

**NOTICE 656 OF 2014****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****ASCENDIS HEALTH LIMITED****AND****PHARMA NATURA PROPRIETARY LIMITED AND TWO PROPERTIES MORE FULLY  
DESCRIBED AS ERF 1115, WYNBERG AND PORTION 1 OF ERF 1114 AND THE  
REMAINDER OF ERF 1114, WYNBERG****CASE NUMBER: 2014MAR0088**

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 Ascendis Health Limited ("**Ascendis**"), a firm incorporated in accordance with the laws of the Republic of South Africa. Ascendis is a company listed on the JSE. As of 21 February 2014, shareholders holding more than 5% of the issued share capital of Ascendis were: Bounty Brands (Pty) Ltd (38%), Coast 2 Coast investments (6%) and Coast 2 Coast Holdings (Pty) Ltd (5%).

The primary target firms are Pharma Natura (Pty) Ltd ("**Pharma Natura**") and two immovable properties ("**Target Properties**") owned by Natmed (Pty) Ltd ("**Natmed**"), firms incorporated in accordance with the laws of the Republic of South Africa. Pharma Natura and Natmed are wholly owned subsidiaries of Guy Wertheim Aymes Family Holdings (Pty) Ltd ("**GWAF**").

In terms of the proposed transaction, Ascendis will acquire, in one indivisible transaction, 100% of the issued share capital of Pharma Natura, as well as a direct 100% interest in the Target

Properties. Post-merger, Ascendis will exercise *de jure* sole control over Pharma Natura and the Target Properties

Ascendis is a JSE listed holding company, focussing on health products. Through the operating firms under its control, Ascendis operates within two distinct areas of healthcare, namely, (i) plant and animal healthcare and (ii) human healthcare.

Pharma Natura manufactures its own branded healthcare supplements as well as manufacturing for other customers on a contract basis. Pharma Natura's brands include; Vitaforce, Junglevites, Bettaway, Herbaforce, Homeoforce. The Target Properties are the current business premises of Pharma Natura.

There is an overlap in the market for the sale/distribution of Over The Counter ("OTC") Nutraceuticals (herbal/traditional as well as vitamins and dietary supplements) in the Complementary and Alternative Medicines market ("CAMS") (medical practices or products that are not presently considered to be part of conventional medication, such as prescriptive medication nutritional food substances, herbal products, ethical OTC products etc.).

The Commission's investigation found that the market structure is fragmented and the merging parties are unlikely to have a market share that exceeds 5%, as their estimated combined market share would be around 4.5% in the CAMS market. The Commission found that the merged entity will still face competition from other large players in the market such as Adcock Ingram, Vital Healthfoods, GlaxoSmithKline and Reckitt Benschkiser.

Furthermore, the Commission concludes that the proposed transaction is unlikely to result in any foreclosure concerns arising as a result of the vertical relationship between Chempure and Pharma Natura.

The proposed transaction does however raise employment issues and may result in the retrenchment of certain middle to higher level administrative staff of the Pharma Natura. The merging parties have identified duplicate positions within the group and it is anticipated that there could be up to 14 (fourteen) retrenchments across the three departments of Pharma Natura.

In this regard, the Commission recommends that the merger be approved with the conditions attached hereto, in which the merging parties do not retrench any employee with a grade 12 or less qualification as a result of the merger. See further **Annexure A** which contains the merger conditions that have been agreed between the Commission and the merging parties.

There were no other public interest issues arising as a result of the proposed transaction.

The Commission approved the proposed transaction subject to conditions in terms of section 14(1) (b) (ii) of the Act, as amended.

## **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 Ascendis;
- 1.2 **"Affected Employees"** means the four employees with a qualification of grade 12 or less;
- 1.3 **"Approval Date"** means the date referred to in the Competition Commission's merger clearance certificate (Form CC 15);
- 1.4 **"Ascendis"** means Ascendis Health Limited;
- 1.5 **"Commission"** means the Competition Commission of South Africa;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"Effective Date"** means midnight on the last business day of the month in which the last of the Conditions Precedent as set out in the Sale of Shares Agreement and the Sale of Immovable Property Agreement entered into between the Merging Parties is fulfilled;
- 1.8 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);

- 1.9 **"Merger"** means the acquisition of control by Ascendis over Pharma Natura;
- 1.10 **"Merging Parties"** means Ascendis and Pharma Natura;
- 1.11 **"Pharma Natura"** means Pharma Natura Proprietary Limited and two properties more fully described as Erf 1115, Wynberg and Portion 1 of Erf 1114 and the remainder of Erf 1114, Wynberg; and
- 1.12 **"Target Firm"** means the Pharma Natura;

## 2. Recordal

The Commission finds that the Merger is unlikely to substantially prevent or lessen competition in the market for the sale of OTC Nutraceuticals<sup>1</sup> (herbal/traditional as well as vitamins and dietary supplements) in the CAMS<sup>2</sup> market, as there are alternative players in the market that compete with the Merging Parties and who will be in a position to constrain the merged entity post-merger.

However, the Merger is likely to have a negative impact on employment since it could possibly result in job losses of up to 14 (fourteen) employees across three affected departments, due to duplications of existing positions within the Acquiring Firm.

The Commission identified at least 4 (four) Affected Employees it seeks to protect from retrenchments and these Affected Employees' skills level include a Driver, Raw Materials Buyer, Buyer – Non Stock and a Receptionist who are under the employ of the Target Firm.

Accordingly, the Merging Parties have agreed not to retrench any of the Affected Employees, as a result of the Merger.

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<sup>1</sup> Nutraceuticals refer to a food or food product that provides health and medical benefits, including the prevention and treatment of disease. Such products may range from isolated nutrients, minerals, vitamins, dietary supplements and specific diets to genetically engineered foods, herbal products, and processed foods such as cereals, soups, and beverages. Nutraceuticals are sold and distributed via direct selling in person, through the internet and by mail order, by wholesalers and distributors, in retail pharmacies, in health shops and supermarkets, and from health practitioners.

<sup>2</sup> CAMS is the term used to describe different medical practices or products that are not presently considered to be part of conventional medication, such as prescriptive medication etc. Products included in this market include: nutritional food substances and/or nutraceuticals; herbal products; ethical OTC products; weight management products; therapeutic cosmetics; health food and beverages; sports nutrition; homeopathy; aromatherapy essential oils; and energy substances.

### **3. Conditions to the approval of the Merger**

- 3.1. The merged entity shall ensure that there are no Merger-related retrenchments from the Effective Date, in respect of the Affected Employees.
- 3.2. For the sake of clarity, retrenchments do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act.

### **4. Monitoring of compliance with the conditions**

- 4.1. The Merging Parties shall circulate a copy of these Conditions to their employees/and or their respective representatives within 7 days of the Approval Date.
- 4.2. As proof of compliance thereof, the Merging Parties shall within 5 business days of circulating the Conditions, provide the Commission with an affidavit by a senior official attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.3. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.
- 4.4. Ascendis shall inform the Commission in writing of the Effective Date, within 5 days of it becoming effective.
- 4.5. All correspondence in relation to these Conditions shall be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).

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.