

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Commission therefore approved this merger with conditions

1. Conditions to the approval of the merger

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

2. Monitoring of compliance with the Conditions

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

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

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