



**competition commission**  
*south africa*

## **Weekly Media Statement**

### **For Immediate Release**

**19 April 2022**

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

The Competition Commission of South Africa (CCSA) held its ordinary meeting on Tuesday 11 April 2022, 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.

### **1. MERGERS AND ACQUISITIONS**

#### **1.1 Ardagh Group S.A (Ardagh)/ Consol Holdings Proprietary Limited Consol)**

The Commission has recommended that the Tribunal approve the proposed transaction whereby Ardagh intends to acquire Consol, with conditions.

Ardagh is a private company registered in Luxembourg. Ardagh manufactures glass packaging (such as beverage bottles and glass jars) and metal packaging products. Ardagh through its subsidiaries is also involved in the supply of glass manufacturing equipment and the sale of glass moulds. Ardagh does not have any glass manufacturing facility in SA and only exports its glass products to its customers in SA.

Consol is a manufacturer and supplier of glass packaging for the food and beverage industries including the beer, alcoholic beverage, wine, fruit juice, soft drinks, mineral water and spirits industries, as well as for pharmaceuticals and cosmetics industries. Consol also has a small retail presence, supplying (empty) glass containers to various retailers for sale to consumers.

The Commission found that the proposed transaction raises significant public interest concerns. In addition, the Commission was concerned about the effect of the merger on the market for food jars and wide mouth jar. To remedy this concern, the merging parties agreed to a condition that

merged entity will continue to supply Food Jars or wide mouth jars. With respect to the public interest concerns, the Commission and the merging parties agreed on the following conditions:

- a) the Merging Parties will establish a new Employee Share Ownership Program which will hold 7% of the shareholding in Consol.
- b) Ardagh will incur all reasonable capital expenditure, including raising necessary debt funding required to finalise the construction of the glass manufacturing facility planned by Consol;
- c) Ardagh will invest in the construction of a new glass manufacturing facility;
- d) Ardagh shall procure recycled glass or cullet for use in its operations in the ordinary course, and will favour HDPs in such procurement;
- e) Within a specified time frame, Ardagh shall expand Consol's existing Cullet Owner Driver Scheme;
- f) Ardagh undertakes to support SMME customers through a reduction of minimum order quantities;
- g) Consol shall increase its pre-merger procurement of cullet from small / HDP vendors.
- h) Ardagh undertakes to use reasonable endeavors to introduce new production line of glass related products.

The Commission is of the view that the proposed remedies or conditions adequately address the public interest concerns resulting from the proposed merger.

## **1.2 Digital Titan (Pty) Ltd (Digital Titan)/ TDE Investments (Pty) Ltd (TDE)**

The Commission has recommended that the Tribunal approve the proposed transaction whereby Digital Titan intends to acquire TDE, with conditions.

Digital Titan is ultimately controlled by Digital Realty Trust Inc. ("Digital Realty Trust") through its controlling interest in Digital Realty Trust L.P. ("Digital Realty").

All firms directly and indirectly controlled by Digital Realty are hereinafter collectively referred to as the "Digital Realty".

Digital Realty is a global technology provider of data centre platforms, colocation and interconnection solutions to customers across a variety of industries, ranging from cloud and information technology services, communications and social networking to financial services, manufacturing, energy, healthcare and consumer products. Digital Realty designs, owns and provides global data centre platforms that support customers' digital infrastructure and enables

the customers to interconnect with their customers and partners. Digital Realty's data centres are located in the United States of America, Europe, Latin America, Australia, Africa and Canada. Digital Realty is not active and does not undertake any business activities in South Africa.

TDE, through its subsidiary, Teraco is a provider of data centre services. Through its seven data centres, (located in Johannesburg (Gauteng), Durban (KwaZulu-Natal) and Cape Town (Western Cape)), Teraco makes data centre space available to customers who wish to retain control over their own infrastructure, but who may lack the facilities to house them. Teraco offers customers rentable floor/cabinet space. Teraco also provides all auxiliary infrastructure services such as monitoring power, cooling, humidity security, ancillary building systems and limited non-technical support. Teraco provides secure data centre solutions for cloud providers, network and telecoms providers, managed services providers, enterprises, financial services and content providers.

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 Commission found that the proposed transaction is likely to result in a negative impact on a greater spread of ownership. In order to address this concern, the merging parties have agreed to the imposition of a condition that would ensure that the merged entity maintains the current B-BBEE Trust and further, introduce an employee share ownership plan in the merged entity.

### **1.3 TFC Operations (Pty) Ltd (TFC)/ PEG Retail Holdings (Pty) Ltd (PEG)**

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

TFC, Kaap Agri controls several firms in South Africa. All firms directly and indirectly controlled by Kaap Agri are hereinafter collectively referred to as the "Acquiring Group".

The Acquiring Group provides retail services and supplies a variety of products and services mainly to customers operating in the agricultural sector. The Acquiring Group's product offering includes farming requisites, packaging material, steel, fencing products, lifestyle products, camping, financing services, grain handling and more. The Acquiring Group also sells fuel directly to farmers, which is delivered via its three depots. Lastly, the Acquiring Group also controls and operates forty-three (43) fuel stations across the country.

PEG is an independent fuel retailer in South Africa, housing forty-one (41) service stations situated throughout South Africa (most of which are national highway service stations) where it supplies petrol and diesel products to the general public. The various service stations are operated under the following brands, namely Engen, Sasol, Total and BP. It also operates fuel

forecourts, quick service restaurants and convenience stores on the premises which sell fast moving consumable goods.

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 Golden Rain Tree Trust (Golden Rain)/ South North Exports (Pty) Ltd (Sonorex)**

The Commission has unconditionally approved the proposed merger whereby Golden Rain intends to acquire Sonorex.

Golden Rain does not conduct any business in South Africa apart from the interest it holds in Sonorex and Tradimex.

Tradimex's business activities include the acquisition of fuel products from suppliers located outside of South Africa and the sale of the products to its customers located outside of South Africa. Tradimex does not conduct business in any market for products or services situated within South Africa.

Sonorex provides specialist logistics and allied services, relating to the facilitation of the logistical supply chain management of mining commodities in Sub-Saharan Africa, which comprises the logistics, warehousing and transportation of mining commodities. Sonorex further provides specialist services relating to the collection, clearance and delivery of mining commodities. Sontrad focuses on the supply of coal (purchased in Zambia) and the related logistics services to Glencore-KCC in the Democratic Republic of Congo.

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 QCP1 Investments Proprietary Limited (QCP1)/ Cape Trans Property Investments Proprietary Limited (Cape Trans) in respect of the rental enterprise known as 47 Somerset Road (Target Property)**

The Commission has unconditionally approved the proposed merger whereby QCP1 intends to acquire Target Property from Cape Trans.

QCP1 is a special purpose vehicle set up for the purposes of owning property directly and/or investing in a property-owning company. Of relevance to the proposed transaction is the real

estate business of the QCP1 Group. The QCP1 Group owns a number of real estate properties including office, retail, and residential.

The Target Property was owned and controlled by Cape Trans.

The Target Property comprised of grade A office space (3,573 m<sup>2</sup>), grade C office space (1,243 m<sup>2</sup>) and rentable retail space (660 m<sup>2</sup>). Currently, the Target Property comprises of grade A office space (3,573 m<sup>2</sup>) and rentable retail space (660 m<sup>2</sup>). The Target Property is located at 47 Somerset Road, Green Point, Cape Town, 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.

**1.6 Silver Bird Investments Proprietary Limited (Silver Bird)/ The remainder of Erf 174325 situated at 76 Montreal Drive, Airport City, Cape Town in extent 3.2135 hectares held under Deed of Transfer T64067/2011 (the Property)**

The Commission has unconditionally approved the proposed merger whereby Silver Bird intends to acquire the Property.

Silver Bird is a private company that conducts its business operations by investing in property. These properties comprise mainly of retail, industrial and office properties.

The Property itself consist of land and rentable industrial space which is used for the warehousing and distribution of goods and ancillary services in the Cape Town Airport industrial area.

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 Kwande Energy Proprietary Limited (Kwande Energy)/ Kwanati Investments (RF) Proprietary Limited (Kwanati)**

The Commission has unconditionally approved the proposed merger whereby Kwande Energy intends to acquire Kwanati.

Kwande Capital, Kwande Energy and all the firms that they control will be referred to as the Acquiring Group.

The Acquiring Group, via its subsidiaries, supplies premium quality gas to industrial and commercial companies in South Africa, specialising in delivering methane rich and natural gas and compressed natural gas from its source to factories through the use of a pipeline network.

The Acquiring Group also conducts business in the manufacture and supply of glass in South Africa.

Kwanati is an investment holding company, which holds interest in Masana Petroleum Solutions Proprietary Limited (“Masana”). Kwanati has no subsidiaries and no other interests, save for its interest in Masana.

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.

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

**[ENDS]**

**Issued by:**

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