



Media Statement

For Immediate Release

26 January 2024

STATEMENT ON THE LATEST DECISIONS BY THE COMPETITION COMMISSION

The Competition Commission of South Africa (CCSA) held its ordinary meeting on Tuesday, 23 January 2024 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 Life Healthcare Group Proprietary Limited (“Life”) / Dialysis services business of Fresenius Medical Care South Africa Proprietary Limited (“Target Business”)

The Commission has recommended that the Competition Tribunal (“Tribunal”) approves the proposed transaction whereby Life intends to acquire the Target Business, with conditions.

The primary acquiring firm, Life, is directly controlled by Life Healthcare Group Holdings Limited (“Life Holdings”). Life Holdings is listed on the Johannesburg Stock Exchange (JSE) and as such it is not controlled by any firm whether acting jointly or individually.

Life controls several firms. All firms directly and indirectly controlled by Life are henceforth referred to as the “Acquiring Group”.

Relevant to the assessment of the proposed transaction are the activities of the Acquiring Group relating to the provision of dialysis services through East Rand Dialysis Inc (“ERD”) at 31 of its 48 hospitals in South Africa.

The Acquiring Group is a provider of acute hospital care through its national network of hospitals which provide a comprehensive suite of hospital services. The Acquiring Group operates 48 multi-disciplinary acute care hospitals situated in the Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Mpumalanga, North-West and Western Cape. The Acquiring Group serves predominantly acutely ill patients and is not active in Limpopo.

The Target Business is controlled by Fresenius Medical Care which in turn is controlled by Fresenius Medical Care Beteiligungsgesellschaft mbH, a firm incorporated in accordance with the laws of Germany ("Fresenius Germany"). Fresenius Medical Care Germany is directly controlled by Fresenius Medical Care AG & Co. KGaA ("FMCA").

The Target Business is a dialysis service provider that operates in South Africa, Namibia and eSwatini and operates from hospitals, medical centres and standalone dialysis centres. In South Africa, the Target Business comprises a total of 45 units: 42 freestanding which serve chronically ill patients (out-patients) and three mobile units that provide services to acutely ill patients (in-patients) at third-party hospitals. The Target Business is not active in Limpopo.

The Commission found that the proposed transaction raises substantial competition concerns. The concerns relate to potential foreclosure of other non-integrated dialysis service providers who require access to the Acquiring Group acute hospital for the provision of dialysis services. The other concern that the Commission received from the market participants was that acute hospitals (through the nephrologist, specialist who administers dialysis patients) tend to refer dialysis patients to the dialysis services providers that are linked to their hospitals. Lastly, the Commission was concerned that post-merger, the Acquiring Group will be able to raise tariffs charged by the Target Business for uninsured or self-paying customers (those who do not have medical aid). To remedy the competition concerns resulting from the proposed merger, the merging parties agreed to the following conditions:

- (i) The merger parties shall continue to permit third-party dialysis services providers reasonable access to the Acquiring Firm's hospitals on a mobile basis for a specified period for the purposes of administering acute renal dialysis treatments.
- (ii) Merging parties also indicated that Life Hospitals do not provide any incentives to nephrologists to refer patients to any particular dialysis service provider (including ERD) and will not do so post-merger. However, the Acquiring Group agreed that it shall not interfere with the clinical discretion of nephrologists resident in its hospitals to refer patients to whichever dialysis services provider they deem appropriate within their clinical discretion as set out in the Health Professions Act, No. 56 of 1974 and the rules and regulations promulgated thereunder. The nephrologists operating at the Acquiring Group hospitals shall be free to refer patients to their preferred dialysis centres.
- (iii) The Acquiring Group will ensure that for a specified period it shall maintain the lowest tariffs between ERD and the Target Business tariffs for self-paying customers.

To address public interest concerns, the merged entity agreed to a condition that (i) it shall not retrench any employees as a result of the merger for the duration of the moratorium period. (ii) For an agreed upon

time, the Acquiring Firm will offer provincial health departments in each province in which the Merged Entity provides dialysis services, an agreed-upon number of chronic haemodialysis treatments for public sector patients. (iii) It shall commit a capital expenditure on the Target Business of a specified amount over a specified duration.

1.2 AIH Limited (“AIH”) / Joseph Investment Holdings (“JIH”)

The Commission has recommended that the Tribunal unconditionally approves the proposed transaction whereby AIH intends to acquire JIH.

The primary acquiring firm, AIH, is a special purpose vehicle incorporated in the Republic of Mauritius. AIH does not control any firm. AIH is jointly controlled by VertX Agri Limited (“VertX”) and FAITH Agri Limited (“FAITH Group”). AIH has a shareholding in JIH, the primary target firm.

AIH, all the firms controlled by AIH, all the firms controlling AIH, and all the firms controlled by those firms will be referred to as the “Acquiring Group”.

The activities of the Acquiring Group in South Africa also includes: (i) being a plastic recycler and a manufacturer of rigid plastic containers; (ii) manufacture of prefabricated accommodation, offices, ablutions, clinics, classrooms, kitchens and diners for use across numerous industries; (iii) operating a range of speciality coffee stores that sell premium beverages and a broad quick service food offering; (iv) a producer of extra virgin olive oil and is located near Worcester in the Western Cape; (v) is a vegetable juice producer.

The primary target firm, JIH, is controlled by HFP investments Limited (“HFP”), a firm incorporated in Mauritius.

JIH directly and indirectly controls the following firms: (i) AFGRI Holdings Proprietary Limited (“AHL”); AFGRI Group Holdings Proprietary Limited (“AGH”); AFGRI Agri Services Proprietary Limited; and PhilAfrica Foods Proprietary Limited (“PAF”) amongst others. JIH, and all the firms controlled by JIH will be referred to as the “Target Group”.

The Target Group is an investment holding company with interest in various agricultural services and food related companies. The Target Group has interest in firms that are active in the provision of agricultural services, more specifically grain production and storage.

The Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market. In addition, the proposed transaction does not raise public interest concerns.

1.3 Redefine Properties Limited (“Redefine”) / Mall of the South (Pty) Ltd (“Mall of the South”)

The Commission has recommended that the Tribunal unconditionally approves the proposed transaction whereby Redefine intends to acquire Mall of the South.

The primary acquiring firm, Redefine, is not controlled by any single shareholder. Redefine controls various firms, which includes its joint control of the Mall of the South (Target Firm). Redefine and all the firms directly and indirectly controlled by it will hereinafter collectively be referred to as the “Acquiring Group”.

The Acquiring Group is active in the property sector, with a property portfolio comprising a diverse range of properties including office, retail, residential and industrial space situated throughout South Africa.

The primary target firm is Mall of the South. Mall of the South is jointly controlled by RMB Investments and Advisory (Pty) Ltd (“RMBIA”) and Redefine. RMBIA is wholly owned by FirstRand Limited (“FirstRand”).

Mall of the South is a super-regional retail centre situated at the corner of Swartkoppies Road and Kliprivier Drive, Gauteng.

The Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market. In addition, the proposed transaction does not raise public interest concerns.

1.4 Hyprop Investments Limited (“Hyprop”) / Table Bay Mall from the Table Bay Mall Property Trust (“the proposed transaction”)

The Commission has recommended that the Tribunal unconditionally approves the proposed transaction whereby Hyprop intends to acquire Table Bay Mall from the Table Bay Mall Property Trust.

The primary acquiring firm, Hyprop, operates as a REIT which is listed on the JSE. Hyprop is not controlled by any firm and controls the following entities: Hyprop Investments Employee Incentive Scheme (Pty) Ltd, Hyprop Foundation NPC, African Land Investment (Pty) Ltd, West Africa Asset Management (Pty) Ltd, Natalmahogany (Pty) Ltd, and Conventurist (Pty) Ltd.

Hyprop operates an internally managed portfolio of properties situated in South Africa, Nigeria, Ghana and South-Eastern Europe.

The primary target firm is the rental enterprise known as Table Bay Mall, a retail property situated at corner R27 (West Coast Road) and Berkshire Boulevard in Sunningdale, Cape Town, Western Cape.

The Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market. In addition, the proposed transaction does not raise public interest concerns.

1.5 Mack and Schuhle AG (“Mack and Schuhle”)/ Meridian Holdings Proprietary Limited (“Meridian Holdings”)

The Commission has approved the proposed transaction whereby Mack and Schuhle intends to acquire Meridian Holdings, with conditions.

The primary acquiring firm, Mack and Schuhle, a company incorporated in accordance with the laws of the Federal Republic of Germany, is controlled by an individual.

Mack and Schuhle, through its shareholdings in South Africa, also procures ancillary services from the Target Group including logistics, supply chain and debtor collection services from Meridian Wine Distribution; IT, accounting, and administrative management services from Meridian Services; and human resources, recruitment, and merchandising services from Managed People Solutions.

The primary target firm, Meridian Holdings, is jointly controlled by DFT Investments Proprietary Limited, FIH Proprietary Limited, and Hein on Wine Beleggings Proprietary Limited. Meridian Holdings has several subsidiaries. Meridian Holdings and all its subsidiaries shall be referred to as the “Target Group.”

The Target Group is active in the marketing and wholesale of wine in South Africa. The Target Group through Meridian Wine Merchants provides marketing and wholesale services for the following premium wines including sparkling wine / cap classique; red blends; sauvignon blanc; merlot; rose blends; cabernet sauvignon; pinotage; white blends; chardonnay; chenin blanc; and shiraz.

The Commission is of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market.

To address public interest concerns, the Target Group agreed to, amongst others, conclude a transaction, to enter into a distribution and marketing agreement with identified Historically Disadvantaged Person (HDP) firms in terms of which it will market and distribute each HDP firms’ alcoholic beverages in South African and international markets. The acquiring firm has also agreed to an HDP transaction.

In addition, the proposed transaction does not raise any other public interest concerns.

1.6 Ellis South Africa Proprietary Limited (“Ellis”)/ Neopak Holdings Proprietary Limited (“Neopak”)

The Commission has approved the proposed transaction whereby Ellis intends to acquire Neopak, with conditions.

The primary acquiring firm, Ellis, is a wholly-owned subsidiary of S&S Ellis Holding, which has its principal business address in the Republic of Mauritius. S&S Ellis Holding comprise pooled investment funds which

have a number of different investors, none of whom control these vehicles. The investment manager of these funds is Sango Capital Management (“SCM”), a company registered in the Cayman Islands.

Ellis is a newly incorporated company with no activities. The Acquiring Group conducts research and advisory activities in South Africa and across Africa.

The primary target firm, Neopak, is controlled by Ethos Fund VI and the Neopak Empowerment Trust (the “NET”).

The core business of Neopak is the manufacturing of recycled containerboard paper. The containerboard paper is used by Neopak’s customers in the production of corrugated board. In addition, Neopak produces small volumes of specialty recycled paper products (such as plasterboard and coreboard).

The Commission is of the view that the proposed transaction is unlikely to further substantially lessen or prevent competition in any market.

To address public interest concerns, the merging parties have agreed to implement an Employee Share Ownership Plan (ESOP) and an HDP transaction. The proposed transaction does not raise any other public interest concerns.

1.7 Fairvest Property Holdings (Pty) Ltd (“Fairvest Property”)/ Sebokeng Plaza from Axis Property Fund (Pty) Ltd (“Sebokeng Plaza”)

The Commission has unconditionally approved the proposed transaction whereby Fairvest Property intends to acquire Sebokeng Plaza.

The primary acquiring firm, Fairvest Property, is a wholly owned subsidiary of Fairvest Limited (“Fairvest”). Fairvest is a Real Estate Investment Trust (“REIT”) listed on the JSE.

Fairvest Property is a property investment company. Fairvest focuses on retail assets weighted toward non-metropolitan and rural shopping centres, as well as convenience and community shopping centres servicing the lower LSM market in high growth nodes close to commuter networks.

The primary target property is Sebokeng Plaza, which is jointly controlled by Axis Fund Proprietary Limited (“Axis Fund”) and Fairvest Property, the acquiring firm.

Sebokeng Plaza is a neighbourhood centre situated at Moshoeshoe Street, Sebokeng South, Vereeniging, Gauteng.

The Commission found that the proposed transaction is unlikely to substantially lessen or prevent competition in any market. In addition, the proposed transaction does not raise public interest concerns.

1.8 Investec Property (Pty) Ltd (“Investec”) / letting enterprise known as “15 Chaplin” from Victhyme Investments (Pty) Ltd (“15 Chaplin”)

The Commission has unconditionally approved the proposed transaction whereby Investec intends to acquire 15 Chaplin from Victhyme.

The primary acquiring firm, Investec, is a wholly owned subsidiary of Investec Property Group Holdings Proprietary Limited (“Investec Property Group”). Investec Property Group is a wholly owned subsidiary of Investec Limited.

Investec is a property investment company. Investec owns several properties in Gauteng.

The primary target firm is 15 Chaplin, a P-Grade office property located in Illovo, Sandton (Gauteng).

The Commission found that the proposed transaction is unlikely to substantially lessen or prevent competition in any market. In addition, the proposed transaction does not raise public interest concerns.

[ENDS]

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