



competition commission
south africa

Media Statement

For Immediate Release

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STATEMENT ON THE LATEST DECISIONS BY THE COMPETITION COMMISSION

The Competition Commission of South Africa (CCSA) held its ordinary meeting on 06 June 2023, 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 Flanagan and Gerard Frontiers (Pty) Ltd (“F&G Frontiers”)/Vukile Property Fund Limited (“Vukile Property Fund”)/ Mthatha Mall (Pty) Ltd (“Mthatha Mall”)

The Commission has recommended that the Competition Tribunal (“Tribunal”) approve the proposed transaction whereby F&G Frontiers and Vukile Property Fund intend to acquire the letting premises known as BT Ngebs City (“Target Property”) from Mthatha Mall, with conditions.

The primary acquiring firms are F&G Frontiers and Vukile Property Fund. F&G Frontiers is ultimately controlled by the Flanagan and Gerard Group (Pty) Ltd (“F&G Group”). F&G Frontiers is a special-purpose vehicle created specifically for the purposes of this transaction and does not have any commercial activities. The F&G Group holds interests in various firms involved in property development and investment in all facets of retail property development.

Vukile Property Fund is a Real Estate Investment Trust (“REIT”). Vukile Property Fund holds interests in several firms. F&G Frontiers and Vukile Property Fund are hereinafter referred to as the Acquiring Firms.

The Target Property is BT Ngebs City. BT Ngebs City is owned by Mthatha Mall.

The Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market. In terms of public interest, the Acquiring Firms commit to investments over a five-year period to upgrade, refurbish and operate the Target Property. To support Historically Disadvantaged Persons (HDPs), the Acquiring Firms, will for a period of five years post-merger commit to capital expenditure on HDP-owned suppliers based in Mthatha, Eastern Cape Province, when

upgrading, refurbishing and operating the Target Property subject to the availability of HDP-owned suppliers. In addition, the merging parties undertake to use reasonable commercial endeavours to negotiate with the main tenant at the Target Property to remove the exclusivity clause contained in its lease agreement.

The Commission found that the proposed transaction does not raise any other public interest concerns.

1.2 EMIF II Investment Proprietary Limited (“EMIF II Investment”) / Vector Logistics Proprietary Limited (“Vector Logistics”)

The Commission has recommended that the Tribunal approve the proposed transaction whereby EMIF II Investment intends to acquire Vector Logistics, with conditions.

The primary acquiring firm, EMIF II Investment, is an indirectly owned subsidiary of A.P. Møller Capital – Emerging Markets Infrastructure Fund II K/S (“EMIF II”), a Danish limited partnership, acting through its manager, A.P. Møller Capital P/S (“APMC”), a fund management company incorporated in terms of the laws of the Kingdom of Denmark. APMC is ultimately controlled by A.P. Møller Holding A/S (“APMH”), the holding company of the A.P. Møller Holding group of companies, incorporated in terms of the laws of Denmark. APMH is primarily active through A.P. Møller-Maersk A/S (“APMM”) in South Africa. However, APMM and APMC are operated and managed separately.

Relevant for purposes of the proposed transaction, APMH also controls APMM, an integrated transport and logistics company headquartered in Copenhagen, Denmark, with worldwide activities. The core activities of APMM comprise container liner shipping, container terminal services, inland transportation and logistics services, supply chain management services and harbour towage. Relevant to the proposed transaction are APMM’s activities in the provision of containerised cold chain landside transportation and cold storage/cold warehousing services for primarily chilled food products (fruit and vegetables) destined for export from South Africa. In this regard, APMM operates one cold store facility in Hammarsdale, KwaZulu-Natal.

The primary target firm, Vector Logistics, is currently wholly owned by RCL Foods Limited (“RCL Foods”), which is in turn controlled by Remgro Limited (“Remgro”). In South Africa, Vector Logistics only controls Empty Trips Proprietary Limited (“Empty Trips”).

Vector Logistics’ principal activity is the provision of integrated cold-chain logistics services. Specifically, Vector Logistics provides an end-to-end service to domestic business-to-business customers in South Africa through the transport, storage and distribution of frozen food and other related items. In this regard, Vector Logistics operates cold storage facilities from multi-temperature distribution centres in various regions in South Africa. Vector Logistics also controls Empty Trips, a digital freight matching platform which

allows customers (including external customers) to digitally access reliable empty return-journey haulier options, as well as monitor their cargo deliveries in real-time.

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

To promote a greater spread of ownership, the Target Firm will establish an Employee Share Ownership Program (ESOP). In addition, the Target Firm will, over a period of five years, invest an amount additional to its projected replacement capital expenditure. Furthermore, the Target Firm will spend a specific amount towards procuring goods and services from HDP-owned firms. Lastly, the Target Firm shall not retrench any employees in South Africa as a result of the merger.

1.3 Capitec Bank Limited (“Capitec”)/ Spear Real Estate Investment Trust Limited (“Spear REIT”)

The Commission has recommended that the Tribunal approve the proposed transaction whereby Capitec intends to acquire the office rental enterprise known as the Liberty Life Office Building (“Target Property”) from Speir REIT, without conditions.

The primary acquiring firm is Capitec. Capitec is wholly owned by Capitec Holdings Limited (“Capitec Holdings”). Capitec Holdings is not controlled by any single firm. Capitec Holdings controls Mercantile Rental Finance Proprietary Limited. All firms directly and indirectly controlled by Capitec Holdings are hereinafter referred to as the “Acquiring Group”.

The Acquiring Group is active in the banking industry focusing on personal and business banking services. It also offers other financial services such as insurance. In addition, the Acquiring Group holds a property portfolio which consists of office spaces in the Western Cape and Gauteng. Relevant to the assessment of the proposed transaction is the Acquiring Group’s property portfolio.

The primary target firm is the Target Property which consists of an office space situated in Century City, Western Cape, with a gross lettable area of 18 244m². The Target Property is controlled by Spear REIT. Spear REIT is not controlled by any firm.

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 Letsema Holdings (Pty) Ltd (“Letsema Holdings”)/ Marlyn Chemicals (Pty) Ltd (“Marlyn Chemicals”)/ Marlyn Vulindlela (Pty) Ltd (“Marlyn Vulindlela”)

The Commission has approved the proposed transaction whereby Letsema Holdings intends to acquire Marlyn Chemicals and Marlyn Vulindlela, without conditions.

The primary acquiring firm is Letsema Holdings. Letsema Holdings is jointly controlled by Luxanio Trading 163 (Pty) Ltd (“Luxanio 163”) and Luxanio Trading 164 (Pty) Ltd (“Luxanio 164”). Letsema Holdings and the firms that they control shall be referred to as the “Acquiring Group”.

The Acquiring Group is an investment firm with a diverse investment portfolio which includes (i) information technology; (ii) specialised industrial workwear apparel; (iii) manufacturing of personal care products; and (iv) forestry and sawmilling.

The primary target firms are Marlyn Chemicals (Pty) and Marlyn Vulindlela. Both Marlyn Chemicals and Marlyn Vulindlela do not control any firms and shall be referred to as the “Target Firms”. The Target Firms are controlled by the Palmer Family Trust.

The Target Firms are specialised chemical suppliers within the mining industry. The chemical products supplied by the Target Firms include cyanide, caustic soda, and activated carbon. These products are mainly used in the extraction of minerals such as gold; purification of platinum and gold; and water treatment.

The Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa. The Commission further found that the proposed transaction does not raise any other public interest concerns.

1.5 Bidvest Properties (Pty) Ltd (“Bidvest Properties”)/ McCarthy Motors Dealership Midrand C/O Eris Investment Holdings (Pty) Ltd (the “Target Property”)

The Commission has approved the proposed transaction whereby Bidvest Properties intends to acquire the Target Property, without conditions.

The primary acquiring firm, Bidvest Properties, is a wholly owned subsidiary of Bidvest Property Holdings (Pty) Ltd (“Bidvest Holdings”), which is a wholly owned subsidiary of Bidvest Group Ltd (“Bidvest Group”). Bidvest Group controls numerous firms, including McCarthy (Pty) Ltd. Bidvest Properties and its controlling firms will collectively be referred to as the “Bidvest Group”.

The Bidvest Group is a business-to-business services, trading and distribution group, operating through six divisions namely services, freight, branded products, commercial products, financial services and automotive. Relevant to the proposed transaction are the activities conducted by the primary acquiring firm, Bidvest Properties, a property investment company which manages properties owned by the Bidvest Group.

The Target Property is an immovable property and letting enterprise situated at the corner of New Road & Medical Street, Halfway House, Midrand, Gauteng. The property is classified as a motor dealership showroom. It is currently leased in its entirety to McCarthy Motors (a subsidiary of the Bidvest Group).

The Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa. The Commission further found that the proposed transaction does not raise any other public interest concerns.

1.6 K2022827815 (South Africa) Ltd (“BidCo”)/ Stellar Capital Partners (Pty) Ltd (“Stellar Capital”)/ Greenpoint Holdings (Pty) Ltd (“Greenpoint”)

The Commission has approved the proposed transaction whereby BidCo intends to acquire Stellar Capital and Greenpoint, without conditions.

The primary acquiring firm is BidCo. BidCo is controlled by two individuals. In addition to BidCo, one individual shareholder controls K2021. K2021 does not currently control any firm. BidCo, one of its shareholders and K2021 shall collectively be referred to as the “Acquiring Group”.

The Acquiring Group does not have any business activities.

The primary target firms are Stellar Capital and Greenpoint. Stellar Capital is not controlled by any individual shareholder. Greenpoint is not controlled by any individual shareholder.

Stellar Capital is a private investment holding company with a portfolio of investee companies that operate predominantly in the financial services sector. Stellar Capital controls an alternative asset manager offering alternative asset management services and holds a life / long-term insurance licence. Greenpoint offers specialist private credit solutions for Southern African businesses.

The Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa. The Commission further found that the proposed transaction does not raise any other public interest concerns.

2. COMPLAINTS (NON-REFERRALS)

Following its investigations, the Commission has decided not to refer the following matters to the Competition Tribunal for prosecution.

2.1 Alexander Thomson v Independent Community Pharmacy Association (ICPA), National Health Laboratory Services (NHLS), Transpharm/Medirite and Shoprite, Next Biosciences, and Vertice Medtech

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

2.2 Dieter/Sonja Hinze - Ilanga Décor and Gifts v Theo Rossouw (Park Furnishers (Pty) Ltd)

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

2.3 Anonymous v South African HAJ and Umrah Council

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

2.4 Auto Hail Repair Centre v Mercedes Benz South Africa Ltd

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

2.5 CK Coachworks CC v Mercedes Benz South Africa Ltd

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

2.6 M&L Panelbeaters v Mercedes Benz South Africa Ltd

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

2.7 Kate Elliot v William Simpson Cars and/or Peugeot

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

2.8 Paul de Vantier on behalf of Pops Auto Shop v Mercedes Benz South Africa

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

2.9 Machinecorp Diesel t/a JEG Diesel v Mercedes Benz Century City

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

2.10 Fibre Processing and Manufacturing Seta v Donacel (Pty) Ltd and Elrostep (Pty) Ltd

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

2.11 Rashid Mohammed on behalf of PWR Build (Pty) Ltd v The Mamba Cement Company (RF) (Pty) Ltd and Cashbuild Ltd

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

2.12 Richard Wierderhold on behalf of Advanced Valves v Terence Van Rooyen and Altman Allers on behalf of Digicall Fogi Plumbing Solutions

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

2.13 Stephanus De Villiers (Forensic Services) on behalf of City of Cape Town v Hill Services (Pty) Ltd v Oasis-Reach for Your Dreams NPO

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

2.14 OBC Group (Pty) Ltd v Spar Elim, Spar Gugulethu Square and Spar Phuthaditjhaba

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

2.15 Anonymous v Infiniti Insurance, Santam and Mix Telematics

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

2.16 Anonymous v Hoërskool Pietersburg

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

2.17 Harold Mogaana v Mapalagadi Primary School

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

2.18 Anonymous v Daniel Treger

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

2.19 Dieketseng Olga Setsubi v National Real Estate

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

2.20 Lucas Shivhabu v Lereng Pharmacy

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

2.21 Mogobadi Timothy Phihlela v Capitec Bank Limited

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

2.22 Faghrie Daniels v Gauteng Transcribers

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

2.23 Anonymous v Sanlam Life Insurance Limited (“Sanlam Life”)

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

2.24 Special Investigation Unit v Asijiki Soundbytes (Pty) Ltd

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

2.25 Special Investigation Unit v Auto Race Carwash

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

2.26 Special Investigation Unit v Pricemart Technologies CC

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

2.27 Special Investigation Unit v Biomass Equipment (Pty) Ltd

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

2.28 Mxolisi Mahlangu v Ratanda Secondary School

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

2.29 Anonymous v Dingateng Primary School

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

2.30 Cedric Molefe v Brackenfell High School

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

2.31 Susan Breytenbach v Onze Rust Primary School

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

2.32 Anonymous v Hillside Primary School

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

2.33 Anonymous v Mountain Cambridge School

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

2.34 Anonymous v ADvTECH Group

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

2.35 Anonymous v Bramley Primary School

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

2.36 Anonymous v Nazareth Primary School

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

2.37 Anonymous v Khanya Lesedi, Foundation Five and Bertha Gxowa Primary

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

3. COMPLAINTS (Withdrawals)

The Commission has accepted the withdrawal of the following case:

3.1 BIT Connect v Metrofibre

[ENDS]

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