

## **MERGER DECISIONS – SECOND QUARTER 2022/23**

### **MERGERS AND ACQUISITIONS**

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 Competition Act, 2007 and Competition Commission Regulations Notice, 2010 ("Competition") as well as internal and external merger guidelines.

In the financial year 2022/23's second quarter, the Commission analysed and adjudicated on mergers and acquisitions within sectors that include retail of pharmaceutical products, fast moving consumer goods (FMCGs), commercial property and farmland, supply of building material, insurance and manufacturing of precast concrete products.

### **1. ACQUISITION BY MR. PRICE GROUP LIMITED ("MR. PRICE") OF SOLE CONTROL OVER BLUE FALCON 188 TRADING (PTY) LTD TRADING AS STUDIO 88 ESWATINI (PTY) LTD ("STUDIO 88 ESWATINI")**

#### **1.1 The acquiring firm**

Mr Price is a public company listed on the Johannesburg Stock Exchange and registered in the Republic of South Africa. Mr Price is involved in the supply of fashion-value apparel (both sporting and fashion clothing), footwear, accessories and related goods as well as homeware, which is predominately private label (as opposed to international brands), through a total of 1 254 (One Thousand, Two Hundred and Fifty-Four) stores in South Africa.

#### **1.2 The target firm**

The target firm is Blue Falcon 188 trading as Studio 88, a private company registered in the Republic of South Africa. Studio 88 operates in Eswatini through its wholly-owned subsidiary, Studio 88 Eswatini. Studio 88 is a branded sports-lifestyle, "athleisure" oriented clothing apparel, footwear and accessories independent



**Eswatini  
Competition Commission**

retailer. Studio 88 sells sought after international sporting, leisure and lifestyle brands to various emerging consumer segments throughout sub-Saharan Africa.

### **1.3 The decision**

The Commission considered the products of the firms and concluded that the relevant market is the retail of branded sports-lifestyle, athleisure oriented clothing apparel, footwear and accessories by departmental chain stores in Eswatini.

There are no overlaps between the activities of the merging parties in the relevant market. The proposed transaction was as such categorized as a phase 1 since there are no overlaps in the relevant market. Post-merger, there will be no market accretion in the relevant market, market concentration, countervailing power and barriers to entry will not be affected and the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the proposed transaction was approved without conditions.

## **2. ACQUISITION OF 49.36% SHARES BY ADIA (PTY) LTD (“ADIA”) IN ORCHARD INSURANCE (PTY) LTD (“ORCHARD”) FROM AFRICAN ALLIANCE LIMITED (“AFRICAN ALLIANCE”)**

### **2.1 The acquiring firm**

The acquiring firm Adia, a company registered and incorporated in terms of the laws of Eswatini, is an investment holding company and currently holds a minority of 3.4% of the issued shares in Orchard.

### **2.2 The target firm**

The target firm Orchard, is a licensed Life Insurance Company in Eswatini and is licensed by the Financial Services Regulatory Authority (FSRA). Orchard's current products are as follows:

- Credit Life – a product that pays the outstanding loan amount to the lender on the untimely death of the borrower;
- Funeral – a product that pays out a predefined amount in the event of the death of a life that is insured;
- Group Funeral – a product sold to groups which pays out a predefined amount in the event of the death of a group member; and



**Eswatini  
Competition Commission**

- Group Life Assurance – a product for the employee which pays a multiple of the employees' salary at the time of death

### **2.3 The decision**

The Commission considered the products of the merging firms and concluded that the relevant market is the provision of life insurance products in Eswatini.

There are overlaps between the activities of the merging parties in the relevant market since Adia, is already a shareholder in Orchard. The transaction was categorized as phase 1 because the combined market share post-merger is below 15%. There will be no market share accretion since Adia and its shareholder does not own, directly or indirectly, any other insurance business in Eswatini. 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 of competition in the country. Therefore, the transaction was approved without conditions.

## **3. ACQUISITION BY XEROTECH PROPRIETARY LIMITED (“XEROTECH”) OF THE ENTIRE ISSUED SHARE CAPITAL IN ALTRON DOCUMENT SOLUTIONS BUSINESS DIVISION (“ADS”) OF ALTRON TMT PROPRIETARY LIMITED**

### **3.1 The acquiring firm**

The acquiring firm Xerotech, is a private company incorporated in the Republic of South Africa. Xerotech does not intend to merge ADS into its existing business or sales distribution channels but instead intends to operate the business as a separate entity reporting to the ultimate controller of the acquirer Bi-Africa Group.

### **3.2 The target firm**

The target firm is ADS, a business division of Altron TMT which has its principal business address at Altron Campus, 20 Woodlands Drive, Woodlands Office Park, Woodmead, Johannesburg, 2190. ADS is a Xerox distributor and technology and services company. Globally, ADS provides a range of hardware and consumables and software to manage outsource print services such as installation and training, paper and toner supplies, maintenance and services of equipment and service contracts. Xerox provides leading-edge technology, services, software and supplies for production and office environments of any size.

### **3.3 The decision**



**Eswatini  
Competition Commission**

The Commission considered the products of the firms and concluded that the relevant market is the supply of office automation equipment ("OAE") and related consumables in Eswatini.

The transaction is a foreign-to-foreign merger between two South Africa entities. However, due to their sales into Eswatini there is a horizontal overlap in their activities particularly in regard to the sale of OAE and related consumables. The transaction was categorized as a phase 1 merger since the combined market shares of the merging firms is less than 15%. The merging parties estimate that their market shares are less than 1% individually. Accordingly, the market share accretion is insignificant and cannot give rise to any competition concerns. Furthermore, the merging firms do not procure from or supply to each other. The merging firms supply OAE and related consumables to third-party dealers and do not sell to customers directly in Eswatini. 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. ACQUISITION OF 45% SHAREHOLDING BY PUBLIC SERVICE PENSION FUND ("PSPF") IN SWAZILAND RADIOLOGY SERVICES ("SWAZILAND RADIOLOGY")**

##### **4.1 The acquiring firm**

The acquiring firm PSPF is a Fund established in terms of the Public Service Pensions Order of 1993 and it is based at 7<sup>th</sup> 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.

##### **4.2 The target firm**

The target firm is Swaziland Radiology, a company incorporated in terms of the laws of Eswatini and is involved in the business of medical imaging by providing a range



**Eswatini  
Competition Commission**

of radiology services including but not limited to the following; X-Ray, Fluoroscopy, Trauma Radiology, Computed Topography, Mammography and Magnetic Resonance Imaging.

#### **4.3 The decision**

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

There are no overlaps between the activities of the merging firms. Pursuant to the implementation of the proposed transaction, PSPF acquired control over Swaziland Radiology with 45% shareholding. Post-merger, the market shares in the relevant market, market concentration will not change in that the acquiring firm is a new player in the relevant market, countervailing power and barriers to entry will not be affected or altered hence, the transaction is unlikely to result in the substantial lessening or prevention of competition. Therefore, the transaction was approved without conditions.

### **5. ACQUISITION BY ERIC SLABBERT AGENCIES (PTY) LTD OF INDUSTRIAL LAND FROM THE RECLAMATION GROUP (SWAZILAND) (PTY) LTD**

#### **5.1 The acquiring firm**

The acquiring firm, Eric Slabbert Agencies is a private company with limited liability, duly registered and incorporated in accordance with the company laws of Eswatini. Eric Slabbert Agencies has been in operation in Eswatini since 2004 and its operations are as follows:

- i. a fabric and paper facility at 12<sup>th</sup> Street, Matsapha (premises leased from the Eswatini Investments Promotion Authority (EIPA)); and
- ii. a cardboard, glass, plastic, polypropylene, metal, e-waste, furniture and batteries waste processing facility on King Sobhuza II Avenue.

#### **5.2 The target asset**

The target asset is industrial land situate at Lot 82 Matsapha, Manzini region owned by Reclamation Group. Reclamation Group is a private company registered and incorporated in accordance with the company laws of Eswatini. Reclamation Group ceased trading in Eswatini in October 2019.



**Eswatini  
Competition Commission**

### **5.3 The decision**

The Commission considered the products of the firms and concluded that the relevant market is industrial land in Matsapha.

There are no overlaps between the activities of the merging parties in the relevant market since Reclamation Group ceased all trading in Eswatini in October 2019 and thus no longer active in the relevant market. The transaction is merely the acquisition of the assets. The transaction was categorized as phase 1 because the combined market share post-merger is below 15%. 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 of competition in the country. Therefore, the transaction was approved without conditions.

## **6. ACQUISITION BY AFRICA CHICKS SWAZILAND (PTY) LTD (“AFRICA CHICKS”) OF HORSESHOE FARM OWNED BY EARLY HARVEST FARMING (PTY) LTD (“EARLY HARVEST”)**

### **6.1 The acquiring firm**

The acquiring firm is Africa Chicks, a company incorporated in terms of the laws of Eswatini. The acquiring firm's nature of business is described briefly as follows:

- i. Carrying on business of poultry farmers including the erection or purchase of broiler houses;
- ii. The sale by wholesale or retail of live and dead poultry and of eggs and to carry on the business of manufacturing and selling of chicken and livestock feed; and
- iii. To acquire by purchase, exchange or otherwise lands and buildings of any description, and whether subject or not to any encumbrances and to hold, mortgage or otherwise deal with any such lands or buildings.

### **6.2 The target firm**

The target is Horseshoe Farm situate in the region of Manzini, owned by Early Harvest. The farm comprises mainly of grasslands with some old irrigated lands and is currently used for grazing. Early Harvest is a property holding company incorporated in terms of the laws of Eswatini.

### **6.3 The decision**



**Eswatini  
Competition Commission**

The Commission considered the products of the firms and concluded that the relevant market is the market for farmland in Manzini Region, Eswatini.

There are overlaps between the activities of the merging parties since Africa Chicks, owns commercial land for farming at Extension 1 Ngwenya Industrial Site, Oshoek. However, the overlaps do not come about as a result of this transaction since the farmland being acquired is in a different geographical area. As such, there will be no market share accretion in the relevant market and the transaction is categorized as a phase 1 because the combined market share post-merger is below 15%. 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 of competition in the country. Therefore, the transaction was approved without conditions.

## **7. ACQUISITION BY LIHHOKO LIMITED (“LIHHOKO”) OF 51% SHARES IN GETBUCKS ESWATINI (PTY) LTD (“GETBUCKS”) HELD BY FAH SA (PTY) LTD (“FAH SA”)**

### **7.1 The acquiring firm**

The acquiring firm Lihhoko is a newly incorporated company with the objective of carrying out the business of providing investment management services in the country through being a business investment hub, carrying out business advisory services and rendering financial services to the public.

### **7.2 The target firm**

The target firm Getbucks is a company duly registered and incorporated in terms of the laws of Eswatini. Getbucks is a micro-lending financial services provider registered with the Financial Services Regulatory Authority (“FSRA”).

### **7.3 The decision**

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

There are no overlaps between the activities of the merging parties in the relevant market since the acquiring firm is currently not active in the relevant market. The transaction was categorized as phase 1 because the combined market share post-merger is below 15%. Post-merger, the market shares in the relevant market, market concentration, countervailing power and barriers to entry will not be affected and



**Eswatini  
Competition Commission**

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

**8. ACQUISITION OF 80% SHARES IN WESTCARE HOSPITAL (PTY) LTD (“WESTCARE”) BY ACESO2 HEALTH GROUP (PTY) LTD (“ACESO2”)**

**8.1 The acquiring firm**

The acquiring firm is Aceso2, a company incorporated in terms of the laws of Eswatini. Aceso2 is in the business of providing health and medical treatment including building of private hospitals and clinics; private primary, secondary health facility and hospital services.

**8.2 The target firm**

The target firm is Westcare a company registered and incorporated in terms of the laws of Eswatini. Westcare provides medical laboratory services in the country and operates from the offices of Mbabane Clinic.

**8.3 The decision**

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

- i. the provision of private primary, secondary health facility and hospital services in Eswatini; and
- ii. the provision of medical laboratory services in Eswatini.

In our analysis, we considered the activities of the merging firms within the relevant markets and found that there is a vertical relationship between the operations of the merging parties. The acquiring firm, Aceso2 operates in the upstream market for the provision of private primary, secondary health facility and hospital services in Eswatini. While the target firm operates in the downstream market for the provision of medical laboratory services in Eswatini. As such, the transaction strengthens a vertical relationship and is categorized as phase 3 transaction. Pursuant to the implementation of the proposed transaction, Aceso2 will have a controlling interest in West Care.





**Eswatini  
Competition Commission**

Post-merger, the market shares in the relevant market and market concentration will not be altered such that the structure of the market will remain unchanged since the nature of the transaction is a shareholding restructuring.

In as much as there will be no structural change in the market as a result of the transaction, we however conclude that the strengthening of the verticality of the merged entity may allow the merged parties to invoke foreclosure strategies that may substantially lessen competition in the identified relevant markets. Therefore, the transaction was approved with the following condition –

*Condition*

- 1. The merged entity will not hinder access of clients (customers) to other downstream competitors in the market of laboratory services in Eswatini.*

**9. ACQUISITION BY OPHIR (PTY) LTD (“OPHIR”) OF IMMOVABLE PROPERTY OWNED BY THE ESTATE OF THE LATE ISRAEL CLARENCE HENWOOD (“ESTATE OF THE LATE HENWOOD”)**

**9.1 The acquiring firm**

The acquiring firm Ophir, is a company incorporated in accordance with the laws of Eswatini. Ophir is in the business of agricultural property holding and acquires farm properties and appoints suitable firms to lease the property and operate the farms.

**9.2 The target firm**

Estate of the Late Henwood is the registered owner of the immovable property described as the Remaining Extent of Portion 2 of Farm No. 296, District of Lubombo, Eswatini. The immovable property is intended for commercial farming.

**9.3 The decision**

We considered the products of the firms and concluded that the relevant market is farmland in the Lubombo region.

In as much as there are overlaps in the relevant market the combined market share of the merging firms is below 15% and as such the transaction was categorized as a phase 1. Post-merger the merging firms will have a market share of 0.425% in the relevant market. As a result of the transaction the acquiring firms will have attained



**Eswatini  
Competition Commission**

a market accretion of 0.015% through the immovable property. The market shares in the relevant market and market concentration will not be significantly altered as a result of the transaction. Other factors such as countervailing power and barriers to entry will not be affected by the transaction. As such we conclude that the transaction is not likely to result in a substantial lessening or prevention of competition in the market. Therefore, the transaction was approved without conditions.