



MERGER DECISIONS – FIRST QUARTER 2023/24

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

The total transactional value of international transactions notified and approved during this quarter stood at approximately E625, 000, 000.00 while the total transactional value for domestic transactions was approximately E1 600 224 478.00. The total combined annual turnover of both international and domestic transactions stood at approximately E2 736 254 051.00. The sectors of these transactions include commercial property, farmland, poultry and automotive sectors in Eswatini.

In the quarter under review, the Commission adjudicated on the following mergers -

1.0 ACQUISITION BY K202367843 (SOUTH AFRICA) (PTY) LTD OF THE ENTIRE ISSUED SHARE CAPITAL OF DANNY'S AUTO BODY PARTS (PTY) LTD AND THE INDIRECT ACQUISITION OF THE ENTIRE ISSUED SHARE CAPITAL OF DANNY'S AUTO PROPERTY HOLDINGS PROPRIETARY LIMITED

1.1 The acquiring firm

The acquiring firm is K202367843 (South Africa) (Pty) Ltd ("SPE BidCo"). It is a private company registered under the laws of South Africa, which has its principal place of business at 11 Alice Lane building 2, Sandton South Africa 2196. SPE BidCo is a newly established investment holding company and does not conduct any business activities.

1.2 The target firms

The target firms Danny's Auto Body Parts (Pty) Ltd ("Danny's Auto") and Danny's Auto Property Holdings Proprietary Limited ("Danny's Auto Property") are based in South Africa and have no physical presence or assets in Eswatini. Danny's Auto is a private company incorporated in accordance with the company laws of South Africa with its principal place of business at 77 Marlborough Road, Springfield Johannesburg South Africa 2190. Danny's Auto is a wholesaler of high-quality aftermarket automotive parts and accessories for various vehicle types in Southern Africa; and exports products from South Africa to customers in Eswatini. In particular, Danny's Auto is an authorized reseller for premium brands including Dunlop, Lucas and FIAMM, in addition to its own in-house developed brand, Imoto Chemicals. It supplies these brands to Eswatini. Danny's Auto also distributes a portfolio of unbranded products to both wholesalers and retailers that want to rebrand and package their own products.

Danny's Auto Property is a property holding company in South Africa which does not conduct any business activities in Eswatini. The company owns the property on which Danny's Auto conducts its business in South Africa.

1.3 The decision

The Commission considered the products of these firms and concluded that the relevant market is the supply of aftermarket automotive parts in Eswatini.

In its analysis, the Commission considered the activities of the merging parties and found no overlaps in their operations in the relevant market. Pursuant to the implementation of the proposed transaction, SPE BidCo will acquire control over Danny's Auto and Danny's Auto Property. 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. The transaction was approved without conditions.



2.0 ACQUISITION BY RICHMOND ESTATES (PTY) LTD OF 100% ISSUED SHARES OF BATCH FARMS (PTY) LTD

2.1 The acquiring firm

The acquiring firm is Richmond Estates (Pty) Ltd ("Richmond"), a company incorporated in terms of the laws of Eswatini which is in the business of commercial farming in the Lubombo Region. It undertakes sugar cane cultivation at its farm in Nsoko area by way of a quota granted by the Eswatini Sugar Association.

2.2 The target firm

The target firm is Batch Farms (Pty) Ltd ("Batch Farms"), a company incorporated in terms of the laws of Eswatini and owns Portion 5 (a Portion of Portion 1) of farm No. 539, situate in the Lubombo Region and measuring 393.3 (Three Hundred and Ninety-Three, Point Three) Hectares. Batch Farms is also in the business of commercial farming. It cultivates sugar cane in Big Bend by way of a quota granted by the Eswatini Sugar Association.

2.3 The decision

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

In its analysis, the Commission considered the activities of the merging parties and found product overlaps in the relevant market. Both merging parties are in the business of sugar cane cultivation in the Lubombo Region. Post-merger, the market shares in the relevant market and market concentration will be slightly 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.

3.0 ACQUISITION BY NGWANE MILLS (PTY) LTD OF UMBULUZI FARM CHICKENS (PTY) LTD ("UFC") AND UMBULUZI FARM PROPERTIES (PTY) LTD ("UFP")

3.1 The acquiring firm

The acquiring firm is Ngwane Mills (Pty) Ltd ("Ngwane Mills"), a private company registered in accordance with the laws of the Kingdom of Eswatini and having its



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principal place of business at King Mswati III Avenue, West, Matsapha Industrial Site. Ngwane Mills trading as "Feedmaster" is a manufacturer and supplier of animal feed. It operates a fully automated Buhler plant which produces all mono-gastric and ruminant feeds for chicken broilers, pigs, cattle and breeders. It has been operating in Eswatini since 1991 and selling animal feed products in Eswatini. The Feedmaster brand is one of the oldest and strongest brands in the Eswatini animal feed market.

3.2 The target firm

The target firms are Umbuluzi Farm Chicken and Umbuluzi Farm Properties collectively referred to as ("Umbuluzi Farm). Umbuluzi Farm is not a broiler chicken producer or operator, but a chicken abattoir owned by six (6) equally big contract growers.

3.3 The decision

The Commission considered the products of the firms and concluded that there are three (3) relevant markets which are:

- (i) the production and distribution of broiler chicken feed in Eswatini;
- (ii) the production and distribution of broiler chickens by contract growers in Eswatini;
and
- (iii) the retailing of fresh, frozen and packaged broiler chicken products by Lojaf (Pty) Ltd in Eswatini.

In its analysis, the Commission considered the activities of the merging parties and found no horizontal overlaps. The acquiring firm does not farm, slaughter or distribute chickens. The transaction is categorized as a phase 3 merger because of the verticality that is created as a result of the proposed transaction. The verticality comes about as a result of Ngwane Mills being the manufacturer and supplier of broiler chicken feed, supplying the contract growers who are shareholders of Umbuluzi Farm. The proposed transaction will result in the formation of a three-layer market for the merging parties. This formation includes feed millers, contract chicken growers and retailers of fresh, frozen and packaged broiler chicken products.

The Commission found no horizontal overlaps in the relevant markets and therefore the transaction will not give rise to unilateral effects. The Commission also concluded that there is no coordinated conduct potential, as the structure of the market will not



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make it possible. However, the proposed transaction will impact the structure of the market due to the verticality that it creates in the production and distribution of broiler chicken feed (upstream) as well as the production and distribution of broiler chickens by contract growers (downstream). The transaction was therefore approved with the following conditions –

a) Input Foreclosure (Production and distribution of broiler chicken feed)

- (i) *The merged entity shall supply competitors of its downstream division with broiler chicken feed on the same or more favourable terms as it applies pre-merger;*
- (ii) *The merged entity shall supply competitors of its downstream division with broiler chicken feed on the same or higher volumes that applied pre-merger. If there is a reduction in available stock, such volumes will be maintained in a pro-rata basis; and*
- (iii) *The merged entity shall supply competitors of its downstream division with broiler chicken feed of the same or more favourable quality as it applies pre-merger.*

b) Customer Foreclosure (Production and distribution of broiler chickens by contract growers)

- (iv) *The merged entity will not enter into an exclusive agreement to source broiler chicken feed exclusively from its upstream division;*
- (v) *Post- merger, the merged entity's downstream division will not source more than 70% of its annual broiler chicken feed from its upstream division, based on quantities supplied at pre-merger period. The condition will be subject to all credit terms, market and price factors such quantity, quality and availability of supply from the merged entity's competitors. The sourcing cap will be phased out over a five period. The phasing will be as follows;*

Base Year (2023)	Year 1	Year 2	Year 3	Year 4	Year 5
50%	55%	60%	63%	66%	70%

- (vi) *The annual quantities and sources of broiler chicken feed by the downstream division of the merged entity should be submitted to the Commission for a period of five (5) years, thirty (30) days after the end of every financial year;*



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- (vii) The annual sales of broiler chicken feed and customers (contract growers) of the upstream division of the merged entity should be submitted to the Commission for a period of five (5) years, thirty (30) days after the end of every financial year;*

- (viii) The conditions will be evaluated by the Secretariat every 24 months after the completion of the merger to be submitted to the Board of Commissioners should market conditions have change that warrant an evaluation;*

- (ix) That after the five (5) year period, the Commission has the authority to request the annual quantities of sales and procurement of chicken broiler feed from the merged entity as and when the Commission deems necessary for monitoring purposes; and*

- (x) Based on an emergency or any exceptional factors that may occur in the market for the production and distribution of broiler chicken feed in Eswatini and the market for the production and distribution of broiler chickens by contract growers in Eswatini; the merging parties can request for re-evaluation of the conditions with the Secretariat. The application of the re-evaluation will be submitted to the Board of Commissioners with recommendations by the Secretariat.*

4.0 ACQUISITION BY THE ROCHATS OF 100% ISSUED SHARES OF PONDEROSA FARM (PTY) LIMITED

4.1 The acquiring firm

The acquiring parties are the Jane and Mark Rochat who are citizens of Eswatini and residents of Malkerns in the District of Manzini, Eswatini.

4.2 The target firm

The target firm is Ponderosa Farm (Pty) Limited ("Ponderosa") a property holding company incorporated in terms of the laws of Eswatini. Ponderosa is a non-trading entity which owns Portion 4 of farm 1159 measuring 25.7355 (Twenty-Five point Seven



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Three Five Five) hectares in Malkerns District of Manzini, Eswatini. The farm has buildings which provide accommodation for bed and breakfast services in Malkerns.

4.3 The decision

The Commission considered the products of the firms and concluded that the relevant market is the provision of Bed & Breakfast ("B&B") services in Malkerns.

In its analysis, the Commission considered the activities of the merging parties and found no product overlaps in the relevant market since there are no other enterprises controlled directly or indirectly by the merging parties. As such the transaction is categorized as a phase 1 merger. 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.