



MERGER DECISION NO 54: 2023

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF CERTAIN ASSETS BY SMITHSHINE ENTERPRISES (PTY) LTD FROM KERIOTIC INVESTMENTS (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 certain assets by Smithshine Enterprises (Pty) Ltd ("Smithshine or the "Acquiring Enterprise") from Keriotic Investments (Pty) Ltd ("Keriotic or the "Target Enterprise"). The acquiring enterprise intends to acquire the target assets from Keriotic, pursuant to the terms of Sale of Assets Agreement dated 3 November 2023. The transaction was notified to the Authority on the 9th November 2023 and the merger assessment was completed on 14th December 2023.

The acquiring enterprise, Smithshine, is a company incorporated in accordance with the laws of Botswana. Smithshine is an indirect subsidiary of CA Sales Holding Limited ("CA Sales") (through Pamstad (Pty) Ltd ("Pamstad")), whose linked units are listed on Botswana Stock Exchange Limited. Smithshine does not control any enterprise in Botswana. The Acquiring Enterprise is a distributor of frozen and ambient support services. On the other hand, the target enterprise, Keriotic, is a company incorporated in accordance with the laws of Botswana. Keriotic does not control any enterprise in Botswana. In turn, it is controlled by Kamoso Africa (Pty) Ltd, a company incorporated in accordance with the laws of Botswana. The Target Enterprise was a distributor of fast-moving consumer goods before shutting down.

Relevant Markets

The assessment findings indicate that the acquiring enterprise, Smithshine was established in 2007 as an indirect subsidiary of CA Sales through Pamstad (Pty) Ltd, whose linked units are listed on the Botswana Stock Exchange Limited (BSE). Smithshine is involved in the retail market through the provision of frozen and ambient goods and support services to the retail and wholesale markets including forecourts and hotels, and restaurants.

On the other hand, the assessment of the merger discovered that Keriotic is no longer in operation. However, it is worth noting that the target enterprise operated in the supply and distribution of various products to retail customers. Keriotic was engaged in distributing commodities from food to non-food products, as well as packaging materials to retailers.

Although the target operated within the supply distribution sector before shutting down, the product differentiation between the business of the acquirer and target neutralises any competition concerns which may arise. Furthermore, there is a high degree of supply-side substitutability in the supply and distribution markets as there are various alternatives which are regarded by consumers as interchangeable. Therefore, the merger is not

expected to result in any significant lessening of competition in the market and hence will not affect the current structure of the market under consideration.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the acquiring company and the target company were in the same or related industry but have different business lines or products. Smithshine is involved in the retail market by providing frozen and ambient goods and support services to the retail and wholesale market including forecourts and hotels, and restaurants, a market within which the target is not active. The Authority therefore, does not anticipate the acquisition to result in any substantial lessening of competition post implementation.

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 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. Furthermore, the Merged Enterprise is expected to face strong competition from the existing well-established players.

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 proposed merger entails acquisition of assets from a company that is no longer in operation. In addition, the acquiring enterprise may re-employ some former employees of the target enterprise and thus safeguarding employment.

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 certain assets by Smithshine Enterprises (Pty) Ltd from Keriotic Investments (Pty) Ltd.

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 14th day of December 2023.

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