



REVISED MERGER DECISION NO 2: 2017

REVISED DECISION ON THE PROPOSED ACQUISITION OF ASSETS AND CESSION OF THE MAIN CONTRACT BELONGING TO 4Ms GROUP HOLDINGS (PTY) LTD BY TRANSPORT HOLDINGS LTD.

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 in respect of the proposed acquisition of assets and cession of the main contracts belonging to 4M'S Group Holdings (Pty) Ltd by Transport Holdings Ltd.

The Authority considered the merger assessment report, as well as subsequent communication regarding the said notification. The Authority determined not to approve the acquisition of assets and cession of the main contract belonging to 4Ms Group Holdings (Pty) Ltd by Transport Holdings Ltd on the grounds that the facts, analysis and conclusions of the assessment showed that there were competition and public interest concerns that arose in the line haul transportation services market on account of the aforementioned acquisition, in Botswana. The Authority further took cognisance of the fact that:

- i. The proposed transaction was likely to result in reduced competition due to the removal of a competitor in the line haul transportation services market;
- ii. The implementation of the proposed merger was expected to result in the merged entity attaining a dominant position; and
- iii. The proposed transaction was expected to result in retrenchments and citizen disempowerment.

Therefore, pursuant to the provisions of section 60 of the Competition Act, the Authority did not approve the proposed acquisition.

Given the competition and public interest concerns identified in the aforementioned transaction, and the fact that Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd is the only other entity apart from 4Ms having a contract with Kgalagadi Breweries (Pty) Ltd ("KBL") that expires in January 2020; Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd or any other entity related in anyway with Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd was restrained from participating in the tender to be issued by KBL upon the expiry of the existing 4Ms contract with KBL in October 2017, and for the entire period leading up to the end of the Transport Holdings (Pty) Ltd/Mulbridge Transport (Pty) Ltd contract in January 2020, including any extension period that may be granted thereafter.

However, following the publication of the decision, the merging parties lodged an application for the judicial review of the decision of the Authority with the High Court. The parties and the Authority then determined to engage in settlement negotiations to reach an amicable settlement of the matter. Through these discussions, it was agreed and subsequently confirmed by Order of the High Court dated 5th July 2017 that:

- i. TH is not precluded by the Authority from participating in the tender to be issued by KBL when 4MS' contract with KBL comes to an end;
- ii. TH shall be entitled to submit a merger notification for consideration by the Authority in respect of any new notifiable transaction it may conclude with 4Ms in terms of the Competition Act.

The decision of the Authority dated 13th January 2017 is therefore revised in accordance with the Order of the High Court.

Dated at Gaborone this 22nd day of September 2017.

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