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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**DEPARTMENT OF ECONOMIC DEVELOPMENT**

NO. 1350

17 OCTOBER 2019

**COMPETITION COMMISSION****NOTIFICATION OF CLOSED CONDITIONAL MERGER APPROVALS****1 OCTOBER 2018 – 31 MARCH 2019****1. CASE NO. 2015JUL0421 MPACT LIMITED AND REMADE HOLDINGS (PTY) LTD AND THE PROPERTY COMPANIES**

The Commission imposed a condition that required the merging parties to comply with the terms of the supply agreements it concluded with certain suppliers. In addition, the conditions required the merging parties to not retrench any employees for a period of 2 years from the implementation date. The compliance affidavits submitted by the merging parties indicated their compliance with the conditions. The Commission was thus satisfied with the merging parties' compliance and therefore terminated the conditions.

**2. CASE NO. 2018MAR0049 SERELI HOLDINGS PROPRIETARY LIMITED, FREESTATE PETROLEUM DISTRIBUTORS PROPRIETARY LIMITED AND METABIS PROPERTIES PROPRIETARY LIMITED**

The conditions required the acquiring group to divest of petroleum retail licences (Divestment Business) within 12 months of the approval date but prior to the implementation of the merger. The compliance reports submitted by the merging parties confirmed that the acquiring group disposed of the Divestment Business to an independent third party within 12 months of the approval date. The merging parties further submitted the signed disposal agreement to the Commission. The Commission was thus satisfied with the merging parties' compliance and therefore terminated the conditions.

**3. CASE NO. 2017MAY0009 PEUGEOT S.A AND GENERAL MOTORS LLC IN RESPECT OF THE OPEL BUSINESS**

The Commission had imposed a condition that required the merging parties to notify the acquisition by Isuzu Truck South Africa of the Isuzu light commercial vehicle business conducted by GMSA and the acquisition by Peugeot SA of indirect control of the General Motors business. In addition, the conditions prohibited any retrenchments related to these transactions until the transactions were notified and approved by the Commission. The merging parties notified the Isuzu transaction on 22 August 2017 and the Peugeot SA

transaction was notified on 30 August 2017. The Commission approved these transactions on 22 November 2018. The merging parties further complied with the condition not to effect any retrenchments. The Commission was thus satisfied with the merging parties' compliance with the conditions and therefore terminated the conditions.

**4. CASE NO. 2017JUL0016 SCHMITZ CARGOBULL AG AND GRW HOLDINGS (PTY) LTD AND GRW SALES (PTY) LTD**

The Commission imposed a condition that required the merging parties to allocate at least 30% of their post-merger procurement spend to local suppliers for a period of twelve (12) months on reasonable commercial terms. The compliance affidavit submitted by the merging parties to the Commission confirmed the merging parties' compliance with the condition. The Commission therefore terminated the conditions.

**5. CASE NO. 2015DEC0687 SUPER GROUP TRADING (PTY) LTD AND CORSAIR LOGISTICS (PTY) LTD**

The Commission imposed a condition requiring Corsair to continue using the services of certain small and medium sized enterprises (SMMEs) in its freight forwarding and clearing services. On 27 September 2018, the merging parties' legal representatives informed the Commission that the merger had not been implemented and submitted Form CC 6, *Notice of Abandoned Merger* to formally abandon the merger. As such, the Commission found that the conditions are not applicable or legally enforceable as the merger was never implemented. Consequently, the conditions were terminated.

**6. CASE NO. 2016FEB0052 AFGRI OPERATIONS LIMITED AND PRIDE MILLING COMPANY (PTY) LTD**

The conditions required the merging parties to notify the Commission of the acquisition of sole control over Pride Milling by 1 April 2018. On 14 May 2018, the merging parties' legal representatives informed the Commission that AFGRI did not implement the merger in its entirety and as such submitted the Form CC 6 *Notice of Abandoned Merger* to formally abandon the merger. As such, the Commission found that the conditions are not applicable or legally enforceable as the merger was never implemented and was formally abandoned. Consequently, the conditions have been terminated.

**7. CASE NO. 2015MAR0109 HEBEI IRON & STEEL GROUP CO. LTD AND DURFECO INTERNATIONAL TRADING HOLDING S.A.**

The Commission imposed a condition requiring that Hebei not retrench any employees as a result of the merger and a condition to continued investment in its local steel plant. The various compliance reports submitted by the merging parties confirmed Hebei's compliance with the

conditions. The Commission was thus satisfied with the merging parties' compliance and therefore terminated the conditions.

**8. CASE NO. 2018JUN0035 ROBOR (PTY) LTD AND MACSTEEL SERVICE CENTRES SA (PTY) LTD AND THE TUBE AND PIPE BUSINESSES OF MACSTEEL SERVICE CENTRES SA (PTY) LTD AND ROBOR (PTY) LTD**

The Tribunal imposed a condition requiring the merging parties to restrict the number of retrenchments arising from the merger. In addition, the conditions required the merging parties to offer retrenched employees any positions that become available within the merged entity. The merging parties' legal representatives informed the Commission that the merging parties took a decision not to proceed with the implementation of the proposed transaction and filed Form CC 6 *Notice of Abandoned Merger* to formally abandon the merger. Consequently, the Commission terminated the conditions.

**9. CASE NO. 2010NOV5445 WAL-MART INC. AND MASSMART HOLDINGS LIMITED**

The conditions imposed by the Competition Appeal Court required the merged entity to commission a study relating to the empowerment of local South African suppliers and in particular small and medium sized suppliers. The study was to be completed by June 2012. In addition, the conditions required Massmart to re-employ employees that were retrenched between 2009-2010 as a result of the merger. The merged entity finalised the study on 9 October 2012 and was required to establish a Supplier Development Fund (SDF) to, broadly, allow for micro, small and medium sized producers/suppliers to have access to the merged entity's supply chain. The merged entity was required to provide the SDF with maximum amount of R200 million over a five-year duration. The various SDF compliance reports submitted by Massmart indicate that Massmart did establish a SDF with an investment in excess of the required R200 million, which has benefited approximately 33 SDP participants. In addition, the compliance reports submitted by the merged entity confirmed that Massmart re-employed all the employees who were retrenched between 2009-2010. As such, the Commission is of the view that Massmart has substantially complied with the conditions, based on the compliance reports submitted. Consequently, the Commission has terminated the conditions.

**10. CASE NO. 2011FEB5670 MEDIA 24 LTD, PAARL COLDSET (PTY) LTD AND NATAL WITNESS PRINTING AND PUBLISHING COMPANY (PTY) LTD**

The conditions required the KwaZulu-Natal and Northern Cape community publishing businesses within the Media24 group or its representatives to, *inter alia*, have no influence over operational and/or strategic decisions at Africa Web and to notify the Commission of all future small mergers between Media24, or any other entity controlled by it, and a target firm

which is a Small Independent Publisher. This condition was to apply for as long as Media 24 and Paarl Coldset (the Acquiring Firms) controlled Africa Web. On 13 June 2013, the Acquiring Firms concluded a Sale of Shares Agreement in terms of which they undertook to dispose of their entire shareholding in Africa Web to Mr. Haresh Ouderajh. On 27 August 2013, the Commission approved the merger and on or about 01 September 2013, the merger was implemented by the parties. Consequently, the conditions have lapsed and are of no legal force or effect since Africa Web is no longer controlled by the Acquiring Firms.

**11. CASE NO. 2017SEP0021 CTP LIMITED AND PRIVATE PROPERTY SOUTH AFRICA (PTY) LTD**

The conditions required ooba (Pty) Ltd and Betterlife (Pty) Ltd (as competitors) to not nominate the same individuals who serve on their respective board of directors to the board of Private Property. The merging parties brought an application to the Competition Tribunal (Tribunal) to review and set aside the conditions imposed by the Commission as part of its approval of the merger. In the alternative, the merging parties requested the Tribunal to amend the conditions to allow board members of ooba and to be board members of Private Property (Pty) Ltd. The Tribunal considered the application brought by the merging parties and set aside the conditions imposed by the Commission. Consequently, the conditions become of no legal force or effect as the Tribunal set them aside. As such, the Commission has removed the conditions from its monitoring list.