

CA PUBLICISES POST MERGER IMPACT ASSESSMENT REPORT

The Competition Authority has been assessing mergers and acquisitions; and making determinations pertaining to mergers and acquisitions since November 2011. The merger assessment provisions are contained under Part X of the Competition Act (Cap 46:09). The Authority's mandate with regards to the assessment of mergers and acquisitions does not end at the stage of issuing a decision but extends to the post-decision stage through conducting compliance monitoring and post-merger impact assessments. The post-merger impact assessments are intended to establish the market effects of the decisions taken by the Authority.

The post-merger assessments provide an opportunity to check whether the conditions/remedies imposed were sound, given the information available at the time; and if the assumptions on which the conditions were made were sensible.

As part of the Competition Week (4-8 December 2017) celebrations, the Authority today (7th December) held a press conference to share with the media the Post Merger Impact Assessment Report

The following transactions are a summary of the cases that were assessed during the 2015/16 and 2016/17 Post-merger Impact Assessments:

Name of transaction

- 1. Merger between G4S (Botswana) Limited and Trojan Security Services (Pty) Ltd (Hotline Security Services (Pty) Ltd and Cyber Space Age (Pty) Ltd), as well as the merger between G4S (Botswana) Limited and Shield Security***

In November 2011, the Authority received a notification, for the proposed acquisitions by G4S (Botswana) Limited ("G4S"), of Trojan Security Services (Pty) Ltd ("Trojan") and Shield Security ("Shield").

Decision of the Authority

The acquisition of Trojan and Shield by G4S raised competition concerns and was therefore rejected. The merger was expected to result in reduced competition due to the removal of a small but significant competitor and enhanced market power for the acquiring enterprise.

Undertaking/commitments made by the parties

Following the rejection of the acquisition, the Authority became aware of a transaction between the parties which would have the effect of circumventing the decision of the Authority. The parties claimed that Shield was in dire financial strain and as such would shut down its business; and dispose its assets, allowing G4S to acquire those assets in the open market. In realising the potential effect of the

transaction, the Authority intervened and prohibited G4S from acquiring the said assets.

Through the Authority's intervention, the management of Shield resolved that its assets, trading licence, trading name and clients list be transferred to a 100% citizen owned entity, Sancos MD Investment Enterprises (Pty) Ltd, owned by a minority shareholder in Shield. The Authority further directed that the assets and employees should not be affected and should thus continue to be utilised as before, under Shield.

Moreover, the Authority directed that G4S would be restrained for a period of twenty four months (as of June 2012), from soliciting any current clients of Shield. The restraint would only lapse and be of no further force and effect under the following conditions:

- (i) Sancos t/a Shield closes down business or sells its business, subject to the closing down not being due to the fact that G4S directly or indirectly solicited clients as provided in the submitted client list during the twenty four month restraint period; and/or
- (ii) There is a change in management control and/or majority shareholder control in Sancos at any time whatsoever.

Impact of decision

- Shield has grown as shown by the number of employees and contracts that the company has managed to secure (for example, there was a 45.6¹% increase in number of contracts secured by Shield in the period 2012 to 2015. With regards to employment, an increase of 64.1%² was recorded for the same period); and
- In a related industry transaction, in December 2014, the Authority approved for Security Services Botswana (Pty) Ltd ("Security Services"), to acquire Hotline Security's client service contracts with the required associated equipment. The acquisition availed a citizen owned enterprise an opportunity to compete in the cash-in-transit and alarm & response markets, which were previously dominated by a foreign owned enterprise, G4S.

2. The acquisition of 100% interest in the operations of the Liquid Petroleum Gases business of PUMA Energy Botswana (Pty) Ltd by Easigas Botswana (Pty) Ltd

In January 2012, the Authority received a notification for the proposed acquisition of 100% interest in the operations of the Liquid Petroleum Gases ("LPG") business of Puma Energy Botswana (Pty) Ltd ("Puma Energy Botswana") by Easigas Botswana (Pty) Ltd ("Easigas Botswana").

Decision of the Authority

The Authority approved the acquisition of 100% interest in the operations of the LPG business of Puma Energy Botswana by Easigas Botswana on the condition that:

¹ An increase from 57 contracts in 2012 to 83 in 2015.

² There were 465 employees in 2012 and 763 employees in 2015.

- (i) *The merged entity does not engage in any conduct or activity that is tantamount to abusing its dominant market position since it is classified as a dominant firm as per Section 4(a) of the Competition Regulations; and*
- (ii) *Further, the Authority appeals to the proposed merging entities that during their establishment of the merger and their future existence, they should take cognisance of the need to advance citizen economic empowerment initiatives or enhance the competitiveness of citizen-owned small and medium sized enterprises.*

Undertaking/commitments made by the parties

The merged entity made the following commitments:

- (i) Not to engage in any conduct or activity that is tantamount to abusing its dominant market position since it is classified as a dominant firm as per Section 4(a) of the Competition Regulations; and
- (ii) To take cognisance of the need to advance citizen economic empowerment initiatives or enhance the competitiveness of citizen-owned small and medium sized enterprises.

Impact of decision

- **Employment creation or maintenance:** As at the time of the transaction, there were no stand-alone employees dedicated to the running of the LPG division of Puma Energy Botswana but by end of January 2017, Easigas Botswana reported a staff complement of 20 Batswana working full time directly under Easigas Botswana. Furthermore, through Easigas Botswana's leasing of their distribution plants to be independently managed, a total of 68 individuals were employed between the four different depots.
- **Stability in the supply of LPG in Botswana:** Easigas Botswana has managed to constantly supply LPG in Botswana following the consummation of the merger, and did not endanger continuity of supplies, as per section 59(1).
- **Advancement of citizen economic empowerment initiatives:** The Authority has established that Easigas Botswana has since adopted a strategy to assist indigenous Batswana businesses, especially those that are youth-led, in retailing LPG to corporate clients. Easigas Botswana's support to the youth-owned companies has been in the form of assisting these businesses to set up cages necessary for the required handling of LPG cylinders, as well as through offering those businesses credit facility. Moreover, Easigas Botswana provides technical support to these companies, in order to ensure service standards are maintained.

3. Acquisition of 80% interest in the issued share capital of Fluid Systems Botswana (Pty) Ltd and Fluid Systems North (Pty) Ltd by Manuli Fluiconnecto Holdings B.V. and further 20% in 2015 leading to 100%

In February 2012, the Authority considered the proposed acquisition of 80% interest in the issued share capital of Fluid Systems Botswana (Pty) Ltd and Fluid Systems North (Pty) Ltd (target enterprises) by Manuli Fluiconnecto Holdings B.V., the acquirer. Further, in February 2015, Fluiconnecto Holdings B.V. proposed to acquire the remaining 20% interest in the target enterprises, leading to 100% ownership.

Decision of the Authority

The Authority approved the transactions in April 2012 and in April 2015, respectively, taking into consideration the commitments made by Manuli Fluiconnecto Holdings B.V. that:

- (i) Fluid Systems was in the process of manufacturing Hydraulic and Pneumatic Cylinders used in most industries in mining, in Botswana; and
- (ii) Fluid Systems was planning to start and develop a partnership programme to train local apprentices and to open a third Service Point in 2015.

Undertaking/ commitments made by the parties

Through the approval of the transactions, the Authority took into cognisance the parties' commitment to:

- Manufacture in Botswana Hydraulic and Pneumatic Cylinders used in most industries;
- Establish a partnership programme to train local apprentices; and
- Create employment as a result of new Service Points.

Impact of decision

- **Employment creation as a result of expansion:** Manuli has been able to employ seventeen (17) additional employees through the two (2) new Service Points (Palapye and Karowe Mine) and expansion of the Francistown Service Point.
- **The establishment of a partnership programme to train local apprentices:** Fluid Systems Botswana has completed training of three (3) students from Selebi-Phikwe Technical College and other stakeholders that normally require their services, such as the Botswana Defence Force (BDF), local colleges and universities. The company is also in regular contact with the Botswana Qualifications Authority (BQA) for advice in an effort to provide quality training.
- **Manufacturing of Hydraulic and Pneumatic Cylinders used in most industries in Botswana:** this has not been realised due to the economic downturn which has affected the demand for Hydraulic and Pneumatic Cylinders in the country

more especially in the mining sector (main user of hydraulic and pneumatic cylinders);

4. The acquisition of 100% issued share capital in Shell Botswana by Vivo Energy.

In June 2012, the Authority considered the proposed acquisition of 100% issued share capital in Shell Botswana by Vivo Energy Holdings B.V. ("Vivo Energy").

Decision of the Authority

The transaction was unconditionally approved as the merger was not likely to give rise to substantive competition concerns in the distribution of fuel and lubricants markets in Botswana.

Undertaking/commitments made by the parties

However, considering the increasing levels of unemployment in Botswana, the Authority resolved to authorise the proposed transaction to take effect subject to the commitments made by the parties as follows:

- the level of employment within Shell Botswana would not be negatively affected as a result of the transaction; and
- Vivo Energy should present more opportunity for enterprises trading in the downstream market as fuel retailers through increased capital injection and by providing more start-up capital to aspiring entrepreneurs.

Impact of decision

- **Commitments made with regard to levels of employment:** Vivo Energy inherited a staff complement of fifty three (53) employees at the implementation of this transaction. As at February 2016, Vivo Energy had seventy eight (78) permanent staff which represented a 47% growth in their employment levels for permanent staff, post-merger. This was a positive contribution towards the attainment of section 59(2)(e) on employment promotion;
- **Retail Network Expansion:** Vivo Energy indicated in their acquisition notification that more opportunities would be presented to enterprises in the downstream petroleum industry for fuel retailers. In 2012, Vivo Energy inherited forty three (43) retail sites when they acquired Shell Botswana; with eleven (11) new retail sites being opened, post-acquisition. This indicated a 25.6% increase in the number of new retail sites post-merger. All the eleven new sites are operated by Batswana in the following areas:
 - i. Hillview Filling Station in Mogoditshane;
 - ii. A1 Service Station Northgate Mall in Gaborone;
 - iii. Gabane Filling Station in Gabane village;
 - iv. Otse Filling Station in Otse village;
 - v. Bangwaketse Filling Station in Kanye village;
 - vi. Sowa Town Filling Station in Sowa Town;
 - vii. Palapye Filling Station in Palapye village;

- viii. Safari Filling Station in Maun village;
- ix. Masters Valley in Maun;
- x. Matante Mews Filling Station in CBD in Gaborone; and
- xi. Ledumadumane Filling Station in Mogoditshane.

- o **Provision of start-up capital to aspiring entrepreneurs:** The parties introduced programmes such as the *Young Retailers Programme*, which was intended to assist young locals with access to land and start-up capital for business. These two aspects (land and capital) are critical for the successful running of the business as in most cases; they are not easily accessible to youth. One such beneficiary of the *Young Retailers Programme* manages and operates the Bangwaketse Shell Filling Station in Kanye.

5. The acquisition of 50% issued share capital in Mont Trade (Pty) Ltd by NWK Limited of South Africa

In July 2012, the Authority considered the proposed acquisition of 50% issued share capital in Mont Trade (Pty) Ltd by NWK Limited.

Decision of the Authority

The transaction was unconditionally approved as the merger did not give rise to any competition or public interest concerns in Botswana by virtue of its implementation.

Undertaking/commitments made by the parties

At the time of notification the merging parties indicated that the merger would result in public interest benefits in the form of the merged entity opening new trading branches in Lobatse; Kanye; Maun; Gantsi; Kasane; and Selibe Phikwe. The opening of these branches was expected to create employment for the locals, in line with section 59(2)(e) of the Competition Act, on the promotion of employment.

Impact of decision

- o Expansion of network and employment- NWK opened branches in: Mahalapye; Serowe; Lobatse; Francistown; Pandamatenga; Selibe-Phikwe; Kasane; Palapye; Gantsi; and Maun. This has therefore resulted in an increase in number of employees from 151 to 162 (figures for Mont Trade) and 37 to 62 (for Opti-Feeds). In addition, some of the customers contacted indicated that these expansions have resulted in them now not having to travel distances in search for agricultural products. Customers to the merging parties also reported an increase in the variety of agricultural products offered, which contributes positively to consumers in the form of choice and availability of products and services; and

6. The acquisition of 100% controlling interest in Pinks Family Outfitters by Leapingeagles Investments (Pty) Ltd [Woolworths Group]

In October 2013, the Authority considered the proposed acquisition of 100% controlling interest in Pinks Family Outfitters ("Pinks Family") by Leapingeagles Investments (Pty) Ltd ("Woolworths Group").

Decision of the Authority

This merger did not raise any competition concerns but rather raised some public interest concerns. The Authority was concerned that Woolworths Group (non-citizen owned entity) was acquiring total control of all the 22 Woolworths franchise stores in Botswana, thus taking away the involvement of local citizens in the ownership of Woolworths stores, which appeared against the spirit of citizen empowerment in line with section 59(2)(f) of the Competition Act on the advancement of citizen empowerment initiatives.

Undertaking/commitments made by the parties

The Woolworths Group committed to the following:

“Woolworths Group undertook to determine the commercial viability of implementing the appropriate aspects of its Good Business Journey³ plan in Botswana, once it acquires the twenty-two Woolworths franchise stores in Botswana, and thereby facilitating citizen participation in the Woolworths Group's Business in Botswana. Woolworths Group further committed to doubling its sourcing from Botswana suppliers over the next two years, based on the value of its own current sourcing from Botswana suppliers, as well as, the current sourcing of Pinks Family Botswana.”

Impact of decision

- Employment creation - at the time of the transaction, Woolworths had a total staff complement of three hundred and twenty five (325) and as at the 2016/17, there had been an increment of sixty (60) employees which translates to three hundred and eighty five (385).
- Local procurement sourcing - Woolworths, in their efforts to promote local businesses, source various products locally, such as, free range eggs, free range fresh beef and other poultry products.
- It is also worth noting that Woolworths continues to source from previous local suppliers (that is, those carried on from pre-transaction), for the following products:
 - (i) Supply of bacon;
 - (ii) Sourcing of full cream milk;
 - (iii) Supply of fresh produce;
 - (iv) Sourcing of canned pet food; and
 - (v) Sourcing of plastic shopping bags.
- In terms of product pricing, Woolworths launched the Woolworths Rewards Programme in Botswana in February 2015, through which consumers get to

³ The Good Business Journey is Woolworths' comprehensive plan to make a difference in eight key areas: Energy, Water, Waste, Sustainable Farming, Ethical Sourcing, Transformation, Social Development and Health & Wellness. Through this, Woolworths, together with its suppliers wishes to change their approach to business, in order to ensure minimum harm to the natural environment, help maintain biodiversity and help improve the lives of workers in the supply chain.

enjoy some savings on their purchases. The Authority has noted that there has been a general decline in prices across a variety of seventy five fresh produce items between March 2014 and September 2015, with an average decrease of 2.4%. Furthermore, the introduced WRewards Programme offers consumers the use of a WRewards card and eligibility to vouchers, thus providing more discounts/savings.