



MERGER DECISION NO 56: 2023

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF DELTA PHARMACEUTICALS (PTY) LIMITED BY A-OPCO (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 the entire issued share capital in Delta Pharmaceuticals (Pty) Limited ("Delta" or the "Target Enterprise") by A-Opco (Pty) Limited ("A-Opco" or the "Acquiring Enterprise"). The transaction was notified to the Authority on 28th November 2023 and the merger assessment was completed on 14th December 2023.

The Acquiring Enterprise, is a newly established company incorporated in accordance with the Laws of the Republic of Botswana. A-Opco is a special purpose vehicle established for the purpose of acquiring the Target Enterprise and as such does not currently provide any services. Similarly, the Target Enterprise, is a company registered in accordance with the Laws of Botswana. The Target Enterprise has a sole shareholder, Mr Harshadkumar Patel. The Target Enterprise does not directly or indirectly control any entity in Botswana.

Relevant Markets

In terms of the activities of the Merging Parties, A-Opco is a special purpose vehicle established for the purpose of acquiring the Target Enterprise and as such does not currently provide any services. The Acquiring Enterprise is controlled and owned 100% by A-HoldCo Proprietary Limited, which is in turn wholly owned by the AGFI Partnership Proprietary Limited, a fund that is capitalised and predominantly representing the investments of Botswana based pension funds and institutional investors. On the other hand, Delta is a leading pharmaceutical wholesaler and distribution company, which started operations in 1994.

Delta supplies a wide range of generic and branded pharmaceutical products, medical equipment such as orthopaedic implants, surgical and laboratory consumables, and health supplements to public and private markets. The Target Enterprise services both public and private markets and has a diversified client base of over 500 including retailers, wholesalers, the Government of Botswana, medical aid administrators and private hospitals and clinics. The Target Enterprise products are available throughout Botswana hence its geographical market is national.

The assessment indicates that there is no 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. Furthermore, there exist other players in the relevant market, which will provide a competitive edge on the merged enterprise.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the Acquiring Enterprise and the Target Enterprise are not currently active in the same market and therefore cannot be considered to be direct competitors. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition post implementation due to the fact that there exist other businesses in Botswana which will act as a constraint on the Acquiring Enterprise, post-merger.

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

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. The proposed merger will result in business continuity and product and service offering to consumers and continued employment of the current employees.

Furthermore, the proposed merger will result in the Target Enterprise being owned by a company which is wholly owned by Aleyo Growth Fund I GP (Pty) Ltd, a fund that is capitalised and predominantly represent the investment interests of Botswana-based pension funds and institutional investors. As such, the proposed Transaction will result in more Botswana controlling, participating and/ or benefiting from the pharmaceutical industry.

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 the indifferent 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 in Delta Pharmaceuticals (Pty) Limited by A-Opco (Pty) Limited.

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 14th day of December 2023.

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