

MERGER DECISION NO 16: 2022

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

DECISION ON THE PROPOSED ACQUISITION OF 1% OF THE ISSUED SHARE CAPITAL IN BOKOMO (BOTSWANA) (PTY) LTD BY PIONEER FOODS (PTY) LTD FROM P F BRINK (PTY) LTD

Introduction of the Merging Parties

- i. Pursuant to section 53(4)(a)(ii) of the Competition Act of 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 1% of the issued share capital in Bokomo (Botswana) (Pty) Ltd ("Bokomo Botswana") by Pioneer Foods (Pty) Ltd ("Pioneer Foods") from P F Brink (Pty) Ltd. The transaction was notified to the Authority on 24th February 2022 and the merger assessment was completed on 29th April 2022.
- ii. Pioneer Foods, the Acquiring Enterprise, is registered in accordance with the Laws of the Republic of South Africa. It is wholly owned by Pioneer Foods Holdings (Pty) Ltd ("PFH"). Pioneer Foods is a joint venture partner in Bokomo. The Acquiring Enterprise is a producer and distributor of a range of branded food and beverage items. The list of products that Pioneer Foods exports to Botswana include: Spekko rice, Pasta Grande, Liquifruit, Bokomo Cornflakes, Bokomo Rusks, Moirs, and Wellingtons. The products are distributed through Bokomo Botswana in Botswana.
- iii. Bokomo Botswana, the Target Enterprise, is incorporated in accordance with the Laws of the Republic of Botswana. Bokomo Botswana provides milling, warehousing, sale and distribution and packaging services in Botswana. Specifically, Bokomo Botswana mills maize, sorghum and wheat products from raw materials. Furthermore, it is involved in the packaging of sugar. The products produced and distributed by Bokomo Botswana include: White Star, Lesedi Special, Bokomo Flour, Pure Sugar, and Champion Sorghum. The Target Enterprise is jointly controlled by P F Brink (Pty) Ltd and Pioneer Foods. In turn, Bokomo Botswana does not control any other enterprise.

Relevant Markets

- iv. The Acquiring Enterprise manufactures and supplies food and beverage products to wholesale, retail and other trade customers in South Africa. Pioneer also exports its products to countries worldwide including Botswana.
- v. Bokomo Botswana provides milling, warehousing, sale and distribution and packaging services in Botswana.
- vi. There is no overlap in the activities of the merging parties in Botswana. As such, the Authority adopts not to reach a definitive conclusion on market definition.

Competitive Analysis and Public Interest

- vii. Since there is no overlap in the activities of the merging parties in the relevant market the Authority did not establish any substantial lessening of competition concerns arising from the merger. The proposed transaction involves an internal restructuring where by the acquirer's shareholding is increasing from 50% to 51%, therefore gaining control. Furthermore, there will be no acquisition of market dominance post-merger. However, the merger under consideration raises public interest concerns (citizen disempowerment) because Pioneer Foods stands to gain control in an enterprise that operates in the sorghum market, a market reserved for citizen owned enterprises.

The Determination

- viii. Taking the aforesaid public interest concern into account, and pursuant to the provisions of section 53 of the Competition Act, the Authority has decided to unconditionally approve the proposed acquisition of 1% of the issued share capital in Bokomo (Botswana) (Pty) Ltd by Pioneer Foods (Pty) Ltd from P F Brink (Pty) Ltd. Regarding the sorghum milling licensing requirements and its attendant issues, the merging parties must liaise with the appropriate authority; to wit, the Ministry of Trade and Industry. This is in line with section 61 of the Competition Act of 2018 which reads, "*An approval of a merger granted by the Authority shall not relieve an enterprise from obtaining such other approvals as may be required from other bodies in the exercise of their statutory responsibilities.*"

- ix. 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 29th day of April 2022.

Tebelelo Pule, Chief Executive Officer, Competition and Consumer Authority, P/Bag 00101, Gaborone, Plot 28, Matsitama Road, Tel: 3934278 Fax: 3121013