

Notice in terms of Section 60(4)(a)(ii) of the Competition Act

DECISION ON THE PROPOSED ACQUISITION OF ALL ISSUED SHARES OF SUPASAVE (PTY) LTD AND MEGASAVE (PTY) LTD BY CHOPPIES ENTERPRISES

PURSUANT to Section 60(4)(a)(ii) of the Competition Act, notice is hereby given on the decision made by the Competition Authority in respect of the proposed acquisition of all issued shares of Supasave and Megasave by Choppies.

The analysis of the facts of the merger assessment showed that there were substantial competition concerns that arise in the Fast Moving Consumer Goods market in Gaborone, Molepolole and Palapye, given the fact that the merging parties are close competitors in both product and geographic market dimensions. The merger is also expected to enhance the acquiring enterprise's already existing dominance, which from our finding is 40.4% in Gaborone, 35% in Molepolole and 37.4% in Palapye. This dominance is in particular expected to demonstrate itself in enhanced buyer power in the upstream market, which is not necessarily likely to result in Choppies being a low priced retailer as evidenced from the comparative pricing survey done by the Competition Authority.

Given these competition issues, there is on the other hand a glaring reality that the target enterprises are confirmed competitive failures, that is failing firms. Ordinarily, this transaction should be rejected in the same manner as the Authority rejected the takeover of Shield Security by G4S in April 2012. Further, this transaction at hand does raise plausible competition concerns which on a balance of probability, cannot entirely be ignored despite the failing firm defence.

Having satisfied itself with the peculiar failing firm realities of this case, in particular the absence of a counter-notification, the Authority would not want to have a market situation that is uncontrollable and disastrous to the welfare of employees as a result of the imminent exit of Supasave and Megasave from the relevant markets in Gaborone, Molepolole and Palapye.

In view of the foregoing, the Authority cautiously and reluctantly approved the transaction with the following condition:

Choppies should take over the two entities as going concerns but Choppies should, within a period of 5 years (from 2013) provide the Authority with a reasonable exit plan (including a public notice) to divest from the target Supasave outlets which are within the vicinity of existing Choppies outlets in Mogoditshane, Broadhurst Extension 16, Gaborone Bus Rank/Gaborone West and Palapye.

The condition is envisaged to attract other entrants in the named retail spaces within the next 5 years.

Pursuant to the provisions of Section 66 of the Competition 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 13th day of June, 2013.

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