



MERGER DECISION NO 22: 2024

Notice in Terms of Section 53(4) (a) (ii) of the Competition Act 2018

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 100% OF THE ISSUED SHARES IN NAMPAK LIQUID BOTSWANA (PTY) LTD BY VERNOTONE (PTY) LTD

Introduction of the Merging Parties

Pursuant to section 53(4)(a)(ii) of the Competition Act 2018 ("the Act"), notice is hereby given on the decision made by the Competition and Consumer Authority ("the Authority") in relation to the proposed acquisition of 100% of the issued shares in Nampak Liquid Botswana Proprietary Limited ("Nampak Botswana" or "Target Enterprise") by Vernotone Proprietary Limited ("Vernotone" or "Acquiring Enterprise"). For completeness, Vernotone intends to acquire the entire issued shareholding in Nampak Botswana from Nampak Southern Africa Holdings Limited ("NSAH") and the claims held against Nampak Botswana from Nampak Products Limited. The transaction was notified to the Authority on 24th May 2024, and the merger assessment was completed on 26th June 2024.

The Acquiring Enterprise, is a special purpose vehicle incorporated in accordance with the Laws of the Republic of South Africa. Vernotone's shareholders are SLA Capital Proprietary Limited ("SLA Capital") and Steltrade Proprietary Limited ("Steltrade"). SLA Capital and Steltrade are limited liability companies incorporated in accordance with the Laws of the Republic of South Africa.

The Target Enterprise is a private company incorporated in accordance with the Laws of the Republic of Botswana. Nampak Botswana is wholly controlled by NSAH, a company registered in accordance with the Laws of Mauritius. NSAH is a wholly owned subsidiary of Nampak International Limited ("NI"), a company incorporated in accordance with the Laws of Isle of Man. In turn, NI is controlled by Nampak Limited, a public company incorporated in accordance with the Laws of the Republic of South Africa and listed on the Johannesburg Stock Exchange. Nampak Limited is not controlled by any entity or persons.

Relevant Markets

The Target Enterprise is domiciled in Botswana while the Acquiring Enterprise is domiciled in South Africa. The assessment of the activities of the promoters of the Acquiring Enterprise and discovered that SLA Capital is an investment holding company which controls SLA Water Holdings Proprietary Limited ("SLA Water Holdings"). SLA Water Holdings, in turn, controls Oasis Water Holdings Proprietary Limited ("Oasis Water"), an entity engaged in the bottle water market. SLA Capital does not have any assets in Botswana. However, through Oasis Water,

SLA Capital have franchisees in Botswana, whereby the company earns royalty fees. In addition, Steltrade is a trading and financial services company and it does not have any business interests or assets in Botswana.

On the other hand, Nampak Botswana manufactures, sells and supplies high density polyethylene (HDPE) and polyethylene terephthalate (PET) bottles to the water and dairy industries. The business originally started when Clover SA requested that Nampak provides them with product in Botswana. For a long time, Clover was the only customer of Nampak Botswana. In more recent years the business has managed to secure other clients, though small in nature, and Nampak Botswana's market share remains insignificant.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the assessment of the merger has revealed that the Acquiring Enterprise and the Target Enterprise are currently not active in the same market. The Acquiring Enterprise is an SPV domiciled in South Africa while the Target Enterprise is domiciled in Botswana. However, there is an indirect relation in the activities of the Merging Parties in that they complement each other since the promoter of the Acquiring Enterprise has an indirect control in an entity which is a franchisor to companies involved in water bottling business in Botswana. The promoter of the Acquiring Enterprise, SLA Capital, through Oasis Water, have franchisees in Botswana, whereby the company earns royalty fees. Nonetheless, the Authority does not anticipate the acquisition to result in any substantial lessening of competition post implementation due to the fact that there exist other service providers in both segments of the relevant market.

For the analysis of Acquisition of Dominance, it is important to note that a dominant position in the context of section 2 of the Competition Act 2018, refers to a situation in which one or more enterprises possess such economic strength in a market as to allow the enterprise or enterprises to adjust prices or output without effective constraint from competitors or potential competitors.

The assessment shows that there is no direct overlap between the products and/or services offered by the parties to the proposed transaction hence the merged entity will accordingly not be able to act independently of customers or competitors.

Thus, the implementation of the proposed merger is not expected to result in the acquisition of a dominant position in the relevant market in Botswana. The merger is only expected to contribute to the investment portfolio of the acquiring enterprise and therefore will have an insignificant accretion to its market share.

In terms of Public Interest considerations, The Authority does not foresee any detriment to matters of public interest that will arise as a result of the transaction under consideration. The implementation of the proposed merger would not have any negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act 2018.

The Determination

The Authority determined through the analysis of the facts of the merger that the structure of the structure of the relevant market is not expected to significantly change upon implementation of the proposed merger as the proposed transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the market under consideration. Furthermore, the proposed merger will not have any negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act 2018.

Pursuant to the provision of section 53 of the Act, the Authority has decided to unconditionally approve the proposed acquisition of 100% of the issued shares in Nampak Liquid Botswana Proprietary Limited by Vernotone Proprietary Limited.

However, as stated under section 61 of the Act, this approval does not override or negate any other mandatory statutory approvals or processes that any of the parties to this merger must comply with under the Laws of Botswana.

Dated at Gaborone on this 26th day of June 2024.

Tebelelo Pule, Chief Executive Officer, Competition and Consumer Authority,
P/Bag 00101, Gaborone, Plot 28, Matsitama Road, Tel: 3934278 Fax: 3121013