



THE PROPOSED ACQUISITION OF 100% OF THE ISSUED SHARE CAPITAL OF AQUAPLAST LIMITED BY AQUAPANI LIMITED

1. The Competition Authority of Kenya has approved the proposed acquisition of 100% of the issued share capital in Aquaplast Limited by Aquapani Limited.
2. Aquapani Limited (Aquapani), the acquiring undertaking, is incorporated in Kenya as a wholly-owned subsidiary of the Menengai Group Limited. The acquirer was incorporated for the purpose of this transaction.
3. Aquaplast Limited (Aquaplast) is incorporated in Kenya. Aquaplast manufactures polyethylene terephthalate (PET) bottles, jars and closures and Polycarbonate (PC) plastics for refillable water containers mainly for the bottling business of Aquamist.
4. The proposed transaction is an acquisition of the entire issued share capital of Aquaplast by Aquapani. The proposed transaction therefore qualified as a merger within the meaning of Section 2 and 41 of the Competition Act No.12 of 2010.
5. The parties' combined turnover for the preceding year (2017) was **over Sh1 billion** and, therefore, the transaction met the threshold for full merger analysis as provided in the **Merger Threshold Guidelines**.
6. The acquirer was incorporated solely for the purpose of the proposed transaction. However, other entities controlled by the shareholders of the acquirer are engaged in various commercial activities, including manufacture of cooking oils, soaps, and wood products, among others.
7. Aquaplast manufactures plastic PET and PC bottles which are used for bottling of drinking water under the brand Aquamist. Menengai packages some of its cooking oil in plastic containers but the plastic used is different from that used for bottling water.
8. From the foregoing, and for the purposes of analyzing the proposed transaction, the parties' activities do not overlap. Therefore, the relevant product market was determined as the market for plastic bottles.
9. There are four types of bottles used in the packaging industry:-
 - a. Polyethylene Terephthalate (PET)
 - b. Polycarbonate (PC)

- c. Polypropylene (PP)
 - d. High Density Polyethylene (HDPE)
10. PC and PET are the commonly used plastics for bottling water. HDPE is widely used in the manufacture of hardened plastic tanks, pipes, jerricans and hard plastic materials like refillable 18.9-litre water containers. PP is mostly used for the manufacture of food grade packaging.
 11. According to the parties, there are approximately 200 large and medium scale plastic manufactures in Kenya, according to data from Blowplast, a major player. Aquaplast blows PET and PC bottles exclusively for Aquamist. Aquaplast's factory capacity utilization is currently approximately at 30%.
 12. According to industry estimates and market survey conducted by the Authority, Safepak is the market leader in the PET plastics market with an approximate market share of about 37%. Blowplast has a market share of 30%.
 13. Aquaplast supplies bottles exclusively to Aquamist and is not dominant in the market. Therefore, the Authority is of the view that the merger is unlikely to raise competition concerns. Aquaplast currently operates at 30% capacity utilization and has ability to scale up its output and offer competitive pressure to other players.
 14. Post-merger, the proposed transaction is unlikely to raise any competition concerns. The acquirer does not operate in the market presently. Aquaplast is a small player based on the fact that it serves only one customer. Further, the firm will face competition from well established players with strong distribution networks in the market.
 15. Additionally, the transaction is unlikely to lead to any negative public interest concerns.
 16. Public interest concerns during merger analysis include;
 - i. extent to which a proposed merger would impact employment opportunities;
 - ii. impact on competitiveness of small and medium enterprises (SMEs);
 - iii. impact on particular industries/sectors; and
 - iv. impact on the ability of national industries to compete in international markets.
 17. Premised on the fact that the transaction is unlikely to raise negative competition or public interest concerns, the Authority approved the proposed acquisition of 100% of the issued share capital in Aquaplast Limited by Aquapani Limited.