

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 2258

8 July 2022

## COMPETITION COMMISSION

## NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

ORKILA SOUTH AFRICA (PTY) LTD

AND

UMONGO PETROLEUM (PTY) LTD

CASE NUMBER: 2021OCT0033

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 set out below:

1. On 21 October 2021, the Competition Commission (Commission) received notice of an intermediate merger wherein Orkila South Africa (Pty) Ltd (Orkila) intends to acquire sole control of Umongo Petroleum (Pty) Ltd (Umongo). On completion of the proposed transaction, Orkila will have sole control of Umongo.

**Parties to the transaction**

2. The primary acquiring firm is Orkila. Orkila is a wholly owned subsidiary of Azelis S.A.
3. The primary target firm is Umongo. Umongo is controlled by Omnia Group (Pty) Ltd (Omnia) with majority shareholding. The remaining shareholding in Umongo is held by Historically Disadvantaged Persons (HDPs).

**Activities of the parties**

4. Orkila, part of the Acquiring Group, is a distributor of specialty chemicals and food ingredients to customers in South Africa. The company operates in a wide range of market sectors including mainly pharmaceutical, food, animal nutrition, agrochemicals as well as rubber and plastics additives. Orkila's primary activities are currently in the distribution of specialty chemicals for life sciences and not industrial chemicals.
5. Azelis, part of the Acquiring Group, is a global distributor of specialty chemicals and food ingredients. Specifically, Azelis is involved in the distribution of specialty chemical products used in life sciences industries (personal care, pharmaceutical, food and health, animal nutrition, specialty agriculture/horticulture, homecare, and industrial cleaning) and in industrial chemicals industries (e.g., covers coatings, adhesives, sealants, elastomers, rubber and plastic additives, and lubricants and metal working fluids). However, Azelis does not distribute industrial chemicals in South Africa. Azelis' presence in the lubricants and metalworking fluids segment in Africa and the Middle East is very limited, with sales in Nigeria, Algeria, Morocco, Ghana, and Egypt.
6. Umongo, the target firm, is a distributor of additives, base oils, specialty and related petroleum products in South Africa and the rest of sub-Saharan Africa. Umongo primarily acts as a distributor for various subsidiaries of Chevron Corporation (Chevron). The customers use additives and base oils to produce lubricants.

#### **Competition analysis**

7. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any overlap. Orkila is a distributor of specialty chemicals and food ingredients to customers in South Africa. Orkila operates in a wide range of market sectors including mainly pharmaceutical, food, animal nutrition, agrochemicals as well as rubber and plastics additives. Orkila's primary activities are currently in the distribution of specialty chemicals for life sciences and not industrial chemicals.
8. Orkila does not distribute the same or similar products to those of Umongo. Umongo is a distributor of additives, base oils, specialty and related petroleum products in South Africa and the rest of sub-Saharan Africa to industrial customers. Therefore, the Acquiring Group and Umongo are not active

in the same segment, nor do they serve the same customers in South Africa. As such, there is no overlap between the activities of the merging parties in South Africa. Considering the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

#### **Public interest**

9. The proposed transaction does not raise any employment concerns.

#### *The promotion of a greater spread of ownership*

10. The Commission and the merging parties agreed on a condition that the merging parties will introduce a BEE ownership structure within two years of the merger implementation date (attached as **Annexure A**).

#### **Conclusion**

11. The Commission approves the proposed transaction subject to conditions attached as **Annexure A**.

**ANNEXURE A**  
**ORKILA SOUTH AFRICA (PTY) LTD**  
**AND**  
**UMONGO PETROLEUM (PTY) LTD**

**CASE NO: 2021OCT0033**

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**DEFINITIONS**

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

- 1.1. **“Act”** means the Competition Act, 89 of 1998 as amended.
- 1.2. **“Approval Date”** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15).
- 1.3. **“Autumn Storm”** means Autumn Storm Investments 294 (Pty) Ltd, the current BEE shareholder of Umongo.
- 1.4. **“B-BBEE Investor”** means a BEE Partner, or BEE partners, yet to be identified.
- 1.5. **“Commission”** means the Competition Commission of South Africa.
- 1.6. **“Conditions”** means these conditions.
- 1.7. **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission.
- 1.8. **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Parties.

- 1.9. **“Merger”** means the acquisition of control of Umongo by Orkila, being the merger transaction notified to the Commission in terms of the Act under case number 2021Oct0033.
- 1.10. **“Merged Entity”** means Orkilla, Umongo, and Orbichem.
- 1.11. **“Orkila”** means Orkila South Africa Proprietary Limited
- 1.12. **“Orbichem”** means Orbichem Petrochemicals (Pty) Ltd, a subsidiary of Umongo.
- 1.13. **“Parties”** means Orkila and Umongo.
- 1.14. **“South Africa”** means the Republic of South Africa.
- 1.15. **“Transfer”** means the disposal of a certain shareholding in the Merged Entity to a B-BBEE Investor.
- 1.16. **“Transfer Period”** means 2 (two) year period beginning on the Implementation Date;
- 1.17. **“Tribunal”** means the Competition Tribunal of South Africa.
- 1.18. **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal.
- 1.19. **“Trustee”** means one or more natural or legal person(s), independent of the Parties, who is appointed by the Parties in terms of these Conditions, who shall, inter alia, have the exclusive mandate to implement the Divestiture during the Trustee Divestiture Period;
- 1.20. **“Trustee Period”** means a period of 6 (six) months after the appointment of the Trustee in terms of these Conditions following the expiry of the Divestiture Period from Implementation Date; and
- 1.21. **“Umongo”** means Umongo Petroleum Proprietary Limited.

## **2. RECORDAL**

- 2.1. On 21 October 2021, the Parties notified an intermediate merger where Orkila intends to acquire Umongo. The Commission found that the proposed transaction does not raise any competition issues.
- 2.2. The Commission and the merging parties agreed on a condition that the merging parties will introduce a BEE ownership structure within two years of the merger implementation date.

## **3. CONDITIONS**

- 3.1. The Parties shall implement the Transfer within the Transfer Period.
  - 3.1.1. If it is necessary in order to ensure that the Transfer contemplated in clause 3.1. is achievable, the Parties shall provide reasonable financial support to assist the selected B-BBEE Investor(s) to finance the acquisition of the shareholding contemplated.

## **4. TRANSFER BY THE TRUSTEE**

- 4.1. If the Merged Entity fails to conclude the Transfer within the Transfer Period, the Trustee shall implement the Transfer to the B-BBEE Investor in accordance with these Conditions.
- 4.2. The Merged Entity shall procure that the Trustee enjoys an exclusive mandate and a power of attorney to implement the Transfer to the B-BBEE Investor during the Trustee Period at no minimum price.
- 4.3. Notwithstanding clause 4.12, the Trustee shall be required to use all reasonable commercial endeavours to procure that any disposal concluded in respect of the Transfer shall be on mutually acceptable commercial terms for the Merged Entity and the B-BBEE Investor.

- 4.4. Should the Trustee fail to conclude a disposal in terms of these Conditions, the Trustee may apply to the Commission for an extension of the Trustee Period for a maximum of one (1) further period which period shall not exceed 3 (three) months, on good cause shown. The Commission's consent to an extension may not be unreasonably withheld.
- 4.5. The Trustee shall:
- 4.5.1. submit to the Commission and the Merged Entity a quarterly report (that is, every 3 (three) months) on progress in implementing the Transfer;
  - 4.5.2. submit, in writing, to the Commission and the Merged Entity the name of the potential and actual B-BBEE Investor together with any relevant documentation in respect of the potential B-BBEE Investor that the Commission may reasonably request; and
  - 4.5.3. procure that the B-BBEE Investor provides the Commission and the Merged Entity with an affidavit deposed to by a senior official of that potential and actual B-BBEE Investor confirming the accuracy of all information relating to the actual B-BBEE Investor.

## **5. THE APPOINTMENT OF THE TRUSTEE**

- 5.1. The Parties shall, subject to the prior written approval of the Commission, appoint a Trustee in accordance with clause 4.1.
- 5.2. The Trustee shall:
- 5.2.1. be independent of the Parties;
  - 5.2.2. possess the necessary qualifications to carry out his or her mandate.
  - 5.2.3. be an independent, experienced investment banker, consultant or auditor.
  - 5.2.4. not, at the time of appointment, provide auditing or advisory services to the Merging Parties; and
  - 5.2.5. not, at the time of appointment, be exposed to a conflict of interest.

- 5.3. The Parties shall propose a Trustee for the Commission's written approval within five (5) Days of the expiry of the Transfer Period.
- 5.4. The proposal in clause 5.3 shall contain such information as is necessary for the Commission to determine whether the proposed Trustee is suitable to execute the Trustee's Mandate and shall include, *inter alia*, the proposed Trustee's contact details, qualifications and experience.
- 5.5. The Trustee's relationship (if any) with the Merging Parties for the 24 (twenty-four) months preceding the Implementation Date shall be disclosed to the Commission in writing and under oath.
- 5.6. The Commission shall approve or reject the proposed Trustee in writing promptly upon receiving the proposal in clause 5.3, which approval shall not be unreasonably withheld. Should the Commission reject the proposed Trustee, the Commission shall provide detailed reasons justifying the rejection of the proposed Trustee.
- 5.7. The Parties shall appoint the Trustee approved of by the Commission pursuant to clause 5.6 within five (5) Days of the Commission's approval.
- 5.8. If the proposed Trustee is rejected by the Commission, the Parties shall submit the names of at least two (2) more proposed Trustees within fifteen (15) Days of being informed of that rejection.
- 5.9. If the Commission, acting reasonably and on good cause shown, rejects all further proposed Trustees, the Commission shall appoint a Trustee within 30 (thirty) Days of rejecting the further proposed Trustees.
- 5.10. The Parties shall:
- 5.10.1. pay the reasonable fees and expenses of the Trustee on the terms and conditions agreed upon in writing between the Parties and the Trustee;
  - 5.10.2. within five (5) Days of the Trustee's appointment, the Parties should pursuant execute in favour of the Trustee a comprehensive power of attorney granting him or her the powers and authorities necessary to execute his or her obligations.



- 5.11. A certified copy of the power of attorney shall be submitted to the Commission within five (5) Days of the Trustee's appointment.
- 5.12. The power of attorney granted to the Trustee shall expire on the earlier of the termination of the Trustee's mandate or the discharge of the Trustee.
- 5.13. The Parties shall indemnify the Trustee and hold the Trustee harmless against any liabilities arising from the performance of the Trustees' duties, except to the extent that such liabilities result from the wilful default, recklessness and/or negligence of the Trustee.

## **6. MONITORING OF CONDITIONS**

- 6.1. The Parties shall submit a compliance report to the Commission, describing the extent of its compliance with the Conditions in clause 3. These reports must be lodged within 5 (five) Days after each anniversary of the Implementation Date for a period of two years.
- 6.2. Prior to the implementation of the Transfer envisaged in clause 3.1. above, Orkila will provide the Commission with details of the Transfer in writing. These details shall include: the transaction structure, identities of prospective B-BBEE Investor(s), documentary evidence that prospective B-BBEE Investor(s) are HDPs, the proportion of shareholding that each prospective B-BBEE Investor(s) will receive, the number of board appointments each B-BBEE Investor(s) is entitled to and confirmation of whether the transaction constitutes a merger for the purposes of the Act. The Commission shall provide any comments or queries related to the transaction to the Acquiring Firm, in writing within 30 (thirty) Days of receiving the details of the transaction from Orkila.
- 6.3. The Parties shall circulate a copy of the Conditions to all employees of the Parties within 5 (five) Days of the Approval Date and/or their respective elected representatives.
- 6.4. As proof of compliance thereof, the Parties shall within 5 (five) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.

6.5. The Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.

6.6. Any person who believes that the Parties have failed to comply with clause 3 of the Conditions may approach the Commission with his/her complaint.

## **7. BREACH OF CONDITIONS**

7.1. An apparent breach by the Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

## **8. VARIATION**

8.1. The Parties 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 Parties' application to the Commission, the Parties may apply to the Tribunal for appropriate relief.

## **9. GENERAL**

9.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [Ministry@thedtic.gov.za](mailto: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