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# GENERAL NOTICES

## NOTICE 199 OF 2015

## COMPETITION COMMISSION

### NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

### MERGENCE AFRICA PROPERTY INVESTMENT TRUST

### AND

### REDEFINE PROPERTIES LIMITED IN RESPECT TO A PORTFOLIO OF 6 (SIX) PROPERTY LETTING ENTERPRISES

### CASE NUMBER: 2014OCT0579

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 conditions as set out below:

On 17 October 2014, the Competition Commission (Commission) received a notice of an intermediate merger whereby the primary acquiring firm, Mergence Africa Property Investment Trust (Mergence), intends to acquire control over 6 retail properties (Target Properties) within the portfolio of Redefine Properties Limited (Redefine). Following implementation of the proposed transaction, Mergence will control over the Target Properties, in terms of section 12 (2)(a) of the Competition Act 89of 1998, as amended (the Act).

The primary acquiring firm is Mergence, a firm incorporated in terms of the laws of the Republic of South Africa. Mergence is prt of a group of firms that invest in real estate with a property portfolio comprising of retail, industrial and office properties located throughout South Africa.

The primary target firms are 6 retail centres, 4 of which are classified as convenience centres located in the suburbs of Soweto. The remaining 2 are classified are classified as neighbourhood centres located in Hammanskraal. The 4 Target Properties located in Soweto are Proteapoint Shopping Centre, Dopsonpoint Shopping Centre, Pimville Square Shopping Centre and Meadowpoint Shopping Centre and the 2 centres located in Hammanskraal are Kudube Hammanskraal Centre and the Kopanong Shopping Centre.

The Commission considered the activities of the merging parties in the provision of rental space in convenience centres. The Commission found that a geographic overlap only exists within a 10 km radius of Meadowpoint Shopping Centre, situated in Meadowlands, Soweto. Post-merger the merged entity will have low market shares post-merger. Based on the above, the Commission is of the view that the proposed transaction is unlike to substantially prevent or lessen competition in the market for the provision of rental space in convenience centres in Meadowlands Soweto.

The Commission identified a concern in the existence of exclusivity clauses in Lease Agreements of 5 of the Target Properties, namely, Meadowpoint Shopping Centre, Proteapoint Shopping Centre, Dopsonpoint Shopping Centre, Pimville Square Shopping Centre and Kubube Shopping Centre. The Lease Agreements are between Redefine and the respective anchor tenants. The Commission is of the view that the exclusivity clauses have the effect of precluding small businesses and competitors of the anchor tenants, in competing in the shopping centres, as it is unlikely that the anchor tenants will give permission to lease the space to its competitors. In order to alleviate the concerns, the Commission imposes the conditions contained in **Annexure A.**

The proposed transaction does not raise concerns on other public interest grounds.

The Commission therefore approves the proposed transaction with conditions in terms of section 14 (1) (ii) of the Act.

# Annexure A

**Mergence Africa Property Investment Trust / Redefine Properties Limited in respect to a portfolio of 6 (six) property letting enterprises**

**CC Case Number: 2014Oct0579**

## Conditions

### 1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC 15);

1.2. **"Commission"** means the Competition Commission of South Africa, as established in terms of the Competition Act 89 of 1998 as amended;

1.3. **"Competition Act"** means the Competition Act 89 of 1998, as amended;

1.4. **"Conditions"** means these conditions;

1.5. **"Dopsonpoint Shopping Centre"** means the buildings and improvements, including parking area, erected on the Property in accordance with the Shopping plans as contained in Shopping Centre Lease Agreement;

1.6. **"Exclusivity Clauses"** means the clauses in the Lease Agreements concluded between the landlord of the respective Target Properties and the anchor tenants:

1.7. **"Kudube Shopping Centre"** means the immovable property known as Hammanskraal Shopping Centre, situated on the corners of Douglas Rens Road, Tracey and Stanley Avenue, Erf 4456, Unit 4, Kudube Township, Hammanskraal;

1.8. **"Lease Agreements"** mean the lease agreements between the landlord of the respective centres and the anchor tenants collectively.

1.9. **"Meadowpoint Shopping Centre"** means the buildings and improvements, including parking area, erected on the Property in accordance with the Shopping plans as contained in the Meadowpoint Shopping Centre Lease Agreement;

1.10. **"Mergence"** means Mergence Africa Property Investment Trust, its subsidiaries, its controlling firms and any associated or affiliated firms;

1.11. **"Pimville Square Shopping Centre"** means the Shopping Centre situated in zone 7, Pimville, Soweto;

1.12. **Proteapoint Shopping Centre"** means the buildings and improvements, including parking area, erected on the Property in accordance with the Shopping plans as contained in the Proteapoint Shopping Centre Lease Agreement;

## 2. Recordal

2.1. The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of rental space in convenience centres.

2.2. The Commission however, identified a public interest concern in the existence of exclusivity clauses in Lease Agreements of 5 of the Target Properties, namely, Meadowpoint Shopping Centre, Proteapoint Shopping Centre, Dopsonpoint Shopping Centre, Pimville Square Shopping Centre and Kudube Shopping Centre in favour of the anchor tenants. The Commission is of the view that the exclusivity clauses contained in the Lease Agreements raise a significant public interest concern in terms of section 12A (3) (a) and (c) of the Competition Act. In order to alleviate the concerns, the Commission imposes these conditions.

**3. Conditions to the approval of the merger**

3.1. Mergence or the relevant lessor in respect of each Lease Agreement undertakes to use reasonable commercial endeavours to negotiate with:

3.1.1. The anchor tenants in the utmost good faith within sixty (60) days of the Approval Date, to remove the exclusivity clause contained in the lease agreements.

**3. Monitoring of compliance**

3.2. Mergence shall provide the Commission with an affidavit setting out the outcome of its negotiations with the anchor tenants as contemplated in paragraphs 3.1 above, within 90 days of the Approval Date.

3.3. Mergence shall submit a copy of each new signed lease agreement to the Commission with the affidavit mentioned in paragraph 4.1 above, should it succeed in removing the exclusivity clause.

3.4. The said affidavit shall be attested to by a senior official within Mergence and must comply with the South African Legal Standards.

3.5. Any breach of these Conditions shall be dealt with in accordance with Rule 39 of the Competition Commission Rules.

All reports and correspondences in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

## NOTICE 200 OF 2015

## COMPETITION COMMISSION

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**SHOGUN HOLDING UND FINANZ AG**

**AND**

**FREE STATE BUYING ASSOCIATION LIMITED AND THE BUSINESSES OF ALPHA PHARM EAST CAPE HOLDINGS (PTY) LTD AND ALPHA PHARM KWAZULU-NATAL (PTY) LTD**

**CASE NUMBER: 2014SEP0515**

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 conditions as set out below:

On 22 September 2014, the Competition Commission ("the Commission") received a notice of an intermediate merger whereby the primary acquiring firm, Shogun Holding Und Finanz AG ("Shogun") intends to acquire Free State Buying Association Limited ("Kemco"), and the businesses of Alpha Pharm East Cape Holdings (Pty) Ltd ("APEC) and Alpha Pharm Kwa Zulu Natal (Pty) Ltd ("APKZN"). Kemco and the businesses of APEC and APKZN are collectively referred to as Alpha Pharm Group. Post-merger, Shogun would control Alpha Pharm Group.

Shogun is a company incorporated in accordance with the laws of Switzerland. Shogun is wholly-controlled and owned by Santo Holding AG ("Santo"), a company incorporated and registered in accordance with the laws of Switzerland[1].

The primary target firms are Kemco, a public company incorporated in accordance with the laws of South Africa, the businesses of APEC, a private company incorporated and registered in South Africa, and APKZN, a private company registered in South Africa.

The Alpha Pharm Group controls various firms in South Africa.

Shogun does not conduct business in South Africa. However, its subsidiary Actor Holdings is active in the South African market through Actor Pharma and Mirren. Actor Pharma supplies its own scheduled and unscheduled pharmaceutical products to the wholesale market. Actor Pharma does not manufacture pharmaceuticals itself, but rather holds the licence to sell specific pharmaceutical brands in South Africa. Mirren manufactures and distributes its own pharmaceutical products to the wholesale market. Neither Actor Pharma nor Mirren operate as pharmaceutical distributors on behalf of third party manufacturers.

The Alpha Pharm Group is active in three broad markets, namely the market for the wholesale distribution of pharmaceuticals, the market for the manufacture of pharmaceuticals and at a retail level through its two pharmacies.

The Commission found that the proposed transaction results in a horizontal overlap between the activities in the market for the manufacture of pharmaceutical products (R5D and A11A ATC3 categories). The Commission also identified a vertical overlap in the activities of the merging parties in that Alpha Pharm Group has from time to time distributed Actor Pharma and Mirren's products as part of its wholesale distribution business, and the target businesses also owns retail pharmacies.

The merging parties' estimated market share remains low in the manufacture of R5D pharmaceutical products and in the manufacture of A11A pharmaceutical products, post-merger. Given the above, the Commission found that the proposed transaction was unlikely to

[1] The proposed transaction has not been notified in other jurisdictions.

substantially prevent or lessen competition. None of the competitors contacted raised any concern about the proposed merger.

The Commission found that the proposed transaction would not lead to foreclosure concerns as a large proportion of the Alpha Pharm Group's revenue was derived from activities involving third parties and not the acquiring group. Further, there were numerous pharmaceutical wholesalers and distributors through which pharmaceutical wholesalers can distribute their products.

Regarding public interest the merging parties informed the Commission that the merger is likely to impact on employment since it could possibly result in job losses within the Alpha Pharm Group.

In order to limit the number of potential retrenchments, the Commission imposed employment related Conditions on the Merged Entity.

In this regard, the merging parties have agreed to a condition limiting job losses as per (Annexure A) below.

The proposed transaction did not raise any other public interest concerns.

The Commission therefore approves the proposed merger with conditions in terms of section 14(1)(b)(ii) of the Competition Act no. 89 of 1998, as amended.

# ANNEXURE A

## SHOGUN HOLDING UND FINANZ AG

## AND

## FREE STATE BUYING ASSOCIATION LTD AND THE BUSINESS OF ALPHA PHARM EAST CAPE HOLDINGS (PTY) LTD AND ALPHA PHARM KWAZULU- NATAL (PTY) LTD

## CC CASE NUMBER: 2014SEP0515

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## Conditions

### 1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1 **"Acquiring Firm"** means Shogun Holding Und Finanz AG;

1.2 **"Affected Employees" [CONFIDENTIAL]**;

1.3 **"Approval Date"** means the date referred to in the Competition Commission's clearance certificate (Form CC15);

1.4 **"Commission"** means the Competition Commission of South Africa;

1.5 **"Conditions"** means these conditions;

1.6 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.7 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);

1.8 **"Merger"** means the Acquiring Firm's acquisition of control over Free State Buying Association Ltd, the business of Alpha Pharm East Cape Holdings (Pty) Ltd and Alpha Pharm KwaZulu- Natal (Pty) Ltd (collectively referred to as the "Alpha Pharm Group");

1.9 **"Merged Entity"** means the combined business activities of Alpha Pharm Group and Shogun Holding Und Finanz AG upon approval and/or implementation of the Merger;

1.10 **"Merging Parties"** means Shogun Holding Und Finanz AG, Free State Buying Association Ltd, the business of Alpha Pharm East Cape Holdings (Pty) Ltd and Alpha Pharm KwaZulu- Natal (Pty) Ltd;

1.11 "**Paterson Grades**" means employee grades that comprise of grades A through to F based on an analytical method of job evaluation, used predominantly in South Africa; and

1.12 **"Target Firm"** means Free State Buying Association Ltd, the business of Alpha Pharm East Cape Holdings (Pty) Ltd and Alpha Pharm KwaZulu- Natal (Pty) Ltd.

**2. Recordal**

2.1 The Commission finds that the Merger is unlikely to substantially prevent or lessen competition in the manufacture of R5D pharmaceuticals, the manufacture of A11A pharmaceuticals and the wholesale distribution of pharmaceutical products. The estimated market shares of the merging parties remain low and there are alternative players active in the markets that compete with the Merging Parties, who will be in a position to constrain the Merged Entity post-merger.

2.2 However, the Merger is likely to have a negative impact on employment since it could possibly result in job losses within the Alpha Pharm Group.

In order to limit the number of potential retrenchments, the Commission imposes these Conditions on the Merged Entity.

**3. Conditions to the approval of the Merger**

3.1. With the exception for the Affected Employees, the Merging Parties and their respective direct and indirect subsidiaries shall not retrench any employees as a result of this Merger.

3.2. The Conditions in paragraph 3.1 above are subject to the consultation requirements of section 189 of the Labour Relations Act.

3.3. For the sake of clarity in these Conditions, retrenchments do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; (iii) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (iv) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act.

**4. Monitoring of compliance with the conditions**

4.1. The Merging Parties shall circulate a copy of these Conditions to their employees/and or their respective representatives within 7 days of the Approval Date.

4.2. As proof of compliance thereof, the Merging Parties shall within 5 business days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merged Entity attesting to the circulation of the Conditions and attach a copy of the notice sent.

4.3. The Merged Entity shall advise the Commission of the Implementation Date within 5 days of it becoming effective.

4.4. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.

4.5. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.6. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

**5. Duration of the Condition**

5.1. The Conditions shall remain in effect for a period of two (2) years from the Implementation Date.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

## NOTICE 201 OF 2015

## COMPETITION COMMISSION

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

## NEW LASER CORPORATION

## AND

## THE KO ENERGY ASSETS OF THE KO ENERGY BUSINESS OF THE COCA-COLA COMPANY

## CASE NUMBER: 2014OCT0558

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 conditions as set out below:

**Background**

On 10 October 2014 the Competition Commission ("the Commission") received notice of an intermediate merger whereby New Laser Corporation ("NewCo") intends to acquire Power Play ("Play"), a brand of the Coca Cola Company ("TCCC"). NewCo is a special purpose vehicle formed specifically for the purposes of the proposed transaction and incorporated in accordance with the company laws of California in the United States of America ("USA"). NewCo is a subsidiary of Monster Beverage Corporation ("Monster"), a firm incorporated in accordance with the company laws of Delaware in the USA.

**The parties and their activities**

NewCo has been established for the purposes of the proposed transaction and it does not sell any goods and services. Monster, which controls NewCo, manufactures and sells energy drinks and alternative beverages under different brands around the world. Monster South Africa distributes its energy drinks under the brands Monster Energy, Khaos, Ripper, Absolutely Zero, Export, Assault, The Doctor and Rehab (Tea + Lemonade and Green Tea Flavours). Monster South Africa does not manufacture energy drinks in South Africa but imports all of its energy drinks form the USA. Further, Monster South Africa does not distribute its own energy drinks; the distribution of Monster South Africa's energy drinks is done exclusively by a third party distribution company.

TCCC is a firm incorporated in accordance with the company laws of Georgia in the USA. TCCC is a global producer of soft drinks which include carbonated drinks, bottled water, dairy drinks and juices. In South Africa, TCCC produces and distributes these products through authorised bottlers. The Play Brand, which is a carbonated energy drink, is owned by TCCC. TCCC produces and distributes Play through TCCC's authorised bottlers. Play is currently produced and distributed by Coca Cola Canners.

**The transaction**

Monster and TCCC have entered into a global transaction that involves several steps. The merging parties submit that the only leg of the transaction that is notified in South Africa is the acquisition of TCCC's Play brand by Monster. The global transaction involves the acquisition by TCCC, directly and indirectly through its wholly owned subsidiary European Refreshments ("ER").

The transaction also involves the re-organisation of the energy drinks and non-energy drinks portfolio between TCCC and Monster. TCCC will transfer ownership of its worldwide energy business, including NOS, Full Throttle, Burn, Mother, Play and Power Play, and Relentless to Monster, while Monster will transfer its non-energy drinks business (sold only in North America), including Hansen's Natural Sodas, Peace Tea, Hubert's Lemonade and Hansen's Juice Products to TCCC. Monster does not sell non-energy drinks brands in South Africa and therefore only the acquisition of the Play Brand is notifiable in South Africa.

**Areas of overlap**

The Commission finds that the proposed transaction gives rise to a horizontal overlap in the activities of the merging parties with respect to energy drinks. The proposed transaction raises a potential vertical overlap, as TCCC will be the preferred distributor of Monster energy drinks post-merger. The current exclusive distributor of Monster Energy drinks is a third party distribution company. The Commission finds that the proposed transaction also results in (or gives rise to) potential vertical foreclosure concerns in that post-merger TCCC will be the preferred distribution partner globally which may potentially harm the current distributor of Monster energy drinks in South Africa.

The Commission finds that there is a horizontal overlap in the national market for the manufacture and distribution of energy drinks. With respect to this market the Commission finds that the merged entity will have a high market share. The remainder of the market shares will be held by competitors such as Red Bull South Africa (Pty) Ltd ("Red Bull"), Kingsley Beverages (Pty) Ltd ("Kingsley Beverages") and other competitors.

The Commission finds that despite the high market share post-merger, the merged entity will not have the ability to increase prices post-merger. The merged entity's ability to increase prices post-merger is likely to be sufficiently constrained by other competitors in the energy drinks market. Further, the merged entity will be constrained by new entrants into the market. The number of firms that have entered the energy drinks market has almost doubled in the last three years which has curtailed price increases during the same period.

The merged entity will also be constrained by the countervailing power from customers. Customers have the ability to negotiate prices, import energy drinks and to introduce their own private labels which will constrain the merged entity post-merger. The Commission concludes that the merged entity is unlikely to unilaterally raise prices post-merger as there are alternatives in the market. Therefore, the Commission concludes that it is unlikely that the proposed transaction will substantially prevent or lessen competition in the market for the manufacture and distribution of energy drinks.

With respect to the potential vertical overlap, the Commission finds that the distribution agreement entered into between Monster and the third party distribution company allows Monster to terminate its exclusive distribution agreement with the third party distribution company within a short period subject to certain penalties as stipulated in the contract.

The Commission notes that Monster's ability to cancel the third party distribution company distribution agreement exists pre-merger and is not changed by the merger. However, the incentive to terminate the third party distribution company's distribution contract may increase as a result of the proposed transaction as TCCC will likely distribute the energy drinks post-merger. The Commission finds that Monster's contract accounts for a certain portion of the third party distribution company's total distribution business. Therefore, in the event that Monster terminates the exclusive distribution contract, the third party distribution company will still have other alternative products to distribute. Therefore, the Commission is of the view that the proposed transaction is unlikely to lead to input foreclosure post-merger.

However should the contract be terminated a substantial number of third party distribution company's employees (dedicated to the contract) are likely to be affected. The Commission considered the effects on employment at the third party distribution company as a result of the termination of the Monster distribution contract. The Commission finds that the termination of the Monster distribution contract will affect a substantial number of employees at the third party distribution company comprising of unskilled employees and semi-skilled employees. The Commission is of the view that a condition is warranted to protect the affected employees at the third party distribution company which may be lost due the possible termination of the distribution contract. The condition seeks to ensure that Monster does not terminate the exclusive distribution agreement with the third party distribution company for a period of one (1) year. The Commission, therefore, imposes a condition requiring Monster to continue with the distribution contract with the third party distribution company for a period of at least one (1) year. This period is sufficient for the third party distribution company to secure another distribution contract.

The merging parties do not agree that the condition should last for one year and submit that it took Monster 6 (six) months to negotiate the distribution contract with the third party distribution company. Therefore, the merging parties are of the view that the duration of the condition should be 8 (eight) months. The Commission is of the view that 8 months is not a reasonable period to allow the third party distribution company to secure a similar exclusive distribution agreement. The Commission found that the third party distribution company has in the past taken at least a year to negotiate a similar distribution agreement.

**Public Interest considerations**

The Commission is of the view that the proposed transaction is unlikely to result in any employment losses in the merged entity because the manufacture and distribution of the merging parties' energy drinks is outsourced to third parties. There are no other public interest concerns that arise as a result of the proposed transaction.

**Conclusion**

The Commission therefore approves the merger with conditions in terms of section 14(1)(b)(ii) of the Competition Act No 89 of 1998, as amended. The conditions are attached hereto as **Annexure A**.

## ANNEXURE A

**NEW LASER CORPORATION**

**AND**

**THE KO ENERGY ASSETS OF THE KO ENERGY BUSINESS OF THE COCA-COLA COMPANY**

**CASE NUMBER: 2014Oct0558**

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## CONDITIONS

1. **DEFINITIONS**

The following expressions shall bear the meanings assigned to them below:

1.1 "**Affected Employees**" means the employees at the third distribution company who are dedicated to the contract with Monster, which includes unskilled employees, semi-skilled employees and skilled employees;

1.2 "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC15);

1.3 "**Acquiring firm**" means New Laser Corporation, a wholly-owned subsidiary of Monster Beverage Corporation;

1.4 "**Commission**" means the Competition Commission of South Africa;

1.5 **"Competition Act"** means the Competition Act No. 89 of 1998, as amended;

1.6 **"Competition Commission Rules"** means the Rules for the Conduct of Proceedings in the Competition Commission;

1.7 **"Conditions"** means these conditions;

1.8 **"Exclusive Distribution Agreement"** means the Monster Energy Limited International Distribution Agreement entered into by Monster Energy Limited and the third party distribution company for the exclusive distribution of Monster Energy Drinks by the third party distribution company in South Africa until 2026;

1.9 **"Implementation Date"** means the date, occurring after the Approval date, on which the merger is implemented by the merging parties;

1.10 **"Merger"** means the acquisition of control over the KO Energy Assets of the KO Energy business of the Coca-Cola Company by New Laser Corporation;

1.11 **"Merged Entity"** means the merged business activities of New Laser Corporation and the Coca-Cola Company;

1.12 **"Merging Parties"** for the purposes of these Conditions mean the Acquiring firms and the Target firms as defined in this section;

1.13 **"Monster"** means Monster Beverage Company, a firm incorporated in accordance with the company laws of Delaware in the United States of America and includes Monster Energy Limited;

1.14 "**Semi-skilled employees**" mean employees with a matriculation certificate or a vocational qualification;

1.15 "**Skilled employees**" mean employees with at least a tertiary qualification;

1.16 **"Target Firm**" means the KO Energy Assets of the KO Energy business of the Coca-Cola Company; and

1.17 "**Unskilled employees**" mean employees of the merging parties who do not have any formal qualifications.

## 2. RECORDAL

2.1 On 10 October 2014, the Merging Parties filed an intermediate merger transaction with the Commission. Following its investigation of the merger, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the manufacture and distribution of energy drinks. The Commission has, however, noted a public interest concern which may arise due to the possible termination of an Exclusive Distribution Agreement with the third party distribution company by the Acquiring firm as a result of the proposed transaction.

2.2 2.2 The Commission finds that the proposed transaction is unlikely to result in any employment losses in the merged entity. However, the Commission considered the effects on employment at the third party distribution company as a result of the termination of the Exclusive Distribution Agreement with Monster. The Commission finds that the termination of the Exclusive Distribution Agreement will affect certain employees at the third party distribution company comprising of unskilled employees, semi-skilled employees and skilled employees. The Commission is of the view that a condition is warranted to protect the Affected Employees at the third party distribution company.

2.3 In order to remedy the abovementioned negative impact on employment, the Commission hereby imposes the Conditions as set out in paragraph 3 below.

3. **CONDITIONS**

3.1 Monster and the Merged Entity shall not terminate the Exclusive Distribution Agreement with the third party distribution company as a result of the proposed transaction, for a period of 1 (one) year from the Implementation Date.

3.2 For the avoidance of doubt, this Condition does not affect the provisions of the Exclusive Distribution Agreement, including the provisions regarding termination for breach, all of which remain in full force and effect.

4. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1 4.1 The Merging Parties shall confirm in writing at the end of the one (1) year period from the Implementation Date that the Exclusive Distribution Contract with the third party distribution company was not terminated as a result of the proposed transaction.

4.2 In the event that the Commission receives any complaint in relation to non-compliance with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach will be dealt with in terms of Rule 39 of the Competition Commission Rules.

All correspondence in relation these Conditions should be forwarded to mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

**NOTICE 202 OF 2015**

**COMPETITION COMMISSION**

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**TAKEALOT ONLINE (PTY) LTD**

**AND**

**KALAHARI.COM, A DIVISION OF MIH INTERNET AFRICA (PTY) LTD**

**2014OCT0543**

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 conditions as set out below:

**Parties to the merger**

On 7 October 2014 the Commission received a notice of an intermediate merger whereby Takealot Online (Pty) Ltd (Takealot) intends to acquire Kalahari.com (Kalahari), a division of MIH Internet Africa (Pty) Ltd (MIH).

Takealot is a company incorporated in accordance with the laws of the Republic of South Africa. Takealot is owned and controlled by Tiger Global, an international investment company. Kalahari is a business division of MIH which is in turn wholly owned and controlled by Naspers Limited (Limited).

**The activities of the merging parties**

The proposed merger raises a horizontal overlap with respect to the activities of the merging parties. Both Takealot and Kalahari are active in the online retailing of consumer goods and products. The proposed merger also raises a vertical relationship between the activities of Takealot and Kalahari because Takealot's subsidiary, Mr Delivery, provides services that can be considered to be inputs in the business activities of Kalahari.

**Market definition**

The Commission's investigation found that there is competition between Brick and Mortar (B&M) retailers and online retailers. B&M retailers such as Makro and Clicks indicated that they regard online retailers as direct competitors to the extent that they check their prices. Similarly, online retailers such as the merging parties consider pricing set by B&M retailers when setting their own prices. There is also an increasing trend of local B&M extending their product offering online. Pricing analysis shows that on average the price difference between B&M retailers and online retailers is about 5% for most product categories. The Commission has also learned that majority of customers for online retailers compare prices between online retail stores and B&M.

Information received from market participants indicates that online retailers view other online retailers as their closest competitor. However, they also face a competitive constrain from B&M retailers. The Commission did not conclude on the parameters of relevant market but will assess the effects of the proposed transaction on the retail of fast moving consumer goods and services broadly.

**Competition assessment**

The Commission considered three (3) scenarios in estimating the post-merger market share of the merged entity. Firstly, the Commission considered the broader market for retail in consumer goods and services as informed by market participants and customer survey. The Commission finds that the post-merger market share of the merged entity will be approximately 1-5%. Secondly, the Commission considered online retailers and B&M retailers that have online presence. The Commission found that the post-merger market share of the merged entity will be approximately 30-40%. Lastly, the Commission considered a narrow market which only focuses on strictly online retailers which have similar product portfolio. The Commission found that the post-merger markets are of the merged entity will be approximately 70 - 90%. The Commission found that despite the high post-merger market share of the merged entity, there is a presence of competitive constraint from B&M retailers which were identified by the customers as alternatives. The Commission contacted about 802 customers to participate in the survey. The results confirmed that the merging parties are indeed the two most popular online retailers in South Africa. Roughly 9% of the customers identified Amazon as their most frequently used online retailer. Approximately 80% of the customers compare prices between online retailers and B&M stores before making a purchase. This indicates a high degree of substitutability between online stores and B&M stores. The Commission also finds that about 53% of the respondents would not switch from online shopping and about 47% indicated that they would switch should price increase by 5 – 10%. Taken as a whole, the Commission therefore found that the proposed merger is unlikely to lead to substantial lessening or prevention of competition.

**Public interest assessment**

The Commission found that the proposed merger will lead to about 290 retrenchments which will lead to public interest concerns. The Commission engaged the merging parties on how to ameliorate the effect of the propose merger on employment. The merging parties made submissions on how to best alleviate the employment concerns raised by the proposed merger. Firstly, the merging parties revised the number of employees likely to be retrenched from 290 to 200 employees. Furthermore, the merging parties have offered to assist affected employees in various forms. Lastly, the merging parties have undertaken to establish a training fund which will contribute a maximum of R30 000 per each employee. Please refer to **'Annexures A and A1'** for the full conditions. The Commission is of the view that these remedies are sufficient to alleviate employment concerns raised by the proposed merger. There are no other public interest concerns raised by the proposed merger.

**Conclusion**

The Commission found that the proposed merger is unlikely to lead to substantial lessening or prevention of competition as there are alternatives available in the market. The Commission further found that it is unlikely that the proposed merger will lead to the merged entity having the ability to act unilaterally due to constraint from the B&M retailers. However, the Commission found that the proposed merger will raise public interest concerns as 200 employees are likely to be retrenched. The merging parties have undertaken to offer various forms of assistance to the affected employees. The Commission considered these undertakings by the merging parties and was of the view that they are sufficient to address the employment concerns raised by the proposed merger.

The Commission further found that there are no other public interest issues that are likely to arise.

The Commission therefore approved the proposed merger with conditions in terms of section 14 (1) (b) (ii) of the Competition Act no.89 of 1998, as amended.

# ANNEXURE A

## TAKEALOT ONLINE (PTY) LTD
## AND
## KALAHARI.COM, A DIVISION OF MIH INTERNET AFRICA (PTY) LTD
## CASE NUMBER: 2014SEP0469

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## CONDITIONS

### 1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1. "**Affected Employee**" means any Employee that is not offered employment by the Naspers Group or retained as an employee by Takealot within four (4) months after the Implementation Date, and is accordingly retrenched by Takealot following the implementation of this Merger and as a result of this Merger;

1.2. "**Commission**" means the Competition Commission of South Africa;

1.3. "**Conditions**" means these conditions;

1.4. "**Employee/s**" means those employees employed by Kalahari and Takealot at the time of the implementation of this merger;

1.5. "**Implementation Date**" means the date, occurring after the Merger Approval Date, on which this Merger is implemented by the Merging Parties, which date shall be deemed to be the Effective Date contemplated in the Sale of Business Agreement entered into between MIH, MIH Holdings Proprietary Limited and Takealot dated 3 October 2014;

1.7. "**Kalahari**" means Kalahari.com a division of MIH;

1.8. "**LRA Process**" means the process undertaken by Takealot in respect of the Employees under section 189 of the Labour Relations Act, 66 of 1995;

1.9. "**Merger**" means the proposed acquisition of control by Takealot over the business of Kalahari;

1.10. "**Merger Approval Date**" means the date on which this merger is approved by the Commission and as contained in the merger clearance certificate (CC15);

1.11. "**Merged Entity**" means the combined business of Kalahari and Takealot as a result of this Merger;

1.12. "**Merging Parties**" means Kalahari and Takealot collectively;

1.13. "**MIH**" means MIH Internet Africa Proprietary Limited, a firm in the Naspers Group;

1.14. "**Naspers Group**" means Naspers Limited and its subsidiaries in South Africa;

1.15. "**Takealot**" means Takealot Online Proprietary Limited;

1.16. "**Training Fund**" means an amount of up to a maximum of R 4 million (Four million rand) established by MIH aimed at the re-training and re-skilling of Affected Employees; and

1.17. "**Training Fund Period**" means a period not exceeding one (1) year from the Implementation Date.

**2. Recordal**

2.1. From a public interest point of view, the Commission found that all employees of Kalahari will be transferred to Takealot in terms of section 197 of the Labour Relations Act 1995, as amended, upon implementation of this Merger. The Merging Parties indicate that they have yet to determine the exact structure of the Merged Entity's business as well as engage in a comprehensive audit of the Kalahari employees, as these processes cannot lawfully be undertaken prior to the Implementation Date.

2.2. As such the Merging Parties cannot currently provide certainty as to the precise number and identity of the employees who are potentially facing retrenchment upon implementation of this Merger. In particular, the Merging Parties have made no decisions in relation to retrenchments. However, the Merging Parties have undertaken on a "worst case scenario" basis that no more than 200 employees will be retrenched as a result of this Merger.

2.3. In an effort to minimise the potential negative impact this Merger may have on employment, the Commission hereby imposes these Conditions, to which the Merging Parties have agreed in advance, the details of which are set out below.

**3. Condition**

3.1. The Merging Parties shall ensure that no more than 200 retrenchments occur as a result of this Merger.

3.2 For the sake of clarity, dismissals do not include (i) voluntary separation arrangements (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended, (iv) resignation or retirements in the normal course, and (v) retrenchments lawfully effected for operational requirements unrelated to the Merger.

3.3 The Merging Parties shall offer various support measures to assist the Affected Employees in coming to terms with their retrenchment. This support and shall include but not be limited to:

3.3.1. providing reasonable career counselling to any Affected Employee, pre and post retrenchment for the period of 12 months following the Merger Approval Date;

3.3.2. providing reasonable individual assistance and support in dealing with administrative issues that may arise as a result of retrenchment such as pension fund processing, tax as well as UIF contributions and payments) for the period of 12 months following the Merger Approval Date;

3.3.3. provided that an Affected Employee has given his or her consent to receive such notice, the Merging Parties shall for a period of 12 months following the Merger Approval date, notify the Affected Employee, of any suitable vacancy that may arise in the merged firm's business;3.3.4 for a period of four (4) months after the Merger Approval Date, MIH shall take all reasonable steps to identify reasonable alternative employment opportunities within the Naspers Group for the Affected Employees, including the advertisement of the Affected Employees' CV's on internal websites and intranets (subject to the consent of Affected Employees to do so). In addition, MIH shall ensure that the Naspers Group Talent VP is provided with the CV's of all Affected Employees and reasonably attempts to secure such Affected Employees' employment within the Naspers Group; and

3.3.4. set up the Training Fund to be used for purposes of funding the training and up-skilling of the Affected Employees. The Training Fund shall be applied in accordance with the principles and conditions set out in Annexure 1A hereto.

**4. Monitoring of compliance with this Condition**

4.1. The Merging Parties shall notify the Commission of the Implementation Date within 5 days of its occurrence.

4.2. The Merging Parties shall circulate a copy of these Conditions to Employees as soon as practicable after the Merger Approval Date, but in any event by no later than 16 January 2015.

4.3. As proof of compliance hereof, the Merging Parties shall provide an affidavit by a senior official of MIH attesting to the circulation of the Conditions and provide a copy of the notice that was circulated to the Affected Employees. Such affidavit must be submitted to the Commission by no later than the end of the first month following the Merger Approval Date.

4.4. For a period of five (5) months after the Merger Approval Date, as proof of compliance with the MIH obligations set out in paragraph **Error! Reference source not found.** above, the Merging Parties shall provide a compliance report comprehensively setting out all reasonable steps taken to identify reasonable alternative employment opportunities within the Naspers Group for the Affected Employees, confirming the advertisement of the Affected Employees' CV's on internal websites and intranets as well as confirmation that the Naspers Group Talent VP was provided with the CV's of all Affected Employees and that reasonable attempts to secure Affected Employees' employment within the Naspers Group were taken. This report shall also set out the outcome of the above steps and be accompanied by documentary proof.

4.5. All correspondence in relation to these Conditions must be submitted to the following email address: *mergerconditions@compcom.co.za*.

**5. Variation of the Condition**

5.1. These Conditions shall be effective for the applicable periods indicated herein.

5.2. The Merging Parties may at any time, on good cause shown, approach the Commission for the conditions to be revised or amended.

**ANNEXURE 1 A**

1.1. A Finance Manager in the employ of MIH or another company in the Naspers Group shall be appointed to control and manage all financial and accounting aspects of the Training Fund, and shall be responsible to collate all accounts that identify the Affected Employees, the cost incurred in respect of each Affected Employee, any additional unallocated expenditure incurred and the total amount spent by the Training Fund.

1.2. Within 10 business days from the expiry of the Training Fund Period, the Finance Manager shall cause a compliance report to be delivered to the Commission reflecting amongst others:

1.2.1. The full names and personal details of the Affected Employees including their contact details;

1.2.2. A clear indication of all the Training Fund's accounts, the amount expended by the Training Fund in respect of each Affected Employee, any additional unallocated expenditure incurred and the total amount spent by the Training Fund;

1.2.3. The final accounts of the Training Fund.

1.3. The compliance report envisaged in paragraph 1.2 above shall include all documentary evidence of the income and expenditure of the Training Fund, the amount spent per Affected Employee, documentary proof of the type of training provided to the Affected Employee (for which purpose an invoice issued by the institution providing the training shall suffice), the institution providing such training, its duration and the status (i.e. whether it is completed, or ongoing and if ongoing when it will be completed) of such training on the expiry of the Training Fund Period.

1.4. A Human Resources ("HR") Manager in the employ of MIH or another company in the Naspers Group shall be appointed to manage the implementation of the Training Fund for all Affected Employees, to appoint third party vendors to undertake services for and on behalf of the Training Fund as set out in paragraph 3.3.5 above and approve requests for training and other skills improvement. This function may be outsourced.

1.5. Upon expiry of the Training Fund Period, the HR Manager and/or the appointed service provider envisaged in paragraph 1.4 above shall submit a compliance report to the Commission in respect of the application of the Training Fund to Affected Employees, any training and skills provided as well as the employment opportunities and/or status of the Affected Employees. This report may be consolidated with the Financial Manager's report envisaged in paragraph 5.2 above.

1.6. Each Affected Employee shall be allocated a maximum of R30,000 for the purposes of training and/or re-skilling , subject to the overall limit of R 4 million (Four million rand) for the Training Fund.

1.7. No portion of the Training Fund shall be paid directly to any of the Affected Employees.

1.8. Any Affected Employee wishing to make use of the Training Fund shall apply to the HR Manager, within 6 months from the Merger Approval Date, for the allocation of all or a portion of the fees payable for training.

1.9. The HR Manager shall, upon request from any Affected Employee, assist or procure assistance for the Affected Employee applicant with the compilation of any application letter and/or form for an allocation from the Training Fund, the standard of the letter and/or forms of which shall not be unduly cumbersome.

1.10. Should an application for training be successful, the Finance Manager in the employ of MIH or another company in the Naspers Group shall cause the payment of the fees (granted to the Affected Employee) directly to the applicable training institution upon presentation of an invoice of such training institution.

1.11. MIH shall continue to offer funding from the Training Fund to the Affected Employees for a period of 1 year from the Implementation Date.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

**NOTICE 203 OF 2015**

**COMPETITION COMMISSION**

**NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:**

**HOSKEN CONSOLIDATED INVESTMENT LIMITED**

**AND**

**ATTERBELL INVESTMENT PROPRIETARY LIMITED (TRADING AS GALLAGHER CONVENTION CENTRE)**

**2014OCT0545**

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:

*Background*

The primary acquiring firm is Hosken Consolidated Investments Limited ("HCI"). HCI is a public company listed on the JSE Limited ("JSE") in South Africa. As of the date of the merger filing, the largest shareholders holding in excess of 5% of HCI's shares were Southern African Clothing and Textile Workers Union and associated entities ("SACTWU") and Mr M.J.A Golding holding 32.2% and 6.78% shares, respectively. The remaining shareholding of HCI is widely held. HCI controls a number of entities, however, more relevant to this transaction is that HCI controls TIHC Investments Proprietary Limited ("TIHC"), a private company that controls Tsogo Sun Holdings Limited ("Tsogo Sun"). Tsogo Sun is a public company listed on the JSE and controls the Sandton Convention Centre ("SCC") business. TIHC also controls Johnnic Holdings Limited ("Johnnic"), a public company registered in South Africa that in turn controls Johnnic Properties Limited ("Johnnic Properties"). Johnnic Properties controls Gallagher Estate Holdings

Limited ("Gallagher Holdings"), a public company registered in South Africa. Gallagher Holdings controls Gallagher Convention Centre Limited, a public company registered in South Africa that owns the property on which the Gallagher Convention Centre business ("GCC Business") is situated. The above companies are herein referred to as the "HCI Group" for ease of reference. Pre-merger the GCC Business is owned by the primary target firm.

The primary target firm is Atterbell Investments (Pty) Ltd ("Atterbell"), trading as Gallagher Convention Centre ("GCC"). Atterbell is controlled by the Gallagher Charitable Trust ("the Trust"), a charitable trust incorporated in accordance with the laws of South Africa. The trustees of the Trust are Mr. Mohamed H Ahmed, Ms. Solveig Patricia Jean Piper and Loganayagie Chetty. The Trust controls the GCC Business, a conference and exhibitions venue situated in Midrand, Johannesburg. Both Atterbell and the Trust do not control any other firm.

This transaction involves the acquisition of the GCC Business by HCI from the Trust by way of the purchasing of the entire issued share capital of Atterbell. Pursuant to the implementation of this transaction, HCI will own 100% of the issued share capital of Atterbell and will therefore control Atterbell.

The HCI group is broadly involved in the hotel and leisure industry. In particular, Tsogo Sun operates conferencing and exhibition facilities at its hotels situated within the Sandton, Fourways, Rosebank, Auckland Park and Johannesburg areas, amongst others. Of more relevance to this transaction, is that Tsogo Sun wholly controls the SCC business that also offers conferencing and exhibition facilities in Johannesburg. Further, through Johnnic Properties, HCI owns the property on which the GCC Business is situated.

The GCC Business is essentially a conference and exhibition venue or facility that offers conference and/or exhibition facilities to organisers and is located in Midrand, Johannesburg.

The merging parties' activities overlap in that they are both active in the provision of conference and exhibition facilities in South Africa and more specific to this transaction, in the Johannesburg area.

HCI currently offers these services through the Tsogo Sun range of hotels and casinos as well as the SCC business, whilst Atterbell offers these services through the GCC Business.

In evaluating this merger, the Commission took into account the history behind the acquisition, the anti-competitive effects likely to arise from the merger, the counterfactual arguments presented by the merging parties and public interest concerns arising from the merger.

*The History of this transaction*

On 7 December 2005, the Competition Tribunal ("the Tribunal") approved the merger between *Mercanto Investments and Johnnic Holdings* ("Mercanto transaction")[1] in terms of which HCI acquired control over Johnnic. The Mercanto transaction was a hostile take-over opposed by Johnnic. Due to some competition concerns raised, in particular, that the merger would result in unilateral effects as it resulted in the GCC and SCC businesses falling within common ownership, the Tribunal ordered the merged entity, that is, HCI to divest the GCC Business as a going concern; and / or the entire shareholding of Johnnic in Gallagher Holdings. The Commission interpreted the above to impose the requirement that HCI not only divests the GCC Business but also the property on which the GCC Business is located ("the Property").

HCI subsequently declined to divest itself of the Property citing that the Commission's interpretation set out above was incorrect and that the Tribunal order only required a divestiture of the GCC Business as a going concern to the exclusion of the Property. HCI challenged the Commission's interpretation of the Tribunal order as aforesaid in the Competition Appeal Court ("CAC").

During the CAC proceedings, HCI argued that a divestiture of the GCC Business, excluding the Property, would sufficiently cure the competition concerns the Tribunal order sought to address as it would conclude a lease agreement with the purchaser of the GCC Business thereby enabling the GCC Business to operate in the market.

The CAC then ratified the Tribunal order for HCI to divest of the GCC Business and dismissed the part of the order that required HCI to divest the shareholding of Johnnic in Gallagher Holdings, that is, essentially, the Property. This resulted in HCI divesting the GCC Business yet retaining ownership of the Property.

*Assessment of the current transaction*

In assessing this transaction, the Commission considered the national market for the provision of conference venues and facilities for big conferences (500 delegates and above) as well as the regional market for the provision of exhibition venues and facilities as separate markets.

With regard to the national market for the provision of conference venues and facilities for big conferences (500 delegates and above), the Commission found that the merged entity is likely to face competition from at least 9 other market participants. In light of this, the Commission did not assess this market further.

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[1] 2005Aug1747.

With regard to the regional market for the provision of exhibition venues and facilities, with particular reference to the Johannesburg area, the Commission found that the merged entity would hold a high market share post-merger. The Commission's investigation revealed that this market is highly concentrated pre-merger with there being only 4 participants. These participants are SCC, GCC, the Coca Cola Dome ("the Dome") and Nasrec Expo Centre ("Nasrec Expo"). This merger is therefore a shift from 4 to 3 players in the market with there being a possible further delineation of the market which would result in the SCC and GCC businesses being the only market participants. The abovementioned shift presents substantial concerns in relation to the concentration levels in this market and where a narrower delineation results in SCC and GCC being the only market participants, these concerns would be exacerbated.

The Commission's investigation further revealed that some of the customers of SCC and GCC consider these venues close competitors with there being no reasonable alternative venue. Amongst others, the Commission's investigation revealed that SCC and GCC have a similar product and service offering. The Commission's investigation further revealed that the barriers to enter this market are high and the customer's countervailing power is extremely limited. The Commission therefore concluded that this merger will not only remove an effective competitor from the market but that it is also likely to raise unilateral effects concerns post-merger thereby allowing the merged entity to exert market power by raising prices to the detriment of exhibition organisers.

*Conclusion*

The Commission therefore concludes as follows:

- HCI currently controls the SCC business and will post-merger wholly control the GCC Business;
- SCC and GCC are the closest competitors in the market for the provision of exhibition venues and exhibition facilities, in particular, the Johannesburg area, with there being no other alternative for some exhibitions. This transaction will therefore not only result in the merged entity being dominant post-merger but it also elevates the concentration levels of this market by reducing the number of players from 4 to 3 market participants. This merger is therefore a shift from 4 to 3 players in the market with there being a possible further delineation of the market which would result in the SCC and GCC businesses being the only market participants. The abovementioned shift presents

substantial concerns in relation to the concentration levels in this market and where a narrower delineation results in SCC and GCC being the only market participants, these concerns would be exacerbated;

- The post-merger common ownership of SCC and GCC is therefore likely to result in unilateral effects in that it will allow the merged entity to exert its market power to raise prices in SCC and GCC post-merger to the detriment of exhibition organisers; and
- This merger does not raise significant public interest concerns.

In light of the above, the Commission concludes that the proposed transaction is likely to substantially prevent or lessen competition in the market for the provision of exhibition venues and exhibition facilities in particular, in the Johannesburg area.

The Commission further concludes that this transaction does not raise significant public interest concerns.

The Commission therefore prohibits the merger in terms of section (14) (1) (b) (iii) of the Competition Act No 89 of 1998, as amended.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

## NOTICE 204 OF 2015

## COMPETITION COMMISSION

### NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

### LIFE HEALTHCARE GROUP (PTY) LTD

### AND

### LOWVELD HOSPITAL GROUP PTY LTD AND INTERSTATE CLEARING (126) (PTY) LTD

### 2014SEP0530

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:

On 30 September 2014, the Competition Commission (Commission) was notified of an intermediate merger, wherein Life Healthcare Group Proprietary Limited (LHG) intends to acquire Lowveld Hospital Proprietary Limited (Lowveld) and Interstate Clearing (126) Proprietary Limited (Interstate), collectively referred as the target firms. The primary acquiring firm is LHG, a private company incorporate in terms of the laws of South Africa. LHG is a wholly owned subsidiary of Life Healthcare Group Holdings Limited (LHG Limited), a public company listed in the Johannesburg Stock Exchange. The primary target firms are Lowveld and Interstate. Lowveld and Interstate are private companies which are mostly owned by individual doctors practising at Lowveld in Nelspruit.

In terms of Sale of Shares Agreements, LHG made a conditional binding offer to purchase the target firms. Upon completion of the proposed merger, Lowveld and Interstate will be controlled by LHG.

LHG is a private hospital group whose primary business is the provision of acute private hospital care services to the medically insured market. The business comprises a geographical spread of acute care private hospitals and same day surgical centres located in Southern Africa. The business includes general hospital facilities of various sizes that include: intensive care units (ICUs), high care units (HCUs), operating theatres, emergency units, maternity units and cardiac units.

Lowveld is a small independent surgical hospital that offers a wide range of surgical services for the following disciplines: ear, nose and throat surgery, maxilla facial surgery, ophthalmologists (eye specialists), orthopaedic surgery, plastic surgery, general surgery, dentists, gynaecology, dermatology, neurophysiology and urology. Some of the procedures performed at Lowveld include: knee and hip replacements, hernia, gallbladder, hysterectomies, mandible osteotomies, cataract and replacement of lens, removal of wisdom teeth, removal of skin lesions, breast reductions and breast augmentation, tonsillectomies, sleep studies and gastroscopies and colonoscopies.

There is a horizontal overlap arising from the activities of the merging parties in relation to the provision of hospital medical and related health services. There are both local and regional dynamics to the geographic market concerned in this instance. The competition concerns arising in this merger are however not dependent on whether the geographic market is deemed local or regional. If the narrow market comprising the Nelspruit and surrounding areas is considered, it is the Commission's view that there may be no potential geographic overlap arising from the proposed merger. To the extent that the geographic market is wider than the Nelspruit and surrounding areas, the merged entity will have combined market share [between 25% and 35%] with a market accretion of [between 5% and 10%] using the number of licenced hospital beds. Mediclinic is the largest hospital (group) in both the wider Mpumalanga and the narrower Nelspruit area. There is also a newly licenced hospital, Kiaat, which also operates in the Nelspruit area.

Based on these market shares alone, it may appear that there may be no competition concerns arising. However, there are significant price effects that arise and these price effects are not dependent on the geographic market adopted.

The proposed merger will result in hospital tariffs for Lowveld immediately increasing when the hospital fee structure is changed from the current National Hospital Network (NHN) based structure, which is used at Lowveld, to the LHG fee models. The increase in prices will be significant and immediate, ranging from [6% to 19%] if the hospital tariffs alone for some of the procedures that have recently been performed at Lowveld are taken into account. If the entire hospital bills between LHG and Lowveld for the top 20 hospital procedures are compared instead, the price increase will even be higher, reaching highs of [between 60% and 70%] in some procedures. Such price increases are significant and are directly arising as a result of the merger.

The proposed merger will thus potentially lessen competition between Mediclinic and LHG. This is because currently, Lowveld offers prices that are lower than Mediclinic hence, this feat currently presents some constraining influence and pressure upon Mediclinic to lower its fees in the Nelspruit and surrounding areas. Post-merger, this pressure is likely to disappear given that LHG offers higher prices that are in some instances higher than Mediclinic.

Even if prices are determined nationally for Mediclinic, the presence of an independent hospital in the Nelspruit area may play some role in influencing the prices that are eventually negotiated nationally. Lowveld is losing the autonomy to influence any constraining influence it was currently exerting in the market before the merger. Given that the prices of LHG are significantly higher than Lowveld's for the majority of procedures that were compared, there will be less pressure on Mediclinic to lower its prices in future. This is contrary to the situation when Lowveld is present in the market and offers lower prices than Mediclinic. It will likely be mutually beneficial for both Mediclinic and LHG to maintain higher prices after the proposed merger.

Further, it is only the larger medical schemes that exert some countervailing power during negotiation for tariffs. The proposed merger is likely to also enhance LHG negotiating power, as it increases its presence in all major regions in the country by virtue of the proposed merger. In addition, barriers to entry are also high, rendering new entry in the market unlikely.

The Commission has previously recommended the prohibition a 2012 large merger involving LHG and Joint Medical Holdings in the Durban Metropolitan area, on the basis that LHG would have exercised market power with potential price increases after the merger. The decision was however overturned by the Tribunal. The circumstances are however different in this instance, with the main difference being that LHG does not have an existing stake in Lowveld as was the case in that merger, wherein it was revealed that LHG had already been negotiating prices on behalf of the target before the merger by virtue of its pre-merger stake. This is starkly different in this instance as LHG does not have influence at all in the NHN prices that are currently charged by Lowveld. Therefore, the tariff increase is not existent before the merger, but purely arising as a result of the merger.

The proposed merger is therefore likely to result in a substantial lessening of competition in the market for the provision of hospital services in the Nelspruit and surrounding areas. There are no credible technological, efficiency or pro-competitive gains that have been submitted by the merging parties that outweigh the competitive harm arising.

The merger also raises a negative public interest, in that it significantly negatively impacts on a particular industrial sector and region. Hospital prices in the Nelspruit and surrounding areas will increase as a result of the merger, and a source of independent competition to the incumbent large hospital groups will be undermined by the proposed merger.

Taken as a whole, the Commission prohibits the proposed merger in terms of section 14(1)(b)(iii) of the Act, no. 89 of 1998 as amended.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

## NOTICE 205 OF 2015

## COMPETITION COMMISSION

### NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

### NOORDFED EIENDOMS BEPERK

### AND

### EMPANGENI MILLING PROPRIETARY LIMITED

### CASE NUMBER: 2014OCT0605

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 conditions as set out below:

1. On 30 October 2014, the Commission received notification of an intermediate merger whereby Noordfed Eiendoms Beperk ("Noordfed"), intends to acquire the white maize milling business of Empangeni Milling Proprietary Limited ("Empangeni"). Post-merger, Noordfed will exercise control over Empangeni.

2. Noordfed is a private company incorporated in terms of the laws of South Africa.

3. Empangeni is a private company incorporated in terms of the laws of South Africa. Empangeni does not directly or indirectly control any firm.

4. Noordfed's primary activities are the production and distribution of white maize milling products, namely white maize meal, white maize rice and white maize samp.

5. Noordfed distributes its products in North West, Gauteng, and to a limited extent in Limpopo and KwaZulu-Natal ("KZN").

6. Empangeni is involved in the production and distribution of white milled maize products, namely white maize meal and white maize flour. Its production facility is in the Empangeni area, in KZN. Empangeni distributes its products in KZN, Eastern Cape and Angola.

7. The Commission identified a horizontal overlap in relation to the production and distribution of white milled maize products in the activities of the merging parties. There is also a vertical relationship between the merging parties as Noordfed rendered services Empangeni Milling.

8. In relation to the horizontal overlap, the Commission found that the estimated post-merger market share remains low. The Commission was therefore of the view that based on the market shares, the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the production and distribution of white milled maize products.

9. Further, the Commission found that there are various players that are active in the market for white milled maize products who will continue to compete with the merging parties post-merger.

10. In relation to the vertical overlap, the proposed merger is unlikely to result in the merged entity having the ability or incentive to engage in input and/or customer foreclosure, as services rendered by Noordfed to Empangeni are minimal.

11. The customers and competitors contacted by the Commission did not raise any concerns with the proposed transaction.

12. The case raises a public interest issue around employment in both the acquiring and the target firm. In this regard, the Commission approved the merger subject to a condition which limits merger specific retrenchments and the merging parties agreed to the imposition of this condition.

13. In approving the merger subjects to retrenchment condition the Commission considered the trouble state of the Empangeni business that Noordfed inherited, while at the same time offering enhanced protection to the remaining employees.

14. Therefore considering that the counterfactual would have been the retrenchment of all employees, the proposed transaction saves jobs.

15. A copy of the conditions is attached as Annexure A.

16. The proposed transaction does not raise any other public interest concerns.

17. The Commission therefore approves the merger with conditions in terms of section 14(1)(b)(ii) of the Competition Act no. 89 of 1998, as amended. A copy of the conditions is attached as Annexure A.

**ANNEXURE A**

**NOORDFED EIENDOMS BEPERK**

**AND**

**EMPANGENI MILLING PROPRIETARY LIMITED**

**CC CASE NUMBER: 2014OCT0605**

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**Conditions**

**1. Definitions**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1 **"Acquiring Firm"** means Noordfed Eiendoms Beperk;

1.2 **"Affected Employees"** means the employees identified by the merging parties as employees who may be retrenched if the merger is ultimately implemented in accordance with its terms, including: relevant positions within Noordfed categorised as or similar to Paterson Grade D; and relevant positions within Empangeni Milling categorised as or similar to the A to B range of the Paterson Grades;

1.3 **"Approval Date"** means the date referred to in the Competition Commission's clearance certificate (Form CC15);

1.4 **"Commission"** means the Competition Commission of South Africa;

1.5 **"Conditions"** means these conditions;

1.6 **"Conversion Date"** means the date on which Empangeni Milling shall cease its production of white maize mill products at its mill in Empangeni;

1.7 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.8 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);

1.9 **"Merger"** means the Acquiring Firm's acquisition of control over Empangeni Milling;

1.10 **"Merged Entity"** means the combined businesses of Noordfed and Empangeni Milling upon the approval and/or implementation of the Merger;

1.11 **"Merging Parties"** means Noordfed and Empangeni Milling;

1.12 "**Paterson Grades**" mean employee grades that comprise of grades A through to F based on an analytical method of job evaluation, used predominantly in South Africa; and

1.13 **"Target Firm"** means Empangeni Milling Proprietary Limited.

## 2. Recordal

2.1 The Commission finds that the proposed transaction is unlikely to raise significant competition concerns as the post-merger market shares in the production and distribution of milled white maize products is minimal. Further, there are other players in the market that compete with the merging parties which will be in a position to constrain any potential anti-competitive behaviour by the merging parties.

2.2 However, the proposed transaction is likely to have a negative impact on employment.

2.3 The Commission finds that the counterfactual to the possible employment losses is the greater employment loss likely to result if the merger does not go through, due to the trouble financial state the target and the acquiring firm. In order to limit job losses likely to result from the proposed transaction, the Commission approves the proposed transaction subject to conditions discussed in 3 below.

2.4 The Merging Parties have submitted that Noordfed employees likely to be affected are employees in middle management positions, equivalent to Grade D of the Paterson Grades, and that Empangeni Milling's employees likely to be affected are employees in operational levels, equivalent to Grade A to Grade B of the Paterson Grades.

2.5 The Merging Parties have indicated that the likely retrenchment of the affected employees within Empangeni Milling is an indication of the "worst case scenario".

2.6 In order to limit the number of potential retrenchments, the Commission imposes these Conditions on the Merged Entity.

**3. Conditions to the approval of the Merger**

3.1. With the exception of the Affected Employees, the Merging Parties shall not retrench any employees as a result of this merger.

3.2. The merged entity undertakes not to retrench any of the Affected Employees until such time that it can prove to the satisfaction of the Commission that the Conversion Date has been achieved.

3.3. Once the merged entity has complied with clause 3.2. above, in respect of all potential retrenchments that may be effected at Empangeni Milling, the merged entity shall ensure compliance with the following procedures:

3.3.1. The performance of a detailed skills audit to determine whether any of these employees can possibly be accommodated elsewhere within the merged company group ("**the structures**");

3.3.2. If these employees can be redeployed to available positions within the structures and accept redeployment and such redeployment involves relocation, the merged entity will ensure that:

3.3.3. The moving cost of the redeployed employee's household (based on the best of 3 quotes) is paid by the employer; and

3.3.4. The redeployed employee is paid one month's salary by the employer as a relocation allowance, in addition to his/ her normal monthly salary, in the relocation month.

3.4. In respect of all potential retrenchments that may be effected at Empangeni Milling, the merged entity shall ensure compliance with the following procedures to assist the affected employees:

3.4.1. Empangeni Milling approaches the recruitment agencies in the Empangeni and surrounding areas to investigate possible job opportunities for these retrenched employees;

3.4.2. Empangeni Milling assists these retrenched employees in preparing a detailed CV; and

3.4.3. Empangeni Milling assists these retrenched employees in submitting their CV's to companies in the Empangeni and surrounding areas with whom the Merging Parties have a business relationship.

3.5. For the sake of clarity in these Conditions, retrenchments do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; (iii) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (iv) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act.

## 4. Monitoring of compliance with the conditions

4.1. The Merging Parties shall circulate a copy of these Conditions to their employees and/or their respective representatives within 7 business days of the Approval Date.

4.2. As proof of compliance thereof, the Merging Parties shall within 5 business days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merged Entity attesting to the circulation of the Conditions and attach a copy of the notice sent. The affidavit must comply with the South African legal standards.

4.3. The Merged Entity shall advise the Commission of the Implementation Date within 5 days of it becoming effective.

4.4. The Merged Entity shall advise the Commission of the Conversion Date, being the cessation by Empangeni Milling of its production of white maize mill products at its mill in Empangeni within 5 days thereof by way of an affidavit. The affidavit must comply with the South African legal standards.

4.5. The Merged Entity shall submit a report on an annual basis detailing the number of retrenchments that have occurred, the category of employees affected, the redeployment opportunities offered, those accepted and those that did not accept the offers, and compliance with all the procedures as set out in clause 3 above. The report shall be accompanied by an affidavit confirming the accuracy of the information contained in the report. The affidavit must comply with the South African legal standards.

4.6. The first report shall be submitted within a year of the Conversion Date and the final report a year thereafter.

4.7. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.

4.8. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.9. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

**5. Duration of the Condition**

5.1. The Conditions shall remain in effect from the Approval Date until 2 years after the Conversion Date.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

## NOTICE 206 OF 2015

## COMPETITION COMMISSION

**NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:**

**NEWCO ONE, BAGSHAW FOOTWEAR (PTY) LTD AND BOLTON (PTY) LTD**

**AND**

**THE DIVISION, UNITED FRAM, WAYNE PLASTICS, MOSSOP WESTERN LEATHERS AND JORDAN SHOES, OWNED BY KAP MANUFACTURING (PTY) LTD**

**CASE NUMBER: 2014JUL0346**

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 conditions as set out below:

### Background

On 07 July 2014 the Competition Commission ("Commission") received notice of an intermediate merger, whereby a consortium comprising of NewCo One ("NewCo"), Beier Safety Footwear (Pty) Ltd ("Beier"), Bagshaw Footwear (Pty) Ltd (for ease of reference hereafter referred to as NewCo 2), Bolton Footwear (Pty) Ltd ("Bolton") and SKN Corporation (FZE) ("SKN") intend to acquire the business divisions of KAP Manufacturing (Pty) Ltd ("KAP"), namely, United Fram Footwear ("United Fram"), Wayne Plastics, Jordan Shoes and Mossop Western Leathers ("Mossop"). NewCo is yet to be formed and will be incorporated in accordance with the company laws of the Republic of South Africa ("RSA"). Beier, Bagshaw and Bolton are firms incorporated in accordance with the company laws of RSA. SKN is a firm incorporated in accordance with the company laws of the United Arab Emirates ("UAE"). Upon incorporation, NewCo's shareholders will be Beier and Bolton.

### The parties and their activities

Beier is a division of Beier Industries (Pty) Ltd ("Beier Industries"). NewCo 2 is a dormant firm and its shareholders will be SKN, Bolton and Newco. SKN is a member of the Rahman Group of India. Bolton is 100% controlled by Cargo Carriers Holdings (Pty) Ltd ("CCH"). CCH also controls Hallmark Motor Group (Pty) Ltd ("Hallmark"). NewCo does not produce any products and/or services. Beier is a manufacturer of leather safety footwear located in Pinetown, KwaZulu-Natal. NewCo 2 is a dormant firm and does not produce any/or products and services. Bolton comprises of three divisions, namely, Bagshaw, Watson Shoes ("Watson") and Barker Footwear ("Barker"). Bagshaw is a manufacturer of leather safety footwear whilst Watson and Barker produce civilian footwear. SKN is a manufacturer of leather safety footwear and buffalo tanned leather used in the manufacture of leather footwear in India.

KAP is an investment company with a portfolio of diverse manufacturing businesses including leather products, footwear, automotive components and food. All the footwear and leather business of KAP are conducted by United Fram, Wayne Plastics, Jordan Shoes and Mossop. United Fram is a manufacturer and importer of leather safety footwear. Wayne Plastics is a manufacturer of gumboots. Jordan Shoes is a manufacturer and importer of civilian footwear. Mossop is a manufacturer of bovine tanned leather used in the manufacture of leather footwear.

### The transaction

The proposed transaction comprises of various steps described below:

- **The leather footwear transaction:** This involves the merger between Beier and Bagshaw (a division of Bolton) to form NewCo. United Fram will then be acquired by NewCo. This will result in a horizontal overlap between Beier, Bagshaw, United Fram, Wayne Plastics and Jordan, as all parties manufacture and supply safety footwear.
- **The civilian footwear transaction:** This involves the merger between Watson Shoes ("Watson") and Barker Footwear ("Barker") (both Divisions of Bolton) and Jordan Shoes ("Jordan") (a division of KAP). This will result in a horizontal overlap between Watson/Barker and Jordan in respect of civilian footwear.
- **The acquisition of Mossop:** Mossop will jointly be acquired by Bolton, NewCo and SKN (Rahman Industries). Mossop is a leather tanner and there is a vertical relationship between Mossop and Jordan, Barker and Watson.

**Areas of overlap**

The Commission finds that there are two horizontal overlaps in the activities of the merging parties in the market for manufacture and supply of all civilian footwear including footwear for ladies, men and children and the market for the manufacture and supply of leather safety footwear. The Commission also finds that there is a vertical overlap in the activities of the merging parties in that Mossop which will jointly be acquired by Bolton, NewCo and SKN supplies tanned leather which is used in the manufacture of civilian footwear by Jordan, Barker and Watson.

**Market for the manufacture and supply of civilian footwear**

With respect to the horizontal overlap, the Commission finds that the merged entity will have post-merger low market shares in the national market for the manufacture and distribution of civilian footwear for ladies, children and men, respectively. The Commission is of the view that the merged entity will still face competition from competitors such Futura Footwear Limited, Labora Shoes (Pty) Ltd, Palm Footwear (Pty) Ltd, large retail chains such as Edcon Limited and The Foschini Group and from imports (which account for 50% of footwear in the country), post-merger. Barriers to entry are not high and there are alternatives in the market. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the national market for the manufacture and distribution of civilian footwear for ladies, children and men.

With respect to the vertical overlap, the Commission finds the merged entity would not have the ability to foreclose its competitors as it does not have market power in the market for the manufacture and supply of civilian footwear for ladies, children and men as indicated by the market shares above. Furthermore, Mossop does not have the incentive to engage in input foreclosure as it currently relies on external customers for a substantial value of its sales and foreclosing the merged entity's competitors is unlikely to be profitable. In addition, competitors indicated that they import bovine leather from Argentina and Brazil. The Commission is of the view that the merged entity would not have the ability or incentive to foreclose its competitors from accessing Mossop's bovine tanned leather, post-merger. The Commission concludes that the proposed transaction is unlikely to lead to input foreclosure post-merger.

With respect to customer foreclosure, the Commission finds that the proposed transaction is unlikely to lead to customer foreclosure concerns. Midland Tannery (Pty) Ltd and Fusion Leather World (Pty) Ltd suppliers of bovine tanned leather to the merging parties indicated that they have alternative customers such as other footwear manufacturers and customers in the automotive and furniture industries. Therefore, the Commission concludes that the proposed transaction is unlikely to lead to customer foreclosure post-merger.

**Market for the manufacture and supply of leather safety footwear**

The Commission finds that the merged entity would have a high market share post-merger. The remainder of the market shares will be held by competitors such as Premier, Phoenix, Claw Boots and imports. The Commission concludes that although the merged entity would have high market shares post-merger, the merged entity does not have the ability and incentive to unilaterally increase prices post-merger as customers are likely to switch to other manufacturers of leather safety footwear or import directly from China and India. Furthermore, customers have a degree of countervailing power and barriers to entry are low. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the national market for the manufacture and distribution of leather safety footwear.

**Efficiency claims**

The Commission finds that the efficiencies claimed by the merging parties on savings to be made on leather safety footwear due to reorganisation in production are real and quantifiable. The Commission finds that the proposed transaction will result in a saving on the price per pair of leather safety footwear. The Commission also finds that the proposed transaction would have a positive impact on the South African footwear industry and will also lead to the international competitiveness of the South African footwear industry.

**Public Interest considerations**

The Commission is of the view that conditions are warranted to protect jobs at United Fram. A substantial number of the affected employees are unskilled and semi-skilled with no formal education and would find it extremely difficult to obtain alternative employment within a reasonable period, especially under the current economic conditions. Furthermore, the unskilled employees are weekly employees without long term contracts and therefore have no job security. However, even though there are concerns, there are efficiency gains to be realised as a result of the proposed transaction. Furthermore, the Commission notes that given the financial performance of United Fram job losses were inevitable. The merging parties made an undertaking to the trade unions not to retrench employees for a period of 1 (one) year. The merging parties also made an undertaking not to relocate Mossop's production to India; that retrenchments at Jordan will be limited to the loss in the third party contract and that there would be no retrenchments as a result of the proposed transaction at Barker, Watson, Bagshaw, Wayne Plastics, Beier and Mossop for three years. The Commission is of the view that the undertakings made by the merging parties, with one specific change in relation to the time period on the moratorium on retrenchments at Baker, Bagshaw, Wayne Plastics, Beier and Mossop, should be made conditions. The merging parties were consulted about the proposed conditions and they did not raise any concerns. The conditions are attached hereto as **Annexure A**.

The Trade Unions raised certain concerns, specifically around the time periods on the moratorium on job losses at Barker, Bagshaw, Wayne Plastics, Beier and Mossop. Given the efficiencies that the merger brings about, the Commission imposed Conditions that would allow the merged entity to realise these efficiencies.

Therefore, the Commission approves the proposed transaction subject to conditions attached hereto as **Annexure A** in terms of section 14(1)(b)(ii) of the Competition Act No. 89 of 1998, as amended.

# ANNEXURE A

## NEWCO ONE, BAGSHAW FOOTWEAR (PTY) LTD AND BOLTON FOOTWEAR (PTY) LTD

## AND

## THE DIVISIONS, UNITED FRAM, WAYNE PLASTICS, MOSSOP WESTERN LEATHERS AND JORDAN SHOES, OWNED BY KAP MANUFACTURING (PTY) LTD

## CASE NUMBER: 2014Jul0346

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## CONDITIONS

### 1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below:

1.1 "**Affected Employees**" means the skilled, semi-skilled and unskilled employees at United Fram who may be retrenched as a result of this merger after the elapse of a period of 12 (twelve) months from the Implementation Date as envisaged in paragraph 3.1 below;

1.2 "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC15);

1.3 "**Acquiring firms**" means Newco One, Bagshaw Footwear (Pty) Ltd and Bolton Footwear (Pty) Ltd;

1.4 **"Commission"** means the Competition Commission of South Africa;

1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended;

1.6 **"Conditions"** means these conditions;

1.7 **"Implementation Date"** means the date, occurring after the Approval date, on which the merger is implemented by the merging parties;

1.8 **"Merger"** means the acquisition of control over Wayne Plastics, United Fram, Mossop Western Leathers and Jordan Shoes, divisions of KAP Manufacturing (Pty) Ltd by Newco One, Bagshaw Footwear (Pty) Ltd and Bolton Footwear (Pty) Ltd;

1.9 **"Merged Entity"** means the merged business activities of Newco One, Bagshaw Footwear (Pty) Ltd and Bolton Footwear (Pty) Ltd and Wayne Plastics, United Fram, Mossop Western Leathers and Jordan Shoes operations of KAP Manufacturing (Pty) Ltd;

1.10 **"Merging Parties"** for the purposes of these Conditions means the Acquiring firms and the Target firms as defined in this section;

1.11 **"Mossop Plant"** means the operating facilities of Mossop Western Leathers situated in Blignaut Street, Wellington, 7654, Western Cape Province, South Africa and comprising of all equipment, offices, licences, patents, product lines, employees including all other ancillary facilities;

1.12 "**Rules**" means the Rules for the Conduct of Proceedings in the Competition Commission;

1.13 "**Retraining and reskilling fund**" means the fund that shall be created by the Merged Entity to re-train the affected employees;

1.14 "**SMMEs**" means Small, Medium and Micro Enterprises as defined in the National Small Business Act 102 of 1996, as amended;

1.15 "**Target Firms**"" means the Wayne Plastics, United Fram Footwear, Jordan Shoes and Mossop Western Leathers divisions of KAP Manufacturing (Pty) Ltd;

1.16 "**Unskilled employees**" means employees of the merging parties who do not have any formal qualifications ; and

1.17 "**Weekly employees**" means the employees of the merging parties who are paid on a weekly basis.

2. **RECORDAL**

2.1 On 07 July 2014, the Merging Parties filed an intermediate merger transaction with the Commission. Following its investigation of the merger, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for civilian footwear. The Commission has, however, noted a few concerns in the market for leather safety footwear due to the high market share post-merger. However, the merged entity will still face competition from other competitors and imports. The Commission also finds that the efficiencies claimed by the merging parties on savings on leather safety footwear due to reorganisation in production are real and quantifiable.

2.2 The Commission finds that the proposed transaction will lead to job losses. The

Commission is of the view that conditions are warranted to protect jobs at United Fram. A substantial number of the affected employees are unskilled and semi-skilled with no formal education and are likely to find it difficult to obtain alternative employment within a reasonable period, especially under the current economic conditions. Furthermore, the unskilled employees are weekly employees without long term contracts and therefore they have no job security. However, even though there are concerns, there are efficiency gains to be realised as a result of the proposed transaction. Furthermore, the Commission notes that given the financial performance of United Fram job losses were inevitable. The merging parties in consultation with South African Clothing and Textile Workers Union ("SACTWU") and the National Union of Leather and Allied Workers ("NULAW"), the trade unions which represent the employees of the merging parties, have undertaken not to retrench employees for a period of 1 (one) year from the Implementation Date of the proposed transaction. The merging parties also made an undertaking not to relocate Mossop's production to India; that retrenchments at Jordan will be limited to the loss in the third party contract and that there would be no retrenchments as a result of the proposed transaction at Barker, Watson, Bagshaw, Wayne Plastics, Beier and Mossop for three years. The Commission is of the view that the undertakings made by the merging parties, with one specific change in relation to the time period on the moratorium on retrenchments at Baker, Bagshaw, Wayne Plastics, Beier and Mossop, should be made conditions. The merging parties were consulted about the proposed conditions and they are amenable to conditions being imposed in order to allay the above concerns.

2.3 In order to remedy the abovementioned negative impact on employment, the Commission hereby imposes the Conditions as set out in the paragraphs below.

## 3. CONDITIONS

3.1 The Merged Entity shall not retrench employees at United Fram for a period of 1 (one) year from the Implementation Date as a result of the proposed transaction;

3.2 Should the merging parties relocate United Fram's production facilities from Johannesburg to elsewhere after the period of 1 (one) year, they shall notify the Commission in writing of such relocation, its effect on employment and the steps taken by the merging parties to minimise the negative effect on employment;

3.3 The Merged Entity shall not relocate the Mossop Plant from its current location to a location outside of South Africa. The Merged Entity shall take all reasonable steps to ensure that the Plant and Machinery at the Mossop Plant remain operational post-merger. The Merged Entity shall further take all reasonable steps including procuring the necessary equipment, investment and expansion to maintain or increase the current production capacity at the Mossop Plant.

3.4 Apart from the Affected employees, there shall be no retrenchment of any other employees as a result of the Merger in the Acquiring Firms as well as the Target Firms for a period of 1 (one) year after the Implementation Date; and

3.5 In the event of the non-renewal of Jordan a third party license, the Merged Entity shall notify the Commission in writing if such non-renewal results in the retrenchment of those employees who managed the third party license. The Merged Entity shall bear the onus to prove that such retrenchments are linked and limited to the discontinuation of the third party's license and are not as a result of this Merger.

## 4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1 The Merging Parties shall circulate a copy of the Conditions to all their employees in South Africa within 10 (ten) business days of receipt of the merger clearance.

4.2 As proof of compliance herewith, the Merging Parties shall within 10 (ten) business days of circulating the Conditions, submit an affidavit by a senior official attesting to the circulation of the Conditions and provide a copy of the Notice that was sent to the employees.

4.3 Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his/her complaint.

4.4 The merging parties shall on an annual basis submit a report to the Commission indicating the number of retrenchments undertaken, the skills level, the position of employees retrenched and the reasons for the retrenchments.

4.5 In the event that the Commission receives any complaint in relation to non-compliance with these Conditions, or otherwise determines that there has been an apparent breach by the merging parties of these Conditions, the breach will be dealt with in terms of Rule 39 of the Competition Commission Rules.

4.6 All correspondence in relation these Conditions should be forwarded to mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

## NOTICE 207 OF 2015

## COMPETITION COMMISSION

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

## COMPUGROUP MEDICAL SOUTH AFRICA (PTY) LTD

## AND

## MEDICAL EDI SERVICES (PTY) LTD

**2014Oct0553**

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 conditions as set out below:

The primary acquiring firm is CGM SA, a firm incorporated according to the laws of the Republic of South Africa. CGM SA is 100% owned and controlled by Compugroup Medical AG ("Compugroup Medical"), a company registered in Germany. Compugroup Medical does not control any other firms in South Africa. CGM SA is a provider of healthcare information technology for electronic medical records, pathology and communications systems with its main customers being medical practitioners.

The primary target firm is Medical EDI Services (Pty) Ltd ("Medical EDI"), a firm incorporated in accordance with the laws of the Republic of South Africa. Medical EDI is jointly controlled by its individual shareholders. Medical EDI does not control any firms. It is a medical information technology company, and is involved in the development, marketing, licensing and support of PMA systems and switching services for medical professionals.

Medical EDI's Claims Processing System ("CPS Product") PMA software is front-end software which is utilised in private medical practices throughout South Africa. The CPS product is used to record patient demographics and enable the billing of patients.

In terms of the Sale of Shares Agreement, CGM SA will acquire control of Medical EDI. The proposed transaction will result in CGM SA acquiring sole control over Medical EDI.

The Commission finds that the activities of the merging parties overlap horizontally in two narrow markets within the PMA market, namely:

- The national market for the supply of clinical notes software; and
- The national market for the supply of billing and administration software.

The merger would also result in a potential vertical integration, in the switching services market. The potential vertical overlap arises in that currently, CGM SA switches through a competitor of Medical EDI and post-merger, could possibly switch through Medical EDI which has its own switching service.

The Commission finds that post-merger, the estimated market shares and market share accretion of the merged entity is low to raise any substantial competition concerns in both the national market for the supply of clinical notes products and the national market for the supply of billing and administration products. Customers of the merging parties have not raised any concerns about the proposed transaction. The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the clinical notes market as the merged entity will continue to face competition from firms such as e-MD Technologies (Pty) Ltd ("e-MD"), Practivent Technologies (Pty) Ltd trading as Health Focus ("Health Focus") and Med-e-Mass (Pty) Ltd ("Med-e-Mass").

The proposed transaction does not result in any foreclosure concerns. Medical EDI does not currently have any agreements with any other PMA provider. The Commission also found that in the event that CGM SA chooses to switch through Medical EDI, other competitors will not be foreclosed of a significant customer.

Some concerns were received from competitors of the merging parties, regarding the possibility that the merged entity will adopt an aggressive sales strategy post-merger. In addition, they submit that the bundled offering consisting of clinical notes, billing and switching sold as a set is likely to foreclose competitors who are not able to offer a similar bundle.
The Commission found that the merger does not increase the merged entity's market share in any considerable manner, and is therefore not likely to significantly alter the current conditions in the market.

The merging parties indicated that the proposed merger is likely to result in approximately eight employees from Medical EDI being retrenched. The merging parties submit that the reason for these retrenchments is mainly because of the anticipated duplications, however the Commission is of the view that no rational process was followed to determine these retrenchments. Some of the employees likely to be affected are not highly skilled.

The Commission therefore finds that the proposed transaction raises public interest concerns. The Commission imposes a condition that limits the effect on employment to eight employees only. A copy of the conditions is attached as Annexure A.

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

The Commission therefore approves the proposed merger with conditions in terms of section 14(1)(b)(ii) of the Competition Act no. 89 of 1998, as amended.

**Annexure A**

**Compugroup Medical South Africa (Pty) Ltd**
**And**
**Medical EDI Services (Pty) Ltd**
**CC Case Number: 2014Oct0553**

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**Conditions**

## 1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1 **"Acquiring Firm"** means Compugroup Medical South Africa (Pty) Ltd;

1.2 **"Affected Employees"** means any 8 employees in the support role function with at least a matric qualification as identified by the Merging Parties;

1.3 **"Approval Date"** means the date referred to in the Competition Commission's clearance certificate (Form CC15);

1.4 **"Commission"** means the Competition Commission of South Africa;

1.5 **"Conditions"** means these conditions;

1.6 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.7 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);

1.8 **"Merger"** means the Acquiring Firm's acquisition of control over Medical EDI Services (Pty) Ltd

1.9 **"Merged Entity"** means the combined business activities of Compugroup Medical South Africa (Pty) Ltd and Medical EDI Services (Pty) Ltd upon approval and/or implementation of the Merger

1.10 **"Merging Parties"** means Compugroup Medical South Africa (Pty) Ltd and Medical EDI Services (Pty) Ltd,

1.11 **"Target Firm"** means Medical EDI Services (Pty) Ltd

## 2. Recordal

2.1 The Commission finds that the Merger is unlikely to substantially prevent or lessen competition in the supply of clinical notes software, the supply of billing and administration software for practitioners and the switching services market. The estimated market shares of the merging parties remain low and there are alternative players that compete with the Merging Parties, who will be in a position to constrain the Merged Entity post-merger.

2.2 However, the Merger is likely to have a negative impact on employment since it could possibly result in job losses of up to 8 employees within the Target firm, due to a duplication of positions within the Target Firm and the Acquiring Firm. The Merging Parties have submitted that the 8 employees likely to be affected are skilled and semi-skilled employees in support roles at the Target Firm.

2.3 The Merging Parties have not been able to identify the specific employees that will be affected, however, the Merging Parties have indicated that the likely retrenchment of the abovementioned 8 employees is an indication of the "worst case scenario" resulting from the anticipated duplications.

2.4 In order to limit the impact and number of potential retrenchments, the Commission imposes these Conditions on the Merged Entity.

## 3. Conditions to the approval of the Merger

3.1. With the exception for the Affected Employees, the Merging Parties and their respective direct and indirect subsidiaries shall not retrench any employees as a result of this Merger.

3.2. The Conditions in paragraph 3.1 above are subject to the consultation requirements of section 189 of the Labour Relations Act.

3.3. For the sake of clarity in these Conditions, retrenchments do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; (iii) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (iv) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act.

**4. Monitoring of compliance with the conditions**

4.1. The Merging Parties shall circulate a copy of these Conditions to their employees/and or their respective representatives within 7 days of the Approval Date.

4.2. As proof of compliance thereof, the Merging Parties shall within 5 business days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merged Entity attesting to the circulation of the Conditions and attach a copy of the notice sent.

4.3. The Merged Entity shall advise the Commission of the Implementation Date within 5 days of it becoming effective.

4.4. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.

4.5. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.6. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

**5. Duration of the Condition**

5.1. The Conditions shall remain in effect for a period of two (2) years from the Implementation Date.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

# IMPORTANT Reminder

## from Government Printing Works

Dear Valued Customers,

As part of our preparation for eGazette Go Live on 9 March 2015, we will be suspending the following existing email addresses and fax numbers from **Friday, 6 February**.

| Discontinued Email addresses | Discontinued Fax numbers |
|---|---|
| GovGazette&LiquorLicense@gpw.gov.za | +27 12 334 5842 |
| Estates@gpw.gov.za | +27 12 334 5840 |
| LegalGazette@gpw.gov.za | +27 12 334 5819 |
| ProvincialGazetteGauteng@gpw.gov.za | +27 12 334 5841 |
| ProvincialGazetteECLPMPNW@gpw.gov.za | +27 12 334 5839 |
| ProvincialGazetteNCKZN@gpw.gov.za | +27 12 334 5837 |
| TenderBulletin@gpw.gov.za | +27 12 334 5830 |

To submit your notice request, please send your email (with Adobe notice form and proof of payment to submit.egazette@gpw.gov.za or fax +27 12-748 6030.

Notice requests not received in this mailbox, will NOT be processed.

Please DO NOT submit notice requests directly to your contact person's private email address at GPW – Notice requests received in this manner will also NOT be processed.

GPW does not accept responsibility for notice requests submitted through the discontinued channels as well as for the quality and accuracy of information, or incorrectly captured information and will not amend information supplied.

Thank you!

For any queries, please contact the eGazette Contact Centre.


info.egazette@gpw.gov.za (only for queries).

Notice requests received in this mailbox will NOT be processed.

012-748 6200

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