

MERGER DECISION NO 36: 2016

DECISION ON THE PROPOSED DISPOSAL OF ALL THE MANUFACTURING ASSETS OF CAN MANUFACTURERS (PTY) LTD TO NAMPAK PRODUCTS LTD AND A YET TO BE FORMED SPECIAL PURPOSE VEHICLE (“NEWCO”), WHICH WILL BE JOINTLY CONTROLLED BY NAMPAK LTD AND BOTSWANA DEVELOPMENT CORPORATION LIMITED.

PURSUANT to section 60(4)(a)(ii) of the Competition Act (Cap 46:09), notice is hereby given on the decision made by the Competition Authority (“the Authority”) in respect of the proposed disposal of all the manufacturing assets of Can Manufacturers to Nampak Products Ltd and a yet to be formed Special Purpose Vehicle (“Newco”), which will be jointly controlled by Botswana Development Corporation and Nampak Limited.

At its 87th Mergers Review Committee Meeting held on 22nd December 2016 at 10:00 hours, the Authority considered the merger assessment report, as well as subsequent communications regarding the said notification. The Authority determined to conditionally authorise the proposed transaction in the market under consideration; given the fact that:

- i) There are no competition concerns that will arise as a result of the implementation of the proposed transaction and that it is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the market under consideration;
- ii) The implementation of the proposed transaction is not expected to result in the merged entity attaining a dominant position; and
- iii) The proposed transaction is expected to result in citizen disempowerment to some extent.

Therefore, pursuant to the provisions of section 55 of the Competition Act, the Authority has approved the proposed merger, with the following conditions:

- i. Nampak Southern African Holdings Ltd (“NSAH”) shall sell shares in Newco of not less than 10% but not more than 20% to a citizen of Botswana controlled entity or citizen of Botswana within 12 months upon implementation of this transaction; and

- ii. The end line business will not relocate out of Botswana and shall remain a manufacturing business and not change into a sole distribution business. In the event that market circumstances change to the point where NSAH resolve to exit the market in Botswana, NSAH shall notify the Authority of their intention to sell the company as a going concern to interested parties.

Monitoring of compliance with conditions

To facilitate the effective monitoring of compliance with the conditions outlined above, the merging parties shall:

- i. Inform the Authority of the implementation date within five business days of it becoming effective;
- ii. within the 12 months period, from the date of approval, provide the Authority with a report detailing compliance with the aforementioned conditions; and
- iii. Be cognisant that the Authority may at any time from the decision date, carry out an inspection to confirm compliance by the merged entity with the conditions referred to above.

In the event that the Authority determines that there has been an apparent breach by the merging parties of these conditions, this will be dealt with in terms of section 64 of the Competition Act.

However, as stated under section 66 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, this 22nd day of December 2016.

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