



## MERGER DECISION NO 2: 2024

### Notice in Terms of Section 55(4) (a) (ii) of the Competition Act 2018

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION BY VARUN BEVERAGES LIMITED OF THE BEVERAGE COMPANY (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 acquisition of the entire issued share capital by Varun Beverages Limited ("Varun India" or the "Acquiring Enterprise") in The Beverage Company (Pty) Ltd ("Bevco" or the "Target Enterprise"). The transaction was notified to the Authority on 20<sup>th</sup> December 2023, and the merger assessment was completed on 2<sup>nd</sup> February 2024.

The Acquiring Enterprise is a company incorporated in accordance with the Laws of India. Varun India is a public company which is listed on the National Stock Exchange of India Limited (NSE), as well as the Bombay Stock Exchange Limited (BSE). For completeness, the largest shareholders of Varun India with more than a 5% interest as at 30<sup>th</sup> September 2023 are RJ Corp Limited, Ravi Kant Jaipuria, and Varun Jaipuria. On the other hand, the Target Enterprise Bevco, is a private company registered in accordance with the Laws of the Republic of South Africa. The Target Enterprise is not domiciled in Botswana, but it derives revenue from Bevco products which are distributed and sold by merchants on its behalf throughout Botswana.

##### **Relevant Markets**

Varun India is active in the beverage industry principally in India and it is one of the franchisees of PepsiCo worldwide (outside of the United States of America). It manufactures, distributes and sells a wide range of carbonated soft drinks, as well as a large selection of non-carbonated beverages, including packaged drinking water sold under trademarks owned by PepsiCo. Through its controlled subsidiaries, the Acquiring Enterprise also has presence in various countries such as Nepal, Sri Lanka, Morocco, Zambia, Zimbabwe, and South Africa. Varun India does not currently have any direct or indirect business activities in Botswana.

Similarly, the Target Enterprise is a beverage producer engaged in the production of carbonated soft drinks primarily in 2 litre plastic pack sizes. It sells its own branded carbonated soft drink products called "Refreshhh", "Jive" and "Coo-ee" and is also a private label carbonated soft drink bottler to various retailers in South Africa.

Bevco also produces a range of mixers, energy drinks and water and is a registered bottler for PepsiCo in South Africa. The Target Enterprise is also not domiciled in Botswana, but it derives revenue from Bevco products which are distributed and sold by merchants on its behalf throughout Botswana.

The merger assessment findings therefore indicate that there is no geographical overlap in the activities of the merging parties in Botswana. Thus, the Authority does not anticipate any competition concerns to arise in the market as a result of the proposed transaction. The merger will not lead to any significant change in the structure of the relevant market. Furthermore, there exist other products in the relevant market, which will continue to exert a competitive constraint on the products owned by the merged enterprise such as Coca Cola beverages, Twizza beverages, Kingsley beverages, Red Bull, and Switch etc.

### **Competitive Analysis and Public Interest**

In the assessment of Substantial Lessening of Competition, the investigation has revealed that the Acquiring Enterprise and the Target Enterprise are not domiciled in Botswana and the merger has been notified by virtue of the Target Enterprises' products being present in the local market through imports. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition post implementation.

For the analysis of Acquisition of Dominance, since the Merging Parties are not active in the same market in the Botswana, the Acquiring Enterprise will just inherit the market share of the Target Enterprise and the status quo will remain post-merger. Additionally, the merged enterprise is expected to continue to face competition discipline from the existing players in the market.

Furthermore, a dominant position in the context of section 2 of the Competition Act 2018, refers to a situation in which one or more enterprises possess such economic strength in a market as to allow the enterprise or enterprises to adjust prices or output without effective constraint from competitors or potential competitors. The implementation of the proposed merger is not expected to result in the acquisition of a dominant position in the relevant market in Botswana. The merger is only expected to contribute to the investment portfolio of the Acquiring Enterprise and therefore will have an insignificant accretion to its market share in Botswana.

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. Furthermore, the proposed merger will result in continuity of supply of the Target Enterprise's products into Botswana and indirectly safeguard the job security for employees of its distributor in Botswana.

### **The Determination**

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market will not change upon implementation of the

proposed merger due to a lack of geographical overlap in business activities of the Merging Parties, therefore the proposed transaction is not going 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 the entire issued share capital by Varun Beverages Limited in The Beverage Company (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 2<sup>nd</sup> day of February 2024.

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