



MERGER DECISION NO 52 OF 2024

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF THE CREMORA BUSINESS OF NESTLÉ (SOUTH AFRICA) PROPRIETARY LIMITED (TO BE OWNED BY A NEWLY FORMED SPECIAL PURPOSE VEHICLE) BY LACTALIS SOUTH AFRICA PROPRIETARY 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 acquisition of the Cremora business of Nestlé (South Africa) Proprietary Limited ("Nestlé ZA") (to be owned by a newly formed special purpose vehicle) ("the Primary Target Enterprise") by Lactalis South Africa Proprietary Limited ("Lactalis SA" or "the Acquiring Enterprise"). Prior to implementation of the proposed transaction, the Primary Target Enterprise will be transferred to Vista 24 Proprietary Limited ("Vista 24").

The Acquiring Enterprise, Lactalis SA, is a company incorporated in accordance with the Laws of the Republic of South Africa. Lactalis SA forms part of the Lactalis Group. The Lactalis Group has presence in Botswana through Lactalis Botswana Proprietary Limited ("Lactalis Botswana") and Sanulac Nutritionals South Africa Proprietary Limited ("Sanulac Nutritionals SA"); companies incorporated in Botswana and South Africa, respectively.

The Primary Target Enterprise, Vista 24, is a company incorporated in accordance with the Laws of the Republic of South Africa. It is a newly formed special purpose vehicle for the purposes of this proposed transaction. The Primary Target Enterprise is a 100% subsidiary of Nestlé ZA, a South African based company.

Relevant Market

The Acquiring Entity is involved in the production and sale of dairy products, juice and other food products as well as the distribution and commercialisation of Lactalis brand products in South Africa. In addition, Lactalis SA products are sold in Botswana through its Botswana sister company, Lactalis Botswana. Similarly, the Target is active in the production and distribution of Cremora, a non-dairy creamer primarily used in coffee and tea but can also as an ingredient in baking and cooking. These Cremora creamer products are manufactured in South Africa and distributed in Botswana through distributors, independent wholesalers and large

retailers. In this regard, the Acquirer is not involved in the production and distribution of non-dairy creamer products in Botswana, nor does the Target engage in the production and sale of dairy products in Botswana.

It is worth noting that dairy products require refrigeration once opened while, non-dairy creamer products have a long shelf life and do not require refrigeration once the packaging is opened. Additionally, non-dairy creamers are made from vegetable oil, sugar, glucose syrup and other ingredients, and thus have characteristics which are different from milk. Unlike cream or milk, non-dairy creamer cannot be ingested or processed on its own to produce a consumable product. Instead, creamer products serve as a supplement or additive to coffee, tea, or culinary preparations.

Having regard to the above, it can be deduced that non-dairy creamer products and dairy milk are not functionally interchangeable. Considering this, there is a lack of product overlap in the activities of the merging parties in Botswana. It can therefore be concluded that the proposed transaction will not give rise to horizontal overlap post-merger. Consequently, the status quo is expected to be maintained implementation of the transaction.

In the absence of product overlap in the activities of the merging parties, the Authority has decided to define the market relevant to the transaction under review, taking into account the business nature of the product offered by Vista 24 in Botswana. As a result, the relevant market is defined as *the distribution of non-dairy-based creamer products under the Cremora brand in Botswana from South Africa*.

Competitive Analysis and Public Interest

The Authority has established that the Proposed Transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the market relevant. 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 acquisition of the Cremora business of Nestlé (South Africa) Proprietary Limited (to be owned by a newly formed special purpose vehicle), Vista 24 Proprietary Limited) by Lactalis South Africa Proprietary Limited.

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 9th day of December 2024.

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