
DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 1836****4 March 2022****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****HERENS HOLDCO AG****AND****LONZA'S SPECIALTY INGREDIENTS BUSINESS, INCLUDING ITS RELEVANT
SUBSIDIARIES****CASE NUMBER: 2021APR0022**

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 abovementioned firms subject to conditions as set out below:

1. On 16 April 2021, the Competition Commission ("Commission") received notice of an intermediate merger whereby each of funds managed by Bain Capital Investors L.L.C. ("Bain Capital") and funds managed by Cinven Capital Management (VII) General Partner Limited ("Cinven Capital") intend to acquire indirect joint control over Lonza's Specialty Ingredients business, including its relevant subsidiaries ("LSI"). Funds managed by Bain Capital and funds managed by Cinven Capital will make the acquisition through Herens HoldCo AG ("Herens Holdco"), their newly created and jointly controlled special purpose vehicle. Post-merger, LSI will be jointly indirectly controlled by funds managed by Bain Capital and funds managed by Cinven Capital.

Description of the merging parties

2. The primary acquiring firm is Herens Holdco, a firm duly incorporated in accordance with the laws of Switzerland. Herens HoldCo is a special purpose vehicle indirectly and jointly
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controlled by Bain Capital and Cinven Capital. Bain Capital is incorporated in accordance with the laws of the state of Delaware, USA. Bain Capital is managed by a committee and is not controlled by a single firm or individual.

3. Bain Capital controls several portfolio companies, several of which are either located within South Africa or generate turnover from South Africa. Relevant for the purposes of assessing the proposed transaction, Bain Capital controls Diversey Inc, which trades as Diversey South Africa (Pty) Ltd ("Diversey SA") in South Africa.
4. Cinven Capital is incorporated in accordance with the laws of Guernsey. Cinven Capital is managed by its board of directors and is not controlled by any single firm or individual. Cinven Capital also indirectly controls several firms within South Africa. However, none of these firms are relevant for the purposes of assessing the proposed transaction.
5. Herens HoldCo, Bain Capital, Cinven Capital and the firms controlled by their affiliates will henceforth be referred to as the "Acquiring Group".
6. The primary target firm is LSI. LSI is a business division of Lonza Group AG ("Lonza Group AG"). Lonza Group AG is a public company duly incorporated in accordance with the laws of Switzerland. Lonza Group AG's shares are widely held and as such no firm or individual controls Lonza Group AG. In South Africa, LSI controls two firms in Port Shepstone. These are Arch Personal Care Products Proprietary Limited ("Arch Personal Care") and Arch Wood Protection (SA) Proprietary Limited ("Arch Wood"). LSI and its subsidiaries will henceforth be referred to as LSI or the "Target Firm".

Activities of the merging parties

7. Bain Capital and Cinven Capital are both private equity investment firms that each hold investments in a variety of sectors including information technology, healthcare, retail and consumer products, business services, and financial services. Of relevance to this merger assessment are the South African activities of Bain Capital's portfolio company, Diversey, Inc. ("Diversey"), which is present in South Africa through Diversey SA. Diversey is involved in the manufacture of end-use products such as cleaning and hygiene products.
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8. LSI globally supplies several ingredients used as inputs in the manufacture of chemicals as well as various chemical products such as those manufactured by Diversey. Globally, LSI manufactures a variety of biocidal products (biocides). Of relevance to the Commission's assessment of the proposed transaction are biocidal products for hygiene end-use, which are manufactured by LSI outside of South Africa, but supplied into South Africa by LSI. In South Africa, LSI only manufactures wood preservatives.

Overlapping markets

9. The merging parties submitted that the merger did not give rise to any horizontal overlaps between the merging parties' activities in South Africa.
10. The Commission considered the activities of the merging parties in South Africa and found that they do not supply any products or services that are likely to be considered as interchangeable by customers.
11. The merging parties also submitted that the proposed transaction gave rise to a limited vertical relationship in South Africa. In particular, the merging parties noted the Acquiring Group, through Diversey SA, procured a negligible number of biocidal products for hygiene end-uses from LSI in 2020.
12. The Commission agreed that the merger did present a vertical relationship as LSI supplies biocidal products for hygiene end-use, which, as noted above, are inputs in the manufacture of cleaning and hygiene products. Diversey is active in the manufacture of cleaning and hygiene end use products. Consequently, the Commission found that the merging parties operate at different levels of the same value chain. The Commission also noted that Diversey SA accounted for less than 5% of LSI's sales of biocidal products for hygiene end-use during the financial year 2020.

Scope of assessment and market shares

Upstream Market

13. In line with the approach by the Competition Tribunal ("Tribunal") and the European Commission ("EC"), the Commission assessed the global upstream market for the supply
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of biocidal products and, in particular, biocidal products for hygiene end-use (the “Upstream Market”). It bears specific mention that the Commission’s investigation indicates that biocides are not manufactured in South Africa. Rather, biocidal products for hygiene end-use are imported into South Africa by distributors or local subsidiaries of international manufacturers. Specifically, LSI does not manufacture biocidal products for hygiene end-use in South Africa. Given that biocidal products for hygiene end-use are not manufactured locally and are all imported, the Commission considers that a global geographic scope is appropriate for assessment purposes.

14. The Commission did not find any publicly available sources of information pertaining to participants and market shares in the Upstream Market. The Commission therefore relied on estimates from the merging parties, market participants and desktop research. The Commission found that LSI accounts for less than 20% of the Upstream Market globally. There are several local and international suppliers of biocidal products for hygiene end-use other than LSI, including global multinational competitors such as Stepan, Solvay, and Thor.

Downstream Market

15. In ***Adcock Ingram Healthcare and Plush Professional Leather Care Proprietary Limited***, the Commission and the Tribunal found that the manufacture and supply of cleaning and hygiene products constitutes a distinct relevant market for merger assessment purposes, although the precise product scope was left open. Cleaning and hygiene products were considered to include, *inter alia*, surface cleaners (which include sanitisers and disinfectants), detergents, stain removers, drain cleaners, bleach, stain removers, washing powders and liquids used for domestic, industrial, automotive, or commercial applications. As the proposed transaction is unlikely to raise concerns, the Commission did not take a definitive view, but adopted the approach set out in case precedent.
16. The Commission found that the merged entity will account for less than 20% of the national downstream market for the supply of cleaning and hygiene products. The merged entity will continue to face competition from Unilever, Ecolab, Dynachem and others.

Vertical assessment

17. Given the merged entity's low market shares and the number of alternatives in both the Upstream Market and the Downstream Market, the Commission found that the merger is unlikely to result in anticompetitive foreclosure.
18. In view of the foregoing, the Commission concludes that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant markets.

Public interest considerations

Employment

19. The merging parties submitted that at this stage, they have not made integration plans regarding how the proposed transaction will be implemented in South Africa. For that reason, UASA subsequently filed a *CC5(1) – Notice of Intention to Participate* in the matter. UASA submitted that since the merging parties have made no definite plans regarding the implementation of the proposed transaction, the merging parties should clarify whether any job losses are anticipated and a moratorium on retrenchments should be imposed for a period of two years following the implementation of the merger.
 20. The Minister of Trade, Industry and Competition ("Minister") also issued a *CC5(1) – Minister's Notice of Intention to Participate* in the matter. In the subsequent letter, the Minister noted that the merging parties must provide an assurance that there will be no merger-specific retrenchments and that the merged entity will not close or relocate Arch Wood's KwaZulu-Natal-based manufacturing facility as a result of the proposed transaction.
 21. The Commission contacted the merging parties and shared with them UASA and the Minister's concerns. The merging parties accepted the Minister and UASA's requests and tendered that the proposed transaction may be approved on the conditions that there will be no merger-specific retrenchments in South Africa for at least 2 (two) years following its implementation. The merging parties further tendered that the Arch Wood manufacturing facility will not be closed or relocated outside of KwaZulu-Natal because of the proposed transaction, for a period of 2 (two) years following the implementation of the proposed transaction.
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Conclusion

22. Considering the above, the Commission approves the merger in terms of the Conditions contained in **Annexure A**.

ANNEXURE A
HERENS HOLDCO AG
AND
LONZA'S SPECIALTY INGREDIENTS BUSINESS, INCLUDING ITS RELEVANT
SUBSIDIARIES

CASE NUMBER: 2021APR0022

CONDITIONS

1. DEFINITIONS

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **“Acquiring Firm”** means Herens HoldCo AG;
 - 1.2. **“Acquiring Group”** means the Acquiring Firm, Bain Capital and Cinven;
 - 1.3. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
 - 1.4. **“Approval Date”** means the date referred to in the Commission's merger clearance certificate (Form CC15) in respect of the Merger;
 - 1.5. **“Bain Capital”** means Bain Capital Investors L.L.C.;
 - 1.6. **“Cinven”** means Cinven Capital Management (VII) General Partner Limited;
 - 1.7. **“Commission”** means the Competition Commission of South Africa;
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- 1.8. **“Conditions”** means these conditions;
- 1.9. **“Days”** mean any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.10. **“DTIC”** means the Department of Trade, Industry and Competition;
- 1.11. **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.13. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm, which constitutes an intermediate merger for the purposes of the Act;
- 1.14. **“Merged Entity”** means the entity that will result from the Merger between the Acquiring Firm and the Target Firm;
- 1.15. **“Moratorium”** means the period between the Approval Date and the Implementation Date and, thereafter, a period of 2 years from the Implementation Date;
- 1.16. **“Merging Parties”** mean the Acquiring Group and Target Firm;
- 1.17. **“South Africa”** means the Republic of South Africa;
- 1.18. **“Target Firm”** means Lonza’s Specialty Ingredients business, including its relevant subsidiaries; and
- 1.19. **“Tribunal”** means the Competition Tribunal of South Africa.

2. RECORDAL

- 2.1. On 16 April 2021, the Acquiring Firm and Target Firm notified the Merger to the Commission.
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- 2.2. The Merging Parties were not able to provide a definitive statement that the Merger would not result in any Merger-related retrenchments in South Africa. However, the Acquiring Group tendered the Conditions to address any potential concerns in this regard.
- 2.3. Further, in light of the DTIC's concern in relation to the potential impact of the Proposed Transaction on a particular industrial sector or region, while no plans have been made to close or curtail the Target Firm's factory in Port Shepstone, the Acquiring Group tendered the Conditions to address any potential concerns in this regard.

3. CONDITION TO THE APPROVAL OF THE MERGER: EMPLOYMENT

- 3.1. The Merging Parties shall not retrench any employees in South Africa as a result of the Merger, during the Moratorium period.
- 3.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance, or (vii) retrenchments at any subsidiaries of other portfolio companies of the Acquiring Group, unrelated to the Merger.

4. CONDITION TO THE APPROVAL OF THE MERGER: LOCAL MANUFACTURING

- 4.1. The Merging Parties shall not close the Target Firm's factory in Port Shepstone, KwaZulu-Natal, or relocate it outside of KwaZulu-Natal, as result of the Merger, during the Moratorium period.
 - 4.2. For the sake of clarity, the Merging Parties shall not be precluded from closing or relocating the Target Firm's factory in Port Shepstone, KwaZulu-Natal during the Moratorium period for reasons unrelated to the Merger.
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5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 5.1. The Merging Parties shall circulate a copy of the Conditions to all their employees in South Africa and their relevant trade unions or employee representatives within 5 (five) business days of the Approval Date.
- 5.2. As proof of compliance thereof, a director of the Acquiring Firm, and the Chief Operating Officer of the Target Firm, shall each within 10 (ten) business days of circulating the Conditions, submit affidavits attesting to the circulation of the Conditions to their employees in South Africa and provide a copy of the notice that was sent to the employees, respectively.
- 5.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) business days of it becoming effective.
- 5.4. The Merged Entity shall, on the first and second anniversary of the Implementation Date submit a report confirming compliance with Conditions in section 3 and 4 above.
- 5.5. Each report submitted in terms of paragraph 5.4 shall be accompanied by an affidavit of a director of the Acquiring Firm confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.
- 5.6. The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
- 5.7. Any employee of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.

6. APPARENT BREACH

- 6.1. Any complaint received by the Commission alleging a breach of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read with Rule 37
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of the Tribunal Rules.

7. VARIATION

- 7.1. The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

8. GENERAL

- 8.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298