



**OUTCOME: TRIBUNAL ROLL WEDNESDAY, 21 FEBRUARY, 2018**

Type of matter	Parties involved	Competition Commission's recommendation to Tribunal	Tribunal decisions
Large merger	Southern Palace Group of Companies (Pty) Ltd And Murray and Robert Ltd In Respect of The Business Division Known as The Genrec Division	Approve without conditions	Approved without conditions
Large merger	Redefine (Pty) Ltd And The Trustees for The Time Being of The 115 US West Street Trust in Respect of an Undivided Half Share of The Property Letting Enterprise Known As Alexander Forbes Building	Approve without conditions	Approved without conditions
Large merger	Main Street 1511 (Pty) Ltd And Roosenekal Foods Investment Holdings	Approve without conditions	Approved without conditions
Large merger	Industrial Partnership Investments (Pty) Ltd And Kagiso Tiso Holdings (Pty) Ltd	Approve without conditions	Approved without conditions
Failure to notify	Competition Commission And Macsteel Services Centre SA (Pty) Ltd; Unique Ventilation and Support Systems (Pty) Ltd	Confirm administrative penalty	Administrative penalty confirmed

Settlement agreement	Competition Commission And Secret River Trading CC t/a Caffeluxe	Confirm settlement agreement	Tribunal awaits further submissions
Large merger	Total South Africa (Pty) Ltd And Gulfstream Energy (Pty) Ltd	Approve without conditions	Approved without conditions
Settlement agreement	Competition Commission And Plasser South Africa (Pty) Ltd	Confirm settlement agreement	Confirmed settlement agreement

### **Tribunal approves merger between M&R's Genrec and black owned Southern Palace Group**

Competition Tribunal has unconditionally approved a merger between Southern Palace Group (SPG) and Murray & Roberts (MUR) in respect of the Genrec division. The merger will give SPG full ownership of Genrec.

SPG is a managed black investment holding company with diverse interests in real estate, industrial companies, information technology, metals, mining and construction. It also has a presence in the steel products manufacturing and recycling industry, and the automotive trading and manufacturing industry.

Genrec is a manufacturer of steel fabrication solutions and undertakes high, medium and heavy structural steel fabrication, structural steel, project services, steel erections and site services for construction companies.

Steel fabrication is the process of cutting, bending and shaping steel alloy to create a product. Unlike various types of welding in which items are repaired or strengthened, steel fabrication takes many pieces of metal and attaches them together in the form of a predefined shape and size.

### **Tribunal approves Redefine's acquisition of the Alexander Forbes Building in Sandton**

The acquisition by Redefine of 115 West Street Trust in respect of the Alexander Forbes Building situated in Sandton has been unconditionally approved by the Tribunal.

Redefine already owns shares in the building and with the approval of the merger will wholly own the Alexander Forbes Building. The target property is a letting enterprise which comprises of rentable A-Grade office space.

Redefine is a firm in the property market which focuses on owning, developing and managing quality property. Furthermore, it owns a diversified portfolio of premium office, industrial and retail properties- in South Africa and Internationally.

## **Merger involving operator of 45 KFC stores gets approval**

The Tribunal has approved a merger of special purpose vehicle Main Street 1511 and Roosenekal, operator of over 45 KFC stores.

Bidco is a special purpose vehicle wholly owned by Abraaj Investment Management Ltd, which is ultimately controlled by Abraaj Holdings. Abraaj Holdings manages private equity funds which directly and indirectly control Bidco and Libstar Holdings (Pty) Ltd (Libstar).

Libstar manufactures, imports and distributes fast moving consumer goods in the food and beverage, household and personal care segments of the market. It focuses on supplying the food service industry, private label segments of larger retailers, and on the manufacturing of products for brand owners as well as branded products.

Roosenekal, controlled by Schaffer Family Trust, owns and operates 45 KFC stores.

Abraaj Holdings has no interest in KFC or any other fast food retail operation in South Africa.

## **Merger in market for baked products in Gauteng and KZN approved**

Remgro controlled Industrial Partnership Investments (Pty) (IPI) will purchase Kagiso Tiso Holdings (Pty) Ltd (KTH). Of relevance to this merger is RCL Foods and its production and distribution of baked products through Sunbake Boerstra Bakery and KTH's interest in Lupo Bakery (Pty) Ltd

IPI is controlled by Remgro Limited (Remgro). Remgro is an investment holding company whose investment portfolio currently includes a number of investee companies operating across a broad spectrum of industries, which includes banking, healthcare, insurance, industrial, infrastructure, media, sport, food, liquor and home care. Relevant for the proposed transaction are Remgro's activities in relation to the production and supply of baked products.

KTH is a black controlled and managed investment holding company. It currently has a portfolio of investments comprising firms across key sectors, including media, property, food, resources, infrastructure, power, financial services, investment and health. Of relevance to the transaction is KTH's interests in the supply of specialty baked products.

The merger was unconditionally approved.

## **R1m penalty for Macsteel for prior implementation of a merger**

A R1m administrative penalty for the failure of Macsteel Services Centre and Unique Ventilation & Support Systems (UVSS) to notify their merger has been confirmed by the Tribunal.

The Commission's investigation stems from the Brokrew acquisition. In March 2012 the Commission received a complaint Videx Wire Products alleging that UVSS (then known as Ricoco) had acquired control over Brokrew and UCEV and that the shareholders of UVSS were Macsteel and the Olevano Brothers. The Tribunal found that activities that occurred prior to Macsteel's acquisition of UVSS amounted to an implementation of a merger without the approval of competition authorities.

Macsteel notified the Commission of its intention to acquire shares in UVSS. The transaction was unconditionally approved by the Commission. After further investigation the Commission found that Macsteel had been involved in the operations and affairs of UVSS prior to the approval of the Macsteel transaction. This included the involvement by Macsteel's CFO in the day-to day operations of UVSS.

The Commission's investigation found that, among other things, representatives of Macsteel were involved in discussions on whether or not to change the name of Brokrew business and Ricoco and offered its recommendations, Macsteels Chief financial officer at the time of the Brokrew acquisition was involved in the day-to-day operations of UVSS, and Macsteel initially nominated two directors to the board of Ricoco.

The parties have admitted to contravening 13A (1) and 13A (3) of the Competition Act.

### **Settlement agreement decision still to come in coffee capsule collusion case**

The Tribunal is awaiting further submissions with regard to a settlement agreement in terms of which Secret River Trading (trading as Caffeluxe) allegedly colluded with Global Coffee Exports to fix prices of coffee capsules to retail customers.

The Commission initiated a complaint on 29 July 2015. In terms of an agreement in effect between 2013 and May 2015 Global Coffee was precluded from undercutting Caffeluxe when selling coffee capsules to grocery retail outlets. The complaint relates to a discount offered by Global Coffee in Checkers stores in 2014. Caffeluxe is alleged to have threatened not to supply Global Coffee with capsules unless it increased its price to the agreed shelf price.

Caffeluxe has admitted to the contravention. The company faces a R750 000 (Seven Hundred and Fifty Thousand Rand) administrative penalty which it is to pay in tranches.

The Commission is not seeking any relief against Global Coffee Export.

### **Total South Africa and Gulfstream Energy transaction approved**

Total South Africa (Pty) Ltd has been given approval by the Tribunal to acquire a share in independent wholesaler and supplier of refined petroleum products, Gulfstream Energy (Pty) Ltd, an independent wholesaler and supplier of refined petroleum products, primarily diesel and petrol.

Total SA is a producer and distributor of refined petroleum products throughout South Africa. Through its stake in National Petroleum Refiners of South Africa (Pty) Ltd, Total

SA has crude oil refinery capabilities. Total SA markets and distributes refined petroleum products such as diesel, petrol, greases, illuminating paraffin, kerosene, Liquefied Petroleum Gas, bitumen, jet fuel, fuel oil products and lubricants. Total SA sells its refined petroleum products to retail customers, commercial customers and to independent wholesalers such as Gulfstream.

Gulfstream primarily supplies diesel, petrol and illuminating paraffin with minimal sales of other refined petroleum products such as A1 Jet Fuel or Avgas. Gulfstream markets and distributes petroleum products to various retail and commercial customers including in the mining and the public sectors. It does not have its own refining capabilities.

#### **R8.4 million settlement for rail maintenance firm for collusion in Transnet rail tenders**

Railway construction and maintenance company Plasser South Africa (Pty) Ltd (Plasser) has received an R8.4m administrative penalty for collusion in relation to Transnet's rail maintenance tenders.

On February 2014 the Commission initiated a complaint against Lennings DEC Rail Service (Pty) Ltd (Lennings), (a subsidiary of Aveng Africa) and Plasser for market division and cover pricing arrangements which resulted in collusive tendering. Lennings and Plasser agreed to divide markets by allocating Transnet's railway maintenance tenders to each other and tendered collusively between 1997 and 2013. In August 2014 the complaint was amended to include Plasser's subsidiary Railway Mechanized Maintenance Co. Pty Ltd (RAMCO).

Plasser South Africa, a company which provides railway lines track construction and maintenance services in South Africa, has admitted to colluding with Lennings in respect of tenders for railway construction and maintenance issued by Transnet (SOE) Limited between 1997 and 2013. Lennings and Plasser agreed to allocate railway construction and maintenance tenders among themselves.

As part of a settlement agreement approved by the Tribunal, Plasser South Africa agreed to pay a penalty of R8 427 625.92 (eight million four hundred and twenty seven thousand six hundred and twenty five rand and ninety two cents).

The collusion agreements, according to the Commission, were in relation to the Dynamic Stabilizer Continuous Action Tamers (Dynacat) tenders issued by Transnet in 2004 and concluded in 2013. The first phase of the tender was allocated to Plasser's subsidiary RAMCO, and the second phase to Lennings.

Lennings has been granted leniency in line with the Commission's Corporate Leniency Policy. The settlement agreement concludes proceedings against the respondents in this matter.

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