



MERGER DECISIONS – LAST QUARTER 2020/21

The Commission examines merger notifications in order to make a determination on the effects of such transactions on competition and then either gives conditional approval, approval with conditions or prohibits the transactions based on the outcome of the analysis. This function is supported by Section 35 of the Act and Competition Commission Regulations Notice, 2010 ("Competition") as well as internal and external merger guidelines. The Commission adjudicated on the following mergers in the quarter under review.

1.1 ACQUISITION BY LONSA EVERITE PROPRIETARY LIMITED OF EVERITE PROPRIETARY LIMITED BUSINESSES AND SKY SANDS BUSINESSES

1.1.1 The acquiring firm

The acquiring firm is Lonsa, a private company incorporated in accordance with the laws of South Africa, which has its registered business address at Toro Yaka House, 2 Short Road, Bryanston, 2191, South Africa. Lonsa is an entity established for the purposes of the proposed transaction and does not undertake any business activities in the Kingdom of Eswatini or elsewhere. Apart from owning a 10% non-controlling stake in the United Nations Headquarters Building in Mbabane, the acquiring Group does not engage in any activities, derive revenue or own any assets in Eswatini. The acquiring Group is engaged in activities in certain Africa countries such as: *Lonsa Group and its controlled entities* which is a principal investment entity which has investment in the energy, Industrials and property sectors in Southern Africa.

1.1.3 The target business

The target businesses activities can be divided into two main categories, being the manufacture and supply of building materials conducted by the Everite Group; and the supply of sand, conducted by Sky Sands and the Sky Sands business. The activities of the Everite Group relate primarily to the manufacture, supply and sale of fibre cement and auto aerated autoclaved building products and other complementary traded goods.

1.1.4 The decision

The Commission considered the products of the firms and concluded that the relevant market in this transaction is the supply of building materials in Eswatini

There are no overlaps between the activities of Lonsa Everite and the Everite Businesses in the relevant market. As a result of the transaction, Lonsa Everite will acquire sole control over the Everite Businesses.

Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected and hence the transaction is unlikely to result in the substantial lessening or prevention of competition. The transaction was thus approved without conditions.

2.1 ACQUISITION BY SHISELWENI FORESTRY COMPANY LIMITED OF THE BUSINESS BEING CONDUCTED BY PEAK TIMBERS AND THE BUSINESS BEING CONDUCTED BY PEAK FOREST PRODUCTS

2.1.1 The acquiring firm

The acquiring firm, SFC is a forestry company in Eswatini with wattle, eucalyptus and pine operations. SFC is a diversified forestry, timber processing and agriculture (Maize, Soya beans and Beef Cattle Ranching) company, with its headquarters in Nhlangano, Shiselweni Region.

SFC is a subsidiary of the TWK Group. The TWK Group is the ultimate controller of SFC. TWK Investment Limited (TWK) is a diversified agriculture and forestry company, headquartered in Piet Retief, Mpumalanga. It operates mainly in the Mpumalanga and KwaZulu Natal, but with business interests in several other provinces as well as Eswatini. TWK operates businesses in the Timber, Agricultural Retail, Mechanization, Grain, Financial Services and Motor & Tyre Industries.

2.1.2 The target firms

The target firms are Peak Timbers and PFP. Peak Timbers is a public company with limited liability duly incorporated in terms of the laws of South Africa under registration number 1947/026724/06. It is a plantation forest and sawmilling company with operations located in Eswatini. The company owns a total property base of



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approximately 31,000 hectares, of which 22,000 hectares are plantable, and a sawmill designed to process both pine and eucalyptus. Over the years, ownership and management of the business has changed several times and the current owner is Mondi Business Paper South Africa (Mondi). Peak Forest Products ("PFP") is a private company with limited liability duly incorporated in terms of the laws of Eswatini under registration number R7/27941.

2.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant markets relevant markets are:

- (i) The production of saw logs (hardwood and softwood) in Eswatini; and
- (ii) The production of sawn lumber products (treated/transmission poles, mining timber, building & fencing poles, Industrial poles and pulp).

Given that the combined market shares of the merge entity are above 30% the transaction was categorized as a phase 3. In as far as unilateral effects, we conclude that the merged entity will not be in a position to exercise market power. As such, the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved with the following conditions-

In the supply of Hardwood products (Treated/Transmission Poles, Mining Timber, Building and Fences, Industrial Poles and Pulp) as well as Hardwood Sawlogs-

1. The merged entity shall supply at the same Terms and Conditions to all its Subsidiaries and Holding Company at the same terms and as it supplies to all other customers in the market. These products should all be at market related prices, taking into account all market and price factors such as, quantity, quality and availability of the various products.

2. A three-year Hardwood Sawlog and Hardwood Products Supply Agreement between SFC (suppliers) and the existing and/or active Eswatini Hardwood Sawlog and Hardwood Products markets (purchasers) with an option for both parties to renew the agreement with a second three-year term; and

3. The Hardwood Sawlog and Hardwood Products Supply Agreement shall be according to acceptable market prices and reasonable business (financial and



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credit) terms and conditions, taking into account all market and price factors such as, quantity, quality and availability of the various products.

4. The merging parties do not deviate from the employment conditions set out in paragraph 2.1 to 2.4 of the sale of shares agreement.

3.1 ACQUISITION OF ADDITIONAL 31.37% IN BELL EQUIPMENT LIMITED BY IA BELL AND COMPANY (PTY) LTD

3.1.1 The acquiring firm

The acquiring firm, IA Bell is a company incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business at 75 Columbine Place, King Road Industrial Park, Durban North Kwa – Zulu Natal, South Africa 4051. IA Bell is an investment holding company currently holding shares in Bell Equipment and Loinette Capital Limited (“Loinette Capital”). Save for its existing shareholding in Bell Equipment and Loinette Capital, IA Bell does not carry out any other business activities in Eswatini or elsewhere.

3.1.2 The target firm

The target firm, Bell Equipment is a company incorporated in terms of the laws of the Republic of South Africa, with its principal place of business at 13 – 19 Carbonode Cell Road Alton, Richards Bay, South Africa 3900. The target firm is active in Eswatini through its subsidiary Bell Equipment Company (Swaziland) (Pty) Ltd (“Bell Equipment Eswatini”). Bell Equipment's business is primarily related to the distribution and sale of earth moving equipment, implements and accessories, as well as the distribution and sale of spares, parts and components and business activities related to after-sales support of its earth moving equipment. Bell equipment is also involved in the distribution and sale of certain OEM earth moving equipment as well as pre-owned earth moving equipment and used parts.

3.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant markets relevant market is the supply of earth moving equipment and related spare parts in Eswatini.



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There are no overlaps in the activities of IA Bell and Bell Equipment in the relevant market. Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

**4.1 ACQUISITION OF IMMOVABLE PROPERTIES FROM OKH FARM PROPRIETARY LIMITED
BY MKHAYA TRUST**

4.1.1 The acquiring firm

The acquiring party is Mkhaya. Mkhaya is presently in the business of nature conservation and cattle farming in the Lubombo Region. Mkhaya is a Trust and hence does not have Directors nor shareholders. Instead it has a sole Trustee for the time being namely Terence Evezard Reilly ("Terence Reilly"). Mkhaya is controlled by the sole Trustee. The Trustee also oversees as a trustee of conservation game reserves in Eswatini as per Royal Warrant granting his appointment by His Majesty The Ingwenyama.

4.1.2 The target firm

The target is OKH Farms' two immovable properties (farms) described as Subdivision 2 and Subdivision 4 of Remaining Extent of Farm Ingwavuma Estate No. 432, Lubombo District, measuring approximately 480 Hectares (Four Hundred and Eighty Hectares) and 687 Hectares (Six Hundred and Eighty Hectares) respectively. The farms have been subdivided and approved by the Ministry of Natural Resources. The transaction merely involves the sale of virgin land which has no farming on it. The shareholders of OKH Farms include Estate Late HHH Steffen, Steffen Oskar Kurt Helmuth, Steffen Hans Oskar Helmuth and Troy Minne. Accordingly, OKH Farms is controlled by its shareholders.

4.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is farmland Eswatini.

There are overlaps in the activities of Mkhaya and OKH Farms in the relevant market. However, the transaction was categorized as a phase 1 merger because the overlaps in the relevant market between the merging firms are below 15%. Pursuant



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to the implementation of the proposed transaction, Mkhaya will acquire sole control over the farms.

Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

5.1 ACQUISITION OF 75% SHARES HELD IN MEDSCHEME HOLDINGS (PTY) LTD BY ORACLE INSURE ESWATINI LIMITED

5.1.1 The acquiring firm

The acquiring party is Oracle, of Lot 219 Somhlolo Road, Mbabane, Eswatini. Oracle is a provider of insurance products and services in Eswatini, including life insurance, short-term insurance and health insurance. Oracle's short-term insurance and health insurance offerings are housed in the same legal entity operating under the same license.

5.1.2 The target firm

The target is MH shares held in MAE and MHIE. MH which is selling its shares to Oracle its address is 37 Conrad Street, Florida North, Roodepoort 1709, South Africa. MH is involved in the business of health management service provision and medical aid administration of medical schemes in South Africa, Eswatini, Namibia and Mauritius. The ultimate controller of MH is Afrocentric Health (RF) (Pty) Ltd.

5.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the provision of private healthcare cover in Eswatini.

There are overlaps in the activities of Medscheme and Oracle Insure in the relevant market. However, the transaction was categorized as a phase 1 merger because the overlaps in the relevant market between the merging firms are below 15%. Pursuant to the implementation of the proposed transaction, Oracle will acquire control over Medscheme subsidiaries.

Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected hence the



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transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

**6.1 ACQUISITION BY DSV SOUTH AFRICA PROPRIETARY LIMITED OF GLOBEFLIGHT
WORLDWIDE EXPRESS PROPRIETARY LIMITED**

6.1.1 The acquiring firm

The acquiring firm DSV has its principal business address at 49 Jones Road Jet Park, Boksburg Gauteng 1459, South Africa. DSV is ultimately controlled by DSV Panalpina A/S, a public company incorporated under the laws of the Kingdom of Denmark. DSV Panalpina A/S is a public company listed on the Nasdaq Copenhagen Stock Exchange and is not controlled by any firm. It has its principal place of business at Hovengaden 360, P.O. Box 210, Dk-260 Hedehusene, Denmark. DSV does not control any undertakings (whether directly or indirectly) that are active in Eswatini.

6.1.2 The target firm

The target firm Globeflight, is controlled by Eddie Meyer, an individual residing at Wildepaardejacht Chase Road, Klein Drakenstein, Paarl 7646 Western Cape, South Africa. Globeflight operates in Eswatini through its Subsidiary, Globeflight Eswatini.

6.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the provision of courier services in Eswatini.

There are no overlaps between the activities of DSV and Globeflight in the relevant market Pursuant to the implementation of the proposed transaction, DSV will acquire control over Globeflight.

Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

**7.1 ACQUISITION BY BACHIQUE 813 PROPRIETARY LIMITED OF 100% OF THE ISSUED
SHARES IN TUPPERWARE HOLDINGS SOUTH AFRICA PROPRIETARY LIMITED**

7.1.1 The acquiring firm

The acquiring firm is Newco, a private company with registration number 1947/025250/07 and which has its principal place of business at 162 Tonetti Street, Growthpoint Business Park, Stand 8, Midrand, Johannesburg, South Africa. Newco is a newly incorporated company established for purposes of the proposed transaction. Accordingly, Newco currently has no business activities. Trinitas Equity Partners Proprietary Limited ("Trinitas") jointly controls Newco with Forbes Investment Holdings Proprietary limited ("FIH").

7.1.2 The target firm

The target firm is Tupperware SA and has no activities outside of being a holding company for Avroy Shlain Cosmetics Proprietary Limited ("ASC"), a direct selling personal care and beauty company in South Africa. Tupperware SA is a private company with registration number 1947/ 025250/07 and has its principal place of business at 162 Tonetti Street, Growthpoint Business Park, Stand 8, Midrand, Johannesburg, South Africa. More specifically, ASC sells a range of female and male fragrances; colour cosmetics as well as personal products for men and women (skin, body and ethnic hair care). ASC to a smaller extent supplies fashion accessories (handbags, travel bags, and scarfs). ASC develops markets and supply its own products, under the Avroy Shlain principle brand name, to the end consumer through independent beauty advisors across Southern Africa (including 3 468 beauty advisors in Eswatini). These beauty advisors are individuals, who typically sell Avroy Shlain products as secondary income from commission-based sales to end consumers. ASC target market is the mid to lower economic profile individual. Consumers are able to access the products through digital ordering and direct delivery.

7.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the market for the supply of branded cosmetics in Eswatini.

There are no overlaps between the activities of Tupperware SA and Bachique 813 in the relevant market. Pursuant to the implementation of the proposed transaction, Bachique 813 will acquire control over Tupperware SA.



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Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

8.1 ACQUISITION OF THE ENTIRE SHAREHOLDING OF DEZZO TRADING 392 PROPRIETARY LIMITED BY AUSTELL PHARMACEUTICALS PROPRIETARY LIMITED

8.1.1 The acquiring firm

The acquiring firm Austell was founded in 2005 and is a 100% black owned, South African pharmaceutical company that sells a range of generic prescription and over the counter ("OTC") pharmaceutical products. Austell does not manufacture any of the products it sells in South Africa and all the products that it sells are generics. Austell's South African customers include South African state hospitals, dispensing doctors, wholesalers, private retail pharmacy and private hospitals.

8.1.2 The target firm

The target firm Dezzo, a wholly owned subsidiary of Ascendis, is a pharmaceutical company that buys and sells medicines (ranging from non-scheduled / OTC to schedule 5). Dezzo's product offering in South Africa covers most therapeutic groups but is mainly focused on antibiotics (J class), pain and inflammation (M and N classes) and cardiovascular (C class). Dezzo has no presence in Eswatini. However, in its previous financial year, Dezzo generated the de minimus amount of approximately E9.2 million in export sales from South Africa to Eswatini.

8.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the wholesale of over the counter ("OTC") pharmaceutical products in Eswatini.

There are no overlaps between the activities of Austell and Dezzo in the relevant market. Pursuant to the implementation of the proposed transaction, Austell Pharmaceutical will acquire control over Dezzo Trading 392.



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Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

9.1 THE ACQUISITION OF THE ENTIRE SHAREHOLDING IN TIN CAN HOLDINGS (PROPRIETARY) LIMITED BY THE CAMBELLE TRUST

9.1.1 The acquiring firm

The acquiring party is the Trust and the Trustees for the time being are Andrew Charles Mundeli, Karen Michelle Roscoe, and Janine Geldard. The beneficiaries of the Trust are Anthony John Geldard, Janine Geldard, Cameron John Geldard, and Annabelle Jade Geldard. As such, the Trustees control the Trust. The Trust has no other business or properties however, have intentions to engage in the business of property development and investment.

9.1.2 The target firm

The target firm is Tin Can Holdings. Tin Can Holdings is a company duly registered and incorporated in accordance with the laws of the Kingdom of Eswatini, Certificate of Incorporation No.187/2000, and situated on Lot 170 Mbhilibhi Street, Mbabane Town, District of Hhohho, Eswatini measuring 2 231 m² (Two Thousand, Two Hundred and Thirty-One square metres). Tin Can Holdings is involved in the business of office space and retail shop rentals. In terms of the proposed transaction, the sellers of the target firm are the current shareholders, which include Stephen John Hall, Dean Flintstone, and Gavin Moir all residing from Mbabane. As such, its shareholders control Tin Can Holdings.

9.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the leasing of commercial property in Mbabane Town, District of Hhohho, in Eswatini.



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There are no overlaps between the activities of the Trust and Tin Can Holdings in the relevant market. Pursuant to the implementation of the proposed transaction, the Trust will acquire full control of Tin Can Holdings.

Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

10.1 ACQUISITION OF THE ENTIRE RETAIL APPAREL BUSINESS OPERATED BY OTTO BROTHERS DISTRIBUTORS PROPRIETARY LIMITED BY MR PRICE GROUP LIMITED

10.1.1 The acquiring firm

Mr Price is a public company listed on the Johannesburg Stock Exchange and registered in terms of the laws of the Republic of South Africa, with its head office and principal place of business at Upper Level Durban Station Complex, 65 Masabalala Yenwa Avenue, Stamford Hill, Durban, South Africa. Mr Price is involved in the retail of fashion-value apparel, footwear, accessories and related goods under various brands through a total of 1 254 (One Thousand, Two Hundred and Fifty-Four) stores in South Africa. Mr Price operates 11 (Eleven) stores in Eswatini: 4 (Four) Mr Price Apparel; 3 (Three) Milady's; 1 (One) Mr Price Home; and 3 (Three) Sheet Street Stores. Mr Price is listed on the Johannesburg Stock Exchange ("JSE"), and its shares are widely held and freely traded. The Public Investment Corporation holds 15.03%, JP Morgan holds 8.09% and Fairtree Asset Management holds 5.03% of the shares in Mr Price.

2.10.1 10.1.2 The target business

The target business is Power Fashion, with its principal business address at 350 Umhlangane Road, River Horse Valley, Durban, South Africa. Otto Brothers operates in Eswatini through its wholly-owned subsidiary, Enterprise Stores (t/a Power Factory), which has its principal business address at Suite 2A, 2nd Floor, Development House, Swazi Plaza, Mbabane, Eswatini. The target business is a family-owned apparel retailer which offers clothing for the whole family, as well as cosmetics, mobile handsets and airtime, basic household items, electricity and other products. Power

Factory considers its brand to be fashionable, but not “fashion forward”. It is a price value focused retail business that predominantly trades in cash.

Otto Brothers clothing is a private company incorporated in terms of the laws of South Africa, with its principal address at 350 Umhlangane Road, River Horse Valley, Durban, South Africa. Otto Brothers is controlled by Otto Brothers Clothing Holdings Proprietary Limited (“Otto Brothers Clothing”) (57.78%) with the Noel Otto Family Trust holding the remaining shares (42.22%). Otto Brothers Clothing is controlled by Noel Otto Family Trust (55%), with the Michael Otto Family Trust holding the remaining shares (45%).

10.1.3 The decision

The Commission considered the products of the firms and concluded that there are five relevant markets being -

- (i) the retail of apparel by chain department stores in Eswatini;
- (ii) the retail of cosmetics by chain department stores in Eswatini;
- (iii) the retail of ancillary products by chain department stores in Eswatini;
- (iv) the retail of homeware products in Eswatini; and
- (v) the retail of electricity units in Eswatini.

There are product overlaps between the activities of the merging firms in the relevant markets in relation to the retailing of apparel, cosmetics, ancillary products and homeware products. The transaction is categorized as a phase 1 merger because the merged entity’s market shares in any of the relevant markets is less than 15%. Accordingly, the market share accretion in the different relevant markets is unlikely to raise significant competition concerns, as the merged entity will continue to be constrained by numerous other competitors across all segments of the market. Pursuant to the implementation of the proposed transaction, Mr Price will acquire sole control over Power Fashion (the target business).

The transaction is unlikely to result in the substantial lessening or prevention of competition. Post-merger, the market shares in the relevant markets of the merged



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entity will be less than 15%. Market concentration, countervailing power and barriers to entry will not be affected. Hence, the proposed transaction was approved without conditions.

11.1 ACQUISITION OF +-7% SHARES IN SWAZILAND PROPERTY INVESTMENT LIMITED BELONGING TO SIGNAL HILL PROPRIETARY LIMITED BY PUBLIC SERVICE PENSIONS FUND

11.1.1 The acquiring firm

PSPF is a Fund established in terms of the Public Service Pensions Order of 1993 and it is based at 6th Floor Ingcamu Building, Mhlambanyatsi Road, Mbabane. The Fund is constituted by all Civil Servants of the Eswatini Government who are its members. PSPF is a defined benefit Fund established for the management and administration of pensions for Government (public sector) employees and provides the following products for its members and their dependents: retirement annuities, death benefits, disability benefits and other pension-related benefits. The assets of the Fund consist of contributions made by its members and Government (as their employer) as well as from yields from investments of the Fund. The primary nature of PSPF's business is that of a Pension Fund. At a secondary level and as part of PSPF's investment portfolio, the acquiring firm has an ownership stake in various business enterprises actively engaged in real estate leasing, hospitality and forestry.

11.1.2 The target firm

The target firm Signal Hill, holds +-7% shares in SWAPROP. Signal Hill is a company wholly owned by Mr. Paul Friedlander. Signal Hill has +-17.9% shareholding in SWAPROP. SWAPROP is a Public Listed Company, one of only eight companies listed on the Eswatini Stock Exchange and has a 4.85% market capitalization. It derives income by way of interest on loans with its subsidiary companies and interest on investment accounts. SWAPROP controls shopping centres in Mbabane, Manzini and Nhlanguano which are national landmarks. SWAPROP also owns two industrial warehouses in Matsapha

11.1.3 The decision

The Commission considered the products of the firms and concluded that there are five relevant markets being -



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- i. the provision of commercial space at The Hub, in Manzini;
- ii. the provision of commercial space at The Mall, Mbabane;
- iii. market for commercial property at Tincwadzi Properties, Matsapha; and
- iv. the provision of commercial space at The Nhlangano Mall.

There are overlaps in the activities of the merging firms in the relevant markets particularly because PSPF already has a shareholding in SWAPROP. The transaction is however categorized as a phase 1 because PSPF is already a majority shareholder in SWAPROP with 49% shares and as such there will be no market shares accretion in the relevant markets.

Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the proposed transaction was approved without conditions.