

NOTICE 881 OF 2012
COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

OCEANA GROUP LIMITED AND COMMERCIAL COLD STORAGE (PTY) LTD

AND

V&A COLD STORE (PTY) LTD

CASE NUMBER: 2012APR0187

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 Oceana Group Limited ("Oceana"), a public company incorporated in terms of the laws of the Republic of South Africa. Oceana is acting in this transaction through Commercial Cold Storage Group (Pty) Limited ("CCS"). Oceana, through CCS, owns and manages cold storage facilities in the main industrial and harbours of South Africa (including Cape Town, Durban and Johannesburg). It provides commercial cold storage and handling services to producers, importers, exporters, traders, wholesalers and retailers primarily in the frozen food industries including to the Oceana Group.

The primary target firm is V&A Cold Store (Pty) Limited ("V&A"). V&A is controlled by LG Family Trust. V&A is cold storage facility situated at the Cape Town quayside at the Table Bay harbour. V&A's cold storage facility provides handling and cold storage services to various types of commodities.

In relation to the proposed acquisition by Oceana, there is a horizontal relationship between the activities of the merging parties, as both Oceana and V&A are active in the provision of cold storage and handling services.

The Commission found that there will be no competition concerns arising from the proposed transaction in the broader Cape Town market for cold storage of packaged non-fish products and packaged fish products. Although the Commission found that the barriers to entry appear to be high in the said market, customers have a number of alternatives should the merged entity increase prices (or quality of service deteriorates) post the proposed transaction.

However, in relation to the market for cold storage which is limited to the quayside for loose fish and fish destined for the export market, the market share accretion is high. The merger will therefore result in Oceana being dominant in cold storage and handling of loose and packaged fish (destined for the export market) at the quayside.

Entry barriers for establishing a cold storage business at the quayside are high given the high capital costs, lack of space at the harbour to set up new storage facilities or for existing players to expand their cold store operations.

The merging parties are vertically integrated and are engaged in the harvesting, processing and selling of fish. Cold storage is a service that forms part of this value chain and can be thought of as an essential facility. The Commission is concerned that the constraint which V&A may have constituted in respect of the supply of storage and handling services for loose and packaged fish (destined for the export market) at the quayside will be removed as a result of the proposed merger. This may lead to possible foreclosure of customers and rise in handling and storage fees. The Commission's analysis shows that there is closeness of competition between the merging parties and the proposed transaction results in the removal of an effective competitor at the quayside.

Furthermore, customers that use the quayside have very limited countervailing power because of the lack of the cold storage alternatives at the quayside.

In order to address this concern of possible foreclosure and rise in prices, the Commission imposes a condition to ensure access to the cold storage facilities for fish customers on a non-discriminatory basis post-merger for as long as Oceana has control of V&A.

CONDITIONS

1. Definitions

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

- 1.1. **"Acquiring Firms"** means Oceana Group Limited and Commercial Cold Storage (Pty) Limited;
- 1.2. **"Approval Date"** means the date referred to in the Commission's Merger Clearance Certificate (Form CC15);
- 1.3. **"Commercial considerations"** means reasonable principles of commerce, or bona fide reasons, taken into account in arriving at a decision in the ordinary course of business;
- 1.4. **"Commission"** means the Competition Commission of South Africa;
- 1.5. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6. **"Conditions"** means these conditions
- 1.7. **"Merger"** means the acquisition of control over the V&A Cold Store (Pty) Ltd business by Oceana Group Limited and Commercial Cold Stores (Pty) Ltd;
- 1.8. **"Merging Parties"** means Oceana Group Limited, Commercial Cold Storage (Pty) Limited and V&A Cold Store (Pty) Ltd;
- 1.9. **"Target Firm"** means V&A Cold Store (Pty) Ltd;
- 1.10. **"V&A Cold Store"** means V&A Cold Store (Pty) Ltd.

2. Recordal

- 2.1. This merger results in the removal of an effective competitor and the control by the merging parties of over 70% of the market for the cold storage and handling of loose and packaged fish. There are also high barriers to entry into the market for cold storage and handling of loose and packaged fish at the quayside.
- 2.2. The merging parties are vertically integrated and are engaged in the harvesting, processing and selling of fish. Cold storage is a service that forms part of this value chain. The Commission is concerned that the constraint which V&A may have constituted in respect of the supply of storage and handling services for all fish will be removed as a result of the merger.
- 2.3. In order to address this concern the Commission imposes a condition to ensure access to the cold storage facilities for all fish on a non-discriminatory basis post-merger.

3. Conditions to the approval of the merger

- 3.1. The Acquiring Firm shall, post-merger, make available cold storage facilities and all related ancillary services in respect of all fish to existing and future independent third party customers on a non-discriminatory basis;
- 3.2. The Acquiring firm shall not differentiate in its pricing to any of its subsidiary and related companies and third parties, other than on standard commercial terms such as volume commitments. Any discounts and/or allowances granted shall be transparent and available to all customers willing and able to meet such volume commitments; and
- 3.3. Oceana shall inform all customers of the Merging Parties, by way of written notice, of the above conditions within two weeks of the Approval Date. To this end, Oceana must provide an affidavit by a senior official attesting to the notification and provide a copy of the notice that was sent to its customers within 1 month of the Approval Date.

4. Duration

- 4.1 The above conditions shall remain in place for as long as the Acquiring Firms have control over V&A Cold store.
- 4.2 At any time during the duration of the conditions the Commission may, on good cause shown, lift, revise or amend the conditions upon being approached by the Acquiring Firms or any third party.

5. Monitoring of compliance with the Conditions

- 5.1. In the event that the Commission receives any complaint in relation to non-compliance with the above condition, or otherwise determines that there has been an apparent breach by Oceana of the conditions, the breach will be dealt with in terms of Rule 39 of the Competition Commission Rules.
- 5.2. All correspondence in relation to Conditions 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.