Eswatini
Competition Commission

# MERGER DECISIONS – LAST QUARTER 2019/20

This financial year the strategic plan target is to conduct twelve mergers analyses, including mergers implemented without prior notification.

## 1.1 ACQUISITION OF PART OF THE BUSINESS OF INVICTA HOLDINGS LIMITED BY CNH NDUSTRIAL SA PROPRIETARY LIMITED

### 1.1.1 The acquiring firm

The acquiring firm is CNHISA, a company incorporated in accordance with the laws of South Africa. CNHISA forms part of a wider group of companies, the ultimate controller of which is CNH Industrial N.V. ("CNH Industrial"), an enterprise incorporated in accordance with the laws of the Netherlands and is listed in the New York Stock Exchange and the Mercato Telematico Azionario- Borsa Italiana. CNH Industrial shares are widely traded and it is not controlled by any one firm. CNH Industrial and all enterprises directly and indirectly controlled by them are collectively referred to as the acquiring group. CNH Industrial is a capital goods company engaged in the design, production and financing of construction equipment, trucks, commercial vehicles, buses and specialty vehicles for firefighting, defense and other uses, as well as engines, transmissions and axles for these vehicles and engines for marine and power generation applications.

### 1.1.2 The target firm

The target is part of the Business of Invicta. Invicta is primarily operative in South Africa. The target business of Invicta is the distribution of agricultural equipment spare parts and implements. They primarily supply agricultural equipment under the Baldan brand.

### 1.1.3 The decision

In our analysis, the relevant market for the transaction is the market for the distribution of branded agricultural equipment in Eswatini. We found that, post-merger, the market shares, 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. Therefore, the transaction was approved.

## 2.1 ACQUISITION OF JET BUSINESS BY THE FOSCHINI GROUP LIMITED

### 2.1.1 The acquiring firm

The Foschini Group (TFG) is one of the foremost independent chain-store groups in Southern Africa and has a diverse portfolio of leading fashion retail brands in Eswatini offering clothing, jewellery, cell phones, accessories, cosmetics, sporting apparel and equipment, from value to upper segments. TFG's three business segments (comprising TFG Africa, TFG London and TFG Australia) each have their own local management teams, which report to the Group's head office in Cape Town, South Africa. Within these business segments, TFG's brands are grouped into retail trading divisions and each is supported by a local centralized support services structure. In Eswatini, TFG operates eight different retail chains that target customers from value to upper market segments namely Foschini, the Fix, Exact, Sportscene, Totalsports, Markham, American Swiss and Sterns.

### 2.1.2 The target firm

The Target Business is a retail chain within the Jet Division of Edcon, and is thus controlled by Edcon, through Edcon Eswatini. The Jet Division is Edcon's discount department store division, selling clothing, footwear, homeware and cosmetics, as well as cellular products. There are seven (7) Jet stores across Eswatini. These stores target lower-to-middle income consumers in the Living Standard Measure (LSM) 4-7 categories.

### 2.1.3 Decision

We considered the products of the firms and concluded that there are four 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 mobile cellular products in Eswatini; and

(iv) the retail of home ware products in Eswatini.

There are overlaps between the activities of the merging firms in relation to the retail of apparel, retail of cosmetics and the retail of cellular products by franchised department stores. In the retail of apparel by department stores market, it should be noted that the target firm is focused on low price and low fashion apparel (so-called "replenishable" basic wear) while TFG's apparel repertoire is predominantly aimed at the mid-to-upper market segment (in the LSM 6-10 range). The market share accretion in the different 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. The transaction was approved.

## 3.1 ACQUISITION BY RETAILABILITY (SWAZILAND) PROPRIETARY LIMITED OF PARTS OF THE EDGARS BUSINESS CONDUCTED BY EDCON, THROUGH EDGARS STORES SWAZILAND LIMITED IN ESWATINI

### 3.1.1 The acquiring firm

Retailability Proprietary Limited ("Retailability") controls the acquiring party Retailability Eswatini. Retailability Eswatini has its principal address at c/o Retailability, 10 Dumat Place, Mount Edgecombe, Durban, 4300, South Africa. Retailability is a retailer of apparel and owns apparel retail stores trading under the names "Beaver Canoe", "Style" and "Legit". The Beaver Canoe stores sell clothing apparel for men and boys only. The Style stores offer both men and women contemporary and formal fashion. The Legit stores have a fashion store format which focuses on the retailing of clothing, footwear and accessories aimed at young, budget constrained women in the Living Standard Measure ("LSM") 4-8 categories. In addition, to women's apparel, the Legit stores are also suppliers of colour cosmetics and cellular products. Helvetia Finance Limited and Metier Investment & Advisory Services Proprietary Limited ultimately control Retailability.

In 2016, Retailability acquired the Legit Eswatini Business and income earning activity under the "Legit'' brand as going concern. Retailability has subsidiaries that operate apparel retail stores outside Eswatini.

### 3.1.2 The target business

The target business forms part of the Edgars Division, which is Edcon's department store brand, selling clothing, footwear and accessories for men, women and children. In addition, these stores offer textiles, cosmetics and cellular products. Edcon Eswatini has its principal address at Suite 2A, 2nd Floor, Development House, Swaziland Plaza, Mbabane, Eswatini. The target business comprises two Edgars franchise brand and private label stores in Eswatini. These stores target middle-to-upper income consumers in the LSM 6-10 categories and are home to a range of private-label brands such as Free 2BU, Charter Club, and Stone Harbour, and a wide range of market label brands (for example, Levi's and Guess) for the clothing, footwear and cosmetics. In addition, the target business operates iconic Edgars Home and Edgars Beauty stores as store-in-store formats rounding out the department store offering in Eswatini. The target business does not have any contract arrangements with any of the mobile networks in the country and only sells cellular products in the form of handsets at the point of sale.

### 3.1.3 Decision

We considered the products of the firms and concluded that there are four relevant markets being -

(i) the retail of apparel by franchised department stores in Eswatini;
(ii) the retail of cosmetics by franchised department stores in Eswatini;
(iii) the retail of mobile cellular products by franchised department stores in Eswatini; and
(iv) the retail of home ware products by franchised department stores in Eswatini.

There are overlaps between the merging firms in the relevant markets in relation to retailing of apparel, cosmetics and mobile cellular products. The market share accretion in the different markets is unlikely to raise significant competition concerns. The transaction was approved.

## 4.1 SHAREHOLDING RESTRUCTURING IN MBABANE MOTORS (PTY) LTD AND CERTAIN ALLIED COMPANIES NAMELY, CONSUMER SALES (PTY) LTD, TABPROP (PTY) LTD AND SWAZI DELTA (PTY) LTD

### 4.1.1 The acquiring parties

The acquiring parties Jody Foss and Brett Foss are both adult Swazi male citizens.

### 4.1.2 The target firms

The target parties together form Mbabane Motors Group. Mbabane Motors is a company registered in accordance with the laws of Eswatini. Mbabane Motors is a motor vehicle franchise dealer and the holder of the Isuzu, Chevrolet franchises in Eswatini. Mbabane Motors major business is the franchising of Isuzu, Opel, Suzuki motor vehicles and Isuzu trucks.

We considered the products of the firms and concluded that the relevant markets are;

I. Market for the franchised sale and fuel service station of motor vehicles in Eswatini; and
II. Market for letting of commercial space in Mbabane and Manzini Town in Eswatini

### 4.1.3 The decision

There are no overlaps that are created as a result of the proposed transaction 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 and hence the transaction is unlikely to result in the substantial lessening or prevention of competition. The transaction was approved with a condition that **there shall be no merger specific retrenchments or redundancies that may affect the employees of the restructured enterprises.**

## 5.1 ACQUISITION OF 100% SHARES OF TAMBANKULU ESTATES (PTY) LTD BY PUBLIC SERVICE PENSIONS FUND

### 5.1.2 The acquiring firm

The acquiring firm is the Public Service Pensions Fund, a Fund established in terms of the Public Service Pensions Order of 1993.

### 5.1.2 The target firm

The target firm is Tambankulu Estates (Pty) Ltd, a private company duly incorporated in terms of the company laws of Eswatini. Tambankulu is an agri-business based on two privately owned agricultural estates on the Black Mbuluzi River in north-eastern Eswatini.

### 5.1.3 The decision

We considered the products of the firms and concluded that the relevant market is the growing of sugar-cane in Eswatini. There are no overlaps between the activities of PSPF and Tongaat in the relevant market and as such the transaction was categorized as a phase 1.

Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected. However, concerns were raised on the post-merger management of the target entity (Tambankulu Estate). The potential competition concerns that may arise from the transaction were found not to be merger specific but may occur as a result of action by the merging parties post-merger. In order to address any competition concerns that may arise as a result of a balance of power change post-merger the transaction was approved with the following condition-

I. The merging parties will not assign the management of the target (Tambankulu Estate) to any miller. Authority should be sought from the Eswatini Competition Commission if such an agreement is considered.

## 6.1 ACQUISITION OF 20.1% OF LOJAF (PTY) LTD FROM AFRICAN ALLIANCE ADVISORY (PTY) LTD AND 64.18 OF GAFE FROM AFRICAN ALLIANCE SECURITIES TRADING BY GREYSTONE PARTNERS LIMITED

### 6.1.2 The acquiring firm

The acquiring firm, Greystone was incorporated as a public company on 27 January 2009 and listed on the Eswatini Stock Exchange ("ESE") on 1 November 2010. The principal object of Greystone is to carry on business as an investment holding company.

### 6.1.2 The target firms

The target is assets (shareholding within Lojaf and GAFE) from the Sellers. The Sellers consist of two legal entities, which are African Alliance Advisory Limited and African Alliance Securities Trading. AAAL and AAST are both subsidiaries of the group company, African Alliance Limited, a company incorporated in the Isle of Man and having investment banking operations in 12 countries including asset management, advisory services, private equity and stock broking covering 19 African countries.

### 6.1.3 The decision

We considered the products of the firms and concluded that there are two relevant markets and these are-

a) Retailing of Fast-Moving Consumer Goods (FMCGs) by brand supermarkets in the Mbabane – Manzini corridor in Eswatini; and

b) Retailing of butchery meat and relevant accessories in the Manzini and Matsapha corridor as well as the Nhlangano town in Eswatini.

In considering the relevant markets identified we drew the conclusion that there is an overlap in the retailing of butchery meat and related accessories between the target entities. This relationship arises from the fact that both the target entities being Lojaf and OBC butchery are involved in the retailing of butchery meat. The overlap results in an accretion of 15% for the merged entity in the retailing of butchery meat in Nhlangano town as well as an accretion of 2.5% in the retailing of butchery meat in the Matsapha-Manzini corridor.

We considered the potential unilateral effects and coordinated effects that may arise as a result of the transaction and concluded that this transaction will not confer any market power to the merged entity to act unilaterally in the relevant markets or to co-ordinate with its competitors in the relevant markets. The transaction was approved.

## 7.1 THE ACQUISITION OF 100% SHARES HELD BY CHANCELLOR HOUSE HOLDINGS PTY LTD IN CHANCELLOR HOUSE MINERAL RESOURSES SWAZILAND (PTY) LTD BY MINE-X (PTY) LTD

### 7.1.1 The acquiring firm

The acquiring firm is Mine-X (Pty) Ltd a company duly registered and incorporated in terms of the laws of Kingdom of Eswatini. The company is registered as a Special Purpose Vehicle and is a wholly owned subsidiary of Inyatsi Construction Concession (Pty) Ltd ("ICC"). ICC is a company duly registered and incorporated in terms of the laws of the Kingdom of Eswatini.

### 7.1.2 The target firm

The primary target firm is Chancellor House Mineral Resources Swaziland Pty Ltd ("CHH") a company duly registered and incorporated in terms of the laws of Eswatini. The target firm is an investment subsidiary company of Chancellor House Holdings (Pty) Ltd. CHH is a company incorporated, registered and trading in South Africa in terms of the laws of South Africa.

### The decision

We considered the products of the firms and concluded that the relevant market is the market for the provision of coal mining activities in the Kingdom of Eswatini. The target firm is only present in the country by virtue of its shareholding in Maloma Colliery Ltd. After the proposed transaction, CHH will no longer be present in the country as its shareholding will have been acquired by the acquiring firm. The acquiring firm, through its holding company, is involved in the construction business in the Kingdom of Eswatini whereas the target firm is a South African investment holding company. Therefore, there are no overlaps in the operations of the target firm and the acquiring firm.

The acquiring firm is a Special Purpose vehicle without any relations with regards to the Coal Mining industry and as such there are no overlaps which could potentially arise in an accretion within the mining industry. This transaction as such, will have no effect which would require further scrutiny by the Eswatini Competition Commission.

We concluded that post-merger; the merged firm will not possess market power which will enable it to act independently in the relevant market. Therefore, the transaction is unlikely to result in the substantial lessening of competition in Eswatini. The transaction was approved.