Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID AFRIKA

Vol. 620 | 24 February Februarie 2017 | No. 40645

ISSN 1682-5843

9 771682 584003 40645

Contents

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 149 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

DRS DIETRICH, VOIGT, MIA & PARTNERS

AND

DR WJH VERMAAK INCORPORATED

CASE NUMBER: 2015DEC0694

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:

1. On 29 February 2016 the Competition Commission ("Commission") was notified of an intermediate merger wherein Drs Dietrich, Mia and Partners ("PathCare") intends to acquire majority control in Dr WJH Vermaak Incorporated ("Vermaak"). Post-merger, PathCare and the shareholders in Vermaak, Professor WJH Vermaak and Dr BJ Ubbink will have joint control over Vermaak. The acquiring firm has entered into a restraint of trade agreement with the Sellers.

2. The primary acquiring firm, PathCare, is duly registered in accordance with the company laws of South Africa. PathCare is comprised of substantial partners/pathologists, several of whom are historically disadvantaged individuals. The individual pathologists do not have any other interests. PathCare offers pathology services in various areas including chemical, haematology, microbiology, histology, and virology through in-hospital and out-of-hospital laboratories/depots. PathCare is active in several provinces and has a small presence in the Gauteng province.

3. The primary target firm, Vermaak, a personal liability company duly incorporated in accordance with the company laws of South Africa. Vermaak is jointly controlled by individuals ("Sellers"), who hold equal interest in the company. Vermaak also offers pathology services in various areas including chemical, haematology, microbiology, virology, histology and to a limited extent, molecular testing. Vermaak's activities are limited to the Gauteng province, particularly in Pretoria and Ekurhuleni.
4. There is a horizontal overlap in the activities of the merging parties, as both PathCare and Vermaak are active in the provision of pathology services to the private healthcare sector. The horizontal overlap with respect to histopathology is marginal. Further, the merging parties have entered into a laboratory services sub-contracting agreement at Mediclinic Midstream Hospital ("Midstream"). In terms of the agreement, Vermaak independently operate pathology laboratory services to Midstream on behalf of PathCare which was appointed as the resident pathology laboratory following its success as a preferred bidder.

5. The Commission assessed the likelihood of unilateral effects and coordinated effects. The assessment of unilateral effects considered whether the merged entity will be able to exercise market power as a result of the elimination of competition between PathCare and Vermaak. Given the symmetry that will exist post-merger, the Commission also considered the likelihood for the proposed transaction to result in coordinated effects. Lastly, the Commission considered whether the relationship of the merging parties at the Midstream was not a prior implemented transaction. The Commission further considered the likely effects of the restraint of trade entered between the merging parties.

6. In defining the market, the Commission considered whether pathology services offered by pathology laboratories can be regarded as a single product.. The Commission concluded on the market for the provision of pathology services to the private healthcare sector in Gauteng although the national market dynamics were considered.

7. The Commission found that the merged entity will account for a relatively low market share in Gauteng and within the national market. The merged entity will remain relatively

small in Gauteng but the proposed transaction strengthens PathCare as the third major national pathology services provider. The Commission further found that the merging parties' laboratories/depots are located relatively far apart from each other with an extensive network of competitors' laboratories/depots in between.

8. With regard to coordinated effects assessment, the Commission found that the structure of the market is prone to coordination. There are high barriers to entry, low number of market participants and product homogeneity. The Commission further found that PathCare still remains relatively small in Gauteng than the other two major players and that together with the different cost structures of the players weakens the symmetry in the market. The Commission noted that the historical relationships between hospital groups and pathology laboratories appear intact and the merger will not change or strengthen this. Therefore the extent of the effects of the merger on the likelihood of coordination is unlikely to be significant. However, the Commission remains concerned about the historical relationships in place and that such relationships may be excluding smaller pathologists from gaining access to key hospital space and gaining market share in the pathology market.

9. Furthermore, the Commission found that the merging parties have not violated prior implementation in their agreement to sub-contract pathology services at the Midstream Hospital.

10. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the provision of pathology services to the private sector in Gauteng or the national market.

11. The proposed transaction does not raise any public interest concerns because it will not result in job losses. The Commission considered the Restraint of Trade agreement of the merging parties and found that the restraint of trade was overreaching as it covered geographic locations in which Vermaak was not active. Therefore, the Commission approves the proposed transaction with conditions in Annexure A, in terms of section 14(1)(b)(ii) of the Act, as amended.

ANNEXURE A

Drs Dietrich, Voigt, Mia & Partners

and

Dr WJH Vermaak Incorporated

Case Number: 2015Dec0694

CONDITIONS

1 DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

1.1 "**Acquiring Firm"** means PathCare;

1.2 "**Act**" means the Competition Act 89 of 1998, as amended;

1.3 **"Approval Date"** means the date referred to on the Commission's merger clearance certificate (Form CC 15);

1.4 **"Business"** means the business carried out by Vermaak under the name and style of "*Vermaak and Partners Pathologists*" being the business of providing in and out of hospital pathology testing, and all activities ancillary thereto including providing insurance related and point of care pathology tests;

1.5 **"Business Day"** mean any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.6 **"Business Services"** mean the services rendered by Vermaak in the ordinary course of its business of providing in and out of hospital, insurance-related and point of care pathology testing within the Territory;

1.7 "**Closing date**" means 5 (five) Business Days after the Implementation Date;

1.8 "**Commission**" means the Competition Commission of South Africa as established in terms of section 19 of the Act;

1.9 "**Conditions**" mean these conditions more fully described in clause 3 below;

1.10 "**Executive Consulting Agreement**" means certain agreements between the merging parties;

1.11 "**Implementation Date**" means the first Business Day of the month immediately following the month in which the Approval Date falls;

1.12 **"Initial Purchase"** means the acquisition of majority control in Vermaak;

1.13 "**Merger**" means the transaction notified to the Commission on 29 February 2016 under case number 2016Feb0066, in terms of which *inter alia* PathCare intends to acquire majority control in Vermaak;

1.14 "**Merging Parties**" means PathCare and Vermaak;

1.15 **"Option Purchase"** means the exercising of a call option by PathCare to purchase the remaining minority stake in Vermaak;

1.16 "**PathCare**" means Drs Dietrich, Voigt, Mia and Partners, a partnership carrying on business as pathologists;

1.17 **"Restraint Period"** means the period during which the Sellers are restrained from rendering Restricted Services;

1.18 **"Restraint of Trade"** means the restraint of trade in relation to the Restricted Business for the duration of the Restraint Period in the Territory;

1.19 "**Restricted Business"** means any Restricted business service rendered by the Sellers in competition with the Business Services;

1.20 **"Restricted Services**" mean any services which are rendered within the Territory in competition with the Business Services;

1.21 "**Sale of Shares and Claims Agreement**" means the Sale of Shares and Claims Agreement between the Merging Parties;

1.22 "**Sellers"** means the individuals who hold shares in Vermaak, the only shareholders in the Target Firm;

1.23 **"Target Firm"** means Vermaak;

1.24 "**Territory**" means each province within the Republic of South Africa and each magisterial district in the Republic of South Africa as contained in clauses 2.1.71 and 2.1.71.1 in the Sale of Shares and Claims Agreement; and

1.25 **"Vermaak**" means Dr WJH Vermaak Incorporated, the target firm.

2 RECORDAL

2.1 On 29 February 2016, the Merging Parties notified the Commission of the Merger between PathCare and Vermaak. Following its investigation, the Commission found that the Merger is unlikely to substantially prevent or lessen competition in the Gauteng provincial market in which Vermaak is currently present and in the national market where PathCare is present for the provision of pathology services to the private health sector. The Commission raised concerns relating to the Merging Parties' Option Purchase and the Restraint of Trade as set out in the Sale of Shares and Claims Agreement.

Approval of Option Purchase

2.2 In terms of the Merger, PathCare intends to acquire majority control in Vermaak ("**Initial Purchase**"). In addition, PathCare will have a call option to purchase and the Sellers a put option to sell the remaining minority stake in Vermaak, after a stipulated period. However, there are certain trigger events which, if they occur, would entitle PathCare or the Sellers to exercise their call or put option, respectively, before the stipulated period.

2.3 The Merging Parties requested that the Commission currently approve both the Initial Purchase and the Option Purchase. However, the minority shareholding confers a form of control to the Sellers due to minority protections and hence the Merging Parties will have joint control over Vermaak, even though the Initial Purchase enables PathCare, the Acquiring firm, to "*cross the bright line*" as envisaged in section 12(2)(a) of the Act.

2.4 The Commission is of the view that the Option Purchase, if exercised, would constitute a separate notifiable merger transaction in that there will be a move from joint to sole control after the acquisition of the minority shareholding in Vermaak. PathCare would thereafter have unfettered control.

2.5 Nonetheless, the Commission assessed the proposed transaction as filed and is of the view that the stipulated period between the Initial Purchase and Option Purchase is significant in light of the case law which ordinarily proposes a period of 18 months within which merging parties may merely inform the Commission of a move from joint to sole

control. Therefore, a period longer than that, would warrant further investigation by the Commission. In this respect, the Commission recommends that the proposed transaction be approved subject to a Condition addressing this concern.

Restraint of trade

2.6 PathCare and the Sellers have agreed to a Restraint of Trade in terms of which the Sellers will not directly or indirectly engage or have an interest in any Restricted Business, or entity carrying on any Restricted Business in the Territory for the duration of the Restraint Period.

2.7 The Commission considered the Restraint of Trade including its duration and scope. Following its investigation, the Commission found that the period of 24 months after termination of the Sellers' services on the target firm should be limited in terms of its geographic scope. In this regard, the Commission has concerns in relation to the Territory over which the Restraint of Trade is applicable. The Business of Vermaak is carried out in Pretoria, Ekurhuleni, Secunda and Bele-Bela. The Commission notes that the Territory of the Restraint of Trade encompasses the Republic of South Africa even though the services of the Business do not currently cover the entire Republic of South Africa. In this respect, the Commission recommends that the proposed transaction be approved subject to a Condition addressing this concern.

3 CONDITIONS

3.1 In light of the above, the Commission approves this Merger subject to the Conditions as set out below:

i. Should either of the Merging Parties exercise the Option Purchase (by agreement or in accordance with the current Option Purchase terms, including pursuant to the occurrence of a trigger event):

1. Within 18 months of the Closing Date, the Merging Parties shall inform the Commission in writing within 10 (ten) Business Days of the exercise of the Option Purchase.

2. After a period of 18 months from the Closing Date, the Merging Parties shall notify the Commission of the exercise of the Option Purchase in the form of a merger filing in the requisite manner.

ii. The Merging Parties agree that during the period of 24 (twenty-four) months after which the Sellers would have terminated their services from the target firm, the geographic scope of the Restraint of Trade will be limited to a 50-kilometre radius from each of the hospitals and depots in or from which the Business of Vermaak is currently carried out.

4 MONITORING OF COMPLIANCE WITH THE CONDITION

4.1 The Merging Parties shall:

4.1.1. Inform the Commission in writing of the Implementation Date, within 5 (five) Business Days of this coming into effect;

4.1.2. Submit an addendum to the Sale of Shares and Claims Agreement to reflect the amendments in 3.1.2 above within 10 (ten) Business Days of the Approval Date; and

4.1.3. Submit an affidavit attested to by a senior official attesting to any exercise as contemplated in 3.1.1.1, within 10 (ten) Business Days of such exercise.

4.2 The affidavit referred to in 4.1 shall be forwarded to mergerconditions@compcom.co.za.

5 BREACH OF CONDITIONS

In the event that the Merging Parties appear to have breached the above Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules.

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

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 150 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

ITALTILE LIMITED

AND

CERAMICS INDUSTRIES PROPRIETARY LIMITED

2016APR0207

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:

Background

1. On 29 April 2016, the Competition Commission (Commission) received notice of an intermediate merger in terms of which Italtile Limited (Italtile) intends to acquire control of Ceramic Industries (Pty) Ltd (CIL) and Ezee Tile Adhesive Manufacturers (Pty) Ltd (Ezee Tile). On completion of the proposed transaction, Italtile will control CIL and Ezee Tile in terms of section 12(2)(a) of the Competition Act no. 89 of 1998, as amended (the Act).

The parties and their activities

2. The primary acquiring firm is Italtile, a public company listed on the Johannesburg Securities Exchange (JSE) in South Africa. Italtile is controlled by Rallen (Pty) Ltd (Rallen). Rallen currently has shareholding in CIL. Italtile indirectly, through its wholly-owned subsidiary Italtile Ceramics, currently owns shares in CIL.

3. In South Africa, Italtile does not manufacture any products. It is a retailer of imported ceramic and porcelain tiles, laminated boards, sanitaryware, brassware and bathroom accessories, décor, baths, showers and grout and adhesives to consumers. It owns and operates its own retail outlets comprising Italtile Retail, CTM and Top T, each targeting a specific market segment and located throughout South Africa. Italtile imports and distributes the products to its Italtile-owned retail outlets. All products imported by Italtile are A Grade products and are sold by the Italtile Group's retail outlets or are supplied to and sold by its franchise outlets. Italtile franchise outlets are located throughout South Africa.

4. The primary target firm is CIL. CIL is currently controlled by Rallen. The second target firm is Ezee Tile. Rallen indirectly controls Ezee Tile since it ultimately controls both CIL and Italtile Ceramics, who also hold shares in Ezee Tile.

5. CIL manufactures and supplies tiles, sanitaryware and baths to retailers including the Italtile Group. It is the largest manufacturer of ceramic tiles and glazed porcelain sanitaryware in South Africa, comprising of seven (7) manufacturing facilities in South Africa and one (1) in Australia. The tile factories (Samca Floor, Samca Wall, Vitro, Pegasus, Gryphon and Centaurus) manufacture a combination of pressed and extruded tiles in various sizes, textures and finishes, while the sanitaryware factory (Betta) manufactures a wide range of vitreous china sanitaryware, the main focus being on water closets, basins, cisterns and pedestals. CIL also owns three (3) factory shops that sell some of its B-grade produced tiles, sanitaryware and baths, grout and adhesives directly to consumers. The factory shops are located in Hammanskraal, Vereeniging and Krugersdorp (CIL factory shops). CIL also owns its own clay quarries situated in Vereeniging and Limpopo. Clay is an input material for the production of Tiles and Sanitaryware. Ezee Tile manufactures and supplies grout, adhesives and related products to retailers of these products, including the Italtile Group. Ezee Tile does not own or operate any retail outlets.

The transaction

6. The Commission considered whether the proposed transaction results in a change in control over the CIL and Ezee Tile businesses and whether this change results in a change in incentives in how the merged entity would behave post-merger.

7. The Commission finds that there will be a change in control and a change in incentives. The Commission finds that the proposed merger will strengthen the ability of the merging parties to self-supply and unilaterally increase prices post-merger.

8. Given the above, the Commission considered how the transaction would impact on competition post-merger by assessing the various factors described below.

Areas of overlap

9. The proposed transaction results in a vertical integration in the activities of the merging parties in relation to the upstream markets for the manufacture and supply of (i) tiles (ceramic and porcelain floor and wall tiles), (ii) sanitaryware, (iii) baths and (iv) grout and adhesives and related products and the downstream market for the retail sale of the products in South Africa.

Market shares

10. The Commission found that in relation to the national upstream market for the manufacture and supply of ceramic and porcelain floor and wall tiles, the pre-merger and post-merger market share of CIL is between 60% and 70%, with no market share accretion. As regards the national upstream market for the manufacture and supply of sanitaryware, the pre-merger and post-merger market share of CIL is between 60% and 70%, with no market share accretion. The remainder of the market shares are held by Vaal Sanitaryware (between 20% and 30%) and imports (between 20% and 30%).

11. In relation to the national upstream market for the manufacture and supply of baths, the pre-merger and post-merger market share of CIL is between 70% and 75%, with no market share accretion. The remainder of the market shares are held by Libra Bathrooms (between 20% and 30%) and imports (less than 5%). In the national upstream market for the manufacture and supply of grout, adhesives and related products the Commission found that the pre-merger and post-merger market share of Ezee Tile is between 30% and 40%, with no market share accretion. The remainder of the market shares are held by competitors such as Webber Tylon, Stick a Tile, TAL, Tile Magic and Multi Construction that will continue to constrain Ezee Tile post-

merger. There are numerous suppliers of the products such as Kwiktile, Titan Tiles, ETM, Icon and Tin Pro.

12. In relation to the national downstream market for the retail sale of the products, the pre-merger and post-merger combined market share of the merged entity is between 40% and 50%, with no market share accretion. The remainder of the market shares are held by Tile Africa, Cashbuild, Bathroom Bizarre, Massbuild and Iliad.

Vertical assessment

13. The Commission identified vertical relationships between CIL and Ezee Tile, producers and suppliers of Tiles, Sanitaryware, Baths, Grout and Adhesives operating in the upstream markets and the Italtile Group, a retailer of Tiles, Sanitaryware, Baths, Grout, Adhesives and related products operating in the downstream market in South Africa. CIL Group has made significant sales of Tiles, Sanitaryware and Baths to the Italtile Group in the preceding financial year and continues to supply these products to Italtile Group. In addition, Ezee Tile has made sales of adhesive, paint and related products to the Italtile Group in the preceding financial year and continues to supply the products to the Italtile Group. Ezee Tile also supplies the CIL Group's factory shops with grout, tile adhesive and related products.

14. The Commission found that the merging parties has the ability to foreclose downstream rivals in relation to the supply of the tiles as they have high market shares in the upstream markets for the manufacture and supply of tiles and an incentive to foreclose rivals and self-supply due to the significant volumes of sales supplied to Italtile and other customers post-merger.

15. Further, the investigation revealed that there are no competitive constraints on the merged entity to self-supply or increase prices of tiles as there are no alternative suppliers of tiles besides two (2) other local manufacturers and there is a lack of spare capacity to manufacture more tiles by all market participants.

16. The Commission is concerned that the merged entity will self-supply tiles or raise the price of these products to the detriment of its rivals which is likely to harm consumers

post-merger. There were third party concerns relating to foreclosure by the merged entity post-merger.

Barriers to Entry

17. The Commission found that CIL is the largest producer of tiles with the largest operations in South Africa. Whilst barriers to entry are relatively low for small operations, they are high for large scale operations such as the merging parties. No new entry in the production of these products is indicative that entry barriers at a large scale are substantial. Thus, there is unlikely to be new entrants with sufficient scale to place a competitive constraint on CIL post-merger.

Imports

18. The Commission finds that imports are not a constraint as retailers have not imported any tiles in the past three years due to higher import prices.

Countervailing Power

19. The Commission found that the degree of countervailing power post-merger is not sufficient to offset any adverse effects of the proposed merger given that there are no alternatives for customers in the affected markets. The proposed transaction is therefore likely to substantially prevent or lessen competition in the affected markets.

Remedies

20. In order to address the harm identified, the Commission considered a supply condition in respect to the affected products but found that this was not sufficient to address the harm post-merger. The Commission invited the merging parties to propose possible remedies on the harm and found that the condition proposed by the merging parties was not sufficient to address the harm.

21. Although significant competition concerns arises from the upstream market for the manufacture and supply of tiles, the business models of the target firm, CIL, is integrated with all the operations of tiles, sanitary ware, baths and grouts and hence a structural divestiture of CIL's tiles operation as a remedy is implausible. The Commission found that a remedy to divest from CIL would render the proposed merger ineffective as the merged entities' businesses are intertwined. The

Commission is of the view that there are no remedies to address the substantial competition concerns likely to arise.

Public interest consideration

22. There are no merger-specific retrenchments or redundancies that are expected to occur by virtue of the implementation of the proposed transaction. The transaction does not raise any other public interest concerns. The Commission finds that the transaction does not raise any substantial positive public interest issues that would outweigh the negative competition effects likely to arise from the merger.

Conclusion

The Commission therefore prohibits the proposed transaction.

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.

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 151 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:

MUCH ASPHALT (PTY) LTD

AND

THE ROADSPAN PLANTS

CASE NUMBER: 2016JUN0291

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.

Background

1. On 15 June 2016, the Competition Commission (Commission) received notice of an intermediate merger in terms of which the primary acquiring firm, Much Asphalt (Pty) Ltd (Much Asphalt) intends acquiring 5 fixed asphalt plants (Roadspan Plants) from Roadspan Surfaces (Pty) Ltd (Roadspan). Following the merger, Much Asphalt will wholly own the Roadspan Plants.

2. Much Asphalt is a firm incorporated in accordance with the company laws of South Africa.

3. Roadspan is a firm incorporated in accordance with the company laws of South Africa..

Activities of the merging parties

4. The primary acquiring firm is Much Asphalt which manufactures and supplies hot and cold mix asphalt products to the commercial sector. Much Asphalt supplies asphalt products in the domestic market (i.e. for use on home driveways etc.). It also supplies asphalt products

in South Africa for use or application on urban streets, freeways, runways, race tracks, public sidewalks, bus lanes and certain harbour specific applications.

5. Much Asphalt has fixed asphalt plants in Polokwane, Witbank, Pomona, Roodepoort, Benoni, Eikenhof, Empangeni, Pietermaritzburg, Coedmore, Bloemfontein, East London, Mthatha, Port Elizabeth, George, Contermanskloof and Eersterivier (and a branch that is currently being established in Saldanha). Much Asphalt also has manufacturing capabilities in Namibia. Further, Much Asphalt has mobile production units.

6. The primary target firm is Roadspan Plants being 5 fixed plants which are active in the production of hot and cold mix asphalt. These plants are located in Kimberley, Stilfontein, Welkom, Nelspruit and Daben.

7. There is therefore a horizontal overlap in the activities of the merging parties in that they both produce and supply asphalt.

Market Definition

8. With regards to the product market definition, the Commission defines the market as the market for the supply of hot mix asphalt. The Commission did not include mobile asphalt plants in the assessment as these are unlikely to constrain the Roadspan Plants. In addition, mobile plants are client specific and do not supply to the general sundry market. Furthermore, the Commission does not assess the overlap in cold mix asphalt as it is unlikely to result in any competition concerns.

9. With regards to the geographic market, the Commission finds that the geographic market for a fixed hot mix asphalt plant is likely to be regional and within a 150km to 200km radius of a fixed hot mix asphalt plant. Within these 150km to 200km radius there exists catchment areas wherein the parties compete for customers. The merging parties suggested a radius of between 50km to 100km wherein competition is likely to occur. However, market participants suggest that approximately 150km to 200km and in some instances even 250km is feasible. After considering the available information, the Commission concludes on the following markets:

9.1 Fixed hot mix asphalt plants located within an approximate 200km radius of Roadspan's Kimberley plant.

9.2 Fixed hot mix asphalt plants located within an approximate 150km radius of Roadspan's Welkom plant.

9.3 Fixed hot mix asphalt plants located within an approximate 150km radius of Roadspan's Stilfontein plant.

9.4 Fixed hot mix asphalt plants located within an approximate 150km radius of Roadspan's Daben plant.

Competition Assessment

Unilateral Effects

10. The Commission found that in each of the markets, the merged entity will be a dominant player and is unlikely to be constrained post-merger.

Barriers to entry

11. When assessing whether entry is likely, the Commission considered whether any barriers exist that would deter entry. The Commission identified the following barriers to entry: (i) regulatory requirements; (ii) capital requirements; (iii) economies of scale requirements; and (iv) technical knowledge requirements.

12. The Commission found that barriers to entry into the market are relatively high. This is because the capital requirements, regulatory requirements and economies of scale requirements are significant, making entry unlikely. A new entrant will also require the right technical knowledge and expertise in order to produce the right quality of hot mix asphalt.

13. An asphalt plant is also affected by environmental legislation because the process of preparing a bitumen and aggregate mix causes harmful emissions. A prospective entrant must apply for an Atmospheric Emission Licence and a temporary licence must be granted before the production process may commence. It can take between 6 to 12 months for an

Atmospheric Emissions Licence to be granted while other market participants submit that it could take 12 to 18 months for this licence to be granted.

14. In light of the above evidence, the Commission concludes that barriers to entry in the relevant markets are high and that new entry is highly unlikely. Even if such entry were to take place in future, it is highly unlikely that it will occur in a timely and sufficient manner to constrain the activities of the merging parties in the short to medium term timeframe, given the number of regulatory requirements that a prospective new entrant will have to comply with before production can commence.

Countervailing powers

15. The Commission also considered the countervailing power of customers. The factors to consider in making an assessment of buyer power would be: (i) whether or not the customer can credibly threaten to resort, within a reasonable timeframe, to alternative sources of supply; and (ii) whether or not the buyer is able to refuse to buy products produced by the supplier.

16. In this regard, the Commission considered the views of customers of the merging parties. Customers indicated that in certain markets there are limited alternatives to switch to in the event that the merged entity increases its prices. Due to the high costs of transport, customers will typically procure asphalt from the closest supplier in relation to the site of a particular project, despite the fact that there may be differences in the ex-works prices of asphalt plants located in the same geographic region. The final delivered price will affect the choice of suppliers and customers may therefore not have any alternative suppliers for a given project.

17. For large projects such as new roads or major rehabilitation of roads with volumes of over 20 000 tonnes, the Commission notes that larger customers may have some degree of countervailing power as they may potentially be able to establish a mobile plant for the duration of the project which will not require any procurement of asphalt from fixed asphalt plants. However, for smaller projects such as pothole repairs, small rehabilitations and driveways etc. customers will in most instances not have any countervailing power, as they will not have an option of establishing a mobile plant at the project site. The Commission concludes that due to the presence of few alternatives in the relevant markets and in

particular the sundry trade as primarily supplied by Roadspan Plants, customers do not enjoy any significant degree of countervailing power. It is therefore unlikely that the activities of the merging parties will be constrained in any significant manner by customers post-merger.

18. The Commission concludes that the lack of sufficient alternatives in the relevant markets, together with the absence of competitive constraints on the merging parties due to high barriers to entry and a lack of sufficient countervailing power, implies that the merged entity will be able to exercise its significant market power in the relevant markets to the detriment of customers in these markets. Therefore, the Commission is of the view that the proposed merger is likely to raise unilateral effects concerns.

19. Given the post-merger concentration levels, it is therefore evident that the proposed merger will result in the removal of an alternative choice in the form of Roadspan's plants in most of the regions. It is therefore likely that post-merger the merging parties will increase prices in most of the affected regions.

Coordinated effects

20. The Commission finds that there are structural factors present in the market that make coordination more likely, particularly high barriers to entry, multi-market contact, product homogeneity and high concentration levels in the Kimberley, Welkom and Stilfontein regions.

21. When assessing coordination in terms of a merger analysis, it is essential to determine whether the proposed merger will have an effect on the likelihood of coordination within the market. Given the structure of the market, the Commission has to assess whether there is an increased likelihood of coordination arising from the proposed merger.

22. The proposed merger results in an increased level of concentration in the affected areas, namely Kimberley, Welkom and Stilfontein. As a result, the likelihood of coordination in these regions is high. The market is possibly more susceptible to coordination post-merger than pre-merger. In particular, the Commission found that the prevailing market conditions are such that competitors prefer not to enter highly competitive markets and would rather find a region where they will be able to obtain most of the market share while competitors

that enjoy market power in a particular geographic region could possibly deter new entrants from entering the market. For this reason, an agreement to divide the market seems likely. Therefore, the post-merger concentration levels exacerbate the situation.

23. For these reasons, the Commission is of the view that the merger is likely to increase the merged entity's ability to coordinate.

24. The Commission concludes that the proposed transaction is likely to lead to a substantial prevention or lessening of competition in the relevant markets. There is no evidence provided to the Commission of any pro-competitive or public interest benefits that may arise as a result of the transaction that will outweigh the anti-competitive effects as identified.

Remedies and Efficiencies

25. The Commission provided the merging parties an opportunity to provide efficiencies or remedies that are likely to alleviate the identified competition concerns. The merging parties contend that the proposed transaction does not raise any competition concerns and thus are of the view that no remedies are required.

26. The merging parties have not proposed any remedies or provided any efficiencies that would alleviate the Commission's concerns. The Commission further finds that there are no workable remedies that are likely to alleviate the Commission's concerns.

27. Accordingly, the Commission prohibited the proposed merger.

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.

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 152 OF 2017

COMPETITION COMMISSION

NOTIFICATION OF CLOSED CONDITIONAL MERGER APPROVALS

1 APRIL 2016 – 30 SEPTEMBER 2016

1. CASE NO. 2013SEP0446 SIBANYE GOLD LIMITED AND NEWSHELF 1114 (PTY) LTD

The Competition Tribunal imposed a condition which required the merging parties to not retrench any employee as a result of the merger for a period of 2 years from the implementation date of the merger. After evaluating the information submitted by the merging parties, the Commission was satisfied that the conditions had been complied with as no employees were retrenched during the 2 year period as a result of the merger.

2. CASE NO. 2015APR0151 TRANSPACO PLASTICS (PTY) LTD AND EAST RAND PLASTICS, A DIVISION OF ASTRAPAK MANUFACTURING HOLDINGS (PTY) LTD

The Commission had imposed a condition that required the merged entity to conclude a binding agreement between it and a third party, confirming that it will supply the third party with plastic refuse for a period of not less 3 years from the merger approval date. In addition, the Commission had imposed a condition that required the merged entity to put in place measures to prevent the merged entity and the third party from exchanging competitively sensitive non-public information regarding their business activities. After evaluating the information submitted by the merged entity, the Commission was satisfied that the conditions had been complied with as the merged entity submitted a binding supply agreement between it and the third party, and the merged entity developed a policy to ensure that there is no exchange of competitively sensitive non-public information between it and the third party.

3. CASE NO. 2014FEB0051 UNIPRINT LABELS, A DIVISION OF TIMES MEDIA (PTY) LTD AND THE FERROPRINT BUSINESS AND THE CAST ARENA ASSETS

The Commission had imposed a condition that capped the number of retrenchments the merging parties can make as a result of the merger to 33 employees, for a period of 2 years from the Effective Date of the merger. The merging parties submitted compliance reports

which confirmed that the number of retrenchments did not exceed 33. The Commission was thus satisfied that the merging parties complied with the conditions.

4. CASE NO. 2014OCT0543 TAKEALOT ONLINE (PTY) LTD AND KALAHARI.COM, BEING A DIVISION OF MIH INTERNET AFRICA (PTY) LTD

The Commission had imposed a condition that capped the number of retrenchments the merging parties can make as a result of the merger to 200, for a period of 12 months from the approval date. In addition, the Commission had imposed a condition that required the merging parties to provide the necessary support to the employees who get retrenched, to ensure that they are able to cope with the retrenchment and are able to secure employment in the future. After evaluating the information submitted by the merging parties, the Commission was satisfied that the conditions had been complied with as the merging parties did not exceed the 200 cap on retrenchments and the merging parties provided the necessary support required by the Conditions to the employees who were retrenched.

5. CASE NO. 2014SEP0517 DIMENSION DATA (PTY) LTD AND MWEB CONNECT (PTY) LTD ON BEHALF OF ITS MWEB BUSINESS/VOIP DIVISION AND OPTINET NETWORK DIVISION AND OPTINET SERVICES DIVISION

The Competition Tribunal imposed a condition that capped the number of retrenchments the merging parties can make as a result of the merger to 35 employees, for a period of 18 months from the Effective Date of the merger. After evaluating the information submitted by the merging parties, the Commission was satisfied that the conditions had been complied with and the Commission did not receive any complaints from the employees on any breach of the Conditions.

6. CASE NO. 2013NOV0580 BUCKET FULL (PTY) LTD AND THE CARTONS AND LABELS BUSINESS OF NAMPAK PRODUCTS LIMITED

The Competition Tribunal imposed a condition that required the merging parties to not retrench any Non-Management employees as a result of the merger for a period of 2 years from the implementation date of the merger. The merging parties submitted a compliance report that confirmed that they did not retrench any employees during the 2 year moratorium period. The Commission was thus satisfied that the merging parties complied with the conditions.

7. CASE NO. 2014 NEW LASER CORPORATION AND THE KO ENERGY ASSETS OF THE KO ENERGY BUSINESS OF THE COCA-COLA COMPANY

The Commission had imposed a condition that required the merged entity to not terminate an Exclusive Distribution Agreement with a third party for a period of 1 year from the implementation date. After evaluating the information submitted by the merged entity, the

Commission was satisfied that the conditions had been complied with as the merged entity did not terminate the Exclusive Distribution Agreement it had with the third party during the 1 year moratorium.

8. CASE NO. 2015APR0226 SBV SERVICES (PTY) LTD ("SBV") AND CERTAIN MOVABLE AND IMMOVABLE ASSETS OF ABSA BANK LIMITED

The Commission had imposed a condition that required SBV to not retrench any employees as a result of the merger. In addition, the Commission imposed a condition that required SBV to offer employment to guards who were employed at the cash processing centres being taken over by SBV should they be retrenched by a third party guarding company that provided those guarding services prior to the merger. After evaluating the information submitted by SBV, the Commission was satisfied that the conditions had been complied with as SBV invited all existing third party employees at the cash processing centres to apply for employment at these centres.

9. CASE NO. 2012MAR0148 GLENCORE INTERNATIONAL PLC AND XSTRATA PLC

The Competition Tribunal imposed a condition that required the merged entity to cap the number of potential retrenchments within the merged entity to (i) 80 skilled employees; and (ii) 100 unskilled and semi-skilled employees, for a period of 2 years from the implementation date of the merger. In addition, the Competition Tribunal imposed a condition that required the merged entity to provide a training amount to any unskilled or semi-skilled employee who has been retrenched for re-training purposes. The merged entity submitted compliance reports indicating that the merged entity retrenched less than 10 skilled employees during the moratorium period and no semi-skilled or unskilled employees were retrenched. The Commission was thus satisfied that the merged entity complied with the conditions.

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 153 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

IFFCO AFRICA HOLDINGS PTE. LTD
MIDDLE EAST OILS AND GRAINS FZC
AND
FR WARING HOLDINGS PROPRIETARY LIMITED
AND
AGVESTCO PROPRIETARY LIMITED
AND
THE ASOR GROUP

CASE NUMBER: 2016JUL0359

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:

1. On 19 July 2016, the Competition Commission (Commission) was notified of a two-step transaction, which the Commission assessed as a single indivisible transaction.

2. In terms of the first step of the transaction, the primary acquiring firm, IFFCO Africa Holdings Pte. Ltd (IAH) and Middle East Oils and Grains FZC (Grains) (collectively the IFFCO Group), will acquire shares in FR Waring Holdings (Pty) Ltd (FR Waring), respectively.

3. FR Waring wholly controls, amongst others, Agvestco (Pty) Ltd (Agvestco), collectively the "FR Waring Group".

4. In terms of the second step of the transaction, the primary acquiring firm Agvestco (a wholly owned subsidiary of FR Waring) will acquire some of the issued shares in Africa Sun Oil Refineries (Pty) Ltd (African Sun Oil), Gauteng Oil and Cake Mills (Pty) Ltd (GOCM), Budget Soap Industries (Pty) Ltd (BSI), Marston Investments (Pty) Ltd (Marston) and Ingoby Investments (Pty) Ltd (Ingoby), collectively the "ASOR Group".

5. For purposes of assessing the proposed transaction, the Commission analysed the following relevant markets:

- The national upstream market for the bulk trading of hard oils (and narrowly into palm oils).
- The national upstream market for the bulk trading of soft oils (and narrowly into sunflower oil and soyabean oil).
- The national upstream market for the bulk trading of oilmeal.
- The national downstream market for the supply of baking fats (margarine and shortenings).

6. From a horizontal perspective, the FR Waring Group and the ASOR Group are active in the upstream markets for the bulk trading of soft oils, hard oils and oilmeals.

7. The Commission found that traders import and source soft oils from local producers to trade in the market. The Commission further found that the overlap in relation to the bulk trading of soft oils is minimal as the ASOR Group is not a specialist trader but rather sells ex-tank bulk soft oils to the market where available (from its crushing facility) and in large sum to the FR Waring Group.

8. For the bulk trading of hard oils, the Commission found that the primary supply of hard oils is through the primary traders. The Commission found that the ASOR Group only sells the ex-tank volumes to the market that it would have purchased from traders (such as the FR Waring Group) which was not consumed internally.

9. Therefore, the Commission found that the ASOR Group does not directly compete with the FR Waring Group as it is not a specialist trader and there is therefore no market accretion in the upstream market for the bulk trading of soft oils and hard oils.

10. With respect to the market for the bulk trading of oilmeals, the Commission found that the merged entity's has estimated market shares not exceeding 5%. The merged entity would continue to face competition from numerous players such as the Wilmar Group, Russell Stone Protein, the Willowton Group, Nedan, Free State Oil, Drak Oil, GOCM and Majesty Oil.

11. The proposed transaction also presents a minimal horizontal overlap in the market for the supply of baking fats (margarine and shortenings). In this regard, the Commission found that the merged entity would have a combined estimated market shares not exceeding 10%.

12. The Commission also found that the proposed transaction presents a vertical relationship in that the FR Waring Group is active in the upstream markets for the bulk trading of sunflower, soyabean and palm oils which are used by the ASOR Group in the downstream market for the manufacture of sunflower, soyabean and palm based products.

13. Accordingly, the Commission considered input foreclosure effects in the upstream national markets for the bulk trading of hard oils and soft oils.

14. With regards to the upstream national market for the bulk trading of hard oils, the Commission found that the FR Waring Group would have estimated market shares not exceeding 20%. As such, the FR Waring Group will be constrained by other players in the market, namely the Wilmar Group, Olam and LDCA from exerting market power. Therefore, the merged entity is unlikely to have market power in the relevant upstream market to allow it to engage in an input foreclosure strategy to the detriment of other downstream players as there are alternatives suppliers in the market that would continue to constrain the merged entity post-merger.

15. With regards to the upstream national market for the bulk trading of soft oils, the Commission found that the FR Waring Group has estimated market share not exceeding 30%. The Commission found that other players in the market would include the Wilmar Group, Olam, LDCA and Cargill.

16. More narrowly, the Commission estimates that the FR Waring Group would have combined market shares not exceeding 25% in the upstream market for the bulk trading of sunflower oils and approximately 35% in the upstream market for the bulk trading of soyabean oils. The larger players in the sunflower oils and soyabean markets include the Wilmar Group and Olam. The FR Waring Group therefore does not have market power in the upstream market for the bulk trading of soft oils.

17. From a customer foreclosure perspective, the Commission found that the proposed transaction is unlikely to raise any concerns. With respect to hard oils, the ASOR Group already purchases the majority of its requirements from the FR Waring Group. On the soft oils, the ASOR Group is vertically integrated in that it can self-supply soft oils. In addition, the majority of its requirements are sourced from the FR Waring Group.

18. The Commission also considered the possibility of co-ordination post-merger and found that the proposed transaction is unlikely to enhance or facilitate coordination as it is unlikely to significantly alter the structure of the market.

19. The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the identified markets.

20. In order to prevent any negative public interest concerns arising due to possible relocation, the Commission imposed a condition that requires the merging parties to not relocate any of their plants for a period of 3 years following the implementation of the merger. The merging parties are amenable to this condition.

21. The proposed transaction does not impact on any other public interest considerations.

22. The Commission therefore approves the proposed transaction subject to the conditions as set out in **Annexure A**.

ANNEXURE A: CONDITIONS

IFFCO AFRICA HOLDINGS PTE. LTD
MIDDLE EAST OILS AND GRAINS FZC
AND
FR WARING HOLDINGS PROPRIETARY LIMITED
AND
AGVESTCO PROPRIETARY LIMITED
AND
THE ASOR GROUP

CASE NUMBER: 2016JUL0359

CONDITIONS

1. **Definitions**

The following expressions shall bear the meanings assigned below and cognate expressions bear corresponding meanings -

1.1 **"Acquiring firm"** means IFFCO in the First Transaction Step and Agvestco in the Second Transaction Step;

1.2 **"Act"** means the Competition Act 89 of 1998, as amended;

1.3 **"Agvestco"** means Agvestco Proprietary Limited;

1.4 **"Approval Date"** means the date referred to in the Merger Clearance Certificate (Form CC15);

1.5 **"ASOR Group"** means collectively, Africa Sun Oil Refineries Proprietary Limited, Gauteng Oil and Cake Mills Proprietary Limited, Budget Soap Industries Proprietary Limited, Marston Investments Proprietary Limited and Ingoby Investments Proprietary Limited;

1.6 **"Call Option"**; [Confidential]

1.7 **"Commission"** means the Competition Commission of South Africa;

1.8 **"Conditions"** mean these conditions;

1.9 **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.10 **"First Transaction Step"** means a transaction wherein IFFCO will subscribe for an effective percentage of the issued share capital of FR Waring.

1.11 **"FR Waring"** means FR Waring Holdings Proprietary Limited;

1.12 **"IFFCO"** means collectively, IFFCO Africa Holdings Pte. Ltd and Middle East Oils and Grains FZC;

1.13 **"Implementation Date"** means the date occurring after the Approval Date when the Merging Parties implement the Merger;

1.14 **"Manufacturing Facilities"** mean the facilities of the ASOR Group namely, Mobeni (located in Durban), Verulam (located in Durban), Nasrec (located in Gauteng), Spartan (located in Gauteng) and Prospecton (located in Durban);

1.15 **"Merger"** means, the First Transaction Step and the Second Transaction Step;

1.16 **"Merging Parties"** means the Acquiring Firm and the Target Firm;

1.17 **"Second Transaction Step"** means a transaction wherein Agvestco will acquire a percentage of the issued share capital in the ASOR Group.

1.18 **"Target firm"** means FR Waring in the First Transaction Step and the ASOR Group in the Second Transaction Step; and

1.19 **"Tribunal"** means the Competition Tribunal of South Africa.

2. **Recordal**

2.1 On 19 July 2016, the Merging Parties applied to the Commission for approval of the Merger.

2.2 The Commission assessed the Merger and identified a public interest concern arising from the possible consolidation of the ASOR Group's five manufacturing locations across South Africa. The Commission found that any relocation could result in job losses.

2.3 In order to remedy the abovementioned negative impact on a particular industrial sector, the Commission hereby imposes the Conditions as set out below.

3. **Conditions**

3.1 **Exercise of Call Option**

[Confidential]

3.2 **Relocation of the Manufacturing Facilities**

3.2.1 For a period of three (3) years following the Implementation Date, the Manufacturing Facilities shall not be relocated from their current locations.

4. **Monitoring of compliance with the Conditions**

4.1 The Merging Parties shall notify the Commission of the Implementation Date within 5 Days of its occurrence.

4.2 The Merging Parties shall submit an affidavit prepared by a senior official confirming compliance with the Conditions as set out in clause 3.2.1 on the anniversary of the Implementation Date for the duration of the Conditions.

4.3 All correspondence in relation these Conditions should be forwarded to mergerconditions@compcom.co.za.

4.4 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.

5. **General**

The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

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

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 154 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ABBOTT LABORATORIES

AND

ST. JUDE MEDICAL, INC.

CASE NUMBER: 2016SEP0389

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:

1. On 10 August 2016, the Competition Commission (Commission) received a notice of an intermediate merger in terms of which the primary acquiring firm, Abbott Laboratories (Abbott), intends to acquire the entire issued share capital of the primary target firm, St. Jude Medical, Inc. (SJM). As a result of the proposed transaction, Abbott will exercise control over SJM. The proposed transaction is an international transaction also filed with other jurisdictions including BRICS, Japan, the US Federal Trade Commission and the European Commission.

2. Abbott is a company incorporated in accordance with the laws of the United States of America (the US). Abbott is a public company listed on the New York Stock Exchange (NYSE), Chicago Stock Exchange, London Stock Exchange and the SIX Swiss Exchange. It is not controlled by any one entity. In South Africa, Abbott controls Abbott Laboratories South Africa (Pty) Ltd.

3. Abbott is a global health care company which focuses on the research, development, manufacture, and sale of a broad and diversified range of health care products. Abbott has

four primary business segments, namely: nutritional products (including nutritional aids to children and adults); medical devices (which focuses on cardiovascular (such as coronary, endovascular, vessel closure and structural heart devices), optical and diabetes care products); diagnostic products (which focus on in vitro diagnostic tools including blood screening, hematology products); and established pharmaceutical products (which sells branded generic pharmaceuticals in developing markets). Of relevance to the proposed transaction is Abbott's supplies of medical devices in South Africa, in particular the Vessel Closure Devices (VCDs).

4. SJM is a company incorporated in accordance with the laws of the US. SJM is a public company listed on the NYSE and is not controlled by any one entity.

5. SJM is a global medical device company that researches, develops, manufactures, and sells cardiovascular medical devices. SJM has five principal businesses, namely: cardiac rhythm management products (e.g., pacemakers, leads, etc.); cardiovascular products (e.g., mechanical and tissue heart valves, valve repair, VCDs, etc.); heart failure products (including cardiac resynchronization devices, ventricular assist devices, and pulmonary artery pressure monitors); atrial fibrillation products (which assists physicians in diagnosing and treating irregular heart rhythms); and neuromodulation products (which provides neurostimulation therapy to treat chronic pain and movement disorders, etc). Of relevance to the proposed transaction is SJM's VCD medical devices business which falls under its cardiovascular product category.

6. VCDs are mechanical devices inserted into or placed on the hole in the artery and used to close small (around 2.64mm) and large holes. A hole in the patient's blood vessel usually results from certain minimally invasive cardiovascular diagnostic and interventional procedures. Therefore, a hole in the patient's blood vessel must be closed to prevent uncontrolled bleeding. Abbott manufactures and supplies VCDs for both small and large holes whereas SJM is largely focused on small hole VCDs. It is contended that besides these mechanical devices, a hole in the patient's artery can also be closed manually, that is, medical professionals apply direct pressure manually. This method is widely known in the medical profession as 'manual compression'. In simple terms, manual compression is the application

of pressure to the skin above the access site for several minutes until the hole begins to heal naturally. This is usually the case in public hospitals however this method is rarely applied in private hospitals as patients have medical aids. The manual compression also takes longer to administer as opposed to the use of mechanical devices. Further, there are additional complications in the application of manual compression. It is for these reasons that the Commission does not consider manual compression to be substitutable with mechanical devices, i.e., VCDs, and vice versa.

7. The Commission considered the activities of the merging parties and found that the activities of the merging parties overlap horizontally as they are both active in the manufacture and supply of small hole VCDs in South Africa. The Commission concluded on the market for the manufacture and supply of small hole VCDs in South Africa.

8. In South Africa, the Commission found that the VCDs market is very concentrated with only 4 significant players in the small hole vessel closure segment, being Abbott, SJM, Cardinal Health and Cardiva Medical. None of these players manufacture their respective VCDs locally but supply them into South Africa through third party distributors.

9. The merging parties submit that in South Africa the transaction does not raise concerns in the small hole vessel closure market, given: (i) the significant role played by manual compression, which is the gold standard in small hole vessel closure; (ii) the presence of other strong international competitors; and (iii) the fact that market share accretion is low.

10. For reasons explained above, the Commission is of the view that manual compression does not serve as a competitive constraint to the merging parties, especially in the case of private healthcare. Therefore, in considering the market shares for VCDs, the Commission excluded manual compression.

11. The Commission notes that the proposed transaction reduces the number of VCD suppliers in South Africa from four to only three, namely, the merged entity, Cardinal Health and Cardiva Medical.

12. The Commission found that post-merger, the merged entity will have high market shares post-merger with the balance of the market shares held by Cardinal Health and Cardiva Medical. The Commission is concerned that the merged entity is unlikely to be constrained by the other two competitors who holds relatively low market shares. The Commission also calculated the pre- and post-merger HHI levels, and found that there is an increase in HHI levels and the post-merger HHI is indicative of a highly concentrated market.

13. The proposed transaction further enhances the merged entity's market power which can result in price increase on small hole VCDs supplied into South Africa. This will ultimately cause harm to consumers given the already high costs of private medical care.

14. The Commission's investigation also revealed that the barriers to entry in the market for the manufacture and supply of small hole VCDs are likely to be high in particular considering that it involves a great deal of research and development, branding, amongst others. From a distribution level, the Commission found that it may not be easy to distribute these products as skills and training in the specific products is required. Although the Commission found that there was some countervailing power through the role of medical aids who would serve as a constraint if the merging parties were to engage in a price increase strategy, the Commission was nonetheless concerned at the high market shares which would ultimately lead to unilateral effects. As such, the Commission found that the proposed transaction is likely to substantially prevent and lessen competition in the market for the supply of small hole VCDs in South Africa.

15. As a result, the Commission engaged the merging parties on this aspect and requested them to propose remedies that could address the unilateral effects arising from the proposed transaction. The merging parties proposed a divestiture in order to address the Commission's concerns. The Commission understands that a similar divestiture remedy has been tendered in other jurisdictions where the merger has been notified, notably the US (FTC) and the EC. The proposed divestiture entails the divestment of SJM's global VCD business. The Commission is of the view that the proposed divestiture remedy sufficiently addresses the Commission's concerns emanating from the proposed transaction.

16. In addition, the Commission found that the proposed transaction is unlikely to have an impact on third party distributors currently distributing medical devices for the merging parties. In particular, the merging parties submitted that currently, SJM's products, including its VCDs, are distributed by a third party. Similarly, Abbott's VCDs are distributed by a third party. According to the merging parties, there will be no change to this status quo during the divestiture period. Post-transaction, Abbott's VCDs will continue to be distributed by the existing third party distributor. To this end, the Commission contacted the current third party distributors of Abbott and SJM. None of them raised any concerns with the proposed transaction.

17. Furthermore, the Commission finds that the proposed transaction will not have any negative public interest concerns. In particular, there are no job losses emanating from the proposed transaction.

18. Therefore, the Commission approved the proposed transaction subject to conditions set out in **Annexure A** hereto.

ANNEXURE A

ABBOTT LABORATORIES

AND

ST. JUDE MEDICAL, INC.

CASE NO. 2016AUG0389

CONDITIONS

---

1. **INTERPRETATION**

1.1 The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.1.1 **"Act"** means the Competition Act, No. 89 of 1998 (as amended);

1.1.2 **"Abbott"** means Abbott Laboratories, a company incorporated under the laws of the United States of America with its headquarters in Abbott Park, Illinois, United States of America;

1.1.3 **"Approval Date"** means the date referred to in the Commission's clearance certificate (Form CC15) in relation to the Merger;

1.1.4 **"Closing Date"** means the date in which the Merger has closed globally;

1.1.5 **"Conditions"** mean the conditions as set out in Annexure A ;

1.1.6 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.1.7 **"Days"** means business days;

1.1.8 **"Divestiture"** means the sale of the Divestment Business to Terumo and/or to any other Purchaser as the case may be;

1.1.9 **"Divestment Business"** means SJM's global small hole vessel closure device business comprised of its *Angio-Seal*™ and *FemoSeal*™ product lines as agreed with Terumo;

1.1.10 **"Divestiture Period"** means the agreed period from the Closing Date in which Abbott is required to divest the Divestment Business to Terumo or any other Purchaser as the case may be, including the Divestiture Period;

1.1.11 **"Merger"** means the acquisition by Abbott of SJM, as notified to the Commission under case number 2016Aug0389;

1.1.12 **"Merging Parties"** means Abbott and SJM;

1.1.13 **"Purchaser"** means an independent third party to purchase the Divestment Business in the event that Terumo fails to acquire the Divestment Business;

1.1.14 **"SJM"** means St. Jude Medical, Inc. a company incorporated under the laws of the United States of America with its headquarters in St. Paul, Minnesota, United States of America;

1.1.15 **"Terumo"** means Terumo Corporation, a company incorporated under the laws of Japan with its headquarters in Tokyo, Japan;

1.1.16 **"Tribunal"** means the Competition Tribunal of South Africa as established in terms of section 26 of the Act;

1.1.17 **"VCD"** means vessel closure device.

2. **RECORDAL**

2.1 On September 16 2016, Abbott, SJM, and Terumo agreed the terms under which Terumo would acquire the Divestment Business thereby eliminating all overlap between the Parties in South Africa. Terumo is not active in the manufacture or sale of small hole vessel closure devices in South Africa or elsewhere and has the financial resources, experience, and commitment necessary to maintain and grow the Divestment Business. The sale of the Divestment Business to Terumo was publicly announced on October 18, 2016. The Closing Date of the transaction is expected to be at the end of 2016.

3. **COMMITMENT TO DIVEST**

3.1 Abbott shall divest of the Divestment Business within the Divestiture Period to Terumo.

3.2 Should the Divestiture of the Divestment Business to Terumo in the Divestiture Period fail, the Merging Parties shall divest the Divestment Business to the Purchaser as set out below.

3.3 The Merging Parties shall inform the Commission within the agreed timeframe of failure to divest the Divestiture Business to Terumo and set out the steps, including timelines, in relation to the Divestiture of the Divestiture Business to the Purchaser.

4. **SCOPE OF THE DIVESTMENT BUSINESS**

4.1 The Divestment Business includes those assets that contribute to the current operations of, or are necessary for the viability and competitiveness of, the Divestment Business as agreed with Terumo or the Purchaser, whichever is applicable, including:

4.1.1 tangible and intangible assets (including intellectual property rights) of the Divestment Business;

4.1.2 licences, permits and authorisations issued by any governmental organisation for the benefit of the Divestment Business to the extent such licenses, permits and authorizations can be transferred or assigned in accordance with applicable laws; and

4.1.3 contracts of the Divestment Business, to the extent such contracts can be transferred or assigned.

4.2 The Divestment Business will include transitional services agreed with Terumo or the Purchaser whichever is applicable, including IT, finance/accounting, and other applicable support.

5. **THE PURCHASER**

5.1 Subject to 3.2 above, the Purchaser of the Divestment Business shall be independent and not related to the Merging Parties or any directly or indirectly affiliated member of the Merging Parties' corporate groups.

5.2 The Merging Parties shall, in writing, inform the Commission of the proposed Purchaser. Should the proposed acquisition of the Divestiture Business fall within the provisions of section 13A of the Act, the Merging Parties shall file a merger in the prescribed manner. The Commission may request the Merging Parties to provide additional information in relation to the Divestiture Transaction in the event that the Divestiture is not notifiable in terms of the Act.

6. **VARIATION**

6.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

7. **MONITORING OF COMPLIANCE**

7.1 The Merging Parties shall inform the Commission of the Closing Date within 5 Days of its occurrence.

7.2 Should Abbott conclude the Divestiture in terms of 3 within the Divestiture Period, the Merging Parties shall inform the Commission in writing within the agreed period and shall inform the Commission of the date on which the Divestiture will be effective. Should the Divesture in the Divestiture Period fail, the Merging Parties shall inform the Commission within the agreed period of the date of this occurrence, including timelines, in relation to the Divestiture of the Divestiture Business to the Purchaser.

All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

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

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 155 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

CHINA NATIONAL AGROCHEMICAL CORPORATION

AND

SYNGENTA AG

CASE NUMBER: 2016JUN0322

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:

Background

1. On 30 June 2016, the Competition Commission ("Commission") received notice of an intermediate merger whereby China National Agrochemical Corporation ("China National") intends to acquire 100% of the issued shares in Syngenta AG ("Syngenta"). Once the proposed merger is finalised, it is intended that Syngenta will be owned by China National. China National plans to operate Syngenta as a stand-alone business unit within its subsidiary group.

Parties and their activities

2. China National is an international company headquartered in China. It focuses on the discovery, development, manufacture and sale of a broad and diversified line of agrochemicals or crop protection products. In South Africa, China National operates through

Adama South Africa (Pty) Ltd ("Adama") which is involved in the testing and registration of agrochemical products. Adama has no production facilities in South Africa, as all production occurs off-site pursuant to external tolling agreements. Adama provides the following products in South Africa:

- Crop protection products: fungicides, insecticides, selective and non-selective herbicides and seed treatment products;
- Non-crop products: household and professional fungicides, insecticides and herbicides;
- Active ingredients: used in fungicides, insecticides and selective herbicides.

3. Syngenta is an international company headquartered in Switzerland. Syngenta is active in the agricultural sector, particularly in seeds and crop protection products in over 90 countries. Syngenta has production facilities in the United Kingdom, United States of America, France, China, India and Brazil. In South Africa, Syngenta has a formulation plant in Brits in the North West, where it manufacture agrochemicals. Syngenta through its subsidiary, Syngenta SA (Pty) Ltd ("Syngenta SA") provides the following products in South Africa:

- *Crop protection products:* fungicides, insecticides, selective and non-selective herbicides, plant growth and seed treatment products.
- *Lawn and garden:* flower seeds, turf and landscape and vector control products.
- *Seeds:* sunflower seeds that require less water to allow crops to grow in dryer conditions.

Areas of overlap

4. The Commission's investigation identified horizontal overlaps in the business activities of the merging parties in the market for the manufacture and supply of agrochemicals or crop protection products, namely fungicides, insecticides, herbicides (selective and non-selective) and seed treatment products. These products are sold to the end-users (e.g. farmers) by third party distributors such as AECI (Pty) Ltd (trading as Nulandis), Wenkem SA (Pty) Ltd (Wenkem) and Nexus AG (Nexus), amongst others.

Competitive analysis

5. The Commission assessed the competition effects of the proposed merger on the following markets:
   - *Insecticides* – for cereals (wheat), corn, grapes, pome fruit, soybeans, tomatoes, potatoes and other specialty crops.
   - *Non-selective herbicides* – for cereals (wheat), corn, grapes, soybeans and other specialty crops.
   - *Selective herbicides* - for cereals (wheat), corn, grapes, other diverse field crops (DFC), potatoes, soybeans, sugarcane, sunflowers, tomatoes and other specialty crops.
   - *Fungicides* - for cereals (wheat), citrus, corn, grapes, other DFC, pome fruit, soybeans, tomatoes, vegetables- cucurbits, vegetables- leafy/ brassica/ okra and other specialty crops.
   - *Seed treatment* - for cereals (wheat), potatoes and other specialty crops.

6. The Commission found that the merged entity will continue face competition from reputable firms such as Bayer (Pty) Ltd ("Bayer"), BASF South Africa (Pty) Ltd ("BASF"), Monsanto International Sarl ("Monsanto"), Villa Crop Protection (Pty) Ltd ("Villa Crop"), Agchem Africa (Pty) Ltd ("Agchem"), Dow, DuPont and Arysta LifeScience (Pty) Ltd ("Arysta"), amongst others on a number of markets. According to market participants contacted, there about more than forty (40) suppliers of agrochemicals in South Africa supplying a range of original and generic agrochemicals.

7. Based on the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any of the affected markets. This based on the fact that there are other suppliers of agrochemicals and seed treatment products such as Bayer, BASF, Monsanto, Villa Crop, Agchem, Dow, DuPont and Arysta.

Public interest concerns

8. In relation to employment, given that the businesses of the merging parties will continue to operate independently, the Commission found it unlikely that the proposed merger will result

in job losses. With respect to the potential impact a particular sector or region, the Commission was concerned about the possibility of the merging parties moving Syngenta's formulation plant outside of South Africa. Currently, China National imports all its products into South Africa from its manufacturing facilities abroad and Syngenta has a formulation or manufacturing plant in Brits, in the North West Province.

9. The Commission was concerned that the merger may result in the merging parties importing all their products at the expense of using the manufacturing plant, post-merger. This will have an adverse effect on the agrochemicals sector or the North West region and thus raises a substantial public interest concern. The Commission found that the likelihood of the merging parties importing most of their products at the expense of using the manufacturing plant will affect the economy two-fold, namely, (i) by import substitution and/or (ii) likely job losses should the manufacturing plant be closed or relocated elsewhere whether within South Africa or internationally.

10. In order to remedy the abovementioned negative impact on a particular industrial sector or region, the merging parties and the Commission agreed on a condition requiring the merged entity to not relocate the manufacturing plant of Syngenta outside of the North West Province in South Africa for a period of time.

Conclusion

11. The Commission therefore approves the proposed merger subject to the conditions attached hereto as **Annexure A**.

ANNEXURE A

China National Agrochemicals Corporation / Syngenta AG

CC CASE NUMBER: 2016Jun0322

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1. "**Acquiring Firm**" means China National Agrochemical Corporation;

1.2. "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC15);

1.3. "**Commission**" means the Competition Commission of South Africa;

1.4. "**Competition Act**" means the Competition Act 89 of 1998, as amended;

1.5. "**Conditions**" mean these conditions;

1.6. **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.7. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.8. **"Manufacturing Plant"** means the formulation plant of the Target Firm located in Brits (North West Province);

1.9. "**Merger**" means the acquisition of control over Syngenta AG by China National Agrochemical Corporation;

1.10. **"Merged Entity"** means the merged business activities of the Acquiring Firm and Target Firm;

1.11. "**Merging Parties**" mean the Acquiring Firm and Target Firm, as defined in this section, collectively; and

1.12. **"Target Firm"** means Syngenta AG.

2. Recordal

2.1. On 30 June 2016, the Merging Parties filed an intermediate merger transaction with the Commission. Following its investigation of the Merger, the Commission is of the view that it is unlikely to substantially prevent or lessen competition in the relevant markets.

2.2. Although, the Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition, the investigation found that the Acquiring Firm imports all its products in the agrochemicals sector from its manufacturing facilities abroad to South Africa whilst the Target Firm has a Manufacturing Plant in the North West Province. The Commission is concerned that the Merger may result in the Merging Parties importing all their products at the expense of local manufacturing in the North West. This will have an adverse effect on the agrochemicals sector or region and thus raises a public interest concern. The Commission finds that the likelihood of the Merging Parties importing most of their products at the expense of using the Manufacturing Plant will affect the economy two-fold, namely, (i) by import substitution and/or (ii) likely job losses should the Manufacturing Plant be closed or relocated elsewhere whether within South Africa or internationally.

2.3. In order to allay the concerns of the Commission, the Merging Parties have provided an undertaking that the Manufacturing Plant will not be relocated outside of South Africa for a certain period.

2.4. In order to remedy the abovementioned negative impact on a particular industrial sector, the Commission hereby imposes the Conditions as set out below.

3. Conditions to the approval of the Merger

3.1. For a certain period of years, following the Implementation Date, the Manufacturing Plant shall not be relocated to premises that are outside of the North West Province of the Republic of South Africa.

4. Monitoring of compliance with the Conditions

4.1. The Merging Parties shall notify the Commission of the Implementation Date within 5 Days of its occurrence.

4.2. The Merging Parties shall submit an affidavit prepared by a senior official confirming compliance with the Conditions as set out in clause 3.1 on the anniversary of the Implementation Date for the duration of the Conditions.

4.3. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

4.4. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.5. 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.

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

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 156 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

COUNTRY BIRD HOLDINGS PROPRIETARY LIMITED

AND

SOVEREIGN FOOD INVESTMENTS LIMITED

2016AUG0410

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:

1. On 23 August 2016, the Competition Commission (Commission) received a notice of an intermediate merger according to which Country Bird Holdings Proprietary Limited (CBH) intends to buy Sovereign Food Investments Limited (Sovereign Foods). Following the merger, Sovereign Foods will be controlled by CBH.

2. The primary acquiring firm, CBH, is a private company incorporated according to the company laws of South Africa. CBH is controlled by Synapp International Limited (Synapp) which is ultimately controlled by Mr. Kevin James who does not control any other firms in South Africa. Synapp controls one other firm in South Africa: Arbor Acers South Africa (Pty) Ltd.

3. The primary target firm, Sovereign Foods, is a public company listed on the Johannesburg Stock Exchange and hence not controlled by any firm. Sovereign Foods directly and indirectly wholly owns Sovereign Food Industries Proprietary Limited and Crown Chickens Proprietary Limited.

4. The proposed merger is a hostile takeover in that CBH has made an unsolicited offer directly to the shareholders of Sovereign Foods without the endorsement of Sovereign Foods management. In this regard, the two parties to the merger have not signed a merger agreement and it is not clear what exact percentage CBH will own in Sovereign Foods when the merger is concluded.

5. CBH is a fully integrated chicken producer with its head office in Johannesburg. In addition to South Africa, CBH has operations in Botswana, the DRC, Mozambique, Namibia, Nigeria, Swaziland, Zambia and Zimbabwe. CBH produces chicken products from three production sites in Bloemfontein in the Free State and Klerksdorp and Mahikeng in the North West. Each site has a parent breeding operation, hatchery, feed mill, abattoir, and plant based factory shop.

6. Sovereign Foods is a fully integrated poultry business in South Africa with business units comprising, *inter alia*, breeding, hatchery, broiler operation, feed mill, processing plant and a sales and marketing unit. Sovereign Foods supplies both fresh and frozen chicken portions. Sovereign Foods also has a value added plant which manufactures fully cooked chicken. Sovereign Foods is the only supplier of this product to its various major customers. Sovereign Foods recently acquired the abattoir business of Quantum Foods Proprietary Limited, situated in Hartbeespoort, North West. Prior to this, Sovereign Foods' primary operation was based in Uitenhage, Eastern Cape.

7. Both parties are vertically integrated poultry producers, which raises horizontal overlaps in several levels of the market as well as some potential sub-markets. The Commission has focused on the primary overlap which is in the production and supply of chicken products. The Commission's assessment however focuses on frozen chicken as opposed to fresh chicken as this is primarily where the merging parties' activities overlap. The merger also raises vertical overlaps due to CBH's activities in Grand Parent/Parent chicks and as a supplier of distribution services. The Commission therefore concluded on the following relevant markets:

   7.1. The broad market for chicken meat production in South Africa; and

   7.2. The market for the production and supply of frozen chicken products in South Africa.

8. The Commission has not endorsed the approach to the market definition which includes segmenting the market according to customer groups – the Commission is of the view that this approach is unlikely to be reflective of competition dynamics in the market as the underlying products are largely the same, even across different customer groups.

9. Based on market share data submitted by the respective merging parties as well as the market shares published by the Department of Agriculture, Forestry and Fisheries, it is clear that Astral Operations Limited (Astral) and RCL Foods Consumer (Pty) Ltd (RCL) are the two market leading firms in the South African poultry market. The market positions occupied by RCL and Astral do not change appreciably even if imports are included in the market. With each version of the market shares, the merging parties are minor players in the market with market shares of less than 15%. The low market share that will be attributable to the merged entity post-merger suggests that the merger is not likely to substantially prevent or lessen competition in any of the relevant markets.

10. Notwithstanding the Commission's approach to market definition, the Commission also considered the likely impact of the merger on the different market segments proposed by the merging parties. In the market segments for quick service restaurants (QSR) such as KFC, Hungry Lion and the like, and the market for the supply to restaurants, the merged entity will have a market share not exceeding 15% in each market segment.

11. In the other market segments such as retail/wholesale and independent distributors, the merged entity will have a market share of less than 20%, and will face competition from firms such as Astral, Rainbow, Daybreak and Chubby. The only market segment where the merged entity would have a market share of more than 20% is in the supply to Food Services/Manufacturing however even in this market, RCL remain the market leader while Astral will also remain active in the market. It is unlikely that the merged entity would be able to exercise market power in any of these market segments.

12. The Commission has also found that customers are likely to have some countervailing power and that imports play a prominent role in some of the domestic markets and that this is likely to continue to grow. It appears that the market may be characterised by high barriers to entry, however it does not appear that this merger will increase barriers to entry. The Commission

is therefore of the view that the merger is unlikely to substantially prevent or lessen competition.

13. Sovereign Foods has made extensive submissions regarding the impact of the merger on employment at its business and also at the businesses of its suppliers. In addition, the Commission also received more than one hundred Notices of Intention to Participate from the employees of Sovereign Foods which are largely opposed to the merger. Sovereign Foods submits that the merger will result in job losses as CBH uses a different business model that relies on substantially less employees. In dealing with this concern, CBH has agreed to a merger remedy which will ensure that there will be no merger specific retrenchments in perpetuity. The Commission is of the view that the proposed remedy will be sufficient to address the concerns regarding possible job losses.

14. Sovereign Foods also made submissions regarding the likely impact that changing the Sovereign Foods business model would have on Sovereign Foods' commercial viability. Sovereign Foods submits that changing to a business model similar to that used by CBH may compromise the commercial viability of Sovereign Foods in the future. The Commission is of the view that it may not have the authority to impose a particular business model on an acquiring firm or merged entity if it is unrelated to competition or public interest concerns. The commercial viability of Sovereign Foods post-merger is the concern of CBH; the Commission is of the view that it does not have jurisdiction to direct CBH on how to maintain such commercial viability. Even though CBH had indicated that it is amenable to a condition ensuring that it does not alter this aspect of the Sovereign Foods business model, the Commission is of the view that this kind of condition is unwarranted.

15. The Commission also received a concern from one of Sovereign Foods' suppliers suggesting that it may lose the business of Sovereign Foods post-merger and this could have a negative impact on its business and may cause it to retrench some staff. The Commission is of the view that CBH has no incentive to not purchase from Sovereign Foods' suppliers apart from pure commercial reasons. If, at the expiry of the contracts, CBH decides to purchase from other suppliers, it may be because it has received a better price, better quality, better service or any other commercial dynamic which may result from competitive interactions between

competitors. CBH would have no other incentive to not purchase from a particular supplier as there is no overlap in their activities.

16. The Commission also considered the impact of the merger on an empowerment deal that was being proposed by Sovereign Foods pre-merger. Particularly, CBH and other shareholders in Sovereign Foods had voted against a proposed empowerment prior to the filing of the merger. The Commission proposed that CBH consider, as a condition to the merger, a remedy that would ensure that CBH will put in place a similar deal post-merger if it has the necessary shareholding enabling it to do so. CBH submitted that it was supportive of empowerment initiatives and that it would support the empowerment deal as long as it has the shareholding required to approve the deal. The Commission is satisfied that this proposed condition will ensure that the merger does not result in a dilution of HDI shareholding in the relevant markets.

17. Sovereign Foods has rejected all the conditions that have been put on the table by CBH and maintains that the only viable option is a prohibition of the merger. The Commission has not found any evidence that suggests that a prohibition of the proposed merger is warranted. The Commission is of the view that the merger is unlikely to substantially prevent or lessen competition.

18. The Commission has considered all the proposed conditions and is of the view that they address the public interest concerns identified. Most importantly, it should be noted that CBH has agreed to the following public interest conditions: (1) No job losses for an indefinite period; and (2) Introduction of B-BBEE shareholding in Sovereign Foods up to a level similar to what would have resulted from the initial empowerment deal within two years of CBH acquiring the necessary shareholding in Sovereign Foods in order to approve the deal. It is for these reasons that the Commission is satisfied that the proposed conditions will ensure that the proposed merger does not result in any negative effects on all the public interest concerns identified above.

19. The Commission therefore approves the merger subject to the conditions attached as **Annexure A**.

ANNEXURE A

COUNTRY BIRD HOLDINGS (PROPRIETARY) LIMITED

AND

SOVEREIGN FOOD INVESTMENTS LIMITED

CASE NO. 2016AUG0410

CONDITIONS

---

1. **INTERPRETATION**

1.1 The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

1.1.1 "**Act**" means the Competition Act 89 of 1998, as amended;

1.1.2 **"Approval Date"** means the date referred to in the Commission's Merger Clearance Certificate (Form CC15);

1.1.3 "**B-BBEE**" means Broad-Based Black Economic Empowerment as defined or envisaged in the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended;

1.1.4 "**CBH**" means Country Bird Holdings (Proprietary) Limited;

1.1.5 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act;

1.1.6 "**Conditions**" mean the conditions as set out herein;

1.1.7 **"Days"** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.1.8 **"Employees"** mean any permanent employee or employee on a fixed term contract, employed by the Merging Parties in South Africa, including employees employed through a temporary employment service as that term is defined in the LRA and who fall within the ambit of section 198A of the LRA;

1.1.9 "**Historically Disadvantaged Persons**" means historically disadvantaged persons within the meaning of section 12A(3)(c) of the Act;

1.1.10 **"Implementation Date"** means the date, occurring after the Approval date, on which the merger is implemented by the Merging Parties;

1.1.11 **"LRA"** means the Labour Relations Act No. 66 of 1995, as amended;

1.1.12 "**Merger**" means the acquisition of control by CBH over Sovereign Foods, notified as an intermediate merger to the Commission under case number 2016Aug0410;

1.1.13 "**Merging Parties**" means CBH and Sovereign Foods;

1.1.14 "**Sovereign Foods**" means Sovereign Food Investments Limited and all its subsidiaries;

1.1.15 **"Threshold Shareholding"** means the shareholding in Sovereign Foods necessary for CBH to approve the B-BBEE deal contemplated in clause 4 below; and

1.1.16 "**Tribunal**" means the Competition Tribunal of South Africa as established in terms of section 26 of the Act.

2. **RECORDAL**

2.1 On 22 August 2016, CBH and Sovereign Foods submitted separate notifications of the Merger to the Commission.

2.2 The Commission's investigation of the Merger found the following public interest concerns:

2.2.1 As Sovereign Foods is head-quartered in Uitenhage, Eastern Cape, an area with substantial unemployment, any job losses as a result of the Merger will have a negative effect on employment;

2.2.2 CBH currently outsources the business of growing chickens from day-old chicks to broilers ready for slaughter. Sovereign Foods largely does not make use of contract growers (outsourcing) but primarily insources the growing function. If CBH introduced a contract grower model in respect of Sovereign Foods, it is likely to negatively affect the employees of Sovereign Foods;

2.2.3 A purpose of the Act is the promotion of the greater spread of ownership of the economy by Historically Disadvantaged Persons. Although the Commission reserves its views on the rationale for Sovereign Foods attempting to implement an empowerment transaction, it is clear that CBH does not support this particular transaction, although it is supportive of transformation in general. The Commission wishes to ensure that transformation is achieved in the business of Sovereign Foods regardless of its ownership.

2.3 In order to remedy the abovementioned negative impact on public interest, the Commission hereby imposes the Conditions as set out below.

3. **EMPLOYMENT**

3.1 The Merging Parties shall not retrench the Employees as a result of the Merger.

3.2 For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act 66 of 1995; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of an employee on a fixed term contract.

4. **B-BBEE**

4.1 CBH will ensure compliance by it and all companies controlled by it with all applicable B-BBEE legislation.

4.2 It is recorded that it is the intention of CBH to acquire 100% of the issued shares in Sovereign Foods. If CBH acquires the Threshold Shareholding, CBH will propose a B-BBEE transaction that results in the transfer the same percentage of the issued shares in Sovereign Foods to Historically Disadvantaged Persons as would have been achieved through the deal proposed by Sovereign Foods on the same terms.

4.3 The B-BBEE transaction referred to in paragraph 4.2 will be implemented within 2 (two) years of the date on which CBH acquires the Threshold Shareholding.

5. **APPLICATION OF CONDITIONS**

5.1 The Conditions (other than the Condition set out in paragraph 4.2) will apply if CBH, together with its Concert Parties, obtains control over Sovereign Foods by acquiring 50% plus 1 of the issued ordinary shares in Sovereign Foods.

6. **MONITORING**

6.1 The Merging Parties shall circulate a copy of the Conditions to the Employees and their relevant trade unions or employee representatives within 5 (five) Days of the Approval Date.

6.2 As proof of compliance thereof, a senior official of the Merging Parties shall within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the Employees.

6.3 CBH shall inform the Commission of the Implementation Date within five (5) Days of its occurrence.

6.4 CBH shall notify the Commission within 10 (ten) Days of the date on which CBH acquires the Threshold Shareholding.

6.5 CBH shall notify the Commission within 20 (twenty) Days of the date on which The B-BBEE transaction is implemented and provide proof of the implementation.

6.6 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.

6.7 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

6.8 All correspondence in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za

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

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 157 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

PHUMELELA GAMING AND LEISURE LIMITED

AND

SUPABETS SA HOLDINGS PROPRIETARY LIMITED

CASE NUMBER: 2016MAY0253

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:

1. On 26 May 2016, the Competition Commission (Commission) received notice of an intermediate merger according to which the primary acquiring firm Phumelela Gaming and Leisure Limited (Phumelela) will acquire 50% of the issued share capital in Supabets SA Holdings Proprietary Limited (Supabets). Following the merger, Phumelela will own 50% of Supabets with the remaining shares held by IHH Company (Pty) Ltd (AF).

2. Phumelela is a public company listed on the JSE. Phumelela is not controlled by any firm Phumelela controls several subsidiaries in South Africa. Most relevant for the proposed merger is Betting World (Pty) Ltd (Betting World), a fixed-odds bookmaker that Phumelela controls.

3. Supabets is a private company incorporated according to the laws of South Africa.

4. Phumelela is a vertically integrated horseracing administrator and betting operator. Phumelela's activities include the staging of thoroughbred horseracing in Gauteng, the Free

State, the Eastern Cape and the Northern Cape and conducting totalisator (tote) betting on thoroughbred horseracing at its racecourses and tote agencies in all provinces save for Western Cape and KwaZulu-Natal, as well as via a call-centre and the internet. Through its subsidiary, Betting World, Phumelela also conducts fixed–odds betting on horseracing, sports and numbers (lotteries) through a number of bookmaking outlets around South Africa as well as via a call-centre and the internet.

5. Supabets operates 12 bookmaking outlets in Gauteng, Mpumalanga, Limpopo and KwaZulu-Natal and offers fixed-odds betting on sport as well as numbers (lotteries). In addition to the physical location, Supabets also offers betting via a call-centre and on the internet. Supabets currently does not offer betting on horseracing although it has done so in the past.

6. There is therefore a horizontal overlap in the activities of the merging parties in the betting industry. In particular, the Commission focuses on betting on sports. Supabets is not active in horseracing betting and hence this is not considered further. In addition, the merging parties' respective businesses in numbers betting are very small.

7. With regards to the market definition, the merging parties submit that betting forms part of the broader gambling market and as such faces competition from casinos, LPMs, the lotto and other forms of gambling. The evidence collected by the Commission however does not support this approach to market definition. The Commission relied on the Tribunal's previous findings as well as submission from the merging parties' competitors which confirmed that betting is not in direct competition with other forms of gambling. In fact, the evidence collected by the Commission suggests that there is a distinct market for fixed-odds betting separate from tote betting due to key differences in demand and supply factors between the two. The Commission also finds that it is likely that betting on sports is distinct from betting on horseracing and numbers, and vice versa.

8. With regards to the geographic market, the Commission finds that the geographic market for a betting store is likely to be local with a radius of roughly 5km although it could be slightly wider or narrower depending on the area i.e. urban vs. rural. The market for non-over-the-counter (non-OTC) betting which is betting over the phone and the internet is likely to be

national. The Commission has therefore defined the following markets where the merging parties' activities overlap.

8.1. The local market (with a radius of 5 kilometres) for OTC fixed-odds betting on sports in Pretoria Central, Johannesburg Central, Durban Central, Polokwane and Nelspruit respectively; and

8.2. The national market for non-OTC fixed-odds betting on sports.

9. The Commission finds that the merged entity will have between 31% and 49% market shares in each of the local markets, namely, Johannesburg CBD, Pretoria CBD, Durban CBD, Polokwane and Nelspruit. In each of the local market, the merged firm will be a prominent player however it will continue to face substantial competition constraints from other large bookmakers. Further, in Johannesburg, Pretoria and Durban, Betting World occupies a very limited market position pre-merger such that the actual impact of the merger on the structure of the market in these local markets is not likely to be substantial. The same can be said for Supabets in Nelspruit.

10. With regards to the national market for non-OTC betting on both sports and numbers respectively, the Commission notes that there are no market shares freely available in the market. The market is vast with almost every bookmaker in the country participating through an online platform. There is also growth in the emergence of online-only bookmakers. Punters placing bets online on sports have a wide array of options available to them and it is unlikely that this merger will result in any harm to them.

11. The Commission further finds that the merging parties are unlikely to be each other's most direct competitors in any event as Betting World is more horseracing betting focused whereas Supabets focuses more on sports betting. This is likely to diminish the incentive to act in an anti-competitive manner. The Commission therefore finds that the merger is unlikely to result in the merged entity acting in an anti-competitive manner post-merger.

12. The Commission also considered whether it was feasible that Phumelela may be acquiring Supabets with an intention to slow down its innovative agenda that is placing the more established players under pressure. The shareholders of Supabets have however assured

the Commission that this would not be the case. Supabets will continue to be operated independently of Phumelela and Betting World. The Commission is therefore satisfied that the merger is unlikely to diminish Supabets' incentive to innovate.

13. The Commission therefore finds that the merger is unlikely to result in a substantial prevention or lessening of competition. The Commission also finds that the merger will not have a negative impact on any of the public interest considerations.

14. During the Commission's investigation, it was revealed that a company in which Supabets has shareholding was issued a tote license in North West. The Commission engaged the merging parties to establish whether this was indeed the case. The merging parties confirmed that a tote license had indeed been issued to Supabets in North West however the merging parties further submitted that the license had been disposed of subject to approval by the gambling board. Supabets indicated that it had no intention to proceed with its initial plans to commence operations in the North West province.

15. The merging parties further tendered an undertaking which they agreed may be imposed as a condition to the approval of the proposed transaction. The condition will effectively ensure that the license that was issued to Supabets does not fall under the control of the merged entity or its respective shareholders or associated companies in the event that the disposal is not approved by the NWGB.

16. The Commission therefore approves the merger subject to conditions. The actual condition is attached to the report as **Annexure A**.

Phumelela Gaming and Leisure Limited

and

Supabets SA Holdings Proprietary Limited

CASE NUMBER: 2016May0253

CONDITIONS

1. **DEFINITIONS**

The following terms shall have the meaning assigned to them below and cognate expressions have corresponding meanings–

1.1 **"Acquiring Firm"** means Phumelela Gaming and Leisure Limited and all firms it controls either directly or indirectly and all firms which directly or indirectly control the Acquiring Firm;

1.2 "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC 15);

1.3 **"Century Loop"** means Century Loop Rite Trade (Pty) Ltd, a private company in which the Target Firm owns 40% of the issued shares;

1.4 "**Commission**" means the Competition Commission of South Africa;

1.5 "**Competition Act**" means the Competition Act No. 89 of 1998, as amended;

1.6 "**Conditions**" mean these conditions;

1.7 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;

1.8 **"Dispose"** means sale and/or transfer of title of the Licenses by the Merged Entity and/or the Target Firm which shall include the final approval of the sale and/or transfer of the Licences by the NWGB;

1.9 **"Independent Third Party"** means an independent entity or person(s) not related to the Merging Parties or any directly or indirectly affiliated member of the Merging Parties' corporate group."

1.10 **"Licenses"** mean licenses to operate totalisator and fixed-odds betting operations in the North West Province that have been issued by the NWGB to the Century Loop;

1.11 **"Merger"** means the acquisition of a 50% shareholding in the Target Firm by the Acquiring Firm;

1.12 **"Merging Parties"** mean the Acquiring Firm and the Target Firm;

1.13 **"Merged Entity"** means the Acquiring Firm and the Target Firm following the Merger;

1.14 **"NWGB"** means the North West Gambling Board;

1.15 "**Rules**" mean the Rules for the Conduct of Proceedings in the Commission;

1.16 **"Target Firm"** means the Supabets SA Holdings Proprietary Limited and any firms it controls either directly or indirectly and those firms which indirectly or directly control the Target Firm; and

1.17 **"Tribunal"** means the Competition Tribunal of South Africa.

2. **RECORDAL**

2.1 On 26 May 2016, the Competition Commission ("the Commission") received notice of an intermediate merger according to which the Acquiring Firm will acquire 50% of the issued share capital in the Target Firm.

2.2 During the investigation into the likely impact of the merger, the Commission identified the fact that the Century Loop had been issued Licenses by the NWGB. The Commission is of the view that the Licenses held by the Century Loop in the North West Province introduce a horizontal overlap between the Acquiring Firm and the Target Firm, which needed to be assessed by the Commission.

2.3 The Merging Parties have indicated that they are in the process of disposing the interest held in Century Loop, pending approval by the NWGB and as such there is no need for an assessment of this overlap. The Commission accepts that the Target Firm is in the process of disposing the interest held in Century Loop and as such there is no necessity to consider the overlap in the North West Province. The Commission however notes that the disposal of Century Loop remains subject to approval by the NWGB.

2.4 To ensure that the Licenses do not remain under the control of the Target Firm or the Merged Entity in the event that the disposal of Century loop is not approved by the NWGB, the Commission and Merging Parties have agreed to a condition prohibiting the Merging Parties jointly or separately from maintaining ownership or control of the Licenses through Century Loop or any other firm in which the Merging Parties have interests.

2.5 In light of the above, the Commission imposes the following conditions which are set out below.

3. **CONDITIONS TO THE APPROVAL OF THE MERGER**

3.1 The Merged Entity and/or Target Firm and/or the Acquiring Firm shall not conduct business under the Licenses from the Approval Date.

3.2 The Target Firm shall dispose of its shareholding in Century Loop and/or the Licences to an Independent Third Party within two (2) years of the Approval Date.

3.3 Following the disposal in 3.2, the Merged Entity and/or Target Firm shall not acquire or reacquire its shareholding or any other interest in Century Loop and/or the Licenses.

3.4 In the event that the Target Firm is unable to dispose of its shareholding in Century Loop and/or the Licenses in terms of 3.2 above the Merged Entity and/or the Target Firm must notify the NWGB in writing of their abandonment of the Target Firm's shareholding in Century Loop and/or the Licenses.

4. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1 The Merged Entity shall circulate a copy of the Conditions to the NWGB within 5 (five) Days of the Approval Date.

4.2 As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merged Entity attesting to the circulation of the Conditions and attach a copy of the said notice.

4.3 The Merged Entity shall report to the Commission on a six monthly basis, from the Approval Date, on the status of the disposal of its shareholding in Century Loop and/or the Licenses. The final report will be due on the second anniversary of the Approval Date.

4.4 In the event that the Target Firm is able to dispose of its shareholding in Century Loop and/or the Licenses according to 3.2 above, the Target Firm and/or the Merging Parties shall inform the Commission, as soon as possible but within three months of the expiry of the period referred to in 3.2 above, of the proposed Independent Third Party and shall:

4.4.1 Submit, in writing, the name of the proposed Independent Third Party together with any and all relevant documentation that will enable the Commission to assess the independence of the proposed Independent Third Party prior to concluding any sale agreement with the proposed Independent Third Party; and

4.4.2 The proposed Independent Third Party shall provide the Commission with an affidavit deposed to by a senior official of that proposed Independent Third Party confirming the accuracy of the information referred to in 4.4.1 above.

4.5 The Commission shall, within 10 (ten) Days of being informed in terms of 4.4 above,

provide the Merged Entity and/or Target Firm, with written approval or rejection of the proposed purchaser, the approval of which may not be unreasonably withheld.

4.6 The Merged Entity and/or the Target Firm shall inform the Commission in writing of the disposal of its shareholding in Century Loop and/or the Licenses within 10 (ten) Days of the disposal and provide proof of the disposal to the Commission.

4.7 In the event that the Merged Entity and/or Target Firm is unable to dispose of its shareholding in Century Loop and/or the Licenses within the period referred to in 3.2 above, the Merged Entity and/or the Target Firm must submit an affidavit, attested to by a senior official of the Target Firm, attesting to the abandonment of the Licenses or the shares in Century Loop in terms of 3.4 above.

4.8 In the event that the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merged Entity and/or Target Firm of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Rules.

4.9 The Merged Entity and/or Target Firm shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of the Conditions.

4.10 All correspondence in relation this Condition should be forwarded to: mergerconditions@compcom.co.za

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

ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 158 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MEDPRO PHARMACEUTICA PROPRIETARY LIMITED

AND

ALLERGAN GX

CASE NUMBER: 2016JUL0345

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:

1. On 11 July 2016, the Competition Commission ("Commission") was notified of an intermediate merger wherein Medpro Pharmaceutica (Pty) Ltd ("Medpro") intends to acquire joint control over Allergan Gx ("Allergan Gx"), through an unincorporated Teva/Medpro Joint Venture which is jointly controlled by Medpro and Teva Pharmaceuticals (Pty) Ltd ("Teva") ("Teva/Medpro JV"). Teva and Medpro formed the unincorporated Teva/Medpro in 2014 to collaborate on the marketing and distribution of certain pharmaceutical products. The transaction of the formation of Teva/Medpro JV was notified to and subsequently approved without conditions by the Commission on 9 December 2014. When the Teva/Medpro JV was formed, each of Teva and Medpro transferred some of their products, marketing and distribution functions to Teva/Medpro JV.

2. Teva recently acquired the global generic pharmaceutical business of Allergan ("Allergan Generics Business"). The proposed transaction is meant to transfer some of these Allergan Generics Business' products and functions of Teva's subsidiary, Allergan Generics

Business, to Teva/Medpro JV. Through the proposed transaction, Teva is transferring part of the Allergan Generics Business ("Allergan Gx") to the Teva/Medpro JV. Because Teva already has some form of control over these products, the proposed transaction is meant to enable Medpro to acquire joint control over Allergan Gx as Allergan Gx will be placed under the Teva/Medpro JV, which is jointly owned by Teva and Medpro. Post-merger, Allergan Gx will be a wholly-owned subsidiary of the unincorporated Teva/Medpro JV, which is jointly owned by Teva and Medpro.

3. The primary acquiring firm is Medpro, through the unincorporated Teva/Medpro JV. Medpro is incorporated in terms of the laws of the Republic of South Africa. Medpro is a wholly-owned subsidiary of Cipla Limited ("Cipla"), a global generic pharmaceutical manufacturing company incorporated in accordance with the company laws of India. Medpro supplies over-the-counter ("OTC") and scheduled medicines across various therapeutic areas within South Africa.

4. Teva is a private company incorporated in accordance with the company laws of the Republic of South Africa. Teva is ultimately controlled by Teva Pharmaceutical Industries Limited ("Teva Pharm"). Teva Pharm is a fully integrated public pharmaceutical company incorporated in accordance with the laws of Israel. Teva Pharm's business comprises of two primary segments namely (i) generic medicines and (ii) speciality medicines, which include products in the women's health, respiratory and central nervous system ("CNS") therapeutic areas. In South Africa, Teva Pharm operates through its wholly-owned subsidiary, Teva. Teva develops, sells and markets a range of scheduled pharmaceutical products.

5. The proposed transaction raises horizontal overlap on several products, based on the Anatomical Therapeutic Chemical ("ATC") Classification System. There is no horizontal overlap between the activities of the Teva/Medpro JV and Allergan Gx. However, as Teva/Medpro JV's activities are hosted and operated through Medpro, the horizontal overlap in the transaction is raised by the fact that Medpro also distributes products substitutable with those of Allergan Gx.

6. In addition to these generic products, both Allergan Gx and Medpro sell Respiratory Products. However, the Respiratory therapeutic area does not form part of the Teva/Medpro JV and each of the Allergan Generics Business and Medpro firms will continue to sell and distribute their Respiratory Products independent of Teva/Medpro JV.

7. The merging parties defined the product markets based on the categories of the third level of ATC ("ATC3") Classification, as is commonly done by the Competition Tribunal ("Tribunal") and other competition authorities the world over. The Commission concurs with merging parties with regard to defining the product markets based on ATC3 categories.

8. There are substantial markets in which a horizontal overlap arises in terms of this ATC3 classification. The Commission considered the market shares of these relevant markets (ATC3 categories) and found that the market share accretions are small in almost all of the product offerings.

9. The Commission is of the view that the proposed transaction does not raise substantial concerns as the post-merger market shares and/or the market share accretions are low. In addition, the proposed transaction involves generic products which are scheduled medicines and are thus regulated through the single exit pricing (SEP) regime by the Department of Health. The merged entity will continue to face significant competition from other viable rivals such as Pfizer, Aspen, Novartis, Roche, Boehringer, and Adcock among others.

10. Furthermore, the merging parties have an existing relationship on some of their products. The proposed transaction will not have any effect on the markets for these products as these products will be distributed separately by the Teva/Medpro JV and Medpro.

11. Further, the Commission considered the pipeline products of the merging parties and found that these are products have not yet been brought into the market as they have not yet been approved by the MCC and are therefore not yet registered. Given the regulatory time frames required to bring pharmaceutical products to market (currently estimated to be 4 to 5 years) and the high degree of competition amongst pharmaceutical firms particularly for generic

products, the Commission is of the view that the pipeline products of the merging parties do not raise competition concerns.

12. Lastly, the Commission considered whether Teva/Medpro JV could facilitate information exchange between Medpro and ultimately Teva, as each of these joint venture partners operate as independent pharmaceutical entities in the market. The Commission found that the merging parties have, in terms of the Teva/Medpro JV Agreement, instituted a governance structure through which the flow of competitively sensitive information between their independent entities, namely Teva and Medpro through the Teva/Medpro JV may be ring-fenced.

13. However, the Commission still found that the Teva/Medpro JV is likely to facilitate the exchange of competitively sensitive information between Teva and Medpro and their affiliate companies, resulting in a substantial lessening of competition within the meaning of section 12A of the Act, if the existing governance structure to regulate information remains loose, as is the case, in its current form. The Commission is of the view that this governance structure has to be formalised by making it a condition for the approval of the merger, to enforce compliance. Therefore, it is necessary to adopt the governance structure of the Teva/Medpro JV as a condition to enforce compliance and eliminate any potential flow of competitively sensitive information between Teva and Medpro. The Commission engaged with the merging parties with respect to the matter and the merging parties agreed to the conditions.

14. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the defined markets.

15. The proposed transaction does not raise any substantial public interest concerns.

16. Therefore, the Commission approves the proposed transaction with conditions in Annexure A.

ANNEXURE A

CONFIDENTIAL

Medpro Pharmaceutica (Pty) Ltd and Allergan Gx

CC CASE NUMBER: 2016Jul0345

CONDITIONS

1. Definitions

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1. "**Acquiring Firm**" means Medpro Pharmaceutica (Pty) Ltd, through the unincorporated Teva/Medpro JV;

1.2. "**Allergan Gx"** means the primary target firm;

1.3. "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC15);

1.4. "**Commission**" means the Competition Commission of South Africa;

1.5. **"Competitively Sensitive Information"** means all information with respect to the products of Teva and Medpro that are substitutable with one another which is not already within the public domain and which includes but is not limited to pricing, sales, marketing, promotion, distribution and any action or aspect of commercial value in relation to such products;

1.6. "**Competition Act**" means the Competition Act 89 of 1998, as amended;

1.7. "**Conditions**" mean these conditions;

1.8. **"Confidentiality Undertakings"** mean written and binding measures not to disclose

confidential information concluded by the nominees to the JV Governing Body;

1.9. **"Days"** mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

1.10. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.11. **"JV Governing Body"** means the body that manages the direction of the business and affairs of the Teva/Medpro JV;

1.12. **"JV Governing Body Members"** mean individuals appointed in equal proportions by each of Teva and Medpro to the JV Governing Body;

1.13. **"JV Products"** means the pharmaceutical products initially transferred by each of Teva and Medpro into the JV, and the Allergan Gx products which are being transferred into the JV as a result of this Merger;

1.14. "**Medpro"** means Medpro Pharmaceutica (Pty) Ltd, the acquiring firm, through the Teva/Medpro JV;

1.15. "**Merger**" means the acquisition of joint-control by Medpro Pharmaceutica (Pty) Ltd over Allergan Gx, through the Teva/Medpro JV;

1.16. **"Merging Parties**" mean Teva Pharmaceutica (Pty) Ltd (owners of Allergan Gx) and Medpro Pharmaceutica (Pty) Limited;

1.17. **"Teva"** means Teva Pharmaceuticals (Pty) Ltd, the JV partner of Medpro with respect to the unincorporated Teva/Medpro JV;

1.18. **"Teva/Medpro JV"** means the unincorporated JV formed by Teva and Medpro as the JV partners, to market, sell and distribute the JV Products;

1.19. **"Tribunal"** means the Competition Tribunal of South Africa

2. Recordal

2.1. On 11 July 2016, the Merging Parties filed an intermediate merger transaction with the Commission. Following its investigation of the Merger, the Commission finds that the Teva/Medpro JV may be used by Teva and Medpro as a platform to exchange competitively sensitive information regarding other pharmaceutical products outside those included in the Teva/Medpro JV, resulting in a substantial lessening of competition within the meaning of section 12A(1) of the Competition Act.

2.2. Teva and Medpro established the Teva/Medpro JV after it was approved by the Commission on 09 December 2014. At that time Teva, the independent entity did not have pharmaceutical products which were distributed within the national market, save for those products which Teva was transferring to the Teva/Medpro JV. Therefore, Teva was not competing with Medpro in South Africa and the Commission did not view the Teva/Medpro JV as a platform through which the Teva and Medpro independent entities could exchange Competitively Sensitive Information. However, in this instant transaction, Teva recently acquired Allergan Generics Business and not all of the pharmaceutical products transferred from Allergan Generics Business to Teva will be placed under the Teva/Medpro JV because the JV is assigned for specific therapeutic areas. Teva will now market and distribute those products not falling under the JV, some of which may be substitutable with those of Medpro. The Commission is therefore concerned that the Teva/Medpro JV may be used by Teva and Medpro as a platform to exchange competitively sensitive information regarding other pharmaceutical products outside those included in the Teva/Medpro JV, resulting in a substantial lessening of competition within the meaning of section 12A (1) of the Competition Act.

2.3. The Merging Parties have instituted a governance structure through the JV Governing Body which is responsible for the business and affairs of the Teva/Medpro JV. Part of the responsibilities of the JV Governing Body will be to ring fence the flow of Competitively Sensitive Information between Teva and Medpro. The governance structure is in the form of a JV Governing Body which is comprised of the JV Governing Body Members (GBM) as appointed by Teva and Medpro. Whilst the JV Governing Body

of the unincorporated Teva/Medpro JV does aim to limit the exchange of Competitive Sensitive Information by controlling the persons who can be appointed to the JV Governing Body and requiring the JV Governing Body Members to sign Confidentiality Undertakings, the Commission found that the Teva/Medpro JV Agreement is a private agreement which is not enforceable. It is therefore necessary to adopt the principles of the governance structure into conditions that can be enforceable in order to eliminate any potential for the flow of Competitive Sensitive Information between Teva and Medpro.

2.4. The Merging Parties have agreed to the following undertakings in order to address any expressed concerns on the sharing of information.

3. Conditions to the approval of the merger

3.1. Cross directorships

3.1.1. For as long as Teva and Medpro can nominate individuals to the JV Governing Body they shall ensure that their nominees to the JV Governing Body:

3.1.1.1 are not the same persons serving, nominated and/or appointed on any board or management committees or sub-committee of either Teva and/or Medpro who are directly responsible for marketing, pricing or other customer-facing activities in respect of any substitutable products sold or to be sold by Teva, Medpro and/or the Teva/Medpro JV;

3.1.1.2 decline any and all invitation(s) to attend any meeting(s) of the board of directors and/or management committees or discussions at any sub-committee meetings of either Teva and/or Medpro;

3.1.1.3 shall not receive any board documents pertaining to the pharmaceutical businesses of Teva and/or Medpro, to the extent that they contain Competitively Sensitive Information;

3.1.1.4 will not have served on the board of directors and/or management committees of either Teva and/or Medpro and will not have been directly responsible for marketing, pricing or other customer-facing activities in respect of any substitutable products sold or to be sold by Teva, Medpro and/or the Teva/Medpro JV for a period of 3 (three) months prior to be nominated to the JV Governing Body;

3.1.1.5 shall to adhere to the Confidentiality Undertakings.

3.1.2. No director or executive or officer of Teva or Medpro who have direct responsibility for marketing, pricing or other customer-facing activities in respect of any substitutable products sold or to be sold by Teva, Medpro and/or the Teva/Medpro JV shall be invited, permitted or required to attend a JV Governing Body meeting or be permitted to receive the JV Governing Body documents pertaining to its pharmaceutical businesses in respect of any substitutable products nor attend discussions of the JV Governing Body, nor attend any sub-committee meeting of the JV Governing Body, in circumstances where Competitively Sensitive Information is to be discussed.

3.1.3. No director or executive or officer of Teva or Medpro who have direct responsibility for marketing, pricing or other customer-facing activities in respect of any substitutable products sold or to be sold by Teva, Medpro and/or the Teva/Medpro JV shall be invited, permitted or required to attend any operational, executive, management, or technical meeting of the Teva/Medpro JV.

3.2. **Confidentiality of information**

3.2.1. Teva or Medpro shall not disclose to the JV Governing Body Members Competitively Sensitive Information and vice versa.

3.2.2. Every individual that sits on the Teva/Medpro JV Governing Body shall be required to sign a Confidentiality Undertaking.

3.2.3. Teva, Medpro or the Teva/Medpro JV shall, at all times, comply with the Confidentiality Undertaking for the treatment of confidential information, as revised from time to time.

4. Monitoring of compliance with the Conditions

4.1. Within 10 Days of the Approval Date, the Merging Parties shall submit an affidavit listing the names of the persons nominated and/or appointed by Teva and Medpro to the JV Governing Body, their tenure and the nature of their directorships. This affidavit shall also confirm that the nominees to the JV Governing Body meet the requirements set out in clause 3.1.1.

4.2. Within 20 Days of the Implementation Date, the Merging Parties shall provide the Commission with a copy of the Confidential Undertaking referred to clause 3.2.3.

4.3. The Merging Parties shall submit an affidavit deposed to by a senior official on the anniversary of the Implementation Date confirming compliance with the Conditions for the duration of the existence of the Teva/Medpro JV.

4.4. 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.

4.3 The affidavits/reports and or documents referred to in the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

4.4 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

5. Duration

5.1. These Conditions shall apply for as long as the Teva/Medpro JV exists and/or as long as Teva and Medpro can appoint individuals/directors as JV Governing Body Members of the Teva/Medpro JV.

Should either Teva or Medpro dispose of their shareholding in the Teva/Medpro JV, Medpro shall inform the Commission of the sale within 30 days of concluding a sale agreement and submit a copy of the sale agreement irrespective of whether the transaction is notifiable in terms of the Act.

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

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065