



competition commission
south africa

Media Statement

For Immediate Release

20 June 2023

STATEMENT ON THE LATEST DECISIONS BY THE COMPETITION COMMISSION

The Competition Commission of South Africa (CCSA) held its ordinary meeting on Tuesday, 13 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 Old Mutual Funeral Services Proprietary Limited (“OMFS”) /Two Mountains Underwriters Proprietary Limited/Two Mountains Burial Services Proprietary Limited/ Two Mountains Financial Services Proprietary Limited (collectively “Target Firms”)

The Commission has recommended that the Competition Tribunal (“Tribunal”) approve the proposed transaction whereby OMFS intends to acquire the Target Firms, with conditions.

OMFS is a new entity and is ultimately a subsidiary of Old Mutual Limited (“OML”), a listed entity that is not controlled by any firm. OMFS does not control any firms. OML and all the firms it controls shall be referred to as the “Acquiring Group”.

The Acquiring Group is active in the financial services and insurance markets and offers both short-term insurance and long-term insurance (e.g., life insurance). Through OMFS, the Acquiring Group sells, distributes, and administers funeral cover/policies.

The Target Firms are ultimately controlled by a family trust whose beneficiary is a historically disadvantaged person (HDP) as contemplated in the Competition Act No. 89 of 1998 (as amended).

The Target Firms, through their separate constituent entities, provide funeral cover, burial services and offer funeral cover as an intermediary.

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

To address employment concerns, the parties and the Commission have agreed to a moratorium on merger-specific retrenchments and the alignment of certain employment benefits. To address transformation and participation in the economy by HDPs and small businesses, the parties have agreed to procurement commitments and capital expenditure at the Target Firms post-merger.

1.2 Property Fund Ltd (“Investec Property Fund”)/ Investec Property (Pty) Ltd (“Investec Property”)/ Investec Limited (“Investec”)

The Commission has recommended that the Tribunal approve the proposed transaction whereby Investec Property Fund, Investec Property, and Investec entered into an agreement to internalise the management functions of Investec Property Fund's properties, that were previously outsourced to Investec Property. Further, Investec and Investec Property will acquire property assets known as “Investec Pretoria” and “Investec Durban” (“Disposal Properties”).

The primary acquiring firms are Investec Property Fund, Investec Property, and Investec. Investec Property Fund is a South African Real Estate Investment Trust (“REIT”) and its shares are widely held with no single firm or individual directly or indirectly controlling the Investec Property Fund. Investec Property is a wholly owned subsidiary of Investec Property Group Holdings (“Investec Property Group”), which is in turn a wholly owned subsidiary of Investec.

The target firms are:

- Investec Property Fund, in respect of the property assets known as (i) Investec Pretoria, situated at the corner of Atterbury and Klarinet Roads, Menlo Park, Tshwane, and (ii) Investec Durban, situated at Ridgeside Office Park, 5 Richefond Circle, Umhlanga Rocks, Durban, KwaZulu Natal Province, together with the rental enterprises conducted thereon; and
- Investec, together with Investec Property, in respect of the termination and cancellation of the current asset management agreements.

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

1.3 AFHCO Holdings Proprietary Limited (“AFHCO”)/ Indluplace Properties Limited (“Indluplace”)

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

The primary acquiring firm is AFHCO, a wholly owned subsidiary of SA Corporate Real Estate Limited (“SACREL”). SACREL is a REIT and it is not controlled by any individual firm or person. AFHCO and SACREL control numerous firms in South Africa. AFHCO, SACREL, and all the firms that they, directly and indirectly, control are referred to as the “Acquiring Group”. The Acquiring Group owns a portfolio of

industrial, retail, and residential properties located primarily in the major metropolitan areas of South Africa and the Republic of Zambia.

The primary target firm is Indluplace. Indluplace is controlled by Fairvest Limited (“Fairvest”). Apart from Indluplace, Fairvest also controls Arrowgem Limited, Cumulative Properties Limited, Fairvest Property Holdings Limited, and Vividend Income Fund Limited. Indluplace wholly owns and controls numerous companies in South Africa. All the firms that Indluplace, directly and indirectly, controls are referred to as Indluplace or the “Target Group”.

The Target Group owns a substantial number of residential properties and has a limited retail property portfolio in South Africa.

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

1.4 Twin City Trading 2 (Pty) Ltd (“Twin City Trading”)/ Castle Gate (Pty) Ltd (“Castle Gate”)/ Club Retail Park (Pty) Ltd (“Club Retail”)

The Commission has recommended that the Tribunal approve the proposed transaction whereby Twin City Trading intends to acquire interest in two rental enterprises known as Castle Gate Property and Club Retail Property (“Target Properties”) from Castle Gate and Club Retail, without conditions.

The Acquiring Group owns several properties of various types (residential, commercial, and agricultural) both throughout South Africa and internationally.

The primary target firms are the Castle Gate Property and the Club Retail Property (“Target Properties”). The Target Properties are controlled by Atterbury Property Fund (Pty) Ltd (“Atterbury Property Fund”).

The Target Properties provide rentable retail, hospitality, and office space in Tshwane. The Castle Gate Property has a general letting area (GLA) of 21 800 m² for retail property and a GLA of 3 200 m² for office property. The Club Retail Property has a GLA of 16 784 m² for retail property and a GLA of 12 698 m² for office property.

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

1.5 LP Private Hospital (Pty) Ltd (“LP Private Hospital”)/Louis Pasteur Hospital Holdings (Pty) Ltd (“LPHH Business”)

The Commission has unconditionally approved the proposed transaction whereby LP Private Hospital intends to acquire LPHH Business.

The primary acquiring firm is LP Private Hospital. LP Private Hospital is controlled by Louis Pasteur Hospital Investment Holdings (Pty) Ltd (“LPHIH”). LPHIH is controlled by Razorite Healthcare Fund II (“Razorite Fund II”). LP Private Hospital does not directly or indirectly control any firms. LP Private Hospital and all the firms, directly and indirectly, controlling it, will hereinafter be collectively referred to as the “Acquiring Group”.

LP Private Hospital is a newly established special-purpose vehicle formed for the purposes of the proposed transaction. The Acquiring Group invests exclusively in the development and expansion of healthcare infrastructure in South Africa. The Acquiring Group is focused on investing in acute, sub-acute, and primary healthcare facilities, and public-private partnerships in healthcare.

The primary target firm is LPHH Business. LPHH Business is controlled by Louis Pasteur Holdings (Pty) Ltd (“LPHH”). LPHH is undergoing business rescue proceedings and is currently under the supervision of a business rescue practitioner. LPHH is controlled by Louis Pasteur Medical Investment (Pty) Ltd.

The LPHH Business operates as a private hospital situated in Central Tshwane, 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 substantial public interest concerns.

1.6 Vulindlela Concessions VI Proprietary Limited (“Vulindlela Concessions”)/ Imvelo Concessions (RF) Proprietary Limited (“Imvelo”)

The Commission has unconditionally approved the proposed transaction whereby Vulindlela Concessions intends to acquire Imvelo from Tiso Projects No 1 (Pty) Ltd (“Tiso Projects”) and Aveng Africa (Pty) Ltd (“Aveng”).

Vulindlela Concessions is ultimately controlled by a family trust whose beneficiaries are HDPs as contemplated in the Competition Act No. 89 of 1998 (as amended). Vulindlela Concessions, all the firms controlling Vulindlela Concessions, and the firms controlled by those firms, are collectively referred to as the “Acquiring Group”.

The Acquiring Group created Vulindlela Concessions specifically for this transaction. Of relevance to the merger assessment is the Acquiring Group's investment in Grade P office properties through public-private partnerships (PPPs) with the government.

Imvelo is a ring-fenced special purpose vehicle whose only function is a 27-year concession to design, construct, operate, finance, and maintain the head office of the Department of Environmental Affairs in Tshwane, through a PPP.

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

1.7 Talis Property Investments (Pty) Ltd (“Talis Property Investments”)/ 11 properties owned and controlled by Redefine Properties Limited (“Redefine Properties”)

The Commission has unconditionally approved the proposed transaction whereby Talis Property Investments intends to acquire Redefine Properties.

The primary acquiring firm is Talis Property Investments. Talis Property Investments is ultimately wholly owned by Talis Holdings (Pty) Ltd (“Talis Holdings”). Talis Holdings is in turn wholly controlled by a family trust. The family trust is wholly controlled by HDPs as contemplated in the Competition Act No. 89 of 1998 (as amended). Talis Holdings and all its subsidiaries are hereinafter referred to as the “Acquiring Group”.

Talis Property Investments is a newly established property investment company with its primary activity to hold the Target Properties being purchased in the proposed transaction. The primary focus of Talis Holdings is on investment opportunities in the property, ICT, finance, media, agriculture and infrastructure development sectors.

The Acquiring Group's property portfolio consists of seven properties including rentable grade A, B and P office space, rentable retail space, student accommodation, and parking bays.

The primary target firm is a portfolio of 11 properties owned and controlled by Redefine Properties. The Target Properties comprise rentable grade A, B, and C office space and rentable light industrial space properties. Redefine Properties is a REIT and is not controlled by any firms.

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

1.8 Ndalamo Coal (Pty) Ltd (“Ndalamo Coal”)/ Lexshell 99 General Trading (Pty) Ltd (“Lexshell”)

The Commission has unconditionally approved the proposed transaction whereby Ndalamo Coal intends to acquire Lexshell.

The primary acquiring firm is Ndalamo Coal. Ndalamo Coal is owned and controlled by Ndalamo Resources (Pty) Ltd (“Ndalamo Resources”). Ndalamo Coal and Ndalamo Resources and all firms controlled by Ndalamo Resources shall be referred to as the “Acquiring Group”.

The Acquiring Group is active in the coal mining industry. The Acquiring Group supplies thermal coal to Eskom under long-term coal supply agreements and to the export market.

The Acquiring Group operates the following coal mines:

- North Block Complex is an open pit coal mine located in Belfast, Mpumalanga near Eskom’s Arnot Power Station which it supplies with coal.
- UCD IV is operated as an open cast and underground coal mine situated in Delmas, Mpumalanga near Eskom’s Kriel Power Station, to whom it supplies its coal to.
- UCD III is situated in Delmas, Mpumalanga, and is an open-cast coal mine that supplies the Eskom Kusile Power Plant.
- Eloff is an open-cast Greenfields coal project located in Delmas, Mpumalanga, and is anticipated to provide coal to Eskom power plants.

The primary target firm is Lexshell. Lexshell is jointly controlled by ICH2022 (Pty) Ltd (“ICH2022”) and Umcebo Mining (Pty) Ltd (“Umcebo Mining”). Lexshell controls Springboklaagte Mining (Pty) Ltd (“Springboklaagte”). For purposes of the proposed transaction, Lexshell and Springboklaagte shall be referred to as the “Target Group”.

The Target Group, through Springboklaagte, is a greenfield coal project located in Leslie, Mpumalanga. The mine has not yet been developed. The merging parties submit that once it is developed, Springboklaagte will produce coal for the export market.

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

1.9 Sithega Protect (Pty) Ltd (“Sithega Protect”)/ Legal Expenses Group Africa Limited (“LEGA”)

The Commission has unconditionally approved the proposed transaction whereby Sithega Protect intends to acquire LEGA.

The primary acquiring firm is Sithega Protect. Sithega Protect is controlled by Sithega SPV One (Pty) Ltd (“Sithega SPV One”). Sithega Protect and all the firms controlling it shall collectively be referred to as “the Sithega Group”.

The Sithega Group comprises firms active as investment holding companies with a particular focus on the financial services industry, including asset management, long- and short-term insurance, and related businesses.

The primary target firm is LEGA. LEGA is owned and controlled by an individual. LEGA and all the firms controlled by it will collectively be referred to as the “LEGA Group”.

LEGA is the holding company for various entities which form the LEGA Group. The entities which form part of the LEGA Group provide (i) short-term legal expenses insurance cover (including legal services to its members); (ii) long-term funeral cover (including legal and administration services) and (iii) credit provision services in the form of personal loans.

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

1.10 Olympus Water Holdings IV, L.P. (“Olympus”)/ Diversey Holdings Ltd (“Diversey”)

The Commission has unconditionally approved the proposed transaction whereby Olympus intends to acquire Diversey.

The primary acquiring firm, Olympus, is ultimately controlled by Platinum Equity Group. In South Africa, Platinum Equity Group, through its portfolio companies, provides a variety of water treatment chemicals through Solenis South Africa Proprietary Limited (“Solenis”). All the firms directly and indirectly controlled by Platinum Equity Group are hereinafter referred to as the “Acquiring Group”.

The Acquiring Group’s activities in South Africa of relevance to this merger assessment are undertaken by its subsidiary, Solenis, and include the treatment of residential water, industrial water, commercial pools and spas, and municipal water.

The primary target firm is Diversey, a company incorporated in accordance with the Cayman Islands. Diversey is controlled by funds managed by Bain Capital Investors, L.L.C. Relevant to the proposed transaction is Diversey’s South African subsidiary, Diversey SA, whose shareholding is held by funds managed by Bain Capital, foreign public shareholders, and Diversey Staff Trust.

The target firm is a global manufacturer and supplier of hygiene, sanitation, infection prevention, and cleaning solutions for customers in the institutional and food and beverage sectors.

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 substantial public interest concerns.

1.11 Shoprite Checkers (Pty) Ltd (“Shoprite”) / The Business of Berry Bottles Liquor; The Business of Market Liquors; The Business of Liquor City Atteridgeville & The Business of Liquor City Mawhelereng (“Target Businesses”)

The Commission has unconditionally approved the four small mergers according to which Shoprite acquired the Target Businesses.

The primary acquiring firm is Shoprite. Shoprite is wholly owned by Shoprite Holdings Limited (“Shoprite Holdings”). Shoprite owns and operates various customer-facing brands including supermarkets, fresh produce retailers, furniture stores, cellular technology, liquor stores, ticket sales, hospitality services, and pharmaceuticals.

The primary target firms are the Target Businesses. The Business of Berry Bottles Liquor was owned and controlled by Berry Bottles Liquor (Pty) Ltd (“BBL”). The Business of Market Liquors was owned and controlled by Diamonds Discount Liquor (Pty) Ltd (“DDL”). DDL is a subsidiary of Food Lover’s Holdings (Pty) Ltd. The Business of Liquor City Atteridgeville was controlled by Liquor City Atteridgeville CC. The Business of Liquor City Mawhelereng is controlled by Liquor City 9 (Pty) Ltd. The Target Businesses are retail liquor stores.

The Commission found that these small mergers are unlikely to result in a substantial prevention or lessening of competition in any relevant market. The Commission further found that these small mergers do not raise substantial 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 Thabiso Lundi Busane v Intercap Bus Services

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

2.2 Hoosen Dawood C/O Just Health Pharmacy v Abbott / DSV Healthcare

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

2.3 Catherine Drage-Dlodlo v Sentech

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

2.4 Anonymous v Western Cape Government and City of Cape Town

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

2.5 Anonymous v The Foschini Group

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

2.6 Anonymous v Massmart Group (Builders Warehouse), Mr. Kobus de Jager and Mr. Megan Garden

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

2.7 Anonymous v Sharp Move Trading 260 (Pty) Ltd T/A Davidson's Discount Boards and Mr. Wayne Rossouw

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

2.8 Anonymous v The Building Company (BUCO) and Mr. Darin Reynolds

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

2.9 Anonymous v PG Bison (PTY) Ltd

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

2.10 Owen T. L. Koopman v Lifestyle Vacation Club (and Carl John Attorneys – acting on behalf of the Club)

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

2.11 Pravin R Gareeb v Bonitas Medical Aid (Mr LR Callakoppen (principal officer Bonitas and PSD))

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

2.12 Nkhangweleni Mathelemusa v ACDC Gezina

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

[ENDS]

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