

**MERGER DECISION NO 23 OF 2024****DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF THE LIQUID CARTONS BUSINESS CARRIED ON BY NAMPAK PRODUCTS LTD BY LIQUID CARTONS (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 the Liquid Cartons Business carried on by Nampak Products Limited ("Nampak" or "the Target Enterprise"), by Liquid Cartons (Pty) Ltd ("Liquid Cartons" or "the Acquiring Enterprise").

The proposed transaction involves the acquisition of the target firm as a going concern from Nampak subject to certain adjustments, pursuant to the Sale of Business Agreement together with the Implementation Agreement between the relevant parties to the merger. On completion of the proposed transaction, the shareholders of the Acquiring Enterprise will have joint control over the target firm. The transaction was notified to the Authority on 27<sup>th</sup> June 2024 and the merger assessment was completed on 18<sup>th</sup> July 2024.

The Acquiring Enterprise, Liquid Cartons is a Special Purpose Vehicle (SPV) and a private company incorporated in South Africa. It is 100% owned and controlled by Diversified Liquid Packaging Group (Pty) Ltd ("DLP"), another private South African company which is an SPV. DLP is in turn ultimately jointly controlled by FirstRand Bank Limited ("FirstRand") and Dlonlobala Capital Proprietary Limited ("Dlonlobala"), and these companies are also incorporated in accordance with the Laws of South Africa.

The Target Enterprise, is the Liquid Cartons Business carried on by Nampak. As such, the Target Enterprise is a division of Nampak Products Ltd. Nampak is incorporated in accordance with the Laws of South Africa. Nampak is a wholly owned subsidiary of Nampak Intermediate Holdings Ltd, which is a wholly owned subsidiary of Nampak Limited.

**Relevant Markets**

The Target Enterprise is domiciled in Botswana while the Acquiring Enterprise is domiciled in South Africa. In terms of markets of the Merging Parties, the assessment of the activities merger shows that the Acquiring Enterprise is a newly established entity, which is an SPV and does not have any business interests or assets of any nature in Botswana. A review of the business activities of the Acquiring Enterprise's promoters indicate that the Dlonlobala Group is an

investment holding company and does not have any business interests or assets of any nature in Botswana. However, the Acquiring Enterprise's presence in Botswana is through the FirstRand Group, via First National Bank of Botswana which provides banking and financial services, comprising a range of Banking products.

On the other hand, the Target Enterprise manufactures, sells and supplies liquid packaging products, including Pure-Pak and Conipak liquid cartons. Pure-Pak cartons are straight-sided cartons used for the packaging of dairy products such as milk, yoghurt and maas, mageu, mageu blends, fruit juice, wine, water as well as a limited range of dry products and are available in 250ml, 330ml, 350ml, 500ml, 1litre and 2litre sizes. These are generally fresh or extended shelf-life products (with a shelf life of up to 35 days (product and processing dependant)). Conipak cartons are 1litre cone shaped cartons used for the packaging of wet based, fresh traditional or sorghum beer (with a shelf life of between 5 to 7 days).

For completeness, In Botswana, the Target Enterprise supplies Conipak cartons to a single customer for use as sorghum beer packaging within the wider food and beverage packaging industry while FirstRand Group's activities fall within the banking and financial services sector and it is not involved in manufacturing, selling, and supplying of packaging products.

### **Competitive Analysis and Public Interest**

In the assessment of Substantial Lessening of Competition, the assessment findings revealed that the Acquiring Enterprise and the Target Enterprise are currently not active in the same market. The Acquiring Enterprise is an SPV and in terms of the relevant market, its promoter is active within the banking and financial services sector. On the other hand, the target business manufactures, sells and supplies liquid packaging products. Therefore, 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.

Since there are no direct or indirect overlaps between the products and/or services offered by the parties to the proposed transaction, the Acquiring Enterprise is only expected to acquire the market share of the target business and hence the status quo is expected to remain post-merger. The merged entity will accordingly not be able to act independently of its customers or competitors. Furthermore, the merger is only expected to contribute to the investment portfolio of the Acquiring Enterprise and therefore will have an insignificant accretion to its current 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 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 the Liquid Cartons Business carried on by Nampak Products Limited, by Liquid Cartons (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 18<sup>th</sup> day of July 2024.

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