



MERGER DECISION NO 36: 2024

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 100% OF THE ISSUED SHARES IN NAMPAK LIQUID BOTSWANA (PTY) LTD FROM VERNOTONE (PTY) LTD BY ZENITH (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 100% of the issued shares in Nampak Liquid Botswana (Pty) Ltd ("Nampak Botswana" or "Target Enterprise") from Vernotone (Pty) Ltd ("Vernotone"), by Zenith (Pty) Ltd ("Zenith" or "Acquiring Enterprise").

The proposed transaction is effectively a management buy-out and pursuant to its implementation, Zenith will wholly control Nampak Botswana in accordance with the provisions of the Act. The proposed transaction has been agreed under Sale Agreement between Vernotone and Zenith and Nampak Botswana.

The Acquiring Enterprise, Zenith, is a Special Purpose Vehicle (SPV) incorporated in accordance with the Laws of the Republic of South Africa. Zenith's shareholders who are also Directors of the company are Vuyisile Walter Manyana and Itumeleng Tebakang (both South African). Mr. Vuyisile Walter Manyane is currently a Director of Nampak Botswana, a company which is the subject of the merger transaction under consideration.

The Target Enterprise, Nampak Botswana, is a private company incorporated in accordance with the Laws of the Republic of Botswana. Nampak Botswana is wholly controlled by Vernotone which is also an SPV company registered in accordance with the Republic of South Africa. Vernotone's shareholders are SLA Capital Proprietary Limited, and Steltrade Proprietary Limited.

Relevant Markets

The merger assessment findings indicate that Nampak Botswana is domiciled in Botswana while Zenith is domiciled in South Africa. Zenith is a newly incorporated SPV, with no turnover or asset value in Botswana. For completeness, Zenith does not directly or indirectly control any other enterprise in Botswana.

On the other hand, Nampak Botswana manufactures, sells and supplies high density polyethylene (HDPE) and polyethylene terephthalate (PET) bottles to the

water and dairy industries in Botswana. Nampak Botswana does not directly or indirectly control any other enterprise in Botswana. Nampak Botswana's competitors include Kgalagadi Plastic Industries (Pty) Limited, Oscarian Classic (Pty) Limited, Southern Plastics Botswana (Pty) Limited and Gamalete (Pty) Limited.

Based on the above, the competition landscape in the relevant market is not expected to change in Botswana upon the implementation of the proposed merger. Therefore, the Authority maintains that it is not necessary to reach a definitive view of the exact scope of the product market as the market structure is not expected to substantially change post implementation of the proposed transaction.

Competitive Analysis and Public Interest

The implementation of the Proposed Transaction is not expected to result in an acquisition of a dominant position in any market in Botswana. Since the assessment did not establish any overlaps between the products and/or services offered by the Merging Parties within the Botswana market, Zenith is only expected to assume the market share of Nampak Botswana and the status quo is anticipated to prevail post implementation of the merger.

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 100% of the issued shares in Nampak Liquid Botswana (Pty) Ltd from Vernotone (Pty) Ltd by Zenith (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 7th day of October 2024

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