



## CCA's U.S.-South Africa Business Council: Weekly News Report Week of March 9-13, 2009

### **Grindrod concludes long awaited empowerment deal**

March 6, 2009

JSE-listed shipping and logistics company Grindrod has wrapped up a long-awaited R274-million black economic-empowerment (BEE) transaction. This deal will result in the sale of 25% plus one share of its subsidiary, Grindrod South Africa (GSA), with 15% going to Calulo Petrochemicals, and 10% to the Adopt-a-School Foundation (AAS), by way of the issue of new equity. The shareholders will be locked in for ten years.

The BEE partners will, however, be entitled to sell their shares to other empowerment partners between years seven and ten of the lock-in period, subject to approval from Grindrod. The disposal of any shares in GSA by the empowerment partners is subject to pre-emptive rights in favour of Grindrod. The transaction structure has largely been vendor-financed by Grindrod, with the exception of an equity contribution by Calulo. GSA includes the majority of Grindrod's 100%-owned South Africa-based operations, including Grindrod Terminals, comprising the dry and liquid-bulk product terminal operations located in, or adjacent to, the ports of Richards Bay, Durban and Cape Town; Grindrod Intermodal, comprising container freight logistics operations, which extend to container handling, storage, warehousing, transportation, sales and leasing; and Grindrod Logistics, comprising automotive logistics and storage operations, dry and liquid-bulk transportation, perishable cargo clearing and forwarding, and the provision of supply chain solutions in the furniture and durable-goods sector.

"We have a successful business relationship with Calulo, and have already partnered with them in our South African marine bunkering and coastal shipping operation," says Grindrod CEO Alan Olivier. "They know the industry, and add significant commercial value to the deal. "The third party in this transaction, AAS, fits very well with Grindrod's social responsibility focus, which has always been to support education initiatives." This is the first BEE transaction to be concluded by AAS, and will ultimately create sustainability for the foundation, says Olivier, as its current funding model relies entirely on donations from third parties. This sustainability will be created through GSA directing its corporate social investment expenditure to AAS from the inception of the transaction. GSA will contribute around R1-million a year for the ten-year period of the share lock-in.

AAS is a section 21 company, founded in 2002 by, besides others, former politician Cyril Ramaphosa. The foundation seeks the involvement of companies and individuals to improve the conditions of schools in historically disadvantaged communities. Ten-year-old Calulo is a black-owned and -controlled company which has developed a focused investment and operational niche in the oil and chemicals

sectors, and in the related bulk logistics services arena. "This transaction brings Calulo closer to realising its goal of active investment in all key aspects of the bulk logistics value chain," says Calulo chairperson Mkhusele Faku. "We believe that pooling our resources will realise numerous commercial synergies, over and above the achievement of an acceptable broad-based BEE status for GSA, and we look forward to growing the GSA operations along with them." As part of the transaction, Faku, Calulo CEO Mpho Diale and AAS director Yaganthrie Ramiah will join the GSA board.

<http://www.engineeringnews.co.za/article/transport-2009-03-06>

### **A squirt in the right direction for drugmakers?**

March 9, 2009

Drugmakers' traditional model is under threat from looming loss of exclusivity on some of the industry's biggest sellers and companies are keen to diversify away from the core business of prescription medicines. "All of a sudden the black sheep of the family has become very exciting again and part of that is down to the absence of drugs coming through the regular pipeline," said Simon Friend, global pharmaceutical leader at PricewaterhouseCoopers.

US healthcare reform, with President Barack Obama targeting high drug prices, is adding to the pressure and making vaccines -- previously notorious for low margins -- seem ever more attractive as both their sales and profitability improve. A new generation of high-price blockbusters like Wyeth's Prevnar and Merck & Co Gardasil have changed the landscape and tempted more companies. Sanofi-Aventis, Merck, GlaxoSmithKline and Wyeth have historically dominated the field, but that is altering. Novartis became the world's fifth largest vaccine-maker in 2006, after buying full control of Chiron, while AstraZeneca won a foothold in vaccines in 2007 by buying MedImmune.

Now Pfizer is gate-crashing the party with its plan to acquire Wyeth. One key advantage of vaccines is their relative immunity to generic competition. As biological medicines they are hard to manufacture, typically requiring a large capital investment of \$100- to \$600-million per plant, according to analysts at UBS. "Generics don't play in the vaccines space, so you have them for a long time," PwC's Friend said. Recent vaccine growth is impressive, with sales by the top five producers -- together accounting for 85% of the market -- reaching \$16-billion in 2008, up one-third in just two years. By 2012, market leader Sanofi predicts revenues of \$22-billion and many analysts think that is conservative.

### **Modern science**

Driving that will be a wave of new products tapping what Philippe Monteyne, Glaxo's head of global vaccine development, describes as "an explosive stage of growth" in research, due to progress in science, especially immunology. Recent advances in preventing diseases as diverse as cancer and flu have taken vaccines beyond their traditional marketplace in infancy, and established immunisation as a cost-effective option for adolescents, adults and the elderly. At the same time, a new field of so-called therapeutic vaccines -- designed to treat diseases like cancer by boosting the immune system, rather than simply preventing infections -- could in a few years revolutionise whole areas of medicine.

As a result, many drug companies are eyeing vaccines as among their most promising \$1-billion-a-year-plus products. Novartis, for example, has two meningitis vaccines, Menveo and MenB, in late-stage

development that David Kaegi, a buy-side analyst at asset manager Sarasin, sees as key major earners. "With multibillion-dollar sales potential, MenB is the most important product in Novartis' pipeline," he said. Sanofi has an experimental dengue fever vaccine that chief executive Chris Viehbacher says has billion-dollar sales potential, while Glaxo is pinning high hopes on Synflorix, a rival for Prevnar, and Cervarix, which competes with Gardasil.

### **Eager to snap up assets**

Increasingly attractive fundamentals mean big companies have been eager to snap up promising vaccine assets -- a trend which is expected to continue. Crucell is one vaccine-maker that has attracted plenty of interest. Wyeth was in talks to buy the Dutch company until it was itself bought by Pfizer. Either Sanofi -- which has been frequently linked to the Dutch group -- or another of the top players could still be interested. "I would expect somebody to take them out because this is just too rare an asset. It's a question of whether it is in the next six months or the next 18 months," said one healthcare banker. Austria's Intercell is another vaccine maker that has been tipped as a takeover candidate, and already has a partnership deal with Novartis. – Reuters

<http://www.mg.co.za/article/2009-03-09-a-squirt-in-the-right-direction-for-drugmakers>

### **Draft regulations for industrial tax incentives released**

March 10, 2009

The National Treasury on Tuesday released the draft regulations relating to tax incentives in support of government's industrial policy strategy for public comment. Government would spend R5,6-billion over five years on the tax incentives, Department of Trade and Industry (DTI) director-general Tshediso Matona reaffirmed at an economic cluster media briefing in Pretoria.

He added that the DTI had been working with the National Treasury on the guidelines and hoped to finalise the regulations by April. The regulations were expected to address a number of objectives of the industrial policy, including energy efficiency, skills development, procurement from small and medium-sized enterprises (SMEs) and industrial upgrading, said Matona. The draft regulations defined the prerequisites for an industrial policy project to qualify for tax incentives and the point scoring system applicable to greenfield and brownfield industrial projects. To qualify for the incentive, a greenfield project had to be an investment of R200-million, while it would also have to use the most modern energy-efficient equipment and processes.

For a brownfield project to qualify under the tax incentives regulations, it would have to be an investment of R30-million, or 25% of the value of existing assets. The project also had to achieve a 10% improvement on its 2006 baseline in terms of energy efficiency to qualify. Companies building greenfield and brownfield projects would also have to invest in training equal to at least 2% of its annual wage bill, which would result in the upgrading of skills. Further, the projects would be given certain point allocations according to the use of innovative processes, improving its energy efficiency, its business linkages, the procurement from SMEs, job creation, skills development and its location, if it was a greenfield project to be built in an industrial development zone.

A project would achieve qualifying status if it achieved at least five out of ten points, which would allow

the company to deduct an additional 35% of the costs of the investment made in manufacturing assets from the operation's taxable income. The deductions could reach a maximum of R550-million. A project would achieve preferred status if it achieved at least eight out of ten points, which would allow for an additional deduction of 55% of the cost of investment in manufacturing assets from the operation's taxable income, up to a maximum of R900-million. However, an industrial project could not benefit from these tax incentives if it already received other concurrent benefits through, for example, the Enterprise Investment Programme (EIP).

Meanwhile, Minister of Trade and Industry Mandisi Mphahla commented during the media briefing that tax incentives, which formed part of a range of industrial policy crosscutting interventions to provide a conducive environment for industrial development, were being finalised. The DTI was focusing on industrial financing, which the Minister said would stimulate growth and employment and broaden participation in the economy. To that end, the EIP had replaced the Small Medium Enterprise Development Programme in July last year, to cater for manufacturers wanting to make investments of between R5-million and R200-million.

### **BUSINESS PROCESS OUTSOURCING**

Meanwhile, Mphahla said that the government's work around the roll-out of the Government Assistance and Support Programme for Business Process Outsourcing (BPO) was "unfolding well". He noted that, to date, 19 applications were received, of which 17 were approved, one was pending and one was declined. The approved projects were expected to result in the creation of 15 000 jobs and R1,1-billion in investment. The State's objective was to create 25 000 jobs through the programme. Mphahla said that the government had, to date, committed R439-million for the programme up to 2012.

Further, designated areas in underdeveloped regions were targeted for BPO opportunities through the Monyetla Work Readiness Programme, which was rolled out in two municipalities. Mphahla reported that the first phase of the programme had resulted in more than 1 000 unemployed youths being trained, with the majority, or near 90%, of these trainees already having been employed.

<http://www.engineeringnews.co.za/article/draft-regulations-for-industrial-tax-incentives-released-2009-03-10>

### **Procter & Gamble to invest R200m in local plant**

March 10, 2009

IN A major coup for the Department of Trade and Industry's industrial development drive, US consumer goods giant Procter & Gamble will be establishing capacity in SA for the manufacture of disposable nappies. Procter & Gamble associate director of external relations Adema Sangale yesterday confirmed that the group would invest more than R200m in a plant in Kempton Park.

About 35 South African engineers were trained in Poland and Turkey to head up the plant, which currently employs 75 full-time staff and 40 people indirectly — a figure projected to increase to more than 150 over the next two years. The investment was in part clinched by a decision by the International Trade Administration Commission (Itac) to grant rebates on the import duties of inputs needed for the

manufacture of the nappies. “The granting of the rebate has clinched the investment and it is obviously positive for our attitude to future investment in the region. We are a fledgling here compared to our operations in the rest of the world,” Sangale said.

The rebate was granted on a variety of textile fabrics coated with plastics and used in the manufacture of disposable nappies, none of which are manufactured in the Southern African Customs Union, Itac confirmed. Sangale confirmed that production was already in the pilot phase and that commercial manufacture would start soon. Hinting at the possibility of investing in manufacturing capacity in SA, Procter & Gamble’s MD for southern Africa, Andrew Peterson, said last year that any investment plans would hinge on whether the company would be able to secure an attractive enough package of incentives from the government.

With annual turnover in excess of \$83bn, Procter & Gamble is the world’s top producer of consumer goods. However, its manufacturing footprint on the African continent is limited to the north and west, with plants in Egypt, Nigeria and Morocco. The company has no other manufacturing capacity in the southern or east African region and clinching the investment in the Kempton Park plant at a time of global economic distress is a huge psychological victory for SA. Procter & Gamble’s brands include Pampers, Gillette, Pringles and Duracell. The investment was precipitated by months of negotiations with the department in a bid to secure investment sweeteners from the government. Sangale said the rebate granted by Itac was a demonstration of how a partnership with the state could spur investment.

“This is making our plans a reality and will make local production possible and help us to cater to local consumers,” she said. Procter & Gamble is still awaiting an announcement on its possible participation in trade and industry’s flagship industrial incentive, the Enterprise Investment Programme. The availability of a stable electricity supply was also a factor, but Eskom abandoned scheduled load shedding at the end of last year, which meant power stability was not as pressing an issue anymore. Procter & Gamble was also keen to establish linkages with other markets in the southern African region to expand its consumer base. Peterson said last year that it was commercially more viable to supply a market of more than 150-million people rather than the 45-million in SA, and that trade facilitation efforts between countries in the Southern African Development Community could encourage expanded investment by the group.

<http://www.businessday.co.za/articles/topstories.aspx?ID=BD4A955796>

### **Talk of bail-outs for distressed firms fills SA’s Industry Minister with ‘great trepidation’**

March 10, 2009

Trade and Industry Minister Mandisi Mpahlwa said on Tuesday that the work currently being done to investigate possible support measures for firms and sectors in distress filled him with “great trepidation”. He also noted that South Africa simply did not have the resources to pursue large bail-outs anywhere approaching the scale and depth being discussed in some developed economies.

However, speaking at the last economic cluster briefing ahead of the April 22 election, he also acknowledged that government might have to eventually “engage with whether we can respond effectively to this challenge without some additional resources”. That task, he indicated, would probably

fall to the next administration, which would have to be assembled after the election. Five task teams had been established under the aegis of the National Economic Development and Labour Council (Nedlac) to thrash out South Africa's response to the prevailing economic crisis, with one of these focused specifically on sectors in distress. Several sub-task teams, mostly under the direction of the Department of Trade and Industry, had also been set up to probe specific sector-based support in areas such as automotive, clothing and textiles and mining.

### **AUTO SECTOR IN BATTLE FOR SCARCE RESOURCES**

The automotive task team had already been established and it has been reported previously by Engineering News that the automotive assemblers have requested that government consider extending tax relief to vehicle purchasers and possibly introducing loan guarantees to buoy demand. Component producers, meanwhile, have spoken about the need for bridging finance in a context where local banks have sought to reduce their exposure to the sector by restricting credit. The National Association of Automotive Component and Allied Manufacturers said that some 15 000 people had already lost their jobs over the past year and more could follow unless some relief was granted.

"The automotive industry has come to us with a variety of ideas around what it is we can do to support investment . . . and improve demand," Mpahlwa outlined. But he stressed that the sector was not alone in its distress, and that any remedy would, therefore, have to be pursued as part of a package that would itself be the outcome of a competition for scarce resources. These support programmes would be developed on a sector-by-sector basis, with responses appropriate to one sector, such as automotive, probably having to differ markedly from that in another, such as clothing and textile. "We have to look at what is doable within reasonable means," he added, noting that South Africa, as a developing country, simply did not have the capacity and resources to respond "in the way we have seen in the North". "We can't just pump resources in the way that others can," Mpahlwa insisted.

He indicated that, in the main, government would be looking to tweak existing programmes and incentives instead of creating new schemes. Government would also be turning to its development finance institutions (DFIs), particularly the Industrial Development Corporation (IDC), for support. IDC CEO Geoffrey Qhena told Engineering News in a recent interview that, while it stood ready to support distressed firm, there should be an acknowledgement that its own financial position had also come under pressure. Qhena added that the IDC's resources were, therefore, no limitless and it would not be prepared to throw "good money after bad". But Mpahlwa indicated that the IDC "has to play a role in this regard", but stressed that this role would probably only be effective in partnership with private financial institutions.

"Given that we have a relatively healthy financial sector, which is just scared to death to lend . . . we need to work in collaborative ways to give greater confidence to the financial sector to do more lending," he added, alluding to possible joint ventures between the banks and the DFIs. But regulatory changes would be assessed, particularly where this could help improve demand. "I must say to you that the work we are being called upon to do, arising from this Nedlac process . . . is work that actually fills me with great trepidation," Mpahlwa conceded.

<http://www.businessday.co.za/articles/topstories.aspx?ID=BD4A955796>

## **Agri SA Applauds mineral rights verdicts**

March 9, 2009

Agri SA has welcomed a Pretoria High Court ruling that the Mineral and Petroleum Resources Development Act is effectively expropriating unused, old order mineral rights. It would compel the state to pay compensation or reinstate ownership of expropriated mineral rights, said Agri SA chief executive Hans van der Merwe on Monday.

He described the ruling as a "significant landmark" in Agri SA's attempts to protect property rights and point out errors at policy and regulatory level. The state had argued that mineral right holders could pursue other administrative options before approaching courts for a decision on expropriation and that there was no talk of expropriation, he said. However, Judge Willie Hartzenberg had found that the Act gave no recognition to the holding of existing mineral rights. "Insofar as they have not been exploited they simply disappear in thin air," he said.

He concluded that the Act gave old order mineral rights holders the right to limit their losses. Van der Merwe said the judge's interpretation of the Act recognised that holders of mineral rights could be deprived of their rights and that such deprivation, together with the state's assumption of custodianship and administration of those rights, created the expropriation of those rights. "He finds, therefore, that it is in fact possible for the holders of the old order mineral rights to prove that their rights have been expropriated by the coming into force of the Mineral and Petroleum Resources Development Act." He said Judge Hartzenberg had also found that the Act allowed a claimant to turn to the court in order to confirm expropriation, and that a decision on expropriation was not an administrative matter.

While the verdict opened the door for many old order mineral rights holders to claim these had been expropriated, Van der Merwe said each would have to prove the extent of the losses, as required in the Expropriation Act. Agri SA would continue doing whatever was necessary to uphold and establish the verdict as a legal principle, in the interest of mineral right holders who suffered extensive losses due to expropriation without compensation, he said. The Department of Minerals and Energy could not be reached for comment. – Sapa

<http://www.mg.co.za/article/2009-03-09-agri-sa-applauds-mineral-rights-verdict>

## **Zuma says BEE not 'broad enough'**

March 11, 2009

The way broad-based black economic empowerment is put into effect needs reviewing, ANC president Jacob Zuma said on Tuesday. Zuma said affirmative action and the broad-based black economic empowerment (BBEE) programme had increased the black middle class substantially. "[But] we are not convinced that it has succeeded in addressing the structural economic and social inequalities in our society," he told the Confederation of Black Business Organisations (CBBO) in Sandton.

Zuma was accompanied by ANC treasurer general Mathews Phosa and Jeff Radebe, the party's policy head. The Marula Room at the Sandton Sun Hotel was packed to capacity with delegates overflowing into another room. ANC national executive committee member Tony Yengeni also attended, along with

the presidents of black professional organisations such as the Black Lawyers Association. The ANC had long been saying BBBEE should benefit broader sections of our society."We have said that in its current implementation BBBEE has benefited the few and has not been broad-based enough," Zuma said. "When we talk about a review of BBBEE, such a review should concern itself about how effective we are in applying this policy, how we can strengthen it so that it can better deliver for our the majority and thus become broad-based." Zuma said the policy was meant to restore imbalances from apartheid, and putting it into operation had been a "challenge" with "many obstacles". He, however, reiterated the ANC's commitment to affirmative action, saying it was "unthinkable" for the ANC to abandon it.

"We wish to emphasise that the ANC is committed to ensuring the continued implementation of our affirmative action as well as the BBBEE programmes," he said. The ruling party's presidential candidate said "more and better communication" about the elements of BBBEE was needed and the "bottlenecks" in the policy's implementation had to be identified. "We need to identify where the current bottlenecks are in implementation, and implement BBBEE in such a manner that it becomes genuinely broad-based and promotes the ownership and control of productive assets by black people, women and youth." Harmonising government procurement policies to ensure that they complied with the BBBEE Act and the codes of good practice was a priority, he said, adding that the ANC government should not issue tenders to companies who did not "qualify and comply with BBBEE codes of good practice".

"It is not acceptable that government officials who are empowered to deal with such matters only concern themselves with price only at the expense of equity," he said. It was necessary to beef up communication between black business and the government to "resolve issues" where government departments slipped up. Zuma was aware that government had failed to pay small and medium enterprises (SMME's) timeously, resulting in their demise. "It is unacceptable for our government to be seen to be contributing to the demise of black businesses through not timeously paying for services rendered. This has to stop," he said. The ANC government intended beefing up its oversight capabilities through a planning commission in the presidency.

Zuma called on black professionals to return to the public service to help improve the lives of South Africans. "You can do it at least for a few years and then go and make money in the private sector later!" "National service also includes being part of the public discourse on transformation issues," he said. The CBBO comprises over eight black business and professional organisations. CBBO president Jimmy Manyi said Zuma had addressed the CBBO's concerns which it raised at a previous engagement with the ruling party in December. - Sapa

<http://www.mg.co.za/article/2009-03-11-zuma-says-bee-not-broadbased-enough>

### **BEE deals may have to be renegotiated**

March 13, 2009

MANY of the black economic empowerment (BEE) deals struck in recent years after painstaking negotiations may have to be renegotiated — a blow to the Department of Trade and Industry's goal for an unprecedented 25% of the economy to be in black hands by 2017, according to analysts. About R41bn worth of potential BEE deals have been wiped out due to unfavourable trading conditions in the past two years, according to recent statistics released by rating agency Empowerdex.

A solution, according to Morné van der Merwe, a senior director in the commercial department at Werksmans Attorneys, would be for the government to consider a bail-out package to ensure no BEE deals fail, and the country remains on target to meet its objectives. Last year alone the total value of BEE deals sealed on the JSE declined fivefold to R13bn (from R66bn in 2007). Van der Merwe said yesterday that a number of BEE deals would undoubtedly be under threat during the current economic slowdown, particularly those deals struck in the mining sector at the top of the cycle, to meet the Mining Charter deadline.

“However, I’m confident a large portion of the deals should be safe in light of the fact that a significant number of the latest wave of BEE deals were struck on a vendor-finance basis, using less bank finance than was the case under the model that collapsed during the 1990s market correction. “We will not see anything like that this time around,” said Van der Merwe. However, many deals (especially the large value deals) were structured using bank and private equity funding. Paul Austin, head of corporate finance at BDO Spencer Steward in the Cape, said that where bank finance was present in a deal, the structure might be under stress, not so much because of the share price collapse, but due to failing company earnings in an economic slowdown. “A lot of BEE deals are still financed with debt, and bankers the world over are under pressure to find more security and reduce their exposure to risk,” Austin said. “Although banks have a substantial exposure to BEE finance, we have not yet seen any deals actually collapse because there is a degree of robustness in many of the older deals.

“Even if a share price has collapsed from, say, R500 to R300, if the deal was done in 2005 it is still likely to be in the money. For instance, the original share price might have been R100.” Austin said that it would only affect deals either done at the peak of the cycle last year, or where the share price collapse had been of spectacular proportion. There had been some such spectacular collapses in share price of as much as 94% in the case of Super Group. Austin said many of these deals still had a long time horizon in which to recover, and BEE partners were therefore no worse off than other shareholders. Should the worst happen and some deals collapse, companies might even view this as a benefit, as it would give them the opportunity to negotiate a new deal from scratch, he said.

<http://www.businessday.co.za/articles/topstories.aspx?ID=BD4A958456>

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