Media Statement
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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 Monday, 30 October 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 Vitol Emerald Bidco Proprietary Limited ("Vitol")/ Engen Limited ("Engen")

The Commission has recommended that the Competition Tribunal ("Tribunal") approve the proposed transaction whereby Vitol intends to acquire Engen, with conditions.

The primary acquiring firm is Vitol, a newly incorporated entity which is currently controlled by Vitol Africa BV ("Vitol Africa"). Vitol and Vitol Africa are ultimately controlled by Vitol Holdings II S.A ("Vitol Holdings"). Vitol Holdings is not controlled by any firm. Vitol, Vitol Africa, and Vitol Holdings are collectively referred to as Vitol Group.

The Vitol Group is a large global independent energy marketing and trading company. It supplies and distributes crude oil, petroleum products and natural gas globally. In South Africa, the Vitol Group (through its South African subsidiary, Vesquin Trading) is engaged in the importation of crude oil and wholesale supply of refined petroleum products (i.e. gasoil, gasoline, bitumen, jet fuel, fuel oil and liquefied petroleum gas (LPG)) to the major oil marketing companies and independent wholesalers/resellers. The Vitol Group also jointly controls the Burgan Cape Terminal, a storage and distribution facility located at the Eastern Mole of the Port of Cape Town.

The primary target firm is Engen. Engen is controlled by PETRONAS Marketing International Sendirian Berhad ("PETRONAS"). PETRONAS is owned by the Malaysian Government. Engen controls a number of firms in South Africa. Engen and all its subsidiaries are referred to as the Engen Group.

The Engen Group is an African-based energy group focused on the supply, distribution and marketing of petroleum products including, amongst others, petrol, diesel, lubricants, and chemicals. In South Africa, the Engen Group imports, supplies, and distributes refined petroleum products to the retail market. It also earns revenue from retail convenience services provided at these service stations. The Engen Group also provides refined petroleum products to resellers and large customers through its commercial division. The division also blends lubricants to create refined petroleum products which are supplied to its retail and commercial customers and distributors. It exports its products to Namibia, Botswana, Eswatini, and Lesotho.

Engen Group used to refine petroleum products in South Africa through its Engen Refinery ("Enref") in Durban. However, the Enref facility is no longer operational due to fire damage that occurred in December 2020. Enref's storage facilities are currently being used to store imported refined petroleum products as well as for the blending of certain refined products.

The Engen Group also owns and leases storage facilities across the country. Of relevance to the proposed transaction is that the Engen Group owns and leases storage facilities in Durban and Cape Town.

The Commission found that the proposed transaction raises the following competition concerns:

(i) A significant customer foreclosure concern exists, particularly concerning local refineries, as the Engen Group currently serves as the primary customer for locally refined petroleum products.

(ii) The merger parties possess substantial storage tank capacity in Cape Town and Durban. This, coupled with the Vitol Group's import capabilities, raised concerns that the merger may lead to the (further) displacement of petroleum products refined in South Africa by imports, potentially having a profound negative impact on the petrochemical industry and remaining local refineries.

(iii) Furthermore, the merger raised concerns related to potential anticompetitive information exchange in relation to the gas market.

Thus, the proposed merger raised significant competition and public interest concerns. To remedy these concerns, the merging parties agreed to the following conditions:

i. Continuing to procure locally refined petroleum products for a long-term duration, investing a set amount over a period of five years in capital investments and production commitments,
ii. Increasing levels of localisation across the value chain,
iii. Developing Historically Disadvantaged Persons-owned suppliers,
iv. Establishing a new employee share ownership plan (ESOP) for the merged entity's employees in South Africa,
v. Increasing the number of independently and HDP-owned retail stations, and
vi. A moratorium on merger-specific retrenchments.

1.2 Pharmacare Limited, trading as Aspen Pharmacare ("Aspen Pharmacare")/ Eli Lilly (S.A.) (Pty) Ltd ("Lilly SA")

The Commission has recommended that the Tribunal unconditionally approve the proposed transaction whereby Aspen Pharmacare intends to acquire the promotion, sales and distribution rights relating to 23 pharmaceutical products supplied in South Africa, by Lilly SA (the "Lilly Portfolio").

The primary acquiring firm is Aspen Pharmacare. Aspen Pharmacare is a wholly owned subsidiary of Aspen Pharmacare Holdings Limited ("Aspen Holdings"). Aspen Holdings is not controlled by any firm as its shares are widely held. Aspen Pharmacare, all the firms it controls, all the firms controlling Aspen Pharmacare, and all the firms controlled by those firms, will be referred to as the "Acquiring Group".

The Acquiring Group is a global speciality and branded multinational pharmaceutical company which focuses on manufacturing, marketing and distribution of a broad range of post-patent (i.e. generic), branded medicines and domestic brands covering both hospital and consumer markets.

The primary target firm is the Lilly Portfolio. The Lilly Portfolio is comprised of the promotion, sales and distribution rights relating to the 23 pharmaceutical products. The Lilly Portfolio also includes 46 employees who are involved in the sales, marketing and distribution of the Lilly Portfolio in South Africa.

The merging parties both supply, amongst others, antidepressants (used to treat anxiety and depression) and antimetabolites (used to treat leukaemia and various types of cancer).

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 substantial public interest concerns.

1.3 Government Employees Pension Fund ("GEPF")/ Shenge Property Group (Pty) Ltd ("Shenge")

The Commission has recommended that the Tribunal unconditionally approve the proposed transaction whereby GEPF intends to acquire Shenge.

The primary acquiring firm is the GEPF, a fund duly represented by the Public Investment Corporation SOC Limited ("PIC"). The GEPF is controlled by its Board of Trustees in terms of section 6(2) of the Government Employees Pension Law 21 of 1996. The PIC is controlled by the South African Government and acts as an asset management and investment company for various entities including the GEPF.

The PIC, on behalf of the GEPF, invests in various classes of assets including equities, property, and fixed income, which the PIC has been appointed to manage.

Shenge is a newly incorporated property investment and development company, incorporated for the purposes of this transaction.

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 Hatfield Holdings (Pty) Ltd ("Hatfield Holdings")/ Audi Centre, Somerset West Dealership ("Target Dealership")

The Commission has recommended that the Tribunal unconditionally approves the proposed transaction whereby Hatfield Holdings intends to acquire the Target Dealership.

The primary acquiring firms are Hatfield Holdings and Hatfield Property. Hatfield Holdings and Hatfield Property are jointly controlled by a trust and Grapevine Property Investments 103 CC ("Grapevine"). Hatfield Holding and Hatfield Property including their subsidiaries and controllers will collectively be referred to as the "Hatfield Group".

The Hatfield Group owns and operates 35 branded motor dealerships in Gauteng and KwaZulu-Natal. The dealerships primarily sell passenger vehicles (PAS) and light and medium commercial vehicles (LCV and MCV). Through its dealerships, the Hatfield Group also sells: (i) used vehicles, (ii) after-sales services and after-sales branded original equipment manufacturer (OEM) parts and accessories, (iii) accessories (such as tow bars, tracking devices and safety film), and (iv) top-up maintenance plans, and finance and insurance support services.

The primary target firms are the Target Dealership and the Target Property.

The Target Dealership is an Audi motor vehicle dealership, repair centre and service centre which sells, repairs, and maintains Audi-branded motor vehicles. The Target Dealership is located at the corner of R44 and R104 Highway, Somerset West, Western Cape Province. The Target Dealership sells new and used passenger vehicles. It does not sell LCVs, MCVs or heavy and commercial vehicles (HCVs). The Target Property is the premises from which the Target Dealership operates.

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 Attacq Waterfall Investment Company Proprietary Limited ("AWIC")/ two land parcels known as Pocket 3 and Pocket 24 on portion 1 of the Waterfall Farm 5 ("Development Rights")

The Commission has recommended that the Tribunal unconditionally approve the proposed transaction whereby AWIC intends to increase its share in Development Rights.

The primary acquiring firm is AWIC. AWIC is wholly owned and controlled by Attacq Limited ("Attacq"). AWIC holds and controls various real estate portfolios and development and leasehold rights in Waterfall City. AWIC also holds a 23.57% indirect interest in Waterfall JVCO 115 (Pty) Ltd ("JVCO"). Attacq, which operates as a Real Estate Investment Trust ("REITand is not controlled by any single shareholder. Attacq, its subsidiaries and all the firms directly and indirectly controlling it, will hereinafter be collectively referred to as the "Acquiring Group".

The Acquiring Group invests in, manages and develops a portfolio of real estate assets. Its property portfolio comprises several retail/shopping malls, offices, hotels, as well as logistics and distribution centres, with a minor investment in residential property.

The primary target firm comprises a share in the Development Rights. The Development Rights are currently held by JVCO. JVCO is controlled by Sanlam Life Insurance Limited ("Sanlam Life"), with AWIC, the Acquiring Firm, holding the remaining shares. Sanlam Life is not directly or indirectly owned by any firm.

The Development Rights comprise a mandate to construct and develop approximately 600 000m² of rentable light industrial space on Waterfall Farm, as well as the right, title and interest to the infrastructure on the land following such construction and development.

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 Afrimat Ltd (Afrimat) / Lafarge South Africa Holdings (Pty) Ltd (Lafarge)

The Commission has recommended that the Competition Tribunal ("Tribunal") approve the proposed transaction whereby Afrimat intends to acquire Lafarge, with conditions.

The primary acquiring firm is Afrimat. Afrimat is not controlled by any firm. Of relevance to this merger assessment is Afrimat's construction and building materials activities, namely, general aggregates and ready-mix concrete.

General aggregates are produced from hornfels rock quarries and are produced in various industry standard sizes/diameters. General aggregates are an input for various construction activities such as foundations, roads, railways, and buildings. General aggregates are also one of the inputs required to produce ready-mix concrete.

Ready-mix concrete is made by mixing proportions of cement, general aggregates, and other inputs such as fly ash. Ready-mix is used for, amongst others, building and/or construction.

The primary target firm is Lafarge. Lafarge is ultimately wholly owned by Holcim Limited (Holcim), a firm listed on the SIX Swiss Exchange. Holcim is not controlled by any firm.

Of particular relevance to this merger assessment is Lafarge Group's general aggregates, ready-mix concrete, cement, and fly ash activities.

Lafarge Group is a producer of cement. Cement is the most significant input in the manufacture of ready-mix concrete. Fly ash is produced by processing combusted thermal coal from Eskom's coal-fired power stations. Fly ash is used as an input to 'extend' the cement required to produce ready-mix concrete. Put differently, less cement is required if fly-ash is used in ready-mix concrete.

The Commission found that the merger results in horizontal overlaps as regards (i) general aggregates; and (ii) ready-mix concrete. The Commission found that the merger is likely to result in a substantial lessening and prevention of competition as regards the supply of general aggregates in various regions of South Africa. Similarly, the Commission found that the merger will likely result in a substantial lessening and prevention of competition in the supply of ready-mix concrete. To restore the lost competition that would otherwise arise from the merger and in order to ensure that the merger is justifiable on public interest grounds, the Commission has recommended that the Tribunal approve the merger subject to the merging parties divesting of various general aggregates quarries and ready-mix concrete plants across South Africa (the "Divestiture"). The merging parties have agreed to these recommendations.

The Commission found that the merger results in a number of vertical overlaps namely, (i) general aggregates and ready-mix; (ii) cement and ready-mix concrete; and (iii) fly-ash and ready-mix. The Commission found that the merger is likely to result in a substantial prevention and lessening of competition in specific regions of South Africa as regards the supply of general aggregates and ready-mix concrete. However, the Commission considers that this concern is remedied by the Divestiture, which will ensure competition and continued access to the supply of general aggregates and ready-mix concrete, post the merger.

To address public interest concerns, the Commission has recommended that the merger be approved subject to a moratorium on merger-related retrenchments and other measures to protect employment. The parties have agreed to these conditions.

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

1.7 Boxwood Property Investment Fund GP Proprietary Limited ("Boxwood Fund")/ Business Zone 1186 Proprietary Limited ("Business Zone")

The Commission has unconditionally approved the proposed transaction whereby Boxwood Fund intends to acquire the rental enterprise known as the Mr Price Building ("Target Property") from the Business Zone.

The primary acquiring firm is Boxwood Fund. Boxwood Fund is the general partner of Boxwood Property Investment Fund ("Boxwood Investment") which is an *en commandite* partnership registered in South Africa. Boxwood Fund is controlled by Boxwood Asset Management Proprietary Limited ("Boxwood Asset Management"). The shares in Boxwood Asset Management are held by Third Way Asset Management Proprietary Limited ("Third Way Asset"); and (ii) Boxwood Property Fund 2 Proprietary Limited. Boxwood Fund, all firms directly or indirectly controlling it and all the firms controlled by those firms are collectively referred to as the "Acquiring Group".

The Acquiring Group is active in the property sector. The Acquiring Group's property portfolio consists of rentable retail, office and industrial spaces situated in Cape Town, Gauteng and KwaZulu-Natal.

The primary target firm is the Target Property. The Target Property is a retail property with a gross lettable area of 8 096m^2 and is situated in Somerset West, Cape Town. The Target Property is classified as a convenience 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 substantial public interest concerns.

1.8 Ka An Development Co. Limited ("Ka An Development")/ Eastern Platinum Limited ("EPL")

The Commission has approved the proposed transaction whereby Ka An Development intends to acquire EPL, with conditions.

The primary acquiring firm is Ka An Development, a company incorporated in accordance with the laws of Canada. Ka An Development is controlled by an individual. Ka An Development controls Crocodile Mining Development Limited, a firm incorporated in accordance with the laws of Canada. In South Africa, Ka An Development does not control any other firm. Ka An Development and all firms it controls shall be referred to as the "Acquiring Group".

The Acquiring Group, through Ka An Development, is an investment holding entity with investments in firms that are active in the mining sector.

The primary target firm is EPL. EPL is dually listed on the Toronto Exchange and the Johannesburg Stock Exchange (JSE) and as such it is not controlled by any shareholder. EPL controls 15 firms in South Africa. Fourteen of those firms are not operational. Of relevance to the proposed merger is the shareholding held by EPL in Barplats Mines (Pty) Ltd ("Barplats Mines"), which is envisaged to become fully operational post-merger.

The parties indicate that the Target Group is currently not operational and has not been operational since 2013 as it was placed under care and maintenance as a result of stagnant platinum group metal (PGM) prices and escalating operating costs. However, prior to the Target Group being placed under care and maintenance it was active in the mining of PGMs. In addition, through Barplats Mines, the Target Group produces chrome as a by-product, as well as small amounts of copper and gold (also as by-products of the mining of PGMs), from the Barplats Zandfontein tailings dam.

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 merging parties shall establish an ESOP for the benefit of qualifying workers.

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

1.9 Rema Tip Top Holding South Africa (Pty) Ltd ("RTT")/ Ubusisiwe Ukuphipila (Pty) Ltd ("Ubusisiwe")

The Commission has approved the proposed transaction whereby RTT intends to acquire Ubusisiwe, with conditions.

The primary acquiring firm is RTT. RTT is controlled by Rema Tip Top AG ("Rema AG"), a company registered under the laws of Germany. Rema AG is in turn controlled by Stahlgruber Otto Gruber AG ("Stahlgruber AG"), a company registered under the laws of the Federal Republic of Germany. In South Africa, RTT controls several firms. Rema AG and Stahlgruber AG and all the firms that they control shall be referred to as the "Acquiring Group".

The Acquiring Group operates as a (i) tyre workshop used for fitting, balancing and lifting tyres; (ii) supplier of valves as part of their automotive product offering; (iii) manufacturer of tyre repair systems and (iv) manufacturer of tyre maintenance systems in South Africa. The Acquiring Group also manufactures Dunlop-branded conveyor belts in South Africa and People's Republic of China. However, the conveyor belts manufactured by the Acquiring Group in South Africa and China are not distributed into the South African market.

The primary target firm is Ubusisiwe. Ubusisiwe is jointly controlled by two trusts. Ubusisiwe jointly controls Mbense Sosibo Investments Holdings (Pty) Ltd ("Mbense"). Mbense controls Dunlop Belting Products (Pty) Ltd ("Dunlop Belting Products"). Dunlop Belting Products controls eight firms. Ubusisiwe and Mbense shall be referred to as the "Target Group".

Ubusisiwe is a holding company that does not trade and derives its revenue through its shareholding in Mbense. The parties indicate that Ubusisiwe is a vehicle to facilitate the transaction and is a non-operational company.

The Target Group, through Mbense, is active in the (i) manufacturing and distribution of conveyor belts used by mines; (ii) manufacturing of industrial hoses; and (iii) maintenance and servicing of conveyor belts.

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

With respect to public interest, the merging parties agreed that the Acquiring Group and/or Mbense or its subsidiaries shall create a number of permanent jobs for HDPs within 18 months from the merger implementation date.

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

1.10 BCP VI Neptune Bidco Holdings Limited (“BidCo”)/ Network International Holdings Plc (“Network”)

The Commission has approved the proposed transaction whereby Bidco intends to acquire Network, with conditions.

The primary acquiring firm is BidCo, a company incorporated in England and Wales. Bidco is indirectly controlled by BCP VI Neptune Holdings L.P (“BCP VI Neptune”). BCP VI Neptune is directly controlled by Brookfield Capital Partners VI GP LLC (“Brookfield Capital”), a general partner to BCP VI Neptune Holdings LP and to private equity funds managed and/or advised by affiliates of Brookfield Asset Management Inc. BidCo is ultimately controlled by Brookfield Corporation (“Brookfield”). Brookfield is a public company listed on the New York and Toronto Stock Exchanges and is not controlled by any single firm or individual. In South Africa, Brookfield indirectly controls four firms, none of which have activities that overlap with those of the Target Firm. Brookfield and all firms it directly or indirectly controls are henceforth referred to as the “Acquiring Group”.

The primary target firm is Network, a public company incorporated under the laws of England and Wales.

Network is a public company listed on the London Stock Exchange. Its shares are widely held, and no individual firm controls Network. In South Africa, Network indirectly controls several firms. Network and all the firms it controls shall collectively be referred to as the “Target Group”.

The Target Group provides payment solutions to merchants and financial institutions, including acquiring and processing services and a range of value-added services.

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

To address the greater spread of ownership, the merged entity shall, over a period of five years invest in various transformation initiatives including in enterprise and supplier development, skills, knowledge, and experience development young Historically Disadvantaged Persons through the provision of bursaries, leadership, and industry relevant training. Additionally, the merging parties shall establish an Employee Share Ownership Programme (ESOP) for the benefit of qualifying workers.

Further, to address employment concerns, the merged entity shall for a period of 36 months from the implementation date not retrench any employee as a result of the merger. The non-retrenchment condition will not apply to executive and highly skilled employees.

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

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