

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 368

27 MARCH 2020

COMPETITION COMMISSION

NOTIFICATION OF CLOSED CONDITIONAL MERGER APPROVALS

1 APRIL 2019 – 30 SEPTEMBER 2019

1. CASE NO. 2017DEC0036 SEMA HOLDINGS LIMITED AND CWT AQUARIUS SHIPPING INTERNATIONAL PROPRIETARY LIMITED

The conditions required Acquiring Group to not nominate the same individuals who serve on its board of directors to also serve on the board CWT Aquarius. The conditions further required the Acquiring Group to ensure that its representatives appointed to the board of CWT Aquarius signs a confidentiality undertaking confirming that he or she will keep confidential, the competitively sensitive information of CWT Aquarius. On 26 March 2019, the Commission unconditionally approved an intermediate merger whereby the Acquiring Group increased its shareholding in CWT Aquarius to owning the entire issued share capital. Therefore, as a result of that merger approval, CWT Aquarius is now a wholly owned subsidiary of the Acquiring Group. Consequently, the information sharing concerns that gave rise to the Conditions become no longer applicable and were terminated by the Commission.

2. CASE NO. 2016SEP0477 PARENTCO PROPRIETARY LIMITED AND EDCON LIMITED

The Competition Tribunal imposed conditions aimed at promoting BEE, local procurement and preserving employment within Edcon. On 9 May 2019, the Tribunal approved the merger between *New Holdco and Edgars Consolidated Stores Limited (New HoldCo/Edcon)* with conditions. The *New HoldCo/Edcon* merger related to the further restructuring of the Edcon group which rendered the 2016 *Parentco (Pty) Ltd and Edcon Limited (Parentco/Edcon)* merger superfluous. In other words, the *New HoldCo/Edcon* merger set aside and substituted the *Parentco/Edcon* merger along with the Conditions imposed in that merger. As such, the Commission formed the view that the Conditions were no longer applicable and proceeded to terminate same.

3. CASE NO. 2019FEB0025 SENWESBEL LIMITED, SENWES LIMITED AND KLK LANDBOU LIMITED

The Competition Tribunal was concerned that Senwes may not obtain the requisite shares to establish control over KLK given that the merger was a hostile takeover through public offer.

In order to mitigate this concern, the Tribunal imposed a condition that required Senwes to acquire 50% plus 1 of the issued share capital of KLK within 2 years of 14 June 2019 (i.e. 14 June 2021). Should Senwes only obtain or establish control over KLK after 14 June 2021, the conditions require Senwes to file another merger notification to the Commission requiring approval. On 4 June 2019, the Commission received a compliance affidavit deposed to by the Group Chief Executive Officer of Senwes who confirmed that Senwes has implemented its acquisition of more than 50% plus 1 of the issued share capital in KLK as at 3 June 2019. The Commission therefore noted that Senwes had complied with the Conditions and the Conditions are no longer applicable because Senwes had acquired control over KLK as envisaged by the Conditions. Consequently, the Conditions have lapsed.

4. CASE NO. 2014OCT0553 COMPUGROUP MEDICAL SOUTH AFRICA (PTY) LTD AND MEDICAL EDI SERVICES (PTY) LTD

The Commission imposed conditions that imposed a moratorium on retrenchments for a period of 2 years from the implementation date. The compliance reports submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees during the moratorium period. The Conditions therefore lapsed and were consequently terminated.

5. CASE NO. 2016JUL0347 ENX GROUP LIMITED AND EQSTRA NEWCO (PTY) LTD

The Commission imposed a condition that limited the number of merger specific retrenchments to 15 employees for a period of 2 years from the implementation date. The compliance reports submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees during the moratorium period. The Conditions therefore lapsed and were consequently terminated.

6. CASE NO. 2017SEP0065 KAP BEDDING (PTY) LTD AND SUPPORT A PAEDIC CC AND RME

The conditions required the merged entity to reduce the restraint period contained in the Sale Agreement from 5 years to a maximum of 3 years. The merged entity submitted the amended Sale Agreement in line with the conditions, which reflect the new restraint period of 3 years. The Conditions therefore lapsed and were consequently terminated.

7. CASE NO. 2017JUL0052 LIBSTAR OPERATIONS (PTY) LTD AND SONNENDAL DAIRIES (PTY) LTD

The Commission imposed a condition requiring the merged entity to reduce the scope of the restraint clause as it relates to the territory contained in the Sale of Shares Agreement. The

merged entity submitted the amended Sale of Shares Agreement in line with the conditions. The Conditions therefore lapsed and were consequently terminated.

8. CASE NO. 2016DEC0012 RHODES FOOD GROUP (PTY) LTD AND PAKCO (PTY) LTD

The conditions limited the number of merger specific retrenchments to 13 employees for a period of 2 years from the implementation date. The compliance reports submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees during the moratorium period. The Conditions therefore lapsed and were consequently terminated.

9. CASE NO. 2016APR0186 SANTAM LIMITED AND ABSA INSURANCE COMPANY LIMITED COMMERCIAL LINES BUSINESS

The conditions imposed a moratorium on retrenchments for a period of 1 year from the approval date. The compliance report submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees during the moratorium period. The Conditions therefore lapsed and were consequently terminated.

10. CASE NO. 2014OCT0538 FIDELITY SECURITY SERVICES (PTY) LTD AND FIDELITY CASH SOLUTION (PTY) LTD AND PROTEA COIN GROUP (PTY) LTD (ASSETS IN TRANSIT AND ARMED REACTION)

The conditions imposed a moratorium on merger specific retrenchments for a period of 18 months from the implementation date. In addition, the conditions required the merging parties to implement certain information exchange safeguards to prevent the exchange of competitively sensitive information. The Commission received various compliance reports from the merging parties which indicated that it complied with the conditions. The Conditions therefore lapsed and were consequently terminated.

11. CASE NO. 2016SEP0472 KONECRANES PLC AND THE TEREX MATERIAL HANDLING AND PORT SOLUTIONS BUSINESS

The conditions limited the number of merger specific retrenchments to 40 employees for a period of 2 years from the implementation date. The compliance reports submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees during the moratorium period. The Conditions therefore lapsed and were consequently terminated.

12. CASE NO. 2014JUL0346 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

The conditions imposed a moratorium on retrenchments for a period of 1 year from the approval date. The compliance report submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees during the moratorium period. The Conditions therefore lapsed and were consequently terminated.

13. CASE NO. 2017AUG0073 OPEL AUTOMOBILE GMBH AND THE OPEL DISTRIBUTION NETWORK AND CHEVROLET AFTERSALES DISTRIBUTION NETWORK OF GENERAL MOTORS SOUTH AFRICA (PTY) LTD

The conditions required the merging parties to transfer certain employees and dealerships of General Motors to Opel Automobile in South Africa to ensure no jobs are lost as a result of the merger. The merged entity submitted the first compliance affidavit relating to the transfer of 16 employees and 2 contractors of GMSA that were dedicated to service the target firm to Opel SA as envisaged by the Conditions. The compliance affidavit confirms that the 16 employees and 2 contractors were transferred and were under the employment of Opel SA as at the implementation date of the merger, in compliance with Conditions. The merged entity further submitted a compliance affidavit with concluded Dealership Agreements with various identified Opel dealerships in compliance with the conditions. The Conditions therefore lapsed and were consequently terminated.

14. CASE NO. 2015NOV0627 SIBANYE PLATINUM BERMUDA (PTY) LTD AND AQUARIUS PLATINUM (PTY) LTD

The conditions imposed a moratorium on retrenchments for a period of 2 years from the implementation date. The compliance reports submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees during the moratorium period. The Conditions therefore lapsed and were consequently terminated.

15. CASE NO. 2015NOV0625 SIBANYE RUSTERNBURG MINES (PTY) LTD AND THE RUSTERNBURG MINES (A DIVISION OF RUSTERNBURG PLATINUM MINES LIMITED)

The conditions limited the number of merger specific retrenchments to 260 employees for a period of 2 years from the implementation date. The various compliance reports submitted by the merged entity indicated that Sibanye only effected a total of 25 merger specific retrenchments out of the 260 allowable retrenchments in terms of the Conditions. The Conditions therefore lapsed and were consequently terminated.

**16. CASE NO. 2015SEP0511 STEINHOFF DOORS AND BUILDING MATERIALS (PTY) LTD
/ ILIAD AFRICA LTD**

The conditions imposed a moratorium on retrenchments for a period of 2 years from the implementation date at the store level. In addition, the conditions imposed a cap on the number of retrenchments at the head office level to a maximum of 50 employees for a period of 2 years. The compliance reports submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees at the merged entity's stores during the moratorium period and capped the number of head office retrenchments to 21 employees. The Conditions therefore lapsed and were consequently terminated.

**17. CASE NO. 2015JUN0312 VKB AGRICULTURE (PTY) LTD AND LOUIS DREYFUS
COMMODITIES AFRICA (PTY) LTD AND THE KROMDRAAI GROUP OF COMPANIES**

The conditions limited the number of merger specific retrenchments to 61 employees for a period of 2 years from the implementation date. The compliance reports submitted by the merged entity indicate that it has complied with the conditions, as it did not retrench any employees during the moratorium period. The Conditions therefore lapsed and were consequently terminated.