



MERGER DECISIONS – LAST 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 approval without any conditions, or subject to specific 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 total transactional value of international transactions notified and approved during the fourth quarter stood at approximately E2 237 244 303.00 while the total transactional value for domestic transactions was an approximately 53 063 000.00. The total combined annual turnover of both international and domestic transactions stood at approximately E552 453 895 896.00. The sectors include commercial property, insurance, agriculture, construction and wildlife sectors in Eswatini.

The Commission adjudicated on the following mergers in the quarter under review –

1.0 ACQUISITION BY CIH PROJECTS NO. 41 (PTY) LTD OF 100% OF THE SHARES PAMTRO INVESTMENTS NO. 11 (PTY) LTD AS WELL AS THE REMAINING SHARES IN CONLOG (PTY) LTD

1.1 The acquiring firm

The acquiring firm, CIH41 is a special purpose vehicle which does not have any employees or conduct any business operations and has its principal business address at Building 3, Ashlea Gardens Office Park, 180 Garsfontein Road, Pretoria, 0181, South Africa.

1.2 The target firms

The target firms are Conlog; Pamtro; Conlog Metering Solutions; and CIG Metering and their operations are based in Durban, South Africa at the Dube Trade Port with satellite offices in Lagos, Nigeria and Johannesburg, South Africa. Pamtro is controlled by Consolidated Infrastructure Group Limited while Conlog Metering Solutions and CIG Metering are indirectly controlled by CIG.

1.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the supply of smart electricity meters and ancillary services in Eswatini.



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There are no overlaps between the activities of the merging parties in the relevant market because the acquiring firm does not manufacture, supply or distribute electricity meters in 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.***

2.0 ACQUISITION BY THE MKHAYA TRUST (“MKHAYA”) OF THE ENTIRE ISSUED SHARE CAPITAL OF INGWAVUMA ESTATES PROPRIETARY LIMITED (“INGWAVUMA ESTATES”).

2.1 The acquiring firm

The acquiring firm is Mkhaya. Mkhaya is in the business of wildlife and tourism in the Lubombo Region. Mkhaya also owns immovable properties described as farmland in the Shiselweni Region.

2.2 The target firm

The target firm is Ingwavuma Estates. Ingwavuma Estates is a company duly incorporated in terms of the laws of Eswatini.

2.3 The decision

The Commission considered the products of the merging firms and concluded that the relevant market the relevant market is wildlife reserves in Eswatini.

There are overlaps between the activities of the merging parties, however their combined market share is below 15% in the relevant market. The market shares, market concentration, countervailing power and barriers to entry will slightly be affected by this proposed transaction. Post-merger Mkhaya will have a market share accretion of 1.9% in the relevant market which then will result in a total market share of 13.1%. The transaction is categorized as a phase 1. ***Therefore, the transaction was approved without conditions.***

3.0 ACQUISITION BY LEIF 853 (“LEIF 853”) OF THE ENTIRE ISSUED SHARE CAPITAL OF ZIMCO GROUP (PTY) LTD (“ZIMCO GROUP”)

3.1 The acquiring firm

The acquiring firm, Leif 853, is a private company incorporated under the laws of South Africa, with its principal business address at 140 North Reef Road, Elandsfontein, Ekurhuleni,



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Gauteng, South Africa. AutoX is a South African automotive lead-acid battery manufacturer, supplying local and selected African and European markets with batteries used in a number of applications, including automobiles, light commercial vehicles, trucks, industrial, motorcycle, deep cycle and leisure applications. AutoX supplies its products in Eswatini to some customers in the automotive replacement retail and fitment domain.

3.2 The target firm

The target firm Zimco, is a private company registered in accordance with the laws of South Africa and is a producer of lead products and industrial and base minerals (including zinc, aluminium metal and alloys, related chemicals and engineering plastics). Zimco does not have a physical presence in Eswatini. It however sells products and provides services in Eswatini from South Africa. Zimco's activities in Eswatini are conducted through its wholly owned South African subsidiary, Dutton Plastics (Pty) Ltd.

3.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the supply of plastic plumbing products in Eswatini.

There are no overlaps between the activities of the merging parties in the relevant market since the merging parties are not active in Eswatini. The transaction is categorized as 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 of competition in the country. ***Therefore, the transaction was approved without conditions.***

4.0 ACQUISITION BY LIDWALA INSURANCE COMPANY LIMITED OF UNITED HEALTH INSURANCE LIMITED'S HEALTH BOOK

4.1 The acquiring firm

The acquiring firm is Lidwala Insurance, a company incorporated and registered in accordance with the laws of Eswatini. Lidwala Insurance is in the provision of short-term insurance services in Eswatini. Lidwala Insurance offers custom made Alternative Risk Transfer Solutions ("ART") for the insuring public and is an authorized insurer, registered with the Financial Services Regulatory Authority ("FSRA").

4.2 The target firm

The target business is United Health Insurance's health book. United Health Insurance is also a company incorporated and registered in accordance with the laws of Eswatini. United Health

Insurance is in the business of providing health/medical insurance and is registered with FSRA.

4.3 The decision

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

The transaction only relates to an acquisition of an asset, the health book belonging to a failing firm. Lidwala Insurance is venturing into a new market of health insurance; as a result, there are no overlaps. As such the transaction is categorized as a phase 1. The market shares in the relevant market and market concentration will not change 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.***

5.0 ACQUISITION BY SPARK ATM SYSTEMS OF THE ENTIRE BANKING BUSINESS OF ALTRON MANAGED SOLUTION

5.1 The acquiring firm

The acquiring firm, Spark is a private company incorporated in accordance with the laws of the Republic of South Africa, with its principal business address at Spark House, 31 Transvaal St, Paarden Eiland, Cape Town, 7405.

5.2 The target firm

The target firm is the Banking Business of AMS, a business division of Altron TMT Proprietary Limited (Altron TMT), which is a private company incorporated in accordance with the laws of Republic of South Africa, with its principal business address at Altron campus, Woodlands Office Park, 20 Woodlands drive, Woodmead, Johannesburg, 2191. AMS has no physical presence in Eswatini. It is, however, active in Eswatini directly through its South African operations as well as indirectly through Altron Eswatini Proprietary Limited (a subsidiary of Altron).

5.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the supply of ATM hardware, implementation, licensing, repairs and maintenance to Eswatini.

The Commission considered the activities of the merging parties and found that there are overlaps in the relevant market since the proposed transaction is a foreign-to-foreign merger



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between two South Africa entities, therefore there is a horizontal overlap in South Africa. However, regarding their sales into Eswatini there is no horizontal overlap due to Altron being the only provider of their services particularly regarding the maintenance of ATM-related services. The transaction is categorized as a phase 1 merger since there are no overlaps in the operations of the merging parties in the relevant market. Pursuant to the implementation of the proposed transaction, Spark will acquire control over AMS. 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.***

6.0 ACQUISITION BY LIONSHEAD (PTY) LTD (LIONSHEAD) AND THE ROYAL ESWATINI SUGAR CORPORATION LIMITED (RES) OF SHARES IN ENVIRO APPLIED PRODUCTS FROM NUTRIFLO (PTY) LTD (EAP)

6.1 The acquiring firm

The acquiring firms are Lionshead and RES. Lionshead is a company registered in accordance with the company laws of Eswatini which has its registered office at the Tibiyi Insurance House in Zulwini. Lionshead focuses on the manufacture of agricultural inputs in Eswatini and is an existing shareholder in the target firm with 50% shares. RES is a grower and miller of sugar cane carrying on business in Simunye, Mhlume and Tshaneni in the eastern part of Eswatini. Its major business is to plant and grow sugar cane. The mature cane is converted into sugar. RES also produces electricity which is used amongst other things to run its boilers in its factory. In addition to cultivating and processing sugar cane into raw and refined sugar as well as energy production, RES is involved in the following business activities:

- (i) Production and marketing of ethanol and related products;
- (ii) Management of water systems (through Mhlume Water);
- (iii) Property ownership and leasing of such properties to third parties;
- (iv) Hospitality;
- (v) Schools ownership and operation; and
- (vi) Cattle ranching, feed lotting, game farming and abattoir.

In the production and marketing of ethanol and related products, RES produces a hazardous waste bi-product which is termed Concentrated Molasses Solubles (CMS) which is the prime focus in this transaction.

6.2 The target firm

The target is EAP, a company incorporated in terms of the company laws of Eswatini. EAP is a fertilizer vending company which manufactures CMS based liquid fertilizer. The company acquires its CMS from RES which is the acquirer in this transaction.

6.3 The decision

The Commission considered the products of the firms and concluded that there are two (2) relevant markets and these are:

- i. The production of CMS in the Lubombo Region; and
- ii. The manufacturing and application of CMS based liquid fertilizer in Eswatini.

The transaction is categorized as a phase 3 because of the verticality that is created as a result of the proposed transaction. The verticality comes about as a result of an exclusive supply agreement between RES and EAP for the off take of CMS. The essence of the contract is that EAP processes the CMS produced at RES into CMS based liquid fertilizer and thereafter spreads that fertilizer into the sugar cane fields of RES and also sells off the remainder to other sugar cane growers.

Post-merger, the market shares in the relevant markets, market concentration, countervailing power and barriers to entry will not be affected. There are no horizontal overlaps as a result of the transaction and as such there will be no unilateral effects that will arise as a result of the transaction. Coordinated conduct is not known in this industry and is improbable given the structure of the market with RES having a significant upstream and downstream dominance.

There is however a concern which arises due to the verticality which may give the merging parties the ability and incentive to invoke input foreclosure strategies in as far as the distribution of CMS based liquid fertilizers. In order to mitigate any potential input foreclosure strategies, the Commission imposed the following conditions-

Conditions:

- I. *that the merged entity maintains its supplies of CMS based liquid fertilizer to customers at the same terms as pre-merger (i.e., quality and terms of sale etc.);*
- II. *that any extensive changes to quantities being supplied to the customers be submitted to the Eswatini Competition Commission with reasons as to why;*
- III. *that annual quantities of CMS based liquid fertilizer supplied to the different customers be submitted to the Commission for a period of three (3) years; and*
- IV. *that after the three (3) year period, the Commission will request that the annual quantities of CMS based liquid fertilizer supplied to the customers be submitted as and when the Commission deems necessary. **Therefore, the transaction was approved with conditions.***