Media Statement

For Immediate Release

20 February 2020

COMMISSION CONDITIONALLY APPROVES KWANDE CAPITAL AND NAMPAK TRANSACTION

The Commission has approved with conditions the proposed transaction in which Kwande Capital (Pty) Ltd, through Isanti Glass 1 (Pty) Ltd (Isanti), intends to acquire the glass packaging business and plant Nampak Glass, a division of Nampak Products Limited (Nampak Products).

Isanti is a special purpose vehicle (SPV) formed for the purpose of the proposed transaction. Isanti is controlled by Kwande. The remaining minority shareholding is held by SABSA Holdings (Pty) Ltd (SABSA) a subsidiary of Anheuser-Busch InBev SA/NV group (AB InBev). As part of the transaction AB InBev will provide technical support to Nampak Glass to assist it to improve its operational efficiency.

Nampak Glass is a division of Nampak Products. Nampak Products is a wholly owned subsidiary of Nampak Limited. Nampak Limited is a public company incorporated in South Africa. The target business does not directly or indirectly control any firm.

The Commission found that there is no competitive overlap (horizontal overlap) between the activities of Isanti and Nampak Glass. However, due to SABSA's stake in Isanti, the proposed transaction results in a customer-supplier (vertical) overlap in relation to the (i) upstream market for the manufacture and supply of glass containers (upstream market)and (ii) the downstream market for the production and supply of alcoholic beverages, particularly beer and flavoured alcoholic beverages (FABs) (the downstream market).

The upstream market is highly concentrated with only two players, namely Nampak Glass and Consol Glass (Pty) Ltd (Consol). Consol is a dominant firm in the upstream market, with a market share upwards of 70% based on both output and sales value. Nampak Glass accounts for the rest.

The downstream market for the sale of clear beer is also highly concentrated with AB InBev accounting for market shares upwards of 75% based on sales volumes and sales value. Heineken is the second largest player in this market. In the market for FABs, Distell has the highest market share and AB InBev is the second largest player.

Pre-merger, AB InBev procured a large proportion of its glass packaging requirements from Consol. Post-merger, AB InBev intends switching the bulk of its glass packaging input requirements from Consol to Nampak, essentially following a strategy of self-supply. This raises input foreclosure concerns for other downstream users of glass containers, as Nampak would no longer be able to supply third party users at pre-merger levels.

In addition to the foreclosure concerns mentioned above, the Commission was also concerned that the transaction may raise unilateral price effects. In this regard, the Commission notes that Nampak is an important rival to a dominant firm and a valuable alternative supplier to third parties to ensure security of supply. Nampak also provided competitive prices to customers. If a large proportion of Nampak's output is provided to SABSA post-merger, third parties may lose these benefits. The Commission is also concerned that the proposed transaction may raise information exchange concerns through AB InBev's involvement as technical partner in Nampak Glass post-merger.

The merging parties have submitted that Nampak Glass is currently experiencing operational difficulties. The Commission assessed this and concluded that the continued operation of Nampak Glass as an effective competitor, absent the proposed transaction, is unlikely and that Nampak would benefit from technical efficiency improvements brought by AB InBev's involvement as a technical partner through the merger.

Regarding public interest considerations, the Commission found that the transaction is likely to introduce the first black-owned glass manufacturer in South Africa. The merging parties have also committed to ensuring that there is no adverse effect on historically disadvantaged recycled glass collectors.

Whilst the merging parties dispute that the proposed transaction results in competition and public interest concerns, they have nonetheless tendered remedies to address the concerns raised by the Commission and by third parties. These include remedies in relation to employment, effects on the glass recycling sector, supply to third party customers post-merger, investment in additional capacity, and proposals to limit anticompetitive information exchange. The Commission is of the view that these remedies may, on balance, address the concerns resulting from the proposed transaction.

With respect to third party supply, the merging parties commit to making a material proportion of their planned output available to third parties, on commercially reasonable terms, for 4 years. The merging parties have also committed to comply with the terms and conditions of any pre-existing customer supply agreements that are in place at the time of the merger. The merging parties further commit to taking all steps within their auspices to add additional glass manufacturing capacity within the medium term. Further, in the event that there are production stoppages or shortages, Nampak Glass will ensure that output is allocated in a non-discriminatory manner. To safeguard against any potential sharing of competitively sensitive information, the merging parties will, amongst other safeguards, implement an information exchange policy.

Further, the merging parties are required not to retrench any employees as a result of the merger and to ensure that they procure recycled glass for use in their operations in the ordinary course.

While the Commission is cognisant that post-merger, third party customers will be in a difficult position in relation to their ability to access capacity at the merged entity and at Consol, the Commission does, however, note that, pre-merger, customers were already operating in a market facing capacity constraints. The merger does not resolve the capacity constraints, but by maintaining Nampak's production capacity in the market, the merger ensures that the constraints are not worsened. The Commission thus notes that on the balance of probabilities, a conditional approval of this transaction presents better competitive outcomes for the market.

[ENDS]

Issued by:
Sipho Ngwema, Head of Communications
On behalf of: The Competition Commission of South Africa

Tel: 012 394 3493 / 081 253 8889

Email: SiphoN@compcom.co.za

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