

**NOTICE 200 OF 2015****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****SHOGUN HOLDING UND FINANZ AG****AND****FREE STATE BUYING ASSOCIATION LIMITED AND THE BUSINESSES OF ALPHA  
PHARM EAST CAPE HOLDINGS (PTY) LTD AND ALPHA PHARM KWAZULU-NATAL  
(PTY) LTD****CASE NUMBER: 2014SEP0515**

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:

On 22 September 2014, the Competition Commission ("the Commission") received a notice of an intermediate merger whereby the primary acquiring firm, Shogun Holding Und Finanz AG ("Shogun") intends to acquire Free State Buying Association Limited ("Kemco"), and the businesses of Alpha Pharm East Cape Holdings (Pty) Ltd ("APEC) and Alpha Pharm Kwa Zulu Natal (Pty) Ltd ("APKZN"). Kemco and the businesses of APEC and APKZN are collectively referred to as Alpha Pharm Group. Post-merger, Shogun would control Alpha Pharm Group.

Shogun is a company incorporated in accordance with the laws of Switzerland. Shogun is wholly-controlled and owned by Santo Holding AG ("Santo"), a company incorporated and registered in accordance with the laws of Switzerland<sup>1</sup>.

The primary target firms are Kemco, a public company incorporated in accordance with the laws of South Africa, the businesses of APEC, a private company incorporated and registered in South Africa, and APKZN, a private company registered in South Africa.

The Alpha Pharm Group controls various firms in South Africa.

Shogun does not conduct business in South Africa. However, its subsidiary Actor Holdings is active in the South African market through Actor Pharma and Mirren. Actor Pharma supplies its own scheduled and unscheduled pharmaceutical products to the wholesale market. Actor Pharma does not manufacture pharmaceuticals itself, but rather holds the licence to sell specific pharmaceutical brands in South Africa. Mirren manufactures and distributes its own pharmaceutical products to the wholesale market. Neither Actor Pharma nor Mirren operate as pharmaceutical distributors on behalf of third party manufacturers.

The Alpha Pharm Group is active in three broad markets, namely the market for the wholesale distribution of pharmaceuticals, the market for the manufacture of pharmaceuticals and at a retail level through its two pharmacies.

The Commission found that the proposed transaction results in a horizontal overlap between the activities in the market for the manufacture of pharmaceutical products (R5D and A11A ATC3 categories). The Commission also identified a vertical overlap in the activities of the merging parties in that Alpha Pharm Group has from time to time distributed Actor Pharma and Mirren's products as part of its wholesale distribution business, and the target businesses also owns retail pharmacies.

The merging parties' estimated market share remains low in the manufacture of R5D pharmaceutical products and in the manufacture of A11A pharmaceutical products, post-merger. Given the above, the Commission found that the proposed transaction was unlikely to

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<sup>1</sup> The proposed transaction has not been notified in other jurisdictions.

substantially prevent or lessen competition. None of the competitors contacted raised any concern about the proposed merger.

The Commission found that the proposed transaction would not lead to foreclosure concerns as a large proportion of the Alpha Pharm Group's revenue was derived from activities involving third parties and not the acquiring group. Further, there were numerous pharmaceutical wholesalers and distributors through which pharmaceutical wholesalers can distribute their products.

Regarding public interest the merging parties informed the Commission that the merger is likely to impact on employment since it could possibly result in job losses within the Alpha Pharm Group.

In order to limit the number of potential retrenchments, the Commission imposed employment related Conditions on the Merged Entity.

In this regard, the merging parties have agreed to a condition limiting job losses as per (Annexure A) below.

The proposed transaction did not raise any other public interest concerns.

The Commission therefore approves the proposed merger with conditions in terms of section 14(1)(b)(ii) of the Competition Act no. 89 of 1998, as amended.

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**ANNEXURE A****SHOGUN HOLDING UND FINANZ AG****AND****FREE STATE BUYING ASSOCIATION LTD AND THE BUSINESS OF ALPHA PHARM EAST  
CAPE HOLDINGS (PTY) LTD AND ALPHA PHARM KWAZULU- NATAL (PTY) LTD****CC CASE NUMBER: 2014SEP0515**

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**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 Shogun Holding Und Finanz AG;
- 1.2 **"Affected Employees"** [CONFIDENTIAL];
- 1.3 **"Approval Date"** means the date referred to in the Competition Commission's clearance certificate (Form CC15);
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Conditions"** means these conditions;
- 1.6 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.7 **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.8 **"Merger"** means the Acquiring Firm's acquisition of control over Free State Buying Association Ltd, the business of Alpha Pharm East Cape Holdings (Pty) Ltd and Alpha Pharm KwaZulu- Natal (Pty) Ltd (collectively referred to as the "Alpha Pharm Group");
- 1.9 **"Merged Entity"** means the combined business activities of Alpha Pharm Group and Shogun Holding Und Finanz AG upon approval and/or implementation of the Merger;

- 1.10 **"Merging Parties"** means Shogun Holding Und Finanz AG, Free State Buying Association Ltd, the business of Alpha Pharm East Cape Holdings (Pty) Ltd and Alpha Pharm KwaZulu- Natal (Pty) Ltd;
- 1.11 **"Paterson Grades"** means employee grades that comprise of grades A through to F based on an analytical method of job evaluation, used predominantly in South Africa; and
- 1.12 **"Target Firm"** means Free State Buying Association Ltd, the business of Alpha Pharm East Cape Holdings (Pty) Ltd and Alpha Pharm KwaZulu- Natal (Pty) Ltd.

## 2. Recordal

- 2.1 The Commission finds that the Merger is unlikely to substantially prevent or lessen competition in the manufacture of R5D pharmaceuticals, the manufacture of A11A pharmaceuticals and the wholesale distribution of pharmaceutical products. The estimated market shares of the merging parties remain low and there are alternative players active in the markets that compete with the Merging Parties, who will be in a position to constrain the Merged Entity post-merger.
- 2.2 However, the Merger is likely to have a negative impact on employment since it could possibly result in job losses within the Alpha Pharm Group.

In order to limit the number of potential retrenchments, the Commission imposes these Conditions on the Merged Entity.

## 3. Conditions to the approval of the Merger

- 3.1. With the exception for the Affected Employees, the Merging Parties and their respective direct and indirect subsidiaries shall not retrench any employees as a result of this Merger.

- 3.2. The Conditions in paragraph 3.1 above are subject to the consultation requirements of section 189 of the Labour Relations Act.
- 3.3. For the sake of clarity in these Conditions, retrenchments do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; (iii) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (iv) 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 of the Merged Entity attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.3. The Merged Entity shall advise the Commission of the Implementation Date within 5 days of it becoming effective.
- 4.4. 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.
- 4.5. All correspondence in relation to these Conditions shall be submitted to the following email address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).
- 4.6. 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.

## **5. Duration of the Condition**

- 5.1. The Conditions shall remain in effect for a period of two (2) years from the Implementation Date.

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.