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GENERAL NOTICES

NOTICE 292 OF 2012

COMPETITION COMMISSION

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

SASOL OIL (PROPRIETARY) LIMITED

AND

BP SOUTHERN AFRICA (PROPRIETARY) LIMITED

CASE NUMBER: 2011DEC0423

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is Sasol Oil (Pty) Ltd ("Sasol Oil") and the primary target is BP Southern Africa (Pty) Ltd ("BPSA") only in respect of its Waltloo fuel depot. In a separate, but related transaction, BPSA is the primary acquiring firm and the primary target firm is Sasol Oil only in respect of its Alrode fuel depot.

This transaction, at its core represents an 'exchange' of ownership in respect of two fuel depots only. Currently, BPSA owns 100% of its Waltloo fuel depot and Sasol Oil owns 100% of its Alrode fuel depot. Post transaction, Sasol Oil will own a 50% stake in BPSA's Waltloo fuel depot.

BPSA's Waltloo depot is located in Waltloo, Pretoria. The depot's major facilities consist of a storage tank farm, offices, a laboratory, a workshop, road and rail gantries, and access to Transnet pipeline. Sasol's Alrode depot is located in Alberton, Johannesburg. The depot's major assets include petrol, diesel and additive storage tanks, office and security buildings, a road gantry and associated pipeline infrastructure.

This transaction gives rise to horizontal dimension and has vertical elements as well. In its assessment the Competition Commission ("Commission") analysed coordinated effects and

potential foreclosure. It was found that the transaction does not result in a substantial lessening or prevention of competition.

With regard to the vertical assessment, the Commission considered the likelihood of foreclosure. The Commission received a concern regarding access to storage facilities. However, the Commission found that this transaction is unlikely to give rise to foreclosure concerns. It was also found that one of the industry dynamics may include pre-existing issues around access to storage facilities. It was further found that these transactions do not give rise to a change in ability to control access at the two storage facilities. Any pre-existing state of the industry in this regard is unlikely to change post-merger.

With regards to coordinated effects, the transactions resulting in joint ownership of the Waltloo and Alrode fuel depots may provide a platform for information exchange (outside the ambit of the exemption as gazette on 03 October 2011 No. 34651 Notice 710 of 2011) between BPSA and Sasol Oil. In this regard, transparency arising within the joint venture at each depot operation may facilitate transparency and coordination across depot operations. The Commission imposes conditions to allay the substantial prevention or lessening of competition that would arise as a result of the coordinated effects.

In addition, there are no public interest concerns.

The Commission therefore approves the transaction subject to the following conditions:

1. Conditions to the approval of the merger

Exchange of Information

- 1.1. Any exchange of information between BPSA and Sasol Oil in respect of the Waltloo depot and Alrode depot is only within the ambit and/or parameters specified in the Exemption as was published in Notice 710 of 2011 Government Gazette no 34651.
- 1.2. The parties will not exchange any information not provided for in the Exemption referred to in paragraph 3.1 above. The information exchange must only be in relation to information which relates to the co-ownership and operations of the Depots and which is necessary for the effective co-ownership and operations of the Depots.

1.3. The parties will not share any of the following information:

- i. Information on customers;
- ii. Pricing Information;
- iii. Volume information relating to customers;
- iv. Logistical information relating to secondary distribution of any product which is collected from any of the jointly owned Depots; and/or
- v. Competitively sensitive information which is not public information, and information which, but for the co-ownership of the Depots by the parties, would not have been available to either party.

2. Monitoring of compliance with the Conditions

- 2.1. The Merging Parties will provide proof of compliance with the conditions contained in paragraphs 3.1 above to the Commission within 6 (six) months from the Approval Date and thereafter within six monthly intervals.
- 2.2. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
- 2.3. The Commission may on good cause shown by the merging parties, lift, revise or amend these Conditions.
- 2.4. The Merging Parties shall submit the reports referred to in 4.1 above by e-mail to mergerconditions@compcom.co.za.

3. Duration

The Conditions contained herein shall exist as long as the BPSA and Sasol Oil have joint control in the Alrode and Wallloo depots.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

NOTICE 293 OF 2012**COMPETITION COMMISSION****NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:****BP SOUTHERN AFRICA (PTY) LTD****AND****ALRODE DEPOT (OWNED BY SASOL LIMITED)****CASE NUMBER: 2011DEC0424**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is BP Southern Africa (Pty) Ltd ("BPSA") and the primary target is Sasol Limited only in respect of its Alrode fuel depot. In a separate, but related transaction, Sasol Oil (Pty) Ltd ("Sasol Oil") is the primary acquiring firm and the primary target firm is BPSA only in respect of its Wallloo fuel depot.

This transaction, at its core represents an 'exchange' of ownership in respect of two fuel depots only. Currently, BPSA owns 100% of its Wallloo fuel depot and Sasol Oil owns 100% of its Alrode fuel depot. Post transaction, BPSA will own a 50% stake in Sasol Oil's Alrode fuel depot.

BPSA's Wallloo depot is located in Wallloo, Pretoria. The depot's major facilities consist of a storage tank farm, offices, a laboratory, a workshop, road and rail gantries, and access to Transnet pipeline. Sasol's Alrode depot is located in Alberton, Johannesburg. The depot's major assets include petrol, diesel and additive storage tanks, office and security buildings, a road gantry and associated pipeline infrastructure.

This transaction gives rise to horizontal dimension and has vertical elements as well. In its assessment the Competition Commission ("Commission") analysed coordinated effects and potential foreclosure. It was found that the transaction does not result in a substantial lessening or prevention of competition.

With regard to the vertical assessment, the Commission considered the likelihood of foreclosure. The Commission received a concern regarding access to storage facilities. However, the Commission found that this transaction is unlikely to give rise to foreclosure concerns. It was also found that one of the industry dynamics may include pre-existing issues around access to storage facilities. It was further found that these transactions do not give rise to a change in ability to control access at the two storage facilities. Any pre-existing state of the industry in this regard is unlikely to change post-merger.

With regards to coordinated effects, the transactions resulting in joint ownership of the Waltloo and Alrode fuel depots may provide a platform for information exchange (outside the ambit of the exemption as gazette on 03 October 2011 No. 34651 Notice 710 of 2011) between BPSA and Sasol Oil. In this regard, transparency arising within the joint venture at each depot operation may facilitate transparency and coordination across depot operations. The Commission imposes conditions to allay the substantial prevention or lessening of competition that would arise as a result of the coordinated effects.

In addition, there are no public interest concerns.

The Commission therefore approves the transaction subject to the following conditions:

1. Conditions to the approval of the merger

Exchange of Information

- 1.1. Any exchange of information between BPSA and Sasol Oil in respect of the Waltloo depot and Alrode depot is only within the ambit and/or parameters specified in the Exemption as was published in Notice 710 of 2011 Government Gazette no 34651.
- 1.2. The parties will not exchange any information not provided for in the Exemption referred to in paragraph 3.1 above. The information exchange must only be in relation to information which relates to the co-ownership and operations of the Depots and which is necessary for the effective co-ownership and operations of the Depots.
- 1.3. The parties will not share any of the following information:
 - i. Information on customers;

- ii. Pricing Information;
- iii. Volume information relating to customers;
- iv. Logistical information relating to secondary distribution of any product which is collected from any of the jointly owned Depots; and/or
- v. Competitively sensitive information which is not public information, and information which, but for the co-ownership of the Depots by the parties, would not have been available to either party.

2. Monitoring of compliance with the Conditions

- 2.1. The Merging Parties will provide proof of compliance with the conditions contained in paragraphs 3.1 above to the Commission within 6 (six) months from the Approval Date and thereafter within six monthly intervals.
- 2.2. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.
- 2.3. The Commission may on good cause shown by the merging parties, lift, revise or amend these Conditions.
- 2.4. The Merging Parties shall submit the reports referred to in 4.1 above by e-mail to mergerconditions@compcom.co.za.

3. Duration

- 3.1. The Conditions contained herein shall exist as long as the BPSA and Sasol Oil have joint control in the Alrode and Walloo depots.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

NOTICE 294 OF 2012**COMPETITION COMMISSION****NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:****MARLEY PIPE SYSTEMS (PTY) LIMITED****AND****PETZETAKIS AFRICA (PTY) LIMITED****2011AUG0180:**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firm is Marley Pipe Systems (Pty) Ltd ("Marley") a private company incorporated in accordance with the laws of the Republic of South Africa.

The primary target firm is Petzetakis Africa (Pty) Ltd ("Petzetakis"), a private company incorporated in accordance with the laws of the Republic of South Africa.

This is a hostile takeover in terms of which Marley intends to acquire control over the former business of Petzetakis from a duly appointed liquidator.

There is a horizontal overlap in the activities of the merging parties as they are both active in the manufacture and supply of PVC and HDPE pipe products for use in various sectors, including building, agriculture, civils and mining.

However, Petzetakis ceased trading in December 2010 and is therefore no longer actively competing in the industry.

For purposes of this transaction the Commission has defined the relevant market as the market for the supply of PVC and HDPE pipes in South Africa. In this market the merging parties compete with other players such as DPI, Gazelle, Flotek, MacNeil, and other smaller players like Adritec and Praysa.

In terms of barriers to entry, the Commission has found that these are not insurmountable and this was confirmed by competitors. The main determining factor for entry is SABS accreditation which regulates quality standards in the manufacturing of plastic pipes. The accreditation process takes between 3 to 18 months. In terms of capital requirements and sunk costs, these range depending on scale of entry but low cost equipment can also be imported from China. Other potential barriers could be establishing a good reputation, in order to compete effectively for tenders, and this is likely to take longer for new and smaller entrants. Despite these fairly low barriers, it was also highlighted that no entrant has entered at the same scale as the big players like Petzetakis, Marley or DPI. Instead, a few smaller players have entered while some have exited.

In terms of countervailing power, the Commission found that a big proportion of the sales by the plastic pipes manufacturers are through tenders from mining houses, government (municipalities), and building and construction or infrastructure projects. There are also cross-border sales to various countries in Africa, and a small percentage from day-to-day sales.

The larger customers have more countervailing power and seem able to negotiate discounts with the plastic pipes manufacturers. The smaller customers however do not have as much countervailing power as they are price takers, their volumes are simply too small for them to negotiate prices meaningfully.

With regards to unilateral effects, the Commission's view is that Marley is one of the major players in the industry prior to the merger, and this will not change post-merger. The Commission's view is also that the merger does not change concentration levels in this market significantly, Marley simply replaces Petzetakis, another major player which has exited.

Customers and suppliers of the plastic pipes manufacturers have not raised concerns with this merger. However, Petzetakis, trade unions and competitors have raised concerns about Marley's dominance, employment issues and the process Marley followed in acquiring Petzetakis' assets. The concern raised by Petzetakis and other competitors of the merging

parties is that even though Petzetakis has lost market share since it stopped trading, if their assets are sold to Marley this will increase the merged entity's production capacity such that it becomes a leading player in PVC, HDPE, hose and weholite. One of the concerns raised specifically relates to flexible hose and weholite, where Petzetakis was dominant and the only supplier for weholite. The Commission's view on these concerns is that the merger does not facilitate an accumulation of market share by the merged entity as there are no overlaps in these areas. Further, there are other suppliers of flexible hose such as DPI, Keymak, Nylon Hose and Coilers and others.

Despite all the concerns raised by competitors, the Commission is of the view that this proposed transaction does not raise significant public interest concerns. In arriving at this decision, the Commission has also taken into account the fact that Marley has agreed to employ a number of former Petzetakis employees. These are employees that are currently unemployed. The merger will therefore have a positive public interest outcome.

The Commission therefore approved this merger with conditions

1. Conditions to the approval of the merger

- 3.1 Within a period of 6 (six) months after the Approval Date, Marley shall [REDACTED] [REDACTED] employees who were in Petzetakis' employ at the date upon which Petzetakis ceased trading.
- 3.2 For the sake of clarity, the [REDACTED] positions referred to above shall include the [REDACTED] [REDACTED] former employees of Petzetakis that have, as at the Approval Date, already been offered contracts of employment by Marley.
- 3.3 For a period of 2 (two) years, Marley shall not terminate contracts of employment of the employees referred to in paragraph 3.1.

2. Monitoring of compliance with the Conditions

- 4.1 Marley and Petzetakis must circulate the condition in paragraph 3 above to all the employees referred to in paragraph 3.1 within 7 (seven) days of the Approval Date.
- 2.1. Marley will provide proof of compliance with the conditions contained in paragraph 3 above to the Commission within 6 (six) months from the approval date and thereafter within six monthly intervals for a period of 2 (two) years.
- 2.2. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

- 4.2 The Commission may on good cause shown by the merging parties, lift, revise or amend these Conditions.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

NOTICE 295 OF 2012**COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:**

KENILWORTH RACING (PTY) LTD | THE THOROUGHBRED HORSERACING TRUST
AND | AND
GOLD CIRCLE (PTY) LTD | KENILWORTH RACING (PTY) LTD
2011DEC0429 | 2011DEC0427

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms:

There are two interdependent transactions under consideration. In the first merger (case 2011Dec0429), the primary acquiring firm is Kenilworth Racing (Pty) Ltd ("Kenilworth") and the primary target firm is the Western Cape business division of Gold Circle (Pty) Ltd ("Gold Circle WC"). In the second merger (Case 2011Dec0427), the primary acquiring firm is the Thoroughbred Horseracing Trust ("The Trust") and is acquiring this business of the acquiring firm in the first merger, namely, Kenilworth. Each of these proposed transactions is dependent on the other and cannot be considered in isolation.

Phase one of the transactions involves Kenilworth acquiring control over Gold Circle WC. Phase two of the transaction involves The Trust acquiring control over Kenilworth. Ultimately the Trust will control Kenilworth, and thereby Gold Circle WC.

In terms of the rationale for the transactions, The Trust envisages that Kenilworth, when controlled by the Trust, will be able to reposition and restructure Gold Circle WC, operationally and financially so as to render Gold Circle WC viable. From the perspective of the target, the

rationale is effectively to restore the *status quo* as it existed prior to Gold Circle KwaZulu-Natal ("Gold Circle KZN") and Western Cape ("WC") 'merging' in 1998. This is to separate the horseracing and betting operations of KZN with WC. However this is cited as only the first step to revival of the sport in WC. The second step is to sell the shares held in Kenilworth to a shareholder financially capable with the necessary strategic re-direction.

In terms of the activities of the parties, The Trust does not sell any products or services. However, in light of the 'Management Agreement' between Phumelela and Kenilworth; Phumelela will manage the current totalisator ("tote") business of Gold Circle WC on behalf of The Trust for a management fee. Concurrently, Phumelela is a betting tote operator in seven of South Africa's nine provinces. It operates and maintains racecourses, operates and manages Tellytrack televising horseracing events and is involved in *inter alia*, tote betting on other sports. Similarly to Phumelela, Gold Circle WC operates as an administrator of the sport of thoroughbred horseracing and training in the province of the Western Cape. Gold Circle (Pty) Ltd ("Gold Circle") can be split into Gold Circle WC and Gold Circle KZN (which operates the KZN province).

Given the activities above, there is a horizontal relationship that arises. In particular, there are several alignment factors between Kenilworth, The Trust, and Phumelela, which gives rise to common interests between the three. As such, the Commission's assessment takes Phumelela into account, even if technically, it is not a party to the proposed transaction.

The alignment arises through various layers which includes *inter alia*, the following. Firstly, The Trust holds approximately 35% (and is the single largest shareholder) of Phumelela. The Trust derives its sole source of revenue from the dividends it earns from Phumelela. Concurrently, The Trust will also be in sole control of Kenilworth by virtue of the proposed transaction. Secondly, in terms of the Management Agreement, Phumelela will manage key components of Kenilworth business, which strongly aligns the interests between the two. Thirdly, at least five of the current trustees of The Trust have current financial interests in Phumelela. Lastly, two of these trustees also sit on the board of Phumelela. As such, it is the Commission's view that the interests of The Trust, Phumelela and Kenilworth are aligned.

In terms of the market definition the Commission concluded on the following relevant markets:

- i. The national market for the administration of the sport of thoroughbred horseracing at racecourses and the facilitation of race meetings and training of thoroughbred racehorses;
- ii. The national market for non-exotic bets on horseracing with respect to the tote and bookmakers;
- iii. The national market for exotic bets on horseracing with respect to the tote and bookmakers; and
- iv. The national media rights market for the broadcast of horseracing picture and the pre-race data.

The transactions give rise to horizontal dimension in relation to the markets described above. In the sport administration market, Phumelela's share will increase from approximately 56% to 77%. Gold Circle KZN will hold the remaining market share. Thus, whatever incumbency constraint Gold Circle WC posed over Phumelela pre-merger is significantly reduced post-merger. In the market for exotic bets Phumelela's share will increase from approximately 60% to 70%. The remaining share is held in majority by Gold Circle KZN and an insignificant portion by the large bookmakers. In addition, Phumelela and Gold Circle have a joint venture called Phumelela-Gold Enterprises ("PGE") which has a monopoly over the horseracing media rights market in South Africa.

The market for the administration of the sport of horseracing is inextricably linked with the betting side of the industry. The Commission notes that the Management Agreement will place Phumelela as the effective manager of the new Kenilworth entrant post-merger. In essence, Kenilworth, like Phumelela, might only have an incentive to pose a competitive threat to Gold Circle KZN and not between themselves by virtue of their alignment of interests. It is the Commission's view that the transactions under consideration are not intended to introduce more players in the horseracing industry as envisaged, but to further enhance the position of the leading firm in the industry, namely Phumelela. Therefore without effective competition, it is likely that the quality of the horseracing event may deteriorate to the detriment of key role players such as owners, trainers, jockeys and many enthusiasts of horseracing.

The proposed transactions allow Phumelela to significantly further entrench its already strong position such that Phumelela can exert market power within the horseracing administration market itself and into adjacent markets. In particular, Phumelela can leverage its dominance

from the horseracing administration market into the media rights market and thereafter the betting markets. There are several strategy documents alluding to Phumelela's keen interest in single-handedly controlling the entire horseracing industry in South Africa.

Whilst Phumelela's position in horseracing administration and tote-based betting is increasing, essentially, the entire business of Gold Circle is being 'cut' into approximately half. As such, its revenues from the commingling pool and the media rights is likely to significantly fall, placing it at a significantly weaker competitive position. While its profitability may improve through the reduction of costs, its size may be too small to significantly influence the competitive landscape in horseracing going forward.

In the exotic betting market itself, Phumelela will also acquire a significant position. This will also place Phumelela in a strong position to exercise market power in the exotic bets market. In addition, given the alignment of interests between The Trust, Kenilworth and Phumelela, it is the Commission's view that given any choice, the parties will act cooperatively rather than competitively.

Barriers to entry into both the horseracing administration and tote-based betting markets are significantly high. Among other factors, the inextricability of requiring both race course and tote licence effectively constrains entry to more than one market simultaneously. Moreover, critical mass and televised media are no trivial barriers to overcome in entering the market as a third Race Operator. The critical mass is required to enter effectively in the form of hosting a large enough totalisator prize pool to attract punters. Currently Phumelela and Gold Circle commingle their totalisators into a national pool. A new entrant in a single province may have to compete against a national pool which can be challenging. The Commission found that bookmakers and punters have limited countervailing power.

Whilst the parties have advanced a failing firm doctrine, it is the Commission's view that it does not meet the minimum requirement for a failing firm doctrine. Further the parties did not sufficiently discharge the onus of advancing efficiency argument that convincingly offset any possible anti-competitive outcomes of the proposed transactions.

The parties have raised several public interest benefits for the proposed transactions. However, it is the Commission's view that the benefits are not exclusively provided by the proposed transactions alone, they can still be realised in the potential alternative transactions.

Taken as whole, it is the Commission's view that the proposed transactions result in a significant lessening of competition in the affected markets. The Commission prohibits the transactions.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

NOTICE 296 OF 2012**COMPETITION COMMISSION****NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:****EVONIK INDUSTRIES AG****AND****MAIZEY (PTY) LTD AND AMPAGLAS (PTY) LTD AND MAIN STREET 902 (PTY) LTD****CASE NUMBER: 2011DEC0422**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The first acquiring firm is Evonik Industries AG ("Evonik"), a private company with limited liability incorporated in terms of the laws of Germany. Evonik is a worldwide chemical manufacturer and supplier of plastics. The second acquiring firm is Maizey (Pty) Ltd ("Maizey"), a private company with limited liability incorporated in terms of the laws of South Africa. Maizey is a distributor of plastic products in South Africa.

The first target firm is Ampaglas Plastics Group (Pty) Ltd ("Ampaglas"), a private company with limited liability incorporated in terms of the laws of South Africa. Ampaglas is a manufacturer and supplier of extruded acrylic products within South Africa. The second target firm is Main Street 902 (Pty) Ltd ("Newco"), a newly incorporated private company with limited liability incorporated in terms of the laws of South Africa.

There is both a horizontal and vertical dimension to this transaction. However, the vertical dimension falls away because Maizey has withdrawn from the transaction.

The relevant upstream market is that for the manufacturing and supply of cast and extruded Polymethyl Methacrylate ("PMMA") acrylic sheets and is a national market with significant imports. The relevant downstream market is that for the distribution of general plastics, including cast and extruded PMMA acrylic sheets and is national in scope.

Ampaglas competes with Evonik in South Africa for the supply of PMMA extruded acrylic sheeting, as the Ampaglas Acrilan brand competes with Evonik's Plexiglas brand. Ampaglas does not compete with Evonik in the cast acrylic segment.

Upon approval of this transaction, a new company will be formed (Newco) which will act as a special purpose vehicle for Evonik and Ampaglas. Evonik will have a controlling interest of [REDACTED] and Ampaglas an interest of between [REDACTED]. Before its withdrawal, Maizey was to have an interest of between [REDACTED]. The merging parties have confirmed that Evonik will now have a controlling interest of [REDACTED] and Ampaglas an interest of [REDACTED].

Therefore post-merger, Ampaglas and Evonik will no longer operate PMMA product lines within their individual businesses or distribute these within Southern Africa. These products, made up of cast acrylic (imported by Evonik) and extruded acrylic (manufactured by Ampaglas and imported by Evonik), will now be housed within Newco. Thus, these two companies will not compete in the market for PMMA products. Ampaglas will continue to manufacture its other plastic product lines post-merger independently of Newco. Newco will manufacture extruded acrylic and import the cast acrylic from Evonik in Germany. The Commission has placed a condition upon the merger in this regard in order to ensure that Newco does not expand its business into any other product lines that its parent companies are currently active in without notifying the Commission first. The condition applies for a period of two years. The merging parties have agreed to this condition.

In terms of the horizontal dimension, the estimated market share of the merged entity based on volumes and sales in 2010 and 2011 [REDACTED]

[REDACTED] Even though extruded acrylic can be imported by large distributors as import tariffs are very low, these do not provide a perfect substitute to local

production for various reasons including the scale required to import, the lead times required and fluctuations in the exchange rate. The Commission therefore found that the proposed transaction is likely to substantially lessen or prevent competition upstream, in the manufacturing of PMMA products, especially extruded acrylic which is the only market where Ampaglas competes with Evonik.

The merging parties have also claimed that the pairing of Ampaglas and Evonik will create considerable efficiencies. The Commission has analysed the transaction and concluded that it will have positive results at least in terms of making a South African company more competitive internationally and positively influence the PMMA sector within South Africa in terms of innovation. The Commission therefore found that the efficiencies that will be realised as a result of this merger outweigh any likely competition concerns. Views of third parties also confirm that this merger will provide a much needed boost to Ampaglas, which is struggling financially.

In terms of public interest, this transaction will also boost local production capacity of PMMA, and the plastics sector, such that the local market is more competitive.

There were also competition concerns in relation to the addition of Maizey, the largest distributor in the country, as a party to this transaction. However following a meeting with the Commission on 9 March 2012 regarding possible conditions that the Commission intended to impose on Maizey, Maizey formally withdrew from the transaction on 12 March 2012. The Commission has agreed with the merging parties that a condition will be imposed for Maizey to divest its stake in this transaction.

Although the transaction is likely to lead to a substantial lessening of competition in the manufacturing and supply of PMMA, the efficiencies and public interest benefits outweigh the likely negative effect on competition.

The Commission therefore approves this merger subject to conditions set out below:

1. Conditions

- 1.1. Newco shall be obliged to notify the Commission in the event that it elects to extend its product range, if the new product range includes product currently produced, sold or distributed by the merging parties in South Africa.
- 1.2. Maizey shall divest its 15% shareholding within Newco with immediate effect.

2. Monitoring

- 2.1. Newco shall submit an affidavit by a senior official indicating the current product markets in which it is operating and whether any new products have been introduced. The affidavit will be submitted annually, effective from 1st of April 2013.
- 2.2. Within 1 month of the Approval Date, Newco shall submit an affidavit by a senior official attesting to the compliance of the condition in paragraph 3.2.
- 2.3. The Merging Parties shall submit the reports referred to in paragraph 3 above by e-mail to mergerconditions@compcom.co.za.

3. Duration

The condition in 3.1. will apply for a period of 2 years from the date of the Commission's approval.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.
