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## GENERAL NOTICES

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### NOTICE 247 OF 2008

### COMPETITION COMMISSION

#### NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

**YARA INTERNATIONAL ASA**

**AND**

**KEMIRA GROWHOW OYJ**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to the conditions set out below.

- a) For a period of 5 (five) years following the date of approval of the proposed merger, the merged entity ("Yara/GrowHow") shall continue to make urea (in prilled and/or granular form) available for sale to Smaller Purchasers and Existing GrowHow urea customers (as defined below) on the terms and conditions set out below:
- i. *Smaller Purchasers* for the purposes of this undertaking means purchasers of urea in South Africa whose annual requirements at the time of the request for supply do not exceed 12 000 tons per annum.
  - ii. *Existing GrowHow Customers* means any pre-merger purchasers of urea from GrowHow during 2006 or 2007.
  - iii. The merged entity shall, on written request, make urea available for sale to *Existing GrowHow Customers* subject to Growhow's standard terms, conditions and provisions prevailing at the time of the merger.
  - iv. The merged entity shall, on written request, make urea available for sale to *Smaller Purchasers* on terms that are non-discriminatory as regards price, volumes, quality and quantity when compared with supply conditions applicable to *Existing GrowHow Customers* and its subsidiaries and associated entities.

- v. The merged entity will make urea available for sale either directly or through Yara/GrowHow's appointed distributors.
  - vi. In the event of urea shortages for whatever reason, such that the merged entity is unable to fulfill the requirements of all of its customers, the merged entity shall, to the extent that it is commercially and practically feasible, immediately reduce its supply to each customer and to its subsidiaries and associated entities *pro rata*.
  - vii. Nothing shall prevent or restrict *Smaller Purchasers* or *Existing GrowHow Customers* from sourcing their supplies of urea independently from third parties.
- b) In the event that the Commission has reasonable grounds to believe that the conditions herein are not being complied with by the merging parties, the Commission may request the merged entity to furnish to it the following reports and documents in writing, on 14 (fourteen) days prior written notice:
- i. a report/s signed by a responsible person, indicating the volumes of urea and the prices at which urea has been supplied.
  - ii. documents indicating the volumes of urea and the prices at which such urea has been supplied.
  - iii. a report setting out details regarding any reduction of supply of urea in the circumstances contemplated in paragraph (a) vi above.
  - iv. an independent auditor's certificate confirming the correctness of, or qualifying, as the case may be any information provided (for such period as may be specified by the Commission in its request).

Enquiries in this regard may be addressed to Mr. Hardin Ratsisusu at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3297, or Facsimile: (012) 394 4297.

**NOTICE 248 OF 2008****COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:****FERRO INDUSTRIAL PRODUCTS (PTY) LTD****AND****POWDER-LAK (PTY) LTD**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms.

The primary acquiring firm is Ferro Industrial Products (Pty) Ltd ("Ferro"), a company incorporated under the laws of South Africa. Its main shareholders are Investec Bank Limited and Ian Forbes. Ferro provides its services through the following divisions: Powder Coatings; Plastics; Enamel; Ceramic and Tiles; and Glass coatings.

The primary target firm is Powder-Lak (Pty) Ltd ("Powder-Lak"), a company incorporated under the laws of South Africa, which is a wholly-owned subsidiary of Quarrystone Holdings Ltd. Powder-Lak is involved in the manufacturing, marketing and distribution of powder coating products

Ferro intends to acquire the business of Powder-Lak as a going concern.

There is a horizontal overlap between the activities of the merging parties in the manufacture and supply of powder coating in South Africa. Powder coating finds use in the construction, white goods (i.e. fridges, microwaves, televisions, phones and other appliances), automotive, architectural and general metal finishing sectors.

The parties argued that powder coating could be substituted for solvent-based wet coating, galvanising and anodising. On the contrary, customers of the merging parties have indicated that there are quality and technical limitations inhibiting a switch from powder coating to other forms of coating. There have been instances, advanced by the parties, where certain customers stopped using powder coating and switched to other forms of coating. The Commission's market investigating revealed that such customers switched as powder coating prices were perceived supra-competitive to the extent that it was no longer profitable to use the product, in other words it was not switching as a result of a small but significant price increase of the competitively priced powder coating.

In the powder coating market in South Africa, Ferro and Powder-Lak have a market of approximately 35% and 19%, respectively. Their competitor is Akzo Nobel with the

market share of 38% while the residual is accounted for by imports mainly from India. Therefore, the implementation of the proposed transaction will reduce the number of firms in the powder coating market in South Africa from three to two, in a highly concentrated market.

The powder coating market is characterised by high entry barriers largely due to stringent quality requirements by customers as well as the lack of local technical expertise in the field. Incumbent firms (i.e. Ferro and Akzo Nobel) currently extract high gross profit margins (up to 50%), which suggests that the market is quite profitable. Even in these circumstances, the market has not attracted new entry for more than 15 years; there are also no potential entrants in the near future. Therefore, this structure is such that entry is not likely and if it does, an entrant would have to overcome technical skills barriers and also build the brand, which would take a long time. Some agents have tried to enter the market and failed.

Contrary to submission by parties, imports are not a viable option for the users of powder coating in South Africa especially for Powder Lak's customers. Imports therefore will not be able to exert competitive discipline to the industry. This is evidenced by the fact that even when domestic prices rose, imports did not rise.

Before Powder-Lak entered the powder coating market it was impossible for consumers who needed small requirements to source this within the country; Powder-Lak has made this possible while Ferro and Akzo Nobel do so at a small scale. In addition, Powder-Lak also produces relatively large orders which exerts a competitive constraint on Ferro and Akzo Nobel. The implementation of the proposed merger is likely to remove Powder-Lak, which has been an effective competitor.

In addition, customers of the merging parties (particularly small ones) lack the countervailing power.

Having established that there are weak competitive constraints in the powder coating market and in the light of the concerns from customers of the merging parties, the Commission concludes that the proposed transaction is likely to lead to a substantial prevention or lessening of competition in the powder coating market to the extent that users of the product in the construction, white goods, automotive, architectural and general metal finishing sectors will be adversely affected as prices are likely to increase.

The parties advanced certain efficiencies that could be attained from the proposed merger. However, these efficiencies do not outweigh the anti-competitive outcome that the merger would bring about in the manufacture and supply of powder coating in South Africa. In addition, the parties tendered remedies which are unlikely to remove the substantial prevention or lessening of competition in the powder coating market brought about by the proposed merger.

There are no significant public interest issues that could mitigate the substantial prevention or lessening of competition in the powder coating market.

The Commission accordingly prohibits the proposed transaction.

Enquiries in this regard may be addressed to Mr. Hardin Ratshisusu at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3297, or Facsimile: (012) 394 4297.

**NOTICE 249 OF 2008**  
**COMPETITION COMMISSION**

**NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:**

**MED-E-MASS (PTY) LTD**

**AND**

**MASTERMED (PTY) LTD**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to the conditions set out below.

1. Med-e-Mass should, on request of any other PMA providers or any practitioner utilizing the Med-e-Mass software, make available all codes and technological/electronic processes which are required to enable the conversion/importation of data from Med-e-Mass products to any other PMA products.
2. Med-e-Mass shall provide quarterly reports to the Commission detailing all requests for access to the codes and technological/electronic processes and stating how the requests were dealt with.
3. The first report shall be submitted within 3 months from the date of the conditional approval.

Enquiries in this regard may be addressed to Ms. Edwina Ramohlola at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3285, or Facsimile: (012) 394 4285.

**NOTICE 250 OF 2008****COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:****DPI PLASTICS (PTY) LTD****AND****INCLEDON CAPE (PTY) LTD**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms.

The primary acquiring firm is DPI Plastics (Pty) Ltd ("DPI Plastics"), a company incorporated under the laws of the Republic of South Africa. DPI Plastics is controlled by DPI Holdings (Pty) Ltd ("DPI Holdings"), a wholly owned subsidiary of Distribution and Warehousing Network Limited ("DAWN"). DAWN is a public company listed on the JSE Limited, accordingly no single entity controls it. DAWN controls DPI-Kwanzi (Pty) Ltd ("DPI-Kwanzi"), Incledon- DPI (Pty) Ltd ("Incledon- DPI"), Waterlinx & Irrigation (Pty) Ltd ("Waterlinx") and Pipex Plastics Botswana (Pty) Ltd ("Pipex"). DPI Plastics is involved in the manufacturing and distribution of plastic pipes and fittings for various applications including civil building, construction, plumbing, industrial, mining and irrigation. DAWN and its other subsidiaries are involved in the wholesale trading and distribution of local and international quality branded sanitaryware, plumbing and hardware products such as door locks, pad locks, screws, taps, basins and urinals.

The primary target firm is Incledon Cape (Pty) Ltd ("Incledon Cape"). Incledon Cape is controlled by Kovacs Investments 602 (Pty) Ltd ("Kovacs"). Incledon Cape operates as a wholesaler and supplier of a wide range of products including pipes, fittings, valves, flanges, threading machines, water meters, plumbing and related products used in the engineering, civils, agricultural, plumbing and municipal industries.

In terms of the structure of the proposed transaction, DAWN, through its wholly owned subsidiary DPI Plastics, intends to acquire the entire business of Incledon Cape as a going concern. Pursuant to the implementation of the proposed transaction, DPI Plastics will exercise sole control over the business of Incledon Cape.

There is a horizontal overlap in the activities of the merging firms in the market for the wholesale distribution of pipeline solutions used in the engineering, civils, agricultural, plumbing and municipal sectors. The proposed transaction also results in vertical integration in that DPI Plastics and DAWN are manufacturers of plastic pipes and fittings, sanitaryware, plumbing and hardware products while Incledon Cape is a distributor of said products.

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The Commission has concluded its analysis and has identified various concerns.

The Commission established through its investigation that the merging parties' have understated their respective market shares in respect of the relevant product market in the relevant geographic locations. The Commission established that the parties would in fact have a post merger market share for the distribution of pipeline solutions (downstream market) in the Western Cape of approximately 45% with a market share accretion of 20%. In the upstream market for the manufacture of PVC pipes, DPI Plastics enjoys a significant national market share of 30% and the regional market share would be even more significant, taking into account the fact that there are only three manufacturers of pipeline solutions with plants in the Western Cape region (namely DPI, Andrag and McNeil).

The Commission further established evidence relating to collusion between the merging firms and other independents in the downstream market for distribution of pipeline solutions in respect of tenders and ad hoc quotations for the supply of piping solutions to municipalities. Evidence also that suggests that market allocation took place in the upstream market for the manufacturing of pipeline solutions in the Western Cape. The acquiring firm appears to have an agreement with other manufacturers not to compete in certain segments, particularly the mining sector. The Commission is of the view that the collusive arrangements, besides the fact that they are per se illegal, also have the effect of artificially maintaining market conditions in that it would have the effect or at least increase the likelihood of creating serious foreclosure concerns and raising barriers to entry in both upstream and downstream markets in that any potential new entrant at either level would have to enter at both levels to effectively compete in any one market.

With regards to entry barriers, the Commission is of the opinion that the risk faced by a potential new entrant would be greatly increased as it has to consider entering a market (or both) where it has to compete with a very significant player (DPI Plastics), which already controls a large share of critical inputs and also has access to a large customer base such that the new entrant has greater uncertainty in terms of access to inputs and/or a sufficient customer base should it enter one or both markets.

The Commission further established that new entrants are also likely to be faced with potential aggressive predatory tactics by the merging parties as evidenced in the past. The information submitted to the Commission suggests that new entrants found it difficult to enter and expand in the market because of these tactics.

The proposed transaction does not raise any significant public interest concerns.

The Commission therefore prohibits the transaction.

Enquiries in this regard may be addressed to Ms. Edwina Ramohlola at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3285, or Facsimile: (012) 394 4285.

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