



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 Tuesday, 01 August 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 Petrefuel Holdings (Pty) Ltd (“Petrefuel Holdings”)/ Royale Energy (Pty) Ltd (“Royale Energy”)

The Commission has recommended that the Competition Tribunal (“Tribunal”) approve the proposed transaction whereby Petrefuel intends to acquire Royale Energy, with conditions.

The primary acquiring firm is Petrefuel Holdings (formerly known as Petre Moya Holdings (Pty) Ltd). Petrefuel Holdings is controlled by Petredec South Africa Holdings (Pty) Ltd (“Petredec SA”). Petrefuel Holdings, all the entities it controls as well as the entities controlling it shall collectively be referred to as the “Petredec Group”.

In South Africa, the Petredec Group is active as a non-refining wholesaler and distributor of refined fuel products namely, petrol, diesel, lubricants, illuminating paraffin, and liquefied petroleum gas (LPG). The Petredec Group also has petrol and diesel storage facilities.

The primary target firm is Royale Energy. Royale Energy is controlled by Royale Energy Group (Pty) Ltd (“Royale Energy Group”). Royale Energy and all the firms that it controls will collectively be referred to as the “Target Group”.

Royale Energy is active as a non-refining wholesaler and marketer of refined fuel products (petrol, diesel, illuminating paraffin, lubricants, and LPG) throughout South Africa. The Target Group also operates small petrol and diesel storage facilities.

To address employment concerns, the merging parties have agreed not to retrench any South African employees as a result of the merger for three years from the implementation date. To promote a greater spread of ownership, the merging parties will establish an Employee Share Ownership Programme (ESOP) for the benefit of qualifying employees. Further, the merging parties will assist independent historically disadvantaged persons (HDPs) who are owner drivers and meet certain qualification criteria to purchase fuel tanker vehicles as part of an enterprise and supplier development initiative. The merging parties will also establish an education fund in accordance with specific design principles for the benefit of qualifying workers.

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 any other public interest concerns.

1.2 Abu Dhabi National Oil Company (ADNOC) P.J.S.C. (“ADNOC”)/ OMV Aktiengesellschaft (“OMV”)

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

The primary acquiring firm, ADNOC, is wholly owned by the Government of the Emirate of Abu Dhabi. ADNOC controls numerous firms globally (collectively the “ADNOC Group”). In South Africa, ADNOC does not control any firm.

The ADNOC Group is an energy and petrochemicals group operating across the entire hydrocarbon value chain through a network of fully integrated businesses. ADNOC is principally active in the exploration, production, storage, refining and distribution of oil and gas, as well as in the development of petrochemical products. In 2022, the ADNOC Group supplied refined oil products (i.e., sulphur, gas oil, gasoline and aviation fuel) to South Africa.

The primary target firm, OMV, is controlled by Österreichische Beteiligungs AG (“ÖBAG”), an Austrian government holding company and Mubadala Petroleum Petrochemicals Holding Company L.L.C. (“MPPH”). In South Africa, OMV is only active through its subsidiary, Borealis AG (“Borealis”).

OMV is globally active in upstream and downstream oil and gas activities. The upstream business activities focus on the exploration, development, and production of oil and gas in certain core regions including Central and Eastern Europe, the North Sea, the Middle East, Africa, and Asia-Pacific. The downstream oil business operates refineries in Austria (Schwechat), Germany (Burghausen) and Romania (Petrobrazi). OMV is also active in the production and commercialisation of base chemicals and polyolefins via Borealis.

In addition, OMV is active in the production and commercialisation of polyolefins, base chemicals and fertilisers.

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.

1.3 Cider House Investments (Pty) Ltd (“CHI”) / The license for the sale and distribution of the Strongbow brand (the “Target Business”)

The Commission has approved the proposed transaction whereby CHI intends to acquire the Target Business, with conditions.

The primary acquiring firm is CHI. CHI is jointly controlled by Signal Hill Products Holdings (Pty) Ltd (“SHPH”) and Livor Investments (Pty) Ltd (“Livor”). CHI is majority owned by HDPs. All the firms controlling CHI and all firms controlled by those firms will be referred to as “the Acquiring Group”.

Relevant to this merger assessment is the Acquiring Group’s activities (through SHPH) in the production, packaging and distribution of various alcoholic beverages in South Africa.

The Target Business is the exclusive, perpetual and royalty-free license for the sale and distribution of ciders / alcoholic beverages under the Strongbow brand in South Africa and other territories. The Target Business is controlled by Heineken South Africa (Pty) Ltd (“Heineken SA”) which is ultimately controlled by Heineken N.V. (“Heineken”), a public firm based in the Kingdom of the Netherlands.

The Commission found that the merger is unlikely to result in any substantial lessening or prevention of competition in any relevant market/s.

The Commission found that the merger positively impacts public interest as the merger parties have committed to conditions entailing substantial capital expenditure on production and distribution facilities; local procurement of inputs from SMMEs and HDP firms; an ESOP for the benefit of workers; skills development of HDPs; and ownership by HDPs in the merged entity.

1.4 SPAR Group Ltd (“the SPAR Group”) / Go On Supermarket (Pty) Ltd (iro Lyndhurst SUPERSPAR)

The Commission has unconditionally approved the proposed transaction whereby the SPAR Group intends to acquire Lyndhurst SUPERSPAR from Go on Supermarket.

The primary acquiring firm is the SPAR Group. The SPAR Group is not controlled by any firm. The SPAR Group controls several firms in South Africa.

The SPAR Group conducts a wholesaling operation throughout South Africa.

The primary target firm is Go On Supermarket (Pty) Ltd (in business rescue) in respect of Lyndhurst SUPERSPAR. Lyndhurst SUPERSPAR is controlled by Go On Supermarket (Pty) Ltd (“Go On Supermarket”).

Lyndhurst SUPERSPAR is a retail supermarket store. Lyndhurst SUPERSPAR trades from premises in Lyndhurst Square shopping centre, corner of Pretoria and Drome Roads, Lyndhurst, Johannesburg.

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 Basileia Investment Holdings Limited (“BIH (UK)”)/ King Price Financial Services Proprietary Limited (“KPFS”)/ Porcupine Union Proprietary Limited (“Porcupine Union”)

The Commission has unconditionally approved the proposed transaction whereby BIH (UK) intends to acquire KPFS and Porcupine Union.

The primary acquiring firm is BIH (UK). BIH (UK) is controlled by Basileia Holdings Limited (“Basileia”). In South Africa, BIH (UK) does not directly or indirectly control any firm. BIH (UK), Basileia, and all firms directly or indirectly controlled by Basileia will hereinafter be referred to as the “Acquiring Group”.

BIH (UK) is an investment holding and management company based in the United Kingdom. BIH (UK) also holds investments in firms active in the insurance sectors in certain European countries. The Acquiring Group does not have any activities in South Africa.

The primary target firms are KPFS and Porcupine Union. KPFS is controlled by the Mergon Foundation NPC (the “Mergon Foundation”). Porcupine Union is also controlled by the Mergon Foundation. Porcupine Union does not control any firm. KPFS controls several firms. KPFS, Porcupine Union and all the firms controlled by KPFS will hereinafter be referred to as the “Target Group”.

Porcupine Union provides in-house human resources, brand marketing, accounting and IT consulting services to companies within the Target Group. The Target Group is a short-term insurance broker in South Africa and an authorised financial services provider which acts as a broker in respect of a wide variety of non-life insurance products including insurance for individuals, companies, body corporates and farms. It also acts as a broker in respect of specialised liability insurance and cybercrime insurance.

The Target Group through KPFS provides non-life and life insurance products. The Target Group also provides specialised cover for niche risks faced in engineering contracts, and plants and works projects.

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.

1.6 Pod Property Fund (Pty) Ltd (“Pod”)/Dorpstraat Capital Growth Fund (Pty) Ltd (“Dorpstraat”)/Leaping Frog Shopping Centre (“Leaping Frog”)

The Commission has unconditionally approved the proposed transaction whereby Pod and Dorpstraat (collectively, the “Acquiring Firms”) intend to acquire Leaping Frog.

Pod, and all the firms controlling it, and Dorpstraat, as well as all the firms controlling it, shall collectively be referred to as the “Acquiring Group”.

Pod is a property investment company, holding a portfolio of retail and office properties in the Western Cape and Gauteng.

Dorpstraat is a property investment company holding a portfolio of retail properties in the Western Cape and Gauteng.

The primary target firm is Leaping Frog, a rentable retail space situated at the corner of Mulburton Road and William Nicol Drive in Sandton, Gauteng. Leaping Frog is classified as a neighbourhood centre.

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 ThembiSA InvestCo 2 (Pty) Ltd (“ThembiSA InvestCo 2”)/ MyMostAwesome (Pty) Ltd (“MyMostAwesome”)

The Commission has unconditionally approved the proposed transaction whereby ThembiSA InvestCo 2 intends to acquire MyMostAwesome.

The primary acquiring firm is ThembiSA InvestCo 2. ThembiSA InvestCo 2 is ultimately controlled by the PSG Group. ThembiSA InvestCo 2 and all the firms controlling it will be collectively known as the “Acquiring Group”. The Acquiring Group invests in several sectors including higher education, energy (power) utilities, residential properties, renewable energy products, and motor vehicle dealerships, through the target business.

The primary target firm is MyMostAwesome. MyMostAwesome owns HeyCarter (Pty) Ltd (“HeyCarter”). HeyCarter owns Private Dealer (Pty) Ltd (“My Private Dealer”) and Amanda Motors (Pty) Ltd (“Amanda Motors”). MyMostAwesome is an investment holding company and has no direct operations. Subsidiaries of MyMostAwesome operate as motor vehicle dealerships.

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 public interest concerns.

1.8 PHG Property Holdings Proprietary Limited (“PHG Property”)/ Lussin Piccolo Africa Proprietary Limited (“Lussin Piccolo Africa”)

The Commission has unconditionally approved the proposed transaction whereby PHG Property intends to acquire an undivided share interest in the letting enterprise known as Builders Warehouse Bloemfontein (“Target Property”) from Lussin Piccolo Africa.

The primary acquiring firm is PHG Property. PHG Property is not controlled by any individual shareholder. The shareholdings in PHG Property are held by WDC Business Trust; Boshoff Investment Holdings Proprietary Limited; B & L Trust; and Gray Investment Holdings Proprietary Limited. PHG Property and all firms it, directly and indirectly, controls are hereinafter referred to as the “Acquiring Group”.

The Acquiring Group is active in property investment and development in the retail, commercial and industrial sectors. Its property portfolio consists of retail centres and office spaces. The Acquiring Group is primarily active in Gauteng, Northern Cape, Free State and Cape Town. In the Free State, the Acquiring Group owns Northridge Mall, a minor regional centre, and Victorian Square, a convenience shopping centre.

The primary target firm is the Target Property. The Target Property is a retail property with a gross lettable area of 9 298 m² and is situated in Bloemfontein, Free State. The Target Property is classified as a value centre. The Target Property is wholly owned by Lussin Piccolo Africa. Lussin Piccolo Africa is controlled by various trusts and does not control 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 public interest concerns.

1.9 Nikkel Trading 392 Proprietary Limited (“NT392”)/ Brikor Limited (“Brikor”)

The Commission has approved the proposed transaction whereby NT392 intends to acquire issued share capital in Brikor, with conditions.

The primary acquiring firm is NT392, which has several operational subsidiaries, including ARM Andalusite, Tokata Resources, Tokata Coal and Tokata Metals.

The primary target firm is Brikor. Brikor is not controlled by any single individual. Brikor controls several subsidiaries.

Brikor manufactures and supplies building and construction materials for low-cost housing, residential, commercial, industrial, civil engineering and infrastructure projects and undertakes limited mining activities. Brikor mines its own clay as a key input into its brick-making process. As part of these mining activities, Brikor also mines limited quantities of coal for its own use in the brick-making process and as a secondary mining output to its core brick-making business.

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

To address public interest concerns, the merging parties have agreed to conditions that include the Acquiring Group's planned capex injection within 12 months after the implementation date of the proposed transaction; increased employment; supplier development through a rent-to-own equipment scheme and facilitating the transfer of Grootfontein's Mining Rights.

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

1.10 Kanu Equipment (Mauritius) Limited (“Kanu”)/Kem Structures (Pty) Ltd (“Kem”)

The Commission has approved the proposed transaction whereby Kanu intends to acquire Kem, with conditions.

The primary acquiring firm, Kanu, is a company incorporated in the Kingdom of Mauritius.

The Acquiring Firm is a distributor of heavy machinery such as agricultural, mining, forestry, and construction equipment such as cranes and earthmoving equipment. It distributes products for various Original Equipment Manufacturers (OEMs) such as Liebherr, Case Agriculture, Tigercat, CTP, Black Cat Wear Parts Ltd, G.E.T, Baldwin Filters, Duo Aquatrap, ETR, Berco Duetz, and Bell equipment. The Acquiring Firm distributes heavy machinery in various African countries except for South Africa. In South Africa, the Acquiring Group currently only sells second-hand parts as well as a limited selection of new parts for older/obsolete models of heavy machinery. In addition, the Acquiring Group is also active as a distributor of low-voltage electrical products and solar products in South Africa. It supplies a broad portfolio of products to installers, contractors, resellers as well as end-users.

The primary target firm is Kem, a company wholly owned and controlled by MOG ZA Limited (“MOG ZA”), a company incorporated according to the laws of Mauritius.

The target firm acts as a service provider, supplier, and distributor of machinery, spare parts and lubricants from a number of OEMs such as BOMAG GmbH, Liebherr, Bull and McCloskey. Kem supports and supplies a wide range of heavy machinery to suit a wide variety of applications, including (i) earthmoving and road-building equipment for all types of projects and plant hires; (ii) crushing and screening equipment

for quarrying, mining and recycling; and (iii) forklifts. The Target Group offers warranties, services and maintains heavy machinery (including providing replacement parts when necessary) at a retail level.

The Commission found that the proposed transaction is unlikely to result in substantial prevention or lessening of competition in any relevant markets. To ensure a greater spread of ownership by HDPs, the merging parties have agreed to implement an ESOP within 24 months of the implementation date.

The Commission further found that the proposed transaction does not raise additional 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 Miss Dumisile Ndlovu v Applosoive, Blended Tech, Enthuzex, Mo2C Synergy, Nhika Technology Group, Sizavox, Tech Mahindra, Tipp Focus, Ulwembu, Vhakondeleli IT, Waymamark

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

2.2 Michael van Niekerk on behalf of the trustees of the MVN Familie Trust v Shoprite Checkers (Pty) Ltd, Goosebumps Distributors (Pty) Ltd and Shelf-Sure (Pty) Ltd

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

2.3 Walter Solomon and Mastro Supplies (Pty) Ltd v Goscor Compressed Air Systems and Sullair

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

2.4 Nqobile Victoria Kunene (known as Ndimande) v Eskom Holdings SOC Ltd (“ESKOM”)

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

2.5 Nqobile Victoria Kunene (known as Ndimande) vs Huawei Technologies S.A

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

2.6 Darren van Greunen representing Mr MV Reddy v TBFS/ Hollard Insurance

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

2.7 Anonymous v Fibre to the Apartment, Land and Sea Property Management and Body Corporate 82 on Harfield

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

2.8 Anonymous v Coreline and FTTX under the leadership of Anton Botes

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

2.9 Kwele Jake Mulasi v Discovery Insure – Motor section and Absa Insure – Motor section

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

2.10 Sizwe Dlamini v NERSA SCM

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 Peuentle Investment Holdings (Pty) Ltd v Aloe Vera Westcoast Derek Whitehead

[ENDS]

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