees of OCM who were retrenched following business rescue proceedings. Further, these retrenched employees currently have claims against OCM and this proposed merger will lead to those claims being settled.

Against this background, the Commission is of the view that it is unlikely that the proposed merger will raise significant competition or substantial public interest concerns, given the circumstances under which it is taking place.

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

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