



MERGER DECISION NO 03: 2023

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF A TOTAL OF 76% OF THE ISSUED SHARE CAPITAL OF KAMOSO AFRICA (PTY) LTD BY CHOPPIES DISTRIBUTION CENTRE (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 a total of 76% of the issued share capital of Kamoso Africa (Pty) Ltd ("Kamoso" or "Target Enterprise") by Choppies Distribution Centre (Pty) Ltd ("CDC" or "Acquiring Enterprise").

The Acquiring Enterprise, CDC, is a company registered in accordance with the Laws of the Republic of Botswana. It is directly controlled by its sole shareholder, Choppies Enterprises Limited ("Choppies"). Choppies is in turn a public company registered in terms of the Laws of the Republic of Botswana. Choppies is listed on the Botswana Stock Exchange ("BSE") and the Johannesburg Stock Exchange Limited ("JSE"). In Botswana, the Acquiring Enterprise controls Jexman Holdings (Pty) Ltd which in-turn controls Monyglob (Pty) Ltd, trading as, MonyGlob Bureau De Change.

The Target Enterprise, Kamoso, is a private company registered in accordance with the Laws of the Republic of Botswana. Kamoso is not controlled by any enterprises but its major shareholder is lapef 2 Rmbv7 Kamoso Limited ("IA-RMBV"), a company registered in accordance with the Laws of Mauritius. Other shareholders of the Target Enterprise are Newshelf 1392 (RF) [Pty] Ltd ("Newshelf"), Botswana Development Corporation Limited ("BDC"), Mr. Ramachandran Ottapathu ("Mr. Ottapathu"), and Mr. Narayanan Ottappath ("Mr. Ottappath"). IA-RMBV does not control any entities in Botswana.

Relevant Markets

The Acquiring Enterprise operates a chain of 100 stores across Botswana and is active in the retail segment of the supply chain in the grocery supermarket sector. It is associated with superstores, hyperstores and value stores, each offering the full in-store range of fast moving consumer goods, including bakery, butchery, fresh fruit and vegetables and fast food.

CDC also sells private label products in just about every food and non-food category such as fresh, frozen, canned, dry foods, snacks, ethnic specialities, health and beauty care, household as well as laundry products. Additionally, CDC provides a range of financial services such as airtime, electricity, money transfer and foreign exchange through its subsidiary company Monyglob (Pty) Ltd.

On the other hand, Kamoso directly controls ten (10) companies, which generally operate in three major divisions namely: manufacturing; supplying; and distribution. Kamoso Group's product range consists of fast-moving consumer goods, pharmaceuticals, liquor, building materials and equipment. Kamoso sources and distributes both local and international brands, from groceries to beverages and personal care throughout the region. Specifically, Kamoso's subsidiaries are involved in medical distribution, liquor retailer, liquor wholesaler, hardware accessories retailer, distributor, rice and spice packaging, sorghum manufacturing, maize meal manufacturing, tissue manufacturing, and water bottling plant.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the assessment of the merger did not reveal any competition concerns. The proposed transaction is a vertical merger and as such, the Merging Parties are active in different segments of the supply chain.

Furthermore, the assessment has revealed that the merged entity does not have the ability nor incentive to foreclose competitors of the Acquiring Enterprise in the lower segment of the supply chain as this is not expected to result in any commercial gain. The Authority does not expect the proposed transaction to give rise to a Substantial Lessening of Competition; restrict trade or the provision of services; or to endanger the continuity of supplies in the relevant market in Botswana.

The implementation of the proposed merger will not result in any market share accretion for the Merged Enterprise or any entity in Botswana. The status quo of the relevant market will prevail post-merger and the Merged Enterprise will continue to face competition from the available rivals that exist in the retail as well as the distribution segment of the market, which is under consideration in Botswana.

The assessment of the proposed merger indicated public interest concerns in the form of possible merger specific retrenchment. In addition, the Authority saw the need to ensure that the target businesses remain in operation and the merged entity continues to contribute to citizen empowerment, support Small Medium and Micro Enterprises (SMMEs) and enhances employment in Botswana.

The Determination

Taking into account the public interest concerns discovered and pursuant to the provisions of section 53 of the Act, the Competition and Consumer Authority has resolved to approve the proposed acquisition of a total of 76% of the issued share capital of Kamoso Africa (Pty) Ltd ("Kamoso" or "Target Enterprise") by Choppies Distribution Centre (Pty) Ltd ("CDC" or "Acquiring Enterprise"), with the following conditions:

- a) The Merged Enterprise shall inform the Authority of the date of implementation within thirty (30) business days post implementation. However, if the Merging Parties fail to implement the merger within 12 months from the date of approval, the consummation of the acquisition post this period will require a new merger filing to the Authority for re-assessment;
- b) There shall be no merger specific retrenchments or redundancies of citizen employees for a period of three (3) years from the date of implementation. For clarity, merger specific retrenchments or redundancies do not include (the list is not exhaustive):
 - i. voluntary retrenchment and/or voluntary separation arrangements;
 - ii. voluntary early retirement packages;
 - iii. unreasonable refusals to be redeployed;
 - iv. resignations or retirements in the ordinary course of business;
 - v. retrenchments lawfully effected for operational requirements unrelated to the Merger; and
 - vi. terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance;
- c) The Merged Enterprise shall inherit all employees of the Target Enterprise on the same or better terms and conditions of employment;
- d) The Merged Enterprise shall provide details (Full Name; Identification Number; Gender; Position; and; contact number) of the current employees of the Target Enterprise within ninety (90) business days from the Approval date;
- e) The Merged Enterprise shall share a copy of the conditions of approval with all employees of the Target Enterprise and/or their respective representatives within ninety (90) business days from the Approval date;
- f) The Merged Enterprise shall not dispose any of the businesses of the Target Enterprise within three (3) years from the date of implementation without prior notification of such disposal to the Authority;

- g) If any of the businesses of the Target Enterprise is declared to be in Liquidation and the Merged Enterprise resolves to close it down, such decision must be communicated to the Authority immediately; and
- h) The Merged Enterprise shall for a period of (three) 3 years from the implementation date submit to the Authority, a report on each anniversary of the implementation date, detailing its compliance with the conditions of approval and demonstrate its contribution to citizen empowerment, SMMEs and employment in addition to its current commitments to these highlighted areas.

However, as stated under section 61 of the Act, this approval shall not relieve an enterprise from obtaining such other approvals as may be required from bodies in exercise of their statutory responsibilities.

Dated at Gaborone on this 11th day of April 2023.

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