

## MERGER DECISIONS – THIRD QUARTER 2022/23

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.

### **1.0 ACQUISITION BY M.A. RANCHES (PTY) LTD ("M.A. RANCHES") OF IMMOVABLE PROPERTIES IN THE SHISELWENI AND LUBOMBO REGIONS (THE "TARGET ASSETS") FROM THE EXECUTORS OF THE ESTATES LATE HHH STEFFEN AND OKH STEFFEN AND OKH FARMS**

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

The acquiring firm is M.A. Ranches, a company duly registered in accordance with the company laws of Eswatini and carries on the business of property holding, cattle and other farming in the Hhohho Region.

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

The Target Assets are immovable properties described as farmland owned by Estate Late OKH Steffen, Estate Late HHH Steffen and OKH Farms. OKH Farms is a company duly registered in terms of the company laws of Eswatini and is involved in commercial farming of sugarcane, bananas and other farming in the Lubombo Region.

#### **1.3 The decision**

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

- i. the market for farmland in the Shiselweni Region, Eswatini; and
- ii. the market for farmland in the Lubombo Region, Eswatini.

There are no overlaps between the activities of the merging parties since the acquiring firm, M.A. Ranches, is involved in the business of property holding, cattle and other farming in the Hhohho Region and Manzini Region while the Target Assets are farms in the Shiselweni and Lubombo Regions. As such, there will be no market share accretion in the relevant markets 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 markets, 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. ***The transaction was approved without conditions.***

## **2.0 ACQUISITION BY THE MKHAYA TRUST (“MKHAYA”) OF TARGET ASSETS OWNED BY OKH FARMS (PTY) LIMITED (“OKH FARMS”) AND CTC (PTY) LIMITED (“CTC”)**

### **2.1 The acquiring firm**

The acquiring firm is Mkhaya. Mkhaya is in the business of wildlife and tourism in the Lubombo Region.

### **2.2 The target firm**

The target assets are immovable properties owned by OKH Farms and CTC. CTC is a subsidiary of OKH Farms. Both OKH Farms and CTC are companies duly registered in terms of the laws of Eswatini and carrying on their business in the Lubombo Region.

### **2.3 The decision**

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

- I. Farmland in the Lubombo Region; and
- II. Farmland in the Shiselweni Region.

There are overlaps in the relevant markets in as far as the Lubombo Region since Mkhaya already owns farmland there. In as much as there are overlaps in the relevant market the combined market share of the merged firms is below 15% and as such the transaction was categorized as a phase 1. Post-merger the merging firms will have a combined market share of 0.37% in the Lubombo Region since Mkhaya will attain a market accretion of 0.27%, which is insignificant and will not change the

structure of the relevant market. On the other hand, Mkhaya will have a market share of 0.31% in the Shiselweni Region. 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.**

### **3.0 ACQUISITION OF 50% ISSUED SHARE CAPITAL IN MWELASE MINING ESWATINI (“MME”) BY MCWAYI MINING ESWATINI (PTY) LTD (“MCWAYI”)**

#### **3.1 The acquiring firm**

The acquiring firm is Mcwayi. Mcwayi is incorporated in terms of the laws of Eswatini.

#### **3.2 The target firm**

The target firm is MME, having its principal place of business at Emphalwini Mall, Office No.13, Dr. Sishayi Road, Mbabane Eswatini. MME is a recently incorporated company.

#### **3.3 The decision**

The Commission considered the products of the firms and concluded that the relevant market is mining of iron ore in Eswatini.

In our analysis, we considered the activities of the merging firms and found that there are no overlaps in the relevant market; as such the transaction was categorized as a phase 1. Mcwayi is recently incorporated, with no current business operations or revenue attributable to Eswatini. Similarly, MME has not generated any revenue in, into or from Eswatini. 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. **The transaction was approved without conditions.**

### **4.0 ACQUISITION BY SWAZI LOTTERY TRUST (PTY) LTD (“SWAZI LOTTERY TRUST”) OF GAMING MACHINES AND ASSOCIATED EQUIPMENT FROM NOVOMATIC SWAZILAND (PTY) LTD (“NOVOMATIC SWAZILAND”)**

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

The acquiring firm, Swazi Lottery Trust is a company incorporated in terms of the laws of Eswatini and having its principal place of business at King Mswati III Avenue East, 10th Street, Matsapha Industrial Site, Eswatini. Swazi Lottery Trust is a fully licensed lottery-operating company with a number of business units across Eswatini.

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

The target assets are gaming machines and associated equipment owned by NOVOMATIC Swaziland, a company incorporated in accordance with the company laws of Eswatini and having its principal place of business at King Mswati III, 10<sup>th</sup> Street, Matsapha Industrial Site, Eswatini.

#### **4.3 The decision**

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

There are no overlaps between the activities of the merging parties since the acquiring firm, Swazi Lottery Trust, is involved in the market for the provision of gaming and related services but does not own or distribute gaming machines and associated equipment. The transaction is 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. ***The transaction was approved without conditions.***

### **5.0 ACQUISITION BY ESWATINI ASSOCIATION OF SAVINGS AND CREDIT CO-OPERATIVE SOCIETY LIMITED (“ESASCCO”) OF 100% ISSUED SHARES IN VIEW COURT (PTY) LTD (“VIEW COURT”)**

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

The acquiring firm is ESASCCO a savings and co-operative society duly registered in accordance with the laws of the Kingdom of Eswatini. ESASCCO is controlled and regulated in terms of its By-Laws.

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

The target firm is View Court a company duly registered and incorporated in accordance with the laws of Eswatini. View Court owns commercial property that is in the business of leasing office and retail space.

### **5.3 The decision**

The Commission considered the products of the firms and concluded that the relevant market is commercial property in Mbabane. In our analysis we considered the activities of the merging firms and found that there are no product overlaps in the relevant market. As such the transaction is categorized as a phase 1. ESASCCO is a savings and co-operative society while View Court is a property holding company for a commercial property in the business of leasing office and retail space. 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. 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. ***The transaction was approved without conditions.***

## **6.0 ACQUISITION OF A PART OF THE BUSINESS RELATING TO TRUCKS AND BUSES AND PARTS OF THE COMMERCIAL VANS BUSINESS OF SANDOWN MOTOR HOLDING (PTY) LTD (“SANDOWN MOTORS”) BY DAIMLER TRUCK HOLDING AG (“DT HOLDING AG”)**

### **6.1 The acquiring firm**

The acquiring firm is DT Holding AG, a holding company which wholly-owns and controls the operative business making up Daimler Truck Group through Daimler Truck AG (“DTAG”). DT Holding AG is listed at the Frankfurt Stock Exchange. DTAG is a stock corporation governed by the laws of Germany. DTAG is active in the truck and bus business and is focused on the manufacturing and sale of trucks and buses. The brand portfolio for trucks comprises Mercedes-Benz, Freightliner, Western Star, Fuso and BharatBenz. DTAG product range for buses comprises of city and inter-city buses, touring coaches and bus chassis. Buses are sold under the brands Mercedes-Benz, Setra, Thomas Built Buses and Fuso. DTAG is also active in the financing of trucks and buses through its financing services companies. DT Holding's shares are in free float.

### **6.2 The target firm**

The target firm is Sandown Motors and its principal place of business is at The Braes Office Park, Bryanston, Johannesburg, South Africa. Sandown Motors is a subsidiary of Mercedes-Benz South Africa Limited ("MBSA") and an indirect subsidiary of MBG, markets and sells trucks and busses produced by the Daimler Truck Group under the brands Mercedes-Benz, Fuso and Freightliner. Currently, Sandown Motors is also in the retail sale for passenger cars and vans. Sandown Motors will continue to sell commercial vans produced by MBG under the Mercedes-Benz Brand and trucks and buses produced by Daimler Truck Group.

### **6.3 The decision**

The Commission considered the products of the firms and concluded that the relevant market is the sale and service of commercial vehicles (trucks and buses) by franchised dealership in Eswatini.

In our analysis, we considered the activities of the merging firms and found that, there are no overlaps in the relevant market as such the transaction was categorized as a phase 1. The market shares in the relevant market and market concentration will not be 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 relevant market. ***The transaction was approved without conditions.***

## **7.0 ACQUISITION BY UMLAMULI (PTY) LTD (“UMLAMULI”) OF IMMOVABLE PROPERTY HELD BY KWAKITSI INVESTMENTS (PTY) LTD (“KWAKITSI”)**

### **7.1 The acquiring firm**

The acquiring firm is Umlamuli, a wholly owned subsidiary Public Service Pensions Fund (“PSPF”). PSPF is a Fund established in terms of the Public Service Pensions Order of 1993 and 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. At a secondary level and as part of PSPF's investment portfolio, the acquiring firm (through PSPF) has an ownership stake in various business enterprises actively engaged in real estate leasing, hospitality and forestry. PSPF is accountable to the government of the Kingdom of Eswatini represented by the Minister of Public Service and is constituted by its members and directed by the Board of Trustees. All Eswatini government employees are required by law to become contributing members of PSPF. Every government employee's contribution is deducted from their salaries

### **7.2 The target firm**

The immovable property is situated in Mbabane, Hhohho Region. The immovable property is held by Kwakitsi a property holding company ultimately controlled by Eswatini Association of Savings and Credit Co-Operatives (ESASCCO). Presently on the immovable property there is an incomplete building (the ESASCCO Building), which is intended to be completed and used for commercial purposes.

### **7.3 The decision**

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

In our analysis we considered the activities of the merging firms and found that there are overlaps between the activities of the merging firms. Both PSPF and ESASCCO have business interests in commercial property in Mbabane. In the analysis of the transaction the Secretariat found that there will be an overlap in the operations of the merging parties in as far as commercial property within the Mbabane City. This overlap will result in an accretion of 0.0017% in the relevant market. The combined market share post-merger will be below 15% and as such the transaction is categorized as a phase 1. Post-merger, the market shares and concentration in the relevant market will be slightly altered. 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. ***The transaction was approved without conditions.***

## **8.0 ACQUISITION OF 75% ISSUED SHARE CAPITAL BY SHREEN RAGIE (“SHREE”) AND JUNAID RAGIE (“JUNAID”) HELD IN BATA INVESTMENTS (PTY) LTD (“BATA INVESTMENTS”) BY FOZIA BATA (“FOZIA”)**

### **8.1 The acquiring firm**

The acquiring parties are Shreen and Junaid and each is acquiring a shareholding of 37.5% which is held by Fozia in Bata Investments. The acquiring parties do not own any property and have no business interests.

### **8.2 The target firm**

The target firm is Bata Investments a company duly registered and incorporated in accordance with the laws of Eswatini. Bata Investments owns commercial property in the town of Manzini, Eswatini.

### **8.3 The decision**

We considered the products of the firms and concluded that the relevant market is commercial property in Manzini.

In our analysis we considered the activities of the merging parties and found that there are no overlaps. The proposed transaction is a shareholding restructuring. As such, the proposed transaction is categorized as a phase 1. Pursuant to the



implementation of the proposed transaction, the acquiring parties will acquire control over Bata Investments. 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 without conditions.***

## **9.0 ACQUISITION BY AUSTELL PHARMACEUTICALS (PTY) LTD (“AUSTELL”) OF ASCENDIS PHARMA (PTY) LTD (“ASCENDIS PHARMA”); ALLIANCE PHARMA (PTY) LTD (“ALLIANCE PHARMA”); MEDICINE DEVELOPERS INTERNATIONAL (PTY) LTD (“MEDICINE DEVELOPERS INTERNATIONAL”); AND PHARMACHEM PHARMACEUTICALS (PTY) LTD (“PHARMACHEM”)**

### **9.1 The acquiring firm**

The acquiring firm, Austell is a 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 and currently outsources its manufacturing. Austell markets and sells products in both the public and private sector. Its customers include state hospitals, dispensing doctors, wholesalers, private retail pharmacies and private hospitals. Austell has a strong record in supplying to the public sector over the past 15 years.

### **9.2 The target firms**

The target firms are Alliance Pharma, Ascendis Pharma, Medicine Developers International and Pharmachem Pharmaceuticals and they all have their principal business address at 377 Rivonia Boulevard, Rivonia, Johannesburg, 2128.

### **9.3 The decision**

We considered the products of the firms and concluded that the relevant market is the supply of pharmaceutical products (non-narcotic pain and fever and other beta-lactam antibacterial) in Eswatini.

There is a minimal overlap between the activities of the merging parties in the relevant market in respect of Non-Narcotic pain and fever and other Beta-Lactam Antibacterial which both merging firms export to Eswatini. The transaction is 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. ***The transaction was approved without conditions.***