NOTICE 206 OF 2015

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

NEWCO ONE, BAGSHAW FOOTWEAR (PTY) LTD AND BOLTON (PTY) LTD

AND

THE DIVISION, UNITED FRAM, WAYNE PLASTICS, MOSSOP WESTERN LEATHERS AND JORDAN SHOES, OWNED BY KAP MANUFACTURING (PTY) LTD

CASE NUMBER: 2014JUL0346

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:

Background

On 07 July 2014 the Competition Commission ("Commission") received notice of an intermediate merger, whereby a consortium comprising of NewCo One ("NewCo"), Beier Safety Footwear (Pty) Ltd ("Beier"), Bagshaw Footwear (Pty) Ltd (for ease of reference hereafter referred to as NewCo 2), Bolton Footwear (Pty) Ltd ("Bolton") and SKN Corporation (FZE) ("SKN") intend to acquire the business divisions of KAP Manufacturing (Pty) Ltd ("KAP"), namely, United Fram Footwear ("United Fram"), Wayne Plastics, Jordan Shoes and Mossop Western Leathers ("Mossop"). NewCo is yet to be formed and will be incorporated in accordance with the company laws of the Republic of South Africa ("RSA"). Beier, Bagshaw and Bolton are firms incorporated in accordance with the company laws of RSA. SKN is a firm incorporated in accordance with the company laws of the United Arab Emirates ("UAE"). Upon incorporation, NewCo's shareholders will be Beier and Bolton.

The parties and their activities

Beier is a division of Beier Industries (Pty) Ltd ("Beier Industries"). NewCo 2 is a dormant firm and its shareholders will be SKN, Bolton and Newco. SKN is a member of the Rahman Group of India. Bolton is 100% controlled by Cargo Carriers Holdings (Pty) Ltd ("CCH"). CCH also controls Hallmark Motor Group (Pty) Ltd ("Hallmark"). NewCo does not produce any products and/or services. Beier is a manufacturer of leather safety footwear located in Pinetown, KwaZulu-Natal. NewCo 2 is a dormant firm and does not produce any/or products and services. Bolton comprises of three divisions, namely, Bagshaw, Watson Shoes ("Watson") and Barker Footwear ("Barker"). Bagshaw is a manufacturer of leather safety footwear whilst Watson and Barker produce civilian footwear. SKN is a manufacturer of leather safety footwear and buffalo tanned leather used in the manufacture of leather footwear in India.

KAP is an investment company with a portfolio of diverse manufacturing businesses including leather products, footwear, automotive components and food. All the footwear and leather business of KAP are conducted by United Fram, Wayne Plastics, Jordan Shoes and Mossop. United Fram is a manufacturer and importer of leather safety footwear. Wayne Plastics is a manufacturer of gumboots. Jordan Shoes is a manufacturer and importer of civilian footwear. Mossop is a manufacturer of bovine tanned leather used in the manufacture of leather footwear.

The transaction

The proposed transaction comprises of various steps described below:

- **The leather footwear transaction:** This involves the merger between Beier and Bagshaw (a division of Bolton) to form NewCo. United Fram will then be acquired by NewCo. This will result in a horizontal overlap between Beier, Bagshaw, United Fram, Wayne Plastics and Jordan, as all parties manufacture and supply safety footwear.
- **The civilian footwear transaction:** This involves the merger between Watson Shoes ("Watson") and Barker Footwear ("Barker") (both Divisions of Bolton) and Jordan Shoes ("Jordan") (a division of KAP). This will result in a horizontal overlap between Watson/Barker and Jordan in respect of civilian footwear.
- **The acquisition of Mossop:** Mossop will jointly be acquired by Bolton, NewCo and SKN (Rahman Industries). Mossop is a leather tanner and there is a vertical relationship between Mossop and Jordan, Barker and Watson.

Areas of overlap

The Commission finds that there are two horizontal overlaps in the activities of the merging parties in the market for manufacture and supply of all civilian footwear including footwear for ladies, men and children and the market for the manufacture and supply of leather safety footwear. The Commission also finds that there is a vertical overlap in the activities of the merging parties in that Mossop which will jointly be acquired by Bolton, NewCo and SKN supplies tanned leather which is used in the manufacture of civilian footwear by Jordan, Barker and Watson.

Market for the manufacture and supply of civilian footwear

With respect to the horizontal overlap, the Commission finds that the merged entity will have post-merger low market shares in the national market for the manufacture and distribution of civilian footwear for ladies, children and men, respectively. The Commission is of the view that the merged entity will still face competition from competitors such Futura Footwear Limited, Labora Shoes (Pty) Ltd, Palm Footwear (Pty) Ltd, large retail chains such as Edcon Limited and The Foschini Group and from imports (which account for 50% of footwear in the country), post-merger. Barriers to entry are not high and there are alternatives in the market. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the national market for the manufacture and distribution of civilian footwear for ladies, children and men.

With respect to the vertical overlap, the Commission finds the merged entity would not have the ability to foreclose its competitors as it does not have market power in the market for the manufacture and supply of civilian footwear for ladies, children and men as indicated by the market shares above. Furthermore, Mossop does not have the incentive to engage in input foreclosure as it currently relies on external customers for a substantial value of its sales and foreclosing the merged entity's competitors is unlikely to be profitable. In addition, competitors indicated that they import bovine leather from Argentina and Brazil. The Commission is of the view that the merged entity would not have the ability or incentive to foreclose its competitors from accessing Mossop's bovine tanned leather, post-merger. The Commission concludes that the proposed transaction is unlikely to lead to input foreclosure post-merger.

With respect to customer foreclosure, the Commission finds that the proposed transaction is unlikely to lead to customer foreclosure concerns. Midland Tannery (Pty) Ltd and Fusion Leather World (Pty) Ltd suppliers of bovine tanned leather to the merging parties indicated that they have alternative customers such as other footwear manufacturers and customers in the automotive and furniture industries. Therefore, the Commission concludes that the proposed transaction is unlikely to lead to customer foreclosure post-merger.

Market for the manufacture and supply of leather safety footwear

The Commission finds that the merged entity would have a high market share post-merger. The remainder of the market shares will be held by competitors such as Premier, Phoenix, Claw Boots and imports. The Commission concludes that although the merged entity would have high market shares post-merger, the merged entity does not have the ability and incentive to unilaterally increase prices post-merger as customers are likely to switch to other manufacturers of leather safety footwear or import directly from China and India. Furthermore, customers have a degree of countervailing power and barriers to entry are low. The Commission concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in the national market for the manufacture and distribution of leather safety footwear.

Efficiency claims

The Commission finds that the efficiencies claimed by the merging parties on savings to be made on leather safety footwear due to reorganisation in production are real and quantifiable. The Commission finds that the proposed transaction will result in a saving on the price per pair of leather safety footwear. The Commission also finds that the proposed transaction would have a positive impact on the South African footwear industry and will also lead to the international competitiveness of the South African footwear industry.

Public Interest considerations

The Commission is of the view that conditions are warranted to protect jobs at United Fram. A substantial number of the affected employees are unskilled and semi-skilled with no formal education and would find it extremely difficult to obtain alternative employment within a reasonable period, especially under the current economic conditions. Furthermore, the unskilled employees are weekly employees without long term contracts and therefore have no job security. However, even though there are concerns, there are efficiency gains to be realised as a result of the proposed transaction. Furthermore, the Commission notes that given the financial performance of United Fram job losses were inevitable. The merging parties made an undertaking to the trade unions not to retrench employees for a period of 1 (one) year. The merging parties also made an undertaking not to relocate Mossop's production to India; that retrenchments at Jordan will be limited to the loss in the third party contract and that there would be no retrenchments as a result of the proposed transaction at Barker, Watson, Bagshaw, Wayne Plastics, Beier and Mossop for three years. The Commission is of the view that the undertakings made by the merging parties, with one specific change in relation to the time period on the moratorium on retrenchments at Baker, Bagshaw, Wayne Plastics, Beier and Mossop, should be made conditions. The merging parties were consulted about the proposed conditions and they did not raise any concerns. The conditions are attached hereto as **Annexure A**.

The Trade Unions raised certain concerns, specifically around the time periods on the moratorium on job losses at Barker, Bagshaw, Wayne Plastics, Beier and Mossop. Given the efficiencies that the merger brings about, the Commission imposed Conditions that would allow the merged entity to realise these efficiencies.

Therefore, the Commission approves the proposed transaction subject to conditions attached hereto as **Annexure A** in terms of section 14(1)(b)(ii) of the Competition Act No. 89 of 1998, as amended.

ANNEXURE A

NEWCO ONE, BAGSHAW FOOTWEAR (PTY) LTD AND BOLTON FOOTWEAR (PTY) LTD

AND

THE DIVISIONS, UNITED FRAM, WAYNE PLASTICS, MOSSOP WESTERN LEATHERS AND JORDAN SHOES, OWNED BY KAP MANUFACTURING (PTY) LTD

CASE NUMBER: 2014Jul0346

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below:

1.1 "**Affected Employees**" means the skilled, semi-skilled and unskilled employees at United Fram who may be retrenched as a result of this merger after the elapse of a period of 12 (twelve) months from the Implementation Date as envisaged in paragraph 3.1 below;

1.2 "**Approval Date**" means the date referred to in the Commission's merger clearance certificate (Form CC15);

1.3 "**Acquiring firms**" means Newco One, Bagshaw Footwear (Pty) Ltd and Bolton Footwear (Pty) Ltd;

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 "**Implementation Date**" means the date, occurring after the Approval date, on which the merger is implemented by the merging parties;

1.8 "**Merger**" means the acquisition of control over Wayne Plastics, United Fram, Mossop Western Leathers and Jordan Shoes, divisions of KAP Manufacturing (Pty) Ltd by Newco One, Bagshaw Footwear (Pty) Ltd and Bolton Footwear (Pty) Ltd;

1.9 "**Merged Entity**" means the merged business activities of Newco One, Bagshaw Footwear (Pty) Ltd and Bolton Footwear (Pty) Ltd and Wayne Plastics, United Fram, Mossop Western Leathers and Jordan Shoes operations of KAP Manufacturing (Pty) Ltd;

1.10 "**Merging Parties**" for the purposes of these Conditions means the Acquiring firms and the Target firms as defined in this section;

1.11 "**Mossop Plant**" means the operating facilities of Mossop Western Leathers situated in Blignaut Street, Wellington, 7654, Western Cape Province, South Africa and comprising of all equipment, offices, licences, patents, product lines, employees including all other ancillary facilities;

1.12 "**Rules**" means the Rules for the Conduct of Proceedings in the Competition Commission;

1.13 "**Retraining and reskilling fund**" means the fund that shall be created by the Merged Entity to re-train the affected employees;

1.14 "**SMMEs**" means Small, Medium and Micro Enterprises as defined in the National Small Business Act 102 of 1996, as amended;

1.15 "**Target Firms**"" means the Wayne Plastics, United Fram Footwear, Jordan Shoes and Mossop Western Leathers divisions of KAP Manufacturing (Pty) Ltd;

1.16 "**Unskilled employees**" means employees of the merging parties who do not have any formal qualifications ; and

1.17 "**Weekly employees**" means the employees of the merging parties who are paid on a weekly basis.

2. **RECORDAL**

2.1 On 07 July 2014, the Merging Parties filed an intermediate merger transaction with the Commission. Following its investigation of the merger, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for civilian footwear. The Commission has, however, noted a few concerns in the market for leather safety footwear due to the high market share post-merger. However, the merged entity will still face competition from other competitors and imports. The Commission also finds that the efficiencies claimed by the merging parties on savings on leather safety footwear due to reorganisation in production are real and quantifiable.

2.2 The Commission finds that the proposed transaction will lead to job losses. The

Commission is of the view that conditions are warranted to protect jobs at United Fram. A substantial number of the affected employees are unskilled and semi-skilled with no formal education and are likely to find it difficult to obtain alternative employment within a reasonable period, especially under the current economic conditions. Furthermore, the unskilled employees are weekly employees without long term contracts and therefore they have no job security. However, even though there are concerns, there are efficiency gains to be realised as a result of the proposed transaction. Furthermore, the Commission notes that given the financial performance of United Fram job losses were inevitable. The merging parties in consultation with South African Clothing and Textile Workers Union ("SACTWU") and the National Union of Leather and Allied Workers ("NULAW"), the trade unions which represent the employees of the merging parties, have undertaken not to retrench employees for a period of 1 (one) year from the Implementation Date of the proposed transaction. The merging parties also made an undertaking not to relocate Mossop's production to India; that retrenchments at Jordan will be limited to the loss in the third party contract and that there would be no retrenchments as a result of the proposed transaction at Barker, Watson, Bagshaw, Wayne Plastics, Beier and Mossop for three years. The Commission is of the view that the undertakings made by the merging parties, with one specific change in relation to the time period on the moratorium on retrenchments at Baker, Bagshaw, Wayne Plastics, Beier and Mossop, should be made conditions. The merging parties were consulted about the proposed conditions and they are amenable to conditions being imposed in order to allay the above concerns.

2.3 In order to remedy the abovementioned negative impact on employment, the Commission hereby imposes the Conditions as set out in the paragraphs below.

3. CONDITIONS

3.1 The Merged Entity shall not retrench employees at United Fram for a period of 1 (one) year from the Implementation Date as a result of the proposed transaction;

3.2 Should the merging parties relocate United Fram's production facilities from Johannesburg to elsewhere after the period of 1 (one) year, they shall notify the Commission in writing of such relocation, its effect on employment and the steps taken by the merging parties to minimise the negative effect on employment;

3.3 The Merged Entity shall not relocate the Mossop Plant from its current location to a location outside of South Africa. The Merged Entity shall take all reasonable steps to ensure that the Plant and Machinery at the Mossop Plant remain operational post-merger. The Merged Entity shall further take all reasonable steps including procuring the necessary equipment, investment and expansion to maintain or increase the current production capacity at the Mossop Plant.

3.4 Apart from the Affected employees, there shall be no retrenchment of any other employees as a result of the Merger in the Acquiring Firms as well as the Target Firms for a period of 1 (one) year after the Implementation Date; and

3.5 In the event of the non-renewal of Jordan a third party license, the Merged Entity shall notify the Commission in writing if such non-renewal results in the retrenchment of those employees who managed the third party license. The Merged Entity shall bear the onus to prove that such retrenchments are linked and limited to the discontinuation of the third party's license and are not as a result of this Merger.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

4.1 The Merging Parties shall circulate a copy of the Conditions to all their employees in South Africa within 10 (ten) business days of receipt of the merger clearance.

4.2 As proof of compliance herewith, the Merging Parties shall within 10 (ten) business days of circulating the Conditions, submit an affidavit by a senior official attesting to the circulation of the Conditions and provide a copy of the Notice that was sent to the employees.

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/her complaint.

4.4 The merging parties shall on an annual basis submit a report to the Commission indicating the number of retrenchments undertaken, the skills level, the position of employees retrenched and the reasons for the retrenchments.

4.5 In the event that the Commission receives any complaint in relation to non-compliance with these Conditions, or otherwise determines that there has been an apparent breach by the merging parties of these Conditions, the breach will be dealt with in terms of Rule 39 of the Competition Commission Rules.

4.6 All correspondence in relation these 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.