



MERGER DECISION NO 50 OF 2023

MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF TRIBAL LOT 1602 LETLHAKANE, TRIBAL LOTS 579, 1232, 319, 1462 AND 434 MAUN, LOTS 1032, 1033, 9258, 273 AND 274 FRANCISTOWN, LOT 21314 GABORONE, LEASE AREA 2794-KO (UNIT 1 CARAMBA), LEASE AREA NO.1239-KO (UNIT 3 CARAMBA), LEASE AREA 2790-KO (UNIT 10 CARAMBA), LEASE AREA 1245-KO (UNIT 11 CARAMBA) AND LEASE 1241-KO (UNIT 15 CARAMBA) FROM TSWELELA INVESTMENTS (PTY) LTD AND CHELFORD LIMITED BY SEVENTY5 DEGREES (PTY) LTD FOR AND ON BEHALF OF THE BOTSWANA PUBLIC OFFICERS PENSION FUND

Introduction of the Merging Parties

Pursuant to section 53(4)(a)(ii) of the Competition Act, 2018 ("the Act"), notice is hereby given on the decision made by the Competition and Consumer Authority ("the Authority") in relation to the proposed acquisition of Tribal Lot 1602 Letlhakane, Tribal Lots 579, 1232, 319, 1462 and 434 Maun, Lots 1032, 1033, 9258, 273 and 274 Francistown, Lot 21314 Gaborone, Lease Area 2794-KO (Unit 1 Caramba), Lease Area No.1239-KO (Unit 3 Caramba), Lease Area 2790-KO (Unit 10 Caramba), Lease Area 1245-Ko (Unit 11 Caramba) and Lease 1241-KO (Unit 15 Caramba) (the "Target Properties") from Tswelela Investments (Pty) Ltd and Chelford Limited ("Tswelela" and "Chelford" or collectively the "Target Enterprises") by Seventy5 Degrees (Pty) Ltd ("Seventy5 Degrees" or the "Acquiring Enterprise") for and on behalf of the Botswana Public Officers Pension Fund ("BPOPF"). The transaction was notified to the Authority on the 27th October 2023 and the merger assessment was completed on 8th December 2023.

The Acquiring Enterprise, Seventy5 Degrees, is a newly established private company incorporated in accordance with the Laws of Botswana. The Acquiring Enterprise does not control any entities in Botswana. Seventy5 Degrees is a duly appointed property asset manager which makes property asset acquisitions for and on behalf of BPOPF which will then be leased for rental income. BPOPF is a pension fund duly licensed and established in accordance with the provisions of the Retirement Funds Act No. 38 of 2022 for public service employees.

On the other hand, the Target Enterprises, Chelford and Tswelela, are both private limited companies incorporated in accordance with the Laws of Botswana. The Target Enterprise Chelford, controls Tswelela.

Relevant Markets

The assessment findings reveal that the Acquiring Enterprise is a newly established private company. In 2022 the BPOPF issued a tender for the provision of property

asset management and successfully appointed Seventy5 Degrees as one (1) of the incubation property asset managers. Seventy5 Degrees is therefore a duly appointed property asset manager which undertakes property asset acquisitions for and on behalf of the BPOPF which are consequently leased for rental income. Seventy5 Degrees currently has no assets under management as it is a newly formed special purpose vehicle.

As the ultimate acquirer of the Target Property, BPOPF holds commercial immovable rental property through other property asset managers.

On the other hand, the Target Enterprises operate in the commercial and industrial real estate market as property holding and development companies. The Target Enterprises lease out commercial space in Gaborone, Letlhakane, Maun and Francistown. Furthermore, Chelford is a variable rate loan stock company created for the purposes of holding immovable property.

The assessment indicates that the Acquiring Enterprise is a new entrant in the relevant market and it is not yet active. Thus, there is currently no overlap in the merging parties' activities in Botswana. However, the assessment has also identified that post-merger both parties will operate in the leasing of real estate property for rental income.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the Acquiring Enterprise and the Target Enterprises are not currently active in the same market. The Acquiring Enterprise is a new entrant in the relevant market and currently has no assets under its management. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition post implementation due to the fact that there exists other property investment businesses in Botswana owned by diverse individuals and companies that will act as a constraint on the acquiring enterprise, post-merger.

For the analysis of Acquisition of Dominance, it is important to emphasise that a dominant position in the context of Section 2 of the Competition Act 2018, refers to a situation in which one or more enterprises possess such economic strength in a market as to allow the enterprise or enterprises to adjust prices or output without effective constraint from competitors or potential competitors.

The implementation of the proposed merger is not expected to result in the acquisition of a dominant position in the relevant market in Botswana. The merger is only expected to contribute to the investment portfolio of the Acquiring Enterprise and therefore will have an insignificant accretion to its market share. Furthermore, as indicated above in the report, the Merged Enterprise is expected to face strong competition from the existing well-established players including state-owned and private property investment companies.

In terms of Public Interest considerations, the Authority does not foresee any detriment to matters of public interest that will arise as a result of the transaction under consideration. The implementation of the proposed merger would enhance citizen empowerment as the ultimate beneficiary being BPOPF is investing on behalf of its members who are citizens of Botswana. In addition, the proposed acquisition is not expected to have any effects on tenants since the properties are being acquired as a going concern.

The Determination

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market is not expected to significantly change upon implementation of the proposed merger, as the proposed transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the market under consideration. Furthermore, the proposed merger will not have any negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act 2018.

Pursuant to the provision of section 53 of the Act, the Authority has decided to unconditionally approve the proposed acquisition of Tribal Lot 1602 Letlhakane, Tribal Lots 579, 1232, 319, 1462 and 434 Maun, Lots 1032, 1033, 9258, 273 and 274 Francistown, Lot 21314 Gaborone, Lease Area 2794-KO (Unit 1 Caramba), Lease Area No.1239-KO (Unit 3 Caramba), Lease Area 2790-KO (Unit 10 Caramba), Lease Area 1245-Ko (Unit 11 Caramba) and Lease 1241-KO (Unit 15 Caramba) from Tswelela Investments (Pty) Ltd and Chelford Limited by Seventy5 Degrees (Pty) Ltd for and on behalf of the Botswana Public Officers Pension Fund.

However, as stated under section 61 of the 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 8th day of December 2023.

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