

**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**

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**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](mailto: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