



MERGER DECISION NO 28: 2024

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

MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 33.3% SHARES IN KWENANTLE FARMERS (PTY) LTD BY OBONYE LEMBIE TLHALERWA

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 33% of shares in Kwenantle Farmers (Pty) Ltd ("Kwenantle Farmers" or the "Target Enterprise") by Obonye Lembie Tlhalerwa ("Obonye" or the "Acquiring Enterprise"). Obonye currently has 33.3% shareholding in Kwenantle Farmers and will be acquiring an additional 33.3% that is currently held by Mr. Nicolaas Johannes De Wet. Following implementation, Obonye's shareholding in Kwenantle Farmers will increase to 66.67%. The transaction was notified to the Authority on the 25th June 2024 and the merger assessment was completed on 30th July 2024.

Obonye is an adult Motswana female of full legal capacity with interests in the Target Enterprise as a Shareholder (33.3%) and Director.

On the other hand, the Target Enterprise, Kwenantle Farmers, is a company registered in accordance with the Laws of the Republic of Botswana. The Shareholders of Kwenantle Farmers are Pieter Blignaut Diedericks (33.3%), Nicolaas Johannes De Wet (33.3%) (both South African) and Obonye Lembie Tlhalerwa (33.3 %), who is also the Director of Kwenantle Farmers. There are no firms that directly or indirectly control Kwenantle Farmers.

Relevant Markets

In terms of the activities of the Merging Parties, the Acquiring Enterprise is an individual who is also the Director and Shareholder in four (4) other enterprises, which are Temontle (Pty) Ltd ("Temontle"), MmaGakebao Farms, The Creative Station and Seven Delight (Pty) Ltd ("Seven Delight"). Temontle is still at development phase and production has not yet commenced for fodder crops production; MmaGakebao Farms was established as a holding company and until this year, held Ms. Obonye's shares in Kwenantle Farmers; The Creative Station is also at development phase and has not commenced operations as a children's after-school creative arts centre; and Seven Delight which is a 'motshelo' investment company.

On the other hand, the Target Enterprise is a crop farming enterprise with operations in Talana Farms in the Tuli Block, Bobirwa region. Kwenantle Farmers produces white and yellow maize, sugar beans, wheat and lucerne.

The assessment indicates that the proposed transaction is essentially an internal restructuring as Obonye is both a Shareholder and Director in the Target Enterprise.

Moreover, Obonye is exercising her pre-emptive right as per the enterprise's Shareholders' Agreement to purchase the shares. The assessment findings have revealed that post-implementation of the proposed transaction, Kwenantle Farmers will be a majority citizen-owned entity, with Obonye, a Motswana controlling 66.67% of the entity. This is in line with the Authority's active efforts in facilitating citizen empowerment. Moreover, there are active alternative service providers available within the crop farming sector producing the same products to those of the Target Enterprise. The preliminary assessment of the merger therefore shows that the proposed transaction will not have the effect of substantially preventing or lessening competition in the relevant market that may be found to exist as this is merely an internal restructuring.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the proposed transaction is an internal restructuring in which an already existing shareholder will be increasing her shares to 66.67% from 33.3% while another will be exiting the shareholder structure. In addition, the crop farming sector in Botswana is highly competitive and characterised by a number of players in the market. As such, the Merged Enterprise is expected to face strong competition from well-established players who are engaged in this market segment.

For the analysis of Acquisition of Dominance, it is important to emphasise 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 as the Acquiring Enterprise will only be acquiring additional shares within the Target Enterprise from an existing shareholder and therefore will have no impact on the market share of the Target Enterprise. Furthermore, the Merged Enterprise is expected to face strong competition from existing players who are engaged in this market segment.

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. Furthermore, the proposed transaction will result in a majority citizen-owned enterprise by 66.67%, therefore boosting citizen empowerment.

The Determination

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market is not going to change upon implementation of the proposed transaction, as it is an internal restructuring. As such, no competition concerns will arise. Furthermore, the proposed merger will create citizen empowerment in terms of the acquirer who will now be a majority shareholder in the company that is currently majority foreign owned. Therefore, there will be no negative effects 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 33.3% shares in Kwenantle Farmers (Pty) Ltd by Obonye Lembie Tlhalerwa.

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 30th day of July 2024.

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