



## **Media Statement**

### **For Immediate Release**

**27 July 2023**

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

The Competition Commission of South Africa (CCSA) held its ordinary meetings on 19 and 25 July 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 Goscor Lift Truck Company (Pty) Ltd (“Goscor”)/ Main Street 1967 (Pty) Ltd (“NewCo”)**

The Commission has recommended that the Competition Tribunal (“Tribunal”) approve the proposed transaction whereby Goscor intends to acquire Newco, without conditions.

The primary acquiring firm is Goscor. Goscor is controlled by Uvundlu Investment Holdings Limited (“Uvundlu”). Uvundlu is, in turn, wholly owned and controlled by Bud Industrial Services (Pty) Ltd (“Bud Industrial Services”). Bud Industrial Services is ultimately controlled by Bud Group (Pty) Ltd (“Bud Group”). The Bud Group, Uvundlu, and Goscor shall be referred to as the “Acquiring Group”.

The Acquiring Group is active in the distribution and sale of industrial lithium batteries for use in the solar, renewable, and power-backup industries in South Africa. The Acquiring Group imports and resells lithium batteries for distribution in South Africa.

The primary target firm is NewCo, a special-purpose vehicle created for this proposed merger. NewCo is controlled by K2020649408 (South Africa) (Pty) Ltd.

NewCo will control the business formerly owned and controlled by Hubble Lithium (Pty) Ltd (“Hubble Business”). The Hubble Business consists of the design, engineering and supply of energy products and battery management solutions for the solar, renewable and power-backup industry in South Africa. NewCo and the Hubble Business shall be referred to as the “Target Group”.

The Target Group is active in the design, manufacturing, and supply of industrial lithium batteries which constitute stationary power supplies that are used in businesses, factories and residential homes such as uninterrupted power supply (UPS) and energy storage systems. The Target Group also provides battery

management solutions. The brand of lithium batteries supplied by the Target Group is known as the “Hubble Brand”.

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.

### **1.2 Hudaco Trading Proprietary Limited (“Hudaco Trading”)/ Brigit Fire Proprietary Limited, Brigit Systems Proprietary Limited, and Porta Gas Proprietary Limited (collectively, the “Primary Target Businesses”)**

The Commission has recommended that the Tribunal approve the proposed transaction whereby Hudaco Trading intends to acquire the Primary Target Businesses, without conditions.

The primary acquiring firm, Hudaco Trading, is controlled by Hudaco Industries Limited (“Hudaco”), a public company. The Hudaco Group is active in the importation and distribution of high-quality branded industrial, automotive, and electronic consumable products. Relevant to the proposed transaction are the activities conducted by the Elvey Group division of Hudaco Trading, a distributor of security-related products (including, inter alia, intruder detection, access control, CCTV, and fire detection).

The Primary Target Businesses are controlled by Brigit Deon Proprietary Limited.

The Primary Target Businesses provide fire detection, fire suppression and fire prevention products and services, ensuring equipment compatibility and comprehensive integrated solutions. The products offered by the Primary Target Businesses are primarily focused on the security and safety disciplines, specifically required for commercial and industrial systems. These products include gas suppression products, fire detection systems, sprinklers and valves, passive fire containment products, portable extinguishers and special risk solutions.

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 Capital Propfund Proprietary Limited (“Capital”)/ Erf 137 Longmeadow (“Target Property”)**

The Commission has recommended that the Tribunal approve the proposed transaction whereby Capital intends to acquire the Target Property, without conditions.

The primary acquiring firm is Capital. Capital is wholly owned by Capital Property Fund Limited (“Capital Fund”). Capital Fund is wholly owned by Fortress Real Estate Investments Limited (“Fortress”). Fortress is not controlled directly or indirectly by any individual or entity. Capital, all the firms controlling it and all the firms controlled by those firms, will be referred to as the “Acquiring Group”.

The Acquiring Group is a real estate company and holds a portfolio of properties including industrial and retail properties. The Acquiring Group owns a portfolio of approximately 220 immovable properties and rental enterprises across South Africa in the logistical, industrial, retail and office sectors.

The Target Property is an undivided interest in a large light industrial property located at Modderfontein, Gauteng.

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.

#### **1.4 Modern Packaging Polokwane (“Modern Packaging”)/ Supa Pack (Pty) Ltd (“Supa Pack”)**

The Commission has unconditionally approved the proposed transaction whereby Modern Packaging intends to acquire the assets and liabilities of Supa Pack.

The primary acquiring firm is Modern Packaging, a special vehicle created for the purpose of the proposed transaction. Modern Packaging is a wholly owned subsidiary of Modern Packaging Distribution Proprietary Limited (“MPD”), which is in turn controlled by Axis Pac Proprietary Limited (“Axis Pac”).

Through its operational subsidiaries, the Acquiring Group distributes packaging and related products. None of the Acquiring Group’s subsidiaries manufactures the packaging products which they distribute. Instead, the products are sourced from third-party manufacturers and suppliers and on-sold to customers, mainly for food packaging purposes.

The primary target firm is Supa Pack.

The Target Firm does not manufacture any products but rather procures similar packaging and related products from other manufacturers and only distributes to retailers of food products. The Target Firm operates only in the Limpopo province.

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.

#### **1.5 Palmcourt Investments Proprietary Limited (“Palmcourt Investments”)/Red Tape Investments Proprietary Limited (“Red Tape Investments”)**

The Commission has unconditionally approved the proposed transaction whereby Palmcourt Investments intends to acquire the rental enterprise known as All Saints Shopping Centre from Red Tape Investments.

The primary acquiring firm is Palmcourt Investments. Palmcourt Investments does not control any entity.

Palmcourt Investments is an investment company focusing on the wholesale and retail property industry within the Gauteng Province.

The primary target firm is the Target Property, a rentable retail property known as All Saints Shopping Centre. The Target Property is controlled by Red Tape Investments. The Target Property does not control any firm.

The Target Property is a retail shopping centre situated at the corner of President Fouché Drive and Windsor Way, Olivedale, Johannesburg, Gauteng comprising 7000 m<sup>2</sup> of rentable retail space.

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.

### **1.6 Diageo South Africa (Diageo)/ Castle Wine and E K Green Limited (“Castle Wine”)**

The Commission has unconditionally approved the proposed transaction whereby Diageo intends to terminate the distribution agreement with Castle Wine relating to the sale and distribution of two branded alcoholic beverage products, namely Gordon’s London Dry Gin and Pimm’s No. 1 Cup (the “target products”) in South Africa, Namibia, Lesotho, Botswana, and Eswatini.

The primary acquiring firm, Diageo South Africa, is ultimately wholly owned by Diageo plc (“Diageo”), a company that is incorporated in terms of the laws of the United Kingdom. Diageo and all its subsidiaries are collectively referred to as the “Diageo Group”.

The Diageo Group of companies is a global drinks company based in the United Kingdom. The Diageo Group’s production activities in South Africa are primarily channelled through its local subsidiary, Diageo South Africa (the primary acquiring firm).

The Diageo Group brews, markets and distributes alcoholic products worldwide. The Diageo Group beer brands sold in South Africa include Guinness Extra Stout, Guinness Draught and Kilkeny Irish Ale. The group also produces, markets and distributes several spirits globally and in South Africa, such as Johnnie Walker Scotch whisky, Captain Morgan rum, gin and Smirnoff vodka. Diageo also markets several “ready-to-drink” (“RTD”) drinks, such as Smirnoff Spin and Smirnoff Storm. Relevant to the proposed transaction are the Diageo Group’s activities relating to the supply of gin in South Africa.

Castle Wine is ultimately controlled by Distell Group Limited.

Castle Wine currently bottles, markets, distributes, and sells the target products in South Africa and certain Southern African territories (Botswana, Namibia, Lesotho and Eswatini).

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.

**1.7 Firstmile Properties JHB Housing 2 Proprietary Limited (“Firstmile”)/ Business Venture Investments no 1387 (RF) (Pty) Ltd (“BVI”); Shanike Investments no 87 (RF) (Pty) Ltd (“Shanike 87”); Shanike Investments no 84 (RF) (Pty) Ltd (“Shanike 84”); Tortello Investments 142 (RF) (Pty) Ltd (“Tortello”); Urbaine Triumph Properties (Pty) Ltd (“Urbaine”); Urban Land Properties (Pty) Ltd (“Urban”); 1 Beacon Road (Pty) Ltd (“Beacon”); Situation East (Pty) Ltd (“Situation”); and VJD Holdings (Pty) Ltd (“VJD”) (collectively referred to as “the target firms”)**

The Commission has approved the proposed transaction whereby Firstmile intends to acquire nine property companies owned by Divercity Urban Property Group Proprietary Limited and Circlevest Securitisation (RF) Proprietary Limited, with conditions.

The primary acquiring firm is Firstmile. Firstmile is wholly owned and controlled by a company incorporated in the Republic of Mauritius.

Firstmile is a property investment and development company. It has shareholding in residential and commercial properties across South Africa and Zimbabwe. In South Africa, Firstmile is a provider of affordable housing and owns and operates six residential properties in Gauteng.

The target firms are property companies that own rentable residential properties comprising nine residential apartment blocks and retail properties located in Johannesburg Central Business District.

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

To promote a greater spread of ownership, the Acquiring Group has committed to implementing a transaction wherein a percentage shareholding in the Target Firms will be acquired by one or more historically disadvantaged persons (HDPs).

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

### **1.8 Shoprite Checkers (Pty) Ltd (“Shoprite”)/ Ultra Liquors, Westgate (“Ultra Liquors”)**

The Commission has unconditionally approved the proposed transaction whereby Shoprite acquired Ultra Liquors.

The primary acquiring firm is Shoprite. Shoprite is controlled by Shoprite Holdings Limited (“Shoprite Holdings”). Shoprite Holdings, Shoprite, and all its subsidiaries are hereinafter referred to as the “Acquiring Group”.

The primary target firm is the business of Ultra Liquors.

The primary target firm, Ultra Liquors, operates a retail liquor store in the Westgate Shopping Centre in Roodepoort, Gauteng.

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.

### **1.9 Fidelity ADT Monitoring (Pty) Ltd (“Fidelity ADT”)/National Security and Fire (Pty) Ltd (“the Target Business”)**

The Commission has approved the proposed transaction between Fidelity ADT and part of the security business of the Target Business, with conditions.

The primary acquiring firm is Fidelity ADT. Fidelity ADT is a wholly owned subsidiary of Fidelity Services Group (Pty) Limited (“Fidelity Services Group”). Fidelity Services Group is not controlled by any individual firm and does not control any other firm. Fidelity ADT, Fidelity Service Group, and all firms directly and indirectly controlled by Fidelity Services Group are hereinafter referred to as the “Acquiring Group”.

The Acquiring Group is a security solutions provider in South Africa, offering a range of protection services and equipment. Relevant to the proposed transaction is Fidelity ADT’s services relating to monitoring and response services.

The primary target firm is the Target Business. The Target Business comprises identified clients’ contracts for providing monitoring and response services as well as their data, alarm radios/transmitters, radio signal relaying site agreements, radio signal equipment, base stations and radio frequency spectrum licenses and alarm systems.

The Target Business is controlled by National Security and Fire (Pty) Ltd (“National”). The shareholders of National are New Shelf Thirty-One (Pty) Ltd and New Shelf Thirteen (Pty) Ltd.

The Target Business is involved in the provision of monitoring and response services to residential and SME clients and does not include large commercial clients.

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

To promote the greater spread of ownership, Fidelity ADT has agreed to a condition that it will consider the number of years worked by incoming National employees when considering years of service in terms of the qualifying criteria for its existing employee share ownership program (ESOP).

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

### **1.10 Shearwater SPV Proprietary Limited (“Shearwater”)/ Interflex Holdings Proprietary Limited (“Interflex”)/ Dinaledi Concepts Proprietary Limited (“Dinaledi”) (“Proposed Transaction”)**

The Commission has approved the proposed transaction whereby Shearwater intends to acquire Interflex and Dinaledi (collectively, the “Target Firms”), with conditions.

The primary acquiring firm is Shearwater. Shearwater is ultimately controlled by a family trust. Shearwater, all the firms controlling it, and all the firms controlled by those firms, will be referred to as the “Acquiring Group”. The Acquiring Group has no shareholding by HDPs.

Shearwater is a special purpose vehicle (“SPV”) that was established to facilitate the proposed merger and does not conduct any activities. The Acquiring Group’s activities include holding investments in various sectors such as agriculture, residential property development, industrial property, hospitality property (e.g., holiday lodges and camps), sport fishing, retail, telecommunications, and manufacturing.

The Target Firms have substantial ownership by HDPs. The Target Firms import and distribute light-duty, heavy-duty, and steel cord conveyor belts to the mining industry (including mines and mining equipment distributors).

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

The Commission found that the merger will result in a substantial reduction in HDP ownership at the Target Firms. To address this concern, the parties proposed that a fund set up in accordance with the BEE codes would be created to acquire a minority stake in the Acquiring Group post-merger. However, the Commission found that the proposed fund did not address the dilution arising from the merger or result in beneficial ownership by HDPs in the Target Firms post-merger. However, the Commission and the parties agreed to additional remedies such as an ESOP and skills transfer which render the merger justifiable from a public interest perspective.

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

### **1.11 Smartgrowth Investments (Pty) Ltd (“Smartgrowth”)/ Scuderia South Africa (Pty) Ltd (“Scuderia”)**

The Commission has approved the proposed transaction whereby Smartgrowth intends to acquire Scuderia, with conditions.

The primary acquiring firm is Smartgrowth. The shares in Smartgrowth are held by Globalcom Capital Partners Limited, The Black Pointer Trust, and The Green Grass Trust. Smartgrowth controls several entities. Smartgrowth and all the firms directly and indirectly controlled by it and all the firms, directly and indirectly, controlling it, will hereinafter collectively be referred to as the “Acquiring Group”.

The Acquiring Group is an investment group focusing on the property sector although it also invests in telecommunication-related services, such as distribution of starter packs, prepaid airtime and smartphone insurance.

The primary target firm is Scuderia. Scuderia's shares are held by Divsluce Proprietary Limited and Nous Investments Proprietary Limited. Scuderia directly or indirectly controls several companies. Scuderia is a car distribution business for Ferrari-branded cars under licence from Ferrari S.p.A (Società per azioni). Scuderia is an importer and distributor of Ferrari vehicles.

The Commission found that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Further, to promote the greater spread of ownership, the merged entity shall incorporate an HDP company which will receive a certain percentage of the shares in Scuderia.

## **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 AC Witcher (Pty) Ltd v Mountain to Ocean Forestry (Pty) Ltd**

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

### **2.2 Wykco Holdings (Pty) Ltd v Recycling Consolidated Holdings (Pty) Ltd and Remade Holdings (Pty) Ltd**

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

### **2.3 Tyron Wykerd v Outdoor Investment Holdings (Pty) Ltd, Safari and Outdoor Stores, Inyathi Shooting Supplies and Formalito (Pty) Ltd**

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

### **2.4 Sithembiso Ernest Sambo v Netcare Group South Africa**

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

### **2.5 Riaan Delpont v Pegasus Landscaping and Horticultural Maintenance; Grandma Construction (Pty) Ltd and Uni Building Services and Maintenance T/A Uni Building Services (Pty) Ltd**

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

### **2.6 Jeanette Smith v CemAir, FlySafair and Lift Airlines**

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



**2.7 Thomas Molose v MC Admin Real Estate Agent and Kempt Rent Estate Agent**

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

**2.8 Jason Zaymes v DSV: Global Transport and Logistics**

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

**2.9 Nicolaas Louw v Core Group and Apple**

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

**2.10 Charl van den Berg v Tactical Defence Store SALES**

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

**2.11 Arthur Mpho Lebepe v Moove Gym Cosmo City**

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

**2.12 Mr Maredi Levy Mvundlela v Vodacom**

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

**[ENDS]**

**Issued by:**

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