



MERGER DECISION NO 29: 2024

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

DECISION ON THE PROPOSED COLLECTIVE ACQUISITION OF CONTROL BY VISION INVESTMENTS 155 PROPRIETARY LIMITED NGWENYAMA 62 PROPRIETARY LIMITED KENI 62 PROPRIETARY LIMITED ALMOIZ SA INDUSTRIES PROPRIETARY LIMITED TOKWE ONE PROPRIETARY LIMITED TOKWE TWO PROPRIETARY LIMITED TOKWE THREE PROPRIETARY LIMITED TERRIS SUGAR SOUTH AFRICA PROPRIETARY LIMITED IN TONGAAT HULETT LIMITED, IN BUSINESS RESCUE ACQUISITION OF THE ENTIRE ISSUED SHARE CAPITAL AND CONTROL OVER K2022411275 (SOUTH AFRICA) (PTY) LTD BY MAINSTREET 2019 LIMITED

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 respect of the proposed merger in terms of which the Primary Acquiring Enterprises (comprising a number of firms) ["Vision SPVs"] intend to collectively acquire control over Tongaat Hulett Limited, in business rescue ("THL") through the implementation of an approved business rescue plan, which will result in the Primary Acquiring Enterprises acquiring control of Tongaat Hulett Botswana Proprietary Limited ("THB" or "Primary Target Enterprise"), a subsidiary of THL ("Proposed Transaction"). The transaction was notified to the Authority on 27th June 2024, and the merger assessment was completed on 23rd August 2024.

The Primary Acquiring Enterprises are various special purpose vehicles referred to as Vision SPVs which are owned and controlled by a consortium of parties referred to as the "Vision Parties". The Vision SPVs comprise of: Ngwenyama 62 Proprietary Limited; Keni 62 Proprietary Limited; Almoiz SA Industries Proprietary Limited; Tokwe One Proprietary Limited; and Terris Sugar South Africa Proprietary Limited.

The Target Enterprise, THL, is an entity registered in accordance with the Laws of South Africa and it is listed on the Johannesburg Stock Exchange.

Relevant Market

The Acquiring Enterprises are special purpose vehicles that have been formed specifically to implement the Proposed Transaction. None of the Vision Parties or promoters of the Primary Acquiring Enterprises conduct any business activities in Botswana.

On the other hand, THL is an agriculture and agri-processing business with a focus on the sugar production and animal feeds sectors.

THL exports sugar from South Africa, Mozambique and Zimbabwe to its controlled subsidiary Tongaat Hulett (Botswana) Proprietary Limited ("THB"). THB is engaged in the business of sugar packaging and distribution under the brand name 'Blue Crystal'. THB imports either refined white sugar or brown sugar from enterprises within the THL Group which it then repackages for distribution to customers. Imports from South Africa and Mozambique are typically by road freight whereas imports from Zimbabwe arrive through a blended mix of rail and road freight (but predominantly rail).

Based on the above, it is clear that the competition landscape in the relevant market will not change in Botswana upon the implementation of the proposed merger. The Authority therefore does not anticipate any substantial competition concerns to arise in the relevant market or in any market that may be found to exist in Botswana. Thus, the competition landscape in the relevant market in Botswana is not expected to change upon the implementation of the proposed merger due to lack of both horizontal and geographical overlaps.

Competitive Analysis and Public Interest

The Authority has established that the structure of the relevant market is not expected to significantly change upon implementation of the proposed merger and 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.

The Determination

Pursuant to the provision of section 53 of the Competition Act 2018, the Authority has decided to unconditionally approve the proposed merger in terms of which the Primary Acquiring Enterprises (comprising a number of firms) ["Vision SPVs"] intend to collectively acquire control over Tongaat Hulett Limited, in business rescue ("THL") through the implementation of an approved business rescue plan, which will result in the Primary Acquiring Enterprises acquiring control of Tongaat Hulett Botswana Proprietary Limited ("THB"), a subsidiary of THL.

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 23rd day of August 2024.

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