



**18<sup>th</sup> September 2014**

## **PRESS STATEMENT**

### **DECISION ON THE APPLICATION FOR AN EXEMPTION FROM THE PROVISIONS OF THE COMPETITION ACT BY CHOPPIES DISTRIBUTION CENTRE (PTY) LTD, PAYLESS SUPERMARKET (PTY) LTD AND WOODBLOCK (PTY) LTD**

At its Exemptions Review Committee Meeting held on 16<sup>th</sup> September, 2014 at 15:00 hours, the Competition Authority determined to reject the application for an exemption from the provisions of the Competition Act by Choppies Distribution Centre (Pty) Ltd, Payless Supermarket (Pty) Ltd and Woodblock (Pty) Ltd.

This rejection is on the grounds that the facts, analysis and conclusions of the exemption assessment showed that the proposed transaction would likely lead to the lessening of competition that on balance is not proportionate to the benefits for the public and would likely lead to a situation whereby the parties to the transaction would lessen competition in the retailing of Fast Moving Consumer Goods (FMCG) or grocery retailing market where the Parties operate in similar geographic markets.

In taking its decision, the Authority took cognisance of the fact that:

- (i) The structure of the Choppies Buying Group facilitates coordination with regard to prices and would likely lead to a collusive outcome in the relevant market in contravention of section 25 of the Act, particularly subsections 25(a) and (b) thereof. The Authority noted that Choppies is already a dominant enterprise in the market for retailing of FMCG or grocery retail market and the nature and features of the buying group would allow it to affect competition adversely;

- (ii) The rationale for the Choppies buying group appears to be meant and guided to rescue Payless as Payless was reported to have insufficient capital or even credit facilities to purchase its stock in large volumes. As the Choppies Buying Group secures goods and/or products from suppliers on behalf of its members, this creates a financial dependency on Choppies by its members, which concerns the Competition Authority;
- (iii) No empirical evidence was provided to indicate that the formation of this buying group had any offsetting benefits for the public (in relation to effects on competition) directly attributable to the arrangement as listed under section 32(1)(a) to (h) of the Competition Act. Particularly, the parties failed to demonstrate through comprehensive economic and factual evidence that the formation of the Buying Group has, or would directly lead to the outcome of maintaining low prices, high quality or greater choice for consumers;
- (iv) In relation to employment issues at Payless, the Authority was of the view that in the event that shareholders of Payless considered they could not profitably operate the business (which may lead to job losses), they could float the business for sale as a going concern; and
- (v) The Authority did not consider the adverse effects of the arrangement on competition to be proportionate to the benefits for the public in the grocery retailing market. Furthermore, the buying group was not considered to be the only remedy available for Payless in the long-term.

Thus, taking into account the aforementioned considerations and evaluations, the Authority rejects the application and directs that Payless and Woodblock should:

- (a) Wean themselves from the Choppies Buying Group by the 30<sup>th</sup> November 2014; and
- (b) Provide the Authority with a report of how they have weaned themselves from the Choppies Buying Group by the 15<sup>th</sup> December 2014.