



MERGER DECISION NO 06: 2022

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

DECISION ON THE PROPOSED ACQUISITION OF 60% ISSUED SHARES OF TONGAAT HULETT LIMITED BY MAGISTER INVESTMENTS LIMITED.

Introduction of the Merging Parties

- i. Pursuant to section 53(4)(a)(ii) of the Competition Act of 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 up to 60% issued shares of Tongaat Hulett Limited ("THL") by Magister Investments Limited ("Magister"). The transaction was notified to the Authority on 27th January 2022 and the merger assessment was completed on 1st March 2022.
- ii. The Primary Acquiring Enterprise, Magister, is a private limited company duly incorporated in terms of the Company Laws of the Republic of Mauritius. It does not control any entity in Botswana. Magister is an investment holding entity controlled by the Casa Trust. Magister holds a diverse portfolio of interests in various sectors, including agriculture, transport and logistics, civil construction and real estate. Other than that, Magister does not have any activities in Botswana and it does not produce or sell any products into or from Botswana.
- iii. The Target Enterprise, Tongaat Hulett Limited, is a public company incorporated in accordance with the Laws of the Republic of South Africa. THL is listed on the Johannesburg Stock Exchange and its shares are widely held, as such THL is not controlled by any firm or group of firms. THL controls Tongaat Hulett Botswana ("THB") with other two stakeholders namely; Star Africa Corporation Limited and Hippo Valley Estates Limited. Other than THB, THL does not control any other firm in Botswana. THL is engaged in agri-business in sugar, ethanol, animal feeds and cattle, with a significant asset base and footprint in Southern Africa. THL exports sugar (brown and white) into Botswana to THB. THB is a sugar packaging and distribution business in Botswana which packs and distributes sugar under the brand 'Blue Crystal'.

Relevant Markets

- iv. From the description of the merging parties' activities, the Authority deems the merging parties to be in distinct markets. The acquiring enterprise has no operations in, into or from Botswana and does not conduct any activities in Botswana.

Therefore the relevant market to analyse is that of the Target Enterprise, THL which supplies sugar to THB, a sugar packaging and distribution business under the Blue Crystal brand.

Competitive Analysis and Public Interest

- v. In the assessment of Substantial Lessening of Competition, the Authority discovered that the transaction assessed is not expected to substantially lessen competition due to the absence of product overlaps in the activities of the merging parties. The merger is not expected to result in the reduction of the number of players in the market, hence will not affect the structure of the market.
- vi. In terms of the Acquisition of a Dominant Position, the proposed transaction has no effect on the market status quo; and as such, the merged entity is not expected to attain any dominant position on account of the transaction. Furthermore, the transaction is not expected to negatively impact on rivalry nor harm consumers.
- vii. With regards to Public Interest Considerations, the findings of the assessment revealed that the transaction is as a result of the need for a business rescue by the target enterprise; and that, the advent of the acquirer will result in implementation of a turnaround strategy which the Authority does not have its finer details. On that note, the Authority found it necessary to ensure that the proposed merger does not result in any retrenchments or redundancies. In that regard, the assessment indicated that there exists a need to protect the employees of the merged entity from the possible merger specific retrenchments/ redundancies.
- viii. In addition to the above, TBH currently sources an essential raw material in the form of packaging plastic in Botswana. The parties have made a commitment to continue sourcing this raw material locally.

The Determination

- ix. The Authority determined through the analysis of the facts of the merger, that the proposed transaction is not likely to result in the prevention or substantial lessening of competition, or endanger the continuity of the services offered in the relevant market. However, it is noted that the proposed transaction gives rise to public interest concerns under section 52(2)(e) of the Act, whereby possible retrenchments/ redundancies may arise as a result of implementation of the proposed merger.
- x. Taking the public interest concerns and pursuant to the provision of section 53 of the Act, the Authority has approved the proposed acquisition of up to 60% issued shares of Tongaat Hulett Limited ("THL") by Magister Investments Limited, subject to the following conditions:

1. The merged entity should use all its endeavours to ensure that the packaging business of THB continues to source packaging plastic locally and other services in Botswana; and
2. There shall be no merger specific retrenchments or redundancies that may affect the employees of the merged enterprises. For clarity, merger specific retrenchments or redundancies do not include (the list is not exhaustive):
 - i. voluntary retrenchment and/or voluntary separation arrangements;
 - ii. voluntary early retirement packages;
 - iii. unreasonable refusals to be redeployed;
 - iv. resignations or retirements in the ordinary course of business;
 - v. retrenchments lawfully effected for operational requirements unrelated to the Merger; and
 - vi. terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance;

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 1st day of March 2022.

Tebelelo Pule, Chief Executive Officer, Competition and Consumer Authority,
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