MERGER DECISIONS – FIRST QUARTER 2021/22

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.

In this quarter the Commission analysed and adjudicated on 9 mergers and acquisitions within the statutory timelines. The total value of the mergers approved stood at over 430 million Emalangeni. The total combined annual turnover of the merging firms stood at approximately 36 billion Emalangeni. The sectors include retail of pharmaceutical products, first moving consumer goods, commercial property and farmland, supply of building material, insurance and manufacturing of precast concrete products.

1.1 ACQUISITION OF MISTER SWEET BY PREMIER FMCG (PTY) LTD FROM LODESTONE BRANDS (PTY) LTD

1.1.1 The acquiring firm

The acquiring firm, Premier FMCG (Pty) Ltd ("Premier") is a private company incorporated in terms of the laws of South Africa. Premier is a wholly-owned subsidiary of the Premier Group. The Premier Group is controlled by Brait Mauritius Ltd (98.11%), a company incorporated in Mauritius. Premier is active in the manufacture, distribution and marketing of fast-moving consumer goods in Southern Africa, including sugar-based confectionary products which are imported for sale in Eswatini through Premier Eswatini. The Premier Group wholly-owns Premier Eswatini (Pty) Ltd ("Premier Eswatini"). Premier Eswatini is the only entity controlled by the Premier Group which is present in Eswatini.

1.1.2 The target business

The target firm, Lodestone Brands (Pty) Ltd ("Lodestone") is a private company incorporated in terms of the laws of South Africa. The primary target business is the divisional confectionary business carried on as a going concern under the name Mister Sweet by Lodestone. Lodestone is controlled by Second Chapter Investments (Pty) Ltd ("Second Chapter Investments"), who owns 73.49% of the issued share capital of Lodestone. Second Chapter Investments is controlled by Mayfair Holding (Pty) Ltd ("Mayfair Holdings"). Mayfair Holdings also holds 11.86% shares directly in Lodestone. Lodestone is a manufacturer in the fast-moving consumer goods industry. The target sells confectionary products under its "Mister Sweet" brand.

1.1.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the supply of sugar-based confectionary products in Eswatini.

The merging firms are in the market of the supply of sugar-based confectionary products in Eswatini. The products of the merging firms are not manufactured in Eswatini but exported for sale in Eswatini. Premier's products are exported for sale through Premier Eswatini while Mister Sweet's products are imported through an independent third-party distributor to be sold in Eswatini. As such, there are overlaps in the activities of Premier and Mister Sweet in the relevant market; however this transaction is categorized as a phase 1 given that the combined market share of the merged firms in the relevant market are below 15%.

Post-merger, the merging firms' market shares accretion in the relevant market and market concentration will slightly be altered. 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.

1.2 ACQUISITION OF SHARES IN OKH FARMS (PTY) LTD BY TROY MINNE AND HANS STEFFEN

1.2.1 The acquiring parties

The acquiring parties are Troy Minne, Estate Late Hans Helmut Herman Steffen and Hans Oskar Helmuth Steffen who are also shareholders in OKH Farms.

1.2.2 The target firm

The target firm is OKH Farms (Pty) Ltd ("OKH Farms"). OKH Farms owns 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-Seven Hectares) respectively. The farms have been subdivided and approved by the Ministry of Natural Resources.

1.2.3 The decision

The Commission considered the products of the merging firms and concluded that the relevant market is farmland in the Lubombo Region.

There are overlaps between the activities of the merging parties in the relevant market since the Purchasers are already shareholders in OKH Farms. The proposed transaction is categorized as a phase 1 because it does not entail an overlap with an active competitor in the relevant market. Pursuant to the implementation of the proposed transaction, the Purchasers will acquire control over OKH 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 proposed transaction was approved without conditions.

1.3 ACQUISITION OF SHARES IN GREEN CROSS PHARMACY (PTY) LTD BY THOBILE NDABA AND LILIAN JANE DE MAINE

1.3.1 The acquiring parties

The acquirers, Thobile Ndaba and Lillian Jane de Maine are Eswatini citizens.

1.3.2 The target firm

The target firm, Green Cross Pharmacy (Pty) Ltd, is a pharmacy with over the counter (OTC) and prescription medication sales. Green Cross is controlled by Peter Offer with 55% shares with the remaining 45% shares held by Andre Botha. Green Cross has its principal place of business at The Mall, Mbabane, Eswatini.

1.3.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the retailing of OTC and prescription pharmaceutical products and related services in Mbabane.

There are no overlaps between the activities of the acquirers and Green Cross in the relevant market. As such, the transaction is 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. Therefore, the transaction was approved without conditions.

1.4 ACQUISITION OF SHARES IN ESWATINI MOBILE LIMITED BY THE PUBLIC SERVICE PENSION FUND

1.4.1 The acquiring firm

The acquiring firm, the Public Service Pension Fund ("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.

1.4.2 The target firm

The target firm is Eswatini Mobile Limited and their registered office is at Madlenya House, 1st Floor, Corner Gwamile & Mdada Street, Mbabane, Eswatini. Eswatini Mobile carries on the business of mobile telephone network services provider, retailers and agents for the purpose of trading in and resale of mobile telephones and such related gadgets. The goods comprise mainly of mobile telephones, modems for the provision of internet connections and such related goods. The main business is the provision of a mobile telephone network service provider.

1.4.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the provision of mobile telephone network services and related business in Eswatini.

There are overlaps between the activities of the merging firms due to the fact that the acquirer is already a shareholder in the target. Pursuant to the implementation of the proposed transaction, PSPF will acquire control over Eswatini Mobile with 48.8% shareholding.

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.

1.5 ACQUISITION OF 100% ISSUED SHARE CAPITAL OF THE BUILDING COMPANY (PTY) LTD FROM PEPKOR HOLDINGS LIMITED BY CASHBUILD MANAGEMENT SERVICES (PTY) LTD

1.5.1 The acquiring firm

The acquiring firm, Cashbuild Management Services (Pty) Ltd ("Cashbuild Management") is wholly owned by Cashbuild Limited. Cashbuild Management is a Johannesburg Stock Exchange (JSE) listed company incorporated in terms of the laws of South Africa with its principal place of business at 101 Northern Parkway Road, Omonde Johannesburg 2001. Cashbuild Limited is a Southern Africa-based retailer of building materials and products and operates Cashbuild branded stores. Cashbuild Management is an investment holding company. Cashbuild Management holds shares in a number of companies in southern Africa whose activities range from the retail of building materials, hardware and related products to property development.

1.5.2 The target firm

The target firm is The Building Company, Pepkor's Southern Africa operations building material division. The Building Company is a company incorporated in terms of the laws of South Africa with its principal place of business at 2nd Floor Execujet Building, Tower Road Cape Town International, Cape Town, Western Cape 7525. The Building Company comprises three divisional businesses being retail, wholesale and specialized.

1.5.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the retail of building material and related products in Eswatini.

There are no overlaps between the activities of Cashbuild Management and The Building Company in the relevant market since the target firm does not carry out any activities in Eswatini. As such, the transaction is 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 hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

1.6 ACQUISITION OF MHMK GROUP ESWATINI BY MHMK GROUP LIMITED MAURITIUS

1.6.1 The acquiring firm

The acquiring firm MHMK Group Ltd is a company duly registered and incorporated in terms of the laws of Mauritius under Registration Number C116061 C2/GBL whose office is at C/o Imara Trust Company (Mauritius) Ltd Level 2 Alexander House, Silicon Avenue, Ebene Cybercity 72201, Republic of Mauritius. MHMK Group Ltd operates as an investment holding company based in Mauritius and is a wholly owned subsidiary of Imara Trust Company (Mauritius) Ltd.

1.6.2 The target firm

The target firm MHMK Group Eswatini is a company duly registered and incorporated in terms of the laws of Eswatini. MHMK Group Eswatini operates as a wealth-generating, public company. It is an authorized financial service provider, registered with the Financial Services Regulatory Authority (FSRA). MHMK Group Eswatini is a major shareholder at ESW Investment Group wherein it holds 85% of the issued shares and is a wholly owned subsidiary of AFRISTRAT (formerly ECSPONENT LIMITED SA).

1.6.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the provision of non-banking financial services in Eswatini.

There are no overlaps between the activities of MHMK Group Ltd and MHMK Group Eswatini in the relevant market and therefore no horizontal overlap arises in Eswatini as a result of the proposed transaction. As such the transaction is 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 hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

1.7 ACQUISITION OF AVENG INFRASET SWAZILAND (PTY) LTD BY INFRACAST PROPRIETARY LIMITED

1.7.1 The acquiring firm

The acquiring firm is Infracast (Pty) Ltd ("Infracast") a company duly registered and incorporated sometime in February 2021, in terms of the laws of Eswatini. Infracast is a new entrant which is venturing in the business of manufacturing of concrete and concrete related products. The directors of Infracast are Mr Michelo Shakantu, Mr Malambo Shakantu and Mr Paul Lwiindi. The Directors of Infracast are also its shareholders.

1.7.2 The target firm

The target business is Aveng Infraset Swaziland (Pty) Ltd ("Aveng Infraset"), a company duly registered and incorporated in terms of the laws of Eswatini. Aveng Infraset is part of the Aveng Limited Group and is a wholly owned subsidiary of Aveng Africa. Aveng Africa is in turn a wholly owned subsidiary of Aveng Limited which are all South African based companies. The target business is a manufacturer of a wide range of precast concrete products for the construction industry.

1.7.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the provision of pre-cast and restressed concrete products for the construction industry in Eswatini.

It was evident to the Commission that this transaction could raise competition concerns and as such was categorised as a phase 3 due to the verticality created by the transaction.

Therefore, the transaction was approved with the following conditions -

I. *The merged entity shall supply its products at the same Terms and Conditions to all its affiliated companies/or any company with common shareholding at the same terms and conditions 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; and*

II. *The merged entity should continue to honor all contractual arrangements that it has with current customers.*

III. *There will not be any coordinated interaction between the parties and its customers which coordinating will substantially lessen competition in the country or a substantial part of it; and*

IV. *The Parties undertake to put in place a transparent, predictable and accountable competition compliance program to ensure that there is effective knowledge acquisition, transfer and management within the merged entity by 30 May 2021.*

1.8 ACQUISITION OF COMMERCIAL PROPERTY FROM RIVI (PTY) LTD BY THE ESWATINI COMPETITION COMMISSION

1.8.1 The acquiring firm

The acquiring firm is the Eswatini Competition Commission, a regulatory authority established in terms of Section 6 of the Competition Act of 2007. The main function of the Commission is to monitor, regulate, control and prevent acts or behaviors which are likely to adversely affect competition in Eswatini.

1.8.2 The target firm

The target Immovable Property is owned by Rivi (Pty) Ltd ("Rivi"). Rivi does not own any other assets except the Immovable Property. The Immovable Property is described as Portion 374 (a portion of portion 373) of Farm No. 2 situate in the urban area of Mbabane, District of Hhohho, Eswatini; and measuring 6 632 (Six Thousand, Six Hundred and Thirty-Two) square meters.

1.8.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is commercial property in Mbabane.

There are no overlaps between the activities of the Commission and Rivi in the relevant market. As such, the proposed transaction is 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 and hence the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

1.9 THE ACQUISITION BY WELLOM INVESTMENTS PROPRIETARY LIMITED OF 55.52% SHARES HELD BY MR MOSES MOTSA AND 10.03% SHARES HELD BY NORTH WIND TRADING 196 CC IN LIDWALA INSURANCE COMPANY LIMITED

1.9.1 The acquiring firm

The acquiring party is Wellom Investments (Pty) Ltd, a company duly registered and incorporated in terms of the laws of Eswatini. Wellom Investments is a new entrant in the market for the provision of short term insurance in Eswatini. Wellom Investments is a new entity whose director and shareholder is Mr Michelo Shakantu who owns 100% of the issued shares in the company.

1.9.2 The target firm

The target firm is Lidwala Insurance Limited, a company duly registered and incorporated in terms of the laws of Eswatini Within the target firm on one hand, Wellom Investments is acquiring the shares held by Mr Motsa which constitute 55.52% of the issued share capital and on the other hand the shares held by North Wind through Resure which shares constitute 10.03% of the issued share capital. North Wind is a closed corporation which has only one shareholder, Mr Lionel Oswald Reid. North Wind owns 100% shares in Resure. Resure in turn owns 10.03% shares in Lidwala Insurance. Lidwala Insurance is registered with the Eswatini Financial Regulatory Authority ("FSRA") as an authorized insurer. Lidwala Insurance offers short term insurance services in the country.

1.9.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the provision of short term insurance solutions in Eswatini.

There are no overlaps between the activities of the merging firms in the relevant market. The transaction is categorized as a phase 1 merger. Pursuant to the implementation of the proposed transaction, Wellom Investments will have a controlling interest in Lidwala Insurance.

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.