

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1825

4 March 2022

NOTIFICATION OF CLOSED CONDITIONAL MERGER APPROVALS

1 APRIL 2021 – 30 SEPTEMBER 2021

1. In the matter between **BOUNDARY TERRACES 042 (PTY) LTD AND BRAVO GROUP LIMITED**, the Conditions required that; save for the affected employees, the Merging Parties shall not retrench any employee as a result of the merger. The conditions further provide that Bravo and its subsidiaries shall set up a Development Fund to help to either reskill the Affected Employees or afford them an opportunity to start up small business ventures.
2. On 23 February 2021, the primary target firm's legal representatives indicated to the Commission that the merger was not implemented. The merging parties further submitted a notice of the abandonment of the merger, i.e., Form CC6. The Commission therefore terminated these conditions.
3. In the matter between **FLEMING CAPITAL SECURITIES, INC., A WHOLLY OWNED INDIRECT SUBSIDIARY COMPANY OF GARDA WORLD SECURITY CORPORATION ("GARDA") AND G4S PLC ("G4S") (2020NOV0034)**, the Conditions required the Merged Entity not to retrench any employee of the Target Firm in South Africa as a result of the Merger, for a period of 3 (three) years from the Implementation Date. The Merged Entity was further required to maintain the B-BBEE ownership levels of the entities of the Target Firm in South Africa as at the Implementation Date, for as long as the Acquiring Firm exercises control of the Target Firm.
4. On 19 March 2021, the Commission received submissions from Garda to the effect that *"the Garda/G4S merger has fallen over, and that the merger conditions are accordingly null and void"*. The Commission further received a notice of the abandonment of the merger from the merging parties and as a result, these conditions were terminated.
5. In the matter between **EKAPA MINING (PTY) LTD AND CROWN RESOURCES (PTY) LTD (2018JUL0052)**, the merging parties were required to reinstate 7 unskilled retrenched employees within 10 business days of the merger approval date. Further, if any of the

- identified 7 employees declined to be reinstated, the merging parties were to offer the reinstatement option to the remaining 10 skilled retrenched employees until 7 employees are reinstated in total.
6. The Commission received various compliance reports confirming compliance with the conditions. There are no further reporting requirements, and the Commission therefore terminated the conditions.
 7. In the matter between **GALLUS HOLDINGS LIMITED AND SOVEREIGN FOODS INVESTMENT LTD (2017AUG0062)**, the Conditions required that Sovereign Foods does not retrench employees as a result of the merger for a period of 2 (two) years from the implementation date. The merging parties submitted compliance reports confirming compliance with the conditions. There are no further reporting requirements from the merging parties and hence the Commission terminated the conditions.
 8. In the matter between **IMERYS SA AND KERN TECH 1 (2017APR0028)**, the conditions required that the merging parties do not retrench any other employees, save for those who had been declared upfront, for a period of 3 years after the implementation of the merger. The conditions further required that the merging parties provide affected employees with a range of assistance related to finding alternative employment.
 9. The merging parties submitted various reports confirming compliance with the conditions. There are no further reporting requirements from the merging parties and hence the Commission terminated the conditions.
 10. In the matter between **OFF THE SHELF INVESTMENTS FIFTY-SIX (RF) (PTY) LTD (OTS) AND CHEVRON SOUTH AFRICA (PTY) LTD (CSA) (2017NOV0015)**, a wide range of employment, investment, and other public interest conditions were imposed. CSA was a subject of 3 (three) merger transactions, namely on 8 March 2018 (i.e., *the Sinopec merger*), 13 September 2018 (i.e., *the OTS merger*) and 15 March 2019 (i.e., *the Glencore merger*).
 11. The *Sinopec merger* gave rise to the *OTS merger*, as OTS subsequently exercised its *pre-emptive* right to acquire the CSA shares on the same terms and conditions as CGEI (CSA's parent company) had agreed with Sinopec. Although approved by the Tribunal, *the Sinopec merger* was never implemented, and its Conditions were thus terminated in July 2020. Following the approval of the *OTS merger*, Glencore subsequently filed and obtained approval of the *Glencore merger*. The *Glencore merger* conditions are

- substantially similar to those imposed in the *Sinopec merger* and the *OTS merger*, respectively.
12. The *Glencore merger* was implemented on 8 April 2019. The Commission notes that the subsequent approval and implementation of the *Glencore merger* shows that the Conditions imposed in the *OTS merger* are no longer applicable. Therefore, the *OTS merger* Conditions have been terminated.
 13. In the matter between ***SOUTH AFRICAN DISTILLERS & WINE (SA) LIMITED (DISTELL) AND LUSAN HOLDINGS (PTY) LTD (LUSAN) (2017JUL0035)***, the conditions required that the merging parties do not retrench any other employees, save for those that have been identified, for a period of 2 years. The merging parties have since provided the Commission with various compliance reports that demonstrated their compliance with the conditions. There are no further reporting requirements from the merging parties hence the Commission terminated the conditions.
 14. In the matter between ***TWINSAYER HOLDINGS (PTY) LTD AND SYLKO (PTY) LTD (2017APR0049)***, the conditions required that the merging parties do not retrench any employees for a period of 2 years. The merging parties have provided the Commission with various compliance reports indicating their compliance with the Conditions. There are no further reporting requirements from the merging parties and hence the Commission terminated the conditions.
 15. In the matter between ***SANLAM LIFE INSURANCE LTD AND ABSA CONSULTANTS AND ACTUARIES (PTY) LTD (2017OCT0045)***, the conditions required that the merging parties do not retrench any employees as a result of the merger for a period of two (2) years.
 16. The Commission notes that no concerns were received in respect of employment during the period between the implementation date and the date on which the final compliance affidavit was submitted. Further, there are no outstanding reporting obligations. Therefore, the Commission terminated these conditions.
 17. In the matter between ***AFGATE PROPERTIES (PIETERSBURG) (PTY) LTD AND MURRAY AND ROBERTS'S HALL LONGMORE BUSINESS (PTY) LTD (2013DEC0589)*** the Conditions required that the merging parties not retrench more than 95 employees as a result of the merger. From a monitoring perspective, the Conditions required the merging parties to circulate a copy of the conditions to their employees within

- 7 days of the merger approval. Within 5 days thereafter, they must submit an affidavit confirming compliance with the conditions.
18. The National Union of Metalworkers of South Africa (NUMSA) took the decision of the Commission for reconsideration before Tribunal, primarily based on this condition. The outcome of the reconsideration was a settlement agreement which placed a moratorium on all retrenchments as a result of the merger which the Tribunal confirmed by order on 15 October 2016. The settlement agreement provides that the merging parties shall not retrench any employees in the two-year period following the date of signature of the settlement agreement. There were no reporting obligations imposed by the settlement agreement. The Commission has not received any complaints about retrenchments relating to the Merger.
19. Considering the above, the Commission terminated the Conditions as they were no longer applicable and have lapsed.
20. In the matter between **ASCENDIS HEALTH LTD AND PHARMA NATURA (PTY) LTD (2014MAR0088)** the merged entity was required to ensure that there were no Merger-related retrenchments from the effective date in respect of the Affected Employees.
21. The Commission is of the view that the merged entity has duly complied with its obligations as set out in the Conditions. As such, the Commission terminated the Conditions.
22. In the matter between **DIMENSION DATA PROTOCOL BV AND HATCH INVESTMENT (MAURITIUS) (2017AUG0075)**, Dimension Data was precluded from retrenching any South Africa employees of the merged entity and the Acquiring Group for a period of two (2) years from the implementation date. Further, the merging parties were required to ensure that post-merger, Nihilent (a subsidiary of Hatch Investments) would continue with its internship program and that the merger would not result in any negative changes in relation to the manner in which Nihilent offers the internships. Furthermore, the merging parties were required to engage the University of Witwatersrand with the view to conclude a memorandum of understanding in order to facilitate the transfer of skills to South African citizens in the IT sector.
23. The merger parties have submitted compliance reports and supporting documents confirming their compliance with the conditions. Considering the above, the Commission

is of the view that the merged entity has duly complied with its obligations as set out in the conditions.

24. In the matter between ***LIBSTAR OPERATIONS (PTY) LTD AND PATLEYS (PTY) LTD (2015JUL0416)***, the Conditions precluded the Merged Entity from terminating the supply agreement with Highveld Honey Farms CC for a period of 3 (three) years as a result of the merger. The merging parties submitted compliance reports confirming compliance with the conditions. There are no further reporting requirements from the merging parties and hence the Commission terminated the conditions.
25. In the matter between ***LIKE WISE TRADING (PTY) LTD AND SELBORNE CARPET WHOLESALERS' CLOSE CORPORATION (2017MAY0016)***, the Conditions required the Merged Entity not to retrench any employee as a result of the Merger, for a period of 8 (eight) months from the Implementation Date of the Merger. Following the 8 (eight) month period, the Merged Entity was required to implement the retrenchments as a result of the Merger gradually over a period of 3 (three) years. Should the Merged Entity identify the need to commence with retrenchments as a result of the Merger upon expiry of the 8 (eight) month period, the Merging Parties agreed that the Merged Entity will retrench no more than 9 (nine) of the Affected Employees as a result of the Merger by the first anniversary of the Merger.
26. The Commission received various compliance reports wherein the merging parties reported compliance with the conditions. There were no further compliance reports required from the merging parties and therefore the Commission terminated these conditions.
27. In the matter between ***PURE PHARMACY RETAIL (PTY) LTD AND LJ FARELL AND SONS (PTY) LTD (2018JUL0017)***, the Conditions required the Merged Entity to limit the number of retrenchments that can be effected by the merging parties as a result of the merger. The Conditions further required the merging parties to establish a training fund for unskilled employees of up to R15 000 per unskilled employee to enrol in any training course to upskill them post-retrenchment.

The Commission notes that the Conditions lapsed on 20 August 2021. Further, the merging parties have provided the Commission with various compliance reports indicating their compliance with the Conditions. Therefore, the Commission is of the view that that the merging parties have fully complied with the Conditions. There are no further reporting

requirements from the merging parties and hence the Commission terminated the conditions.

28. In the matter between **MIH ECOMMERCE HOLDINGS PROPRIETARY LIMITED AND CAR TRADER PROPRIETARY LIMITED T/A AUTOTRADER (2017JUL0024)**, the merging parties were precluded from retrenching any employees as a result of the merger for a period of two (2) years from the approval date.
29. The first compliance affidavit was submitted on 29 November 2018, where the merging parties confirmed that neither of the merging parties have retrenched any employees in the twelve (12) months following the approval of the merger, as a result of the merger. The merging parties also submitted that the acquiring firm retrenched 3 (three) employees for reasons unrelated to the merger. The retrenchments were due to operational requirements.
30. With regard to the second and final compliance affidavit dated 20 November 2019, the merging parties confirmed that neither of the merging parties have retrenched any employees in the period 1 January 2019 to 2 December 2019, as a result of the merger. The merging parties also submit that the target firm retrenched 1 (one) employee for reasons unrelated to the merger. The Commission found that the retrenchments of the 4 (four) employees in total, 3 (three) in the November 2017 to December 2018 period, and 1 (one) in the January to December 2019, were unlikely to be as a result of the merger but were linked to operational requirements. The Commission notes that no concerns were received in respect of employment during the period between the implementation date and the date on which the final compliance affidavit was submitted. The merging parties have thus complied with the conditions and therefore the Commission terminated these conditions.
31. In the matter between **AON PLC (AON) AND WILLIS TOWERS WATSON PUBLIC LIMITED COMPANY (WILLIS TOWERS) (2020OCT0011)**, the Conditions required the merging parties to divest Willis Towers' entire global reinsurance broking business units dedicated to treaty and facultative reinsurance services, (the Reinsurance Divestiture Business) to Gallagher.
32. Further, the Conditions required the merging parties to divest the entire Willis Towers short-term insurance broking services in South Africa ("South African CRB Divestiture

Business”) to Gallagher which would remove the overlap between Aon and Willis in South Africa.

33. On 2 August 2021, the merging parties abandoned the merger. Considering this, the Conditions are no longer applicable. The Commission therefore terminated these conditions.
34. In the matter between ***RYMCO (PTY) LTD AND YEASTPRO (PTY) LTD (2012MAR0126)***, the Conditions required the merging parties to make amendments to their supply agreement. In addition, the merging parties were required not to enter into an exclusivity agreement of any form whether in writing or tacitly with Anchor Yeast and NCP Yeast, including any successor of NCP Yeast, in relation to the procurement and supply of Wet Yeast in South Africa. The condition relating to the amendments in the Supply Agreement was set to exist for the duration of the Supply Agreement (the Supply Agreement was for a period of 6 years). Further, the condition relating to exclusivity was set to exist for the duration of the supply agreement or 6 years from the Approval Date (the merger was approved 12 June 2012), whichever is the longer.
35. On 22 June 2012, the merging parties submitted an amended supply agreement to the Commission. On 20 August 2015 the merging parties submitted a final affidavit in compliance with the conditions. The Commission notes that the period of 6 years has lapsed and the 6 years from the approval date lapsed in June 2018. Therefore, there are no reporting obligations outstanding in this regard, and the Commission terminated the conditions.