

## DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 50

29 JANUARY 2021

## COMPETITION COMMISSION

## NOTIFICATION OF CLOSED CONDITIONAL MERGER APPROVALS

1 APRIL 2020 – 30 SEPTEMBER 2020

**1. CASE NO. 2018MAR0001: HUDACO TRADING (PTY) LTD AND THE BOLTWORLD BUSINESS**

In the matter between *Hudaco Trading (Pty) Ltd and the Boltworld Business*, the conditions required the merging parties not to retrench any employees because of the merger for a period of 2 years from implementation date. The compliance affidavits submitted by the merged entity indicated that they have complied with the conditions, as they did not retrench any employees during the moratorium period. The Commission terminated these conditions on 30 June 2020.

**2. CASE NO. 2016DEC0049: RHODES FOOD GROUP (PTY) AND MA BAKER COMPANIES**

In the matter between *Rhodes Food Group (Pty) Ltd and MA Baker Companies*, the conditions obliged the merged entity not to effect any merger specific retrenchments for a period of three years from the implementation date of the merger. On 03 April 2018, the Merged Entity submitted its first compliance affidavit detailing that they have not retrenched any employees. The second compliance affidavit was submitted on 02 April 2019. The third and final compliance affidavit was submitted on 27 March 2020, confirming that the Merged Entity has fully discharged its obligation in compliance with the Conditions. The Commission terminated these conditions on 14 April 2020.

**3. CASE NO. 2017FEB0004: BAYER AKTIENGESELLSCHAFT AND MONSANTO CORPORATION**

In the matter between *Bayer Aktiengesellschaft and Monsanto Corporation*, the conditions required that, within a period of 6 months, Bayer divest of its South African cotton seed

business as a going concern to a third party purchaser who would be nominated by Bayer and who would meet the Broad Based Black Economic Empowerment (BBBEE) credentials and neutrality from the merging parties' criteria. The conditions also provided that a Trustee should be appointed to ensure that the merging parties' compliance with the conditions and that Bayer would inform the Commission of the proposed independent Trustee in writing.

On 29 May 2020, the Commission received notification of a small merger under case number 2020May0072 and in terms of which Cotton Seed Enterprise (Pty) Ltd intended to acquire The South African Cotton Business of Bayer (Pty) Ltd ("CSE transaction"). The Commission unconditionally approved the CSE transaction on 10 June 2020. The merging parties confirmed that pursuant to the Commission's approval of the CSE transaction, the sale has been completed and thus the transaction has indeed been implemented. Therefore, Bayer has now ceased controlling the South African Cotton Business of Bayer (Pty) Ltd. Considering the above, the Commission terminated this condition as it is no longer applicable and have lapsed.

#### **4. CASE NO. 2017OCT0027/LM220NOV17: ROYAL BAFOKENG PLATINUM LIMITED AND MASEVE INVESTMENT 11 (PTY) LTD**

In the matter involving ***Royal Bafokeng Platinum Limited (RBPlat) and Maseve Investment 11 (Pty) Ltd (Maseve)***, the condition entailed that RBPlat should employ 115 employees at its concentrator plant and give preference to the employees of Maseve who were retrenched. To the extent that these employees are no longer available RBPlat will endeavour to source employees from the local community in Rustenburg. RBPlat will take over 20 permanent employees of the target firm and RBPlat will give preference to retrenched employees for job opportunities likely to occur in the future and is required to circulate the conditions to the merger to all employees.

The merging parties have complied with all their obligations in the conditions and on 24 April 2020, they submitted their last and final compliance report. They submitted that from April 2018, being the Implementation Date, no new job opportunities have become available at the Maseve Mine.

The conditions were for a period of 2 (two) years from April 2018 to April 2020. As such, the conditions have lapsed by virtue of the passing of time and the merging parties have fully complied with their reporting obligations.

## 5. CASE NO. 2018JAN0023: BOARDRIDERS INC AND BILLABONG INTERNATIONAL LIMITED

In the matter between *Boardriders Inc and Billabong International Limited*, the conditions obliged the merged entity not to effect any merger specific retrenchments for a period of two years from the implementation date of the merger and to inform the Commission of the merger implementation date within 5 days of the merger becoming effective. On 24 April 2019, the merging parties submitted an Affidavit confirming that Merger was implemented on the same date in compliance with the conditions.

In their compliance documents, the Merging Parties indicated that there was an intention to integrate the business of Boardriders and Billabong which will have an impact on employment. The Merging Parties also indicated that once the plan is formalized, it will indicate whether there is a need to contemplate any termination of employment and in which case, full and proper consultation as contemplated in Section 189 of the Labour Relations Act, will take place before any final decision in respect of retrenchment is made.

The Merging Parties further indicated that they have communicated this proposal with all employees and the Southern African Clothing and Textile Workers Union ("SACTWU") in compliance with the conditions. On or about January 2020 the Commission considered a variation application whereby the merged entity sought to effect merger related retrenchments within the moratorium period. The merged entity sought to restructure and move operations to Durban. They therefore approached employees and offered to continue paying their wages until the expiry of the moratorium period which was until 22 June 2020. The employees did not raise any objections to the process undertaken.

Considering the above and the fact that the moratorium period expired on 22 June 2020, the Commission therefore terminated the conditions as they are no longer applicable and have lapsed.

## 6. CASE NO. 2017APR0046: SOIHLA HONG KONG HOLDING LIMITED AND CHEVRON SOUTH AFRICA (PTY) LTD

In the matter between *SOIHL Hong Kong Holding Limited and Chevron South Africa (Pty) Ltd*, the conditions required that Sinopec establish its head office in South Africa, moratorium

on retrenchments, and maintenance of the baseline number of independently owned service stations, amongst other condition to address competition and public interest issues identified during the investigation.

The merger was conditionally approved by the Tribunal on 08 March 2018. In terms of the *Shareholders Agreement* entered into between the shareholders of CSA (which includes Off the Shelf Investments RF (Pty) Ltd (OTS) and Chevron Global Energy Inc. (CGEI)), OTS had a pre-emptive right to acquire the issued share capital held by CGEI in CSA, in the event that CGEI intends to sell its shares in CGEI to a third party, on the same terms and conditions as CGEI intends to sell its shares to that third party (the pre-emptive right).

The merger also triggered the mechanisms of the pre-emptive right contained in the *Shareholders Agreement*, resulting in CGEI extending an offer to sell the CSA shares to OTS on the same terms and conditions as CGEI had agreed with Sinopec. OTS had accepted the CGEI offer subject to regulatory approvals. Hence, OTS filed a merger for the acquisition of a stake in CSA upon the exercise its pre-emptive right (the *OTS-CSA merger*).

In the *OTS-CSA merger*, the merging parties submitted that OTS had engaged Glencore Energy UK Limited (Glencore) as its technical and financial partner in respect of the *OTS-CSA merger*. Glencore, independently and separately from the *OTS-CSA merger*, had made its intention clear to purchase the majority shareholding in CSA from OTS in the future (the *Glencore-CSA merger*).

On 13 September 2018, the Tribunal conditionally approved the *OTS-CSA merger*. The *OTS-CSA merger* conditions were substantially similar to those imposed on the *Sinopec merger*. As it was expected, Glencore subsequently filed the *Glencore-CSA merger* following the approval of the *OTS-CSA merger*. The *Glencore-CSA merger* was approved with various public interest conditions by the Tribunal on 15 March 2019. The *Glencore-CSA merger* conditions are substantially similar to those imposed on the *Sinopec merger* and the *OTS-CSA merger*.

The subsequent approval of the *OTS-CSA* and the *Glencore-CSA* mergers rendered the conditions imposed in the *Sinopec merger* null. In addition, Glencore and/or Astron Energy

have commenced their reporting obligations in line with the *Glencore*-CSA merger conditions. Therefore, the *Sinopec* merger Conditions have lapsed.