



MERGER DECISION NO 05: 2024

Notice in Terms of Section 53(4) (a) (ii) of the Competition Act 2018

DECISION OF THE PROPOSED SALE AND ACQUISITION OF LOT 68277, GABORONE FROM TREEHOUSE (PTY) LTD BY BARLOWORLD EQUIPMENT (PTY) LTD

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 Lot 68277 Gaborone by Barloworld Equipment Botswana (Pty) Ltd ("Barloworld" or the "Acquiring Enterprise") from Treesource (Pty) Ltd ("Treesource" or the "Target Enterprise"), (the "Proposed Transaction"). The proposed sale is pursuant to an Agreement of Purchase and Sale of immovable property dated 11th December 2019. The transaction was notified to the Authority on 6th February 2024, and the merger assessment was completed on 4th March 2024.

The Acquiring Enterprise, Barloworld, is a company incorporated in accordance with the Laws of Botswana. The Acquiring Enterprise is controlled by Barloworld Equipment UK, a company incorporated in accordance with the Laws of the United Kingdom. In turn, Barloworld does not control any entity in Botswana. On the other hand, the Target Enterprise, Treesource, is a company also incorporated in accordance with the Laws of Botswana. The Target Enterprise does not control any entity in Botswana.

Relevant Markets

The activities of the Merging Parties indicate that Barloworld is engaged in the business of selling machine parts and services specifically CAT machinery and related products, since it is an authorised CAT dealership. The assessment of the merger also shows that Treesource is not controlled by any entity. Treesource was registered as a property holding company and owns a property that is being sold as its sole asset. The asset which is the subject of the proposed acquisition is an industrial plot without any complete developments, measuring 4, 5112 Hectares.

For completeness, the target property is an industrial plot developed with an under construction double volume warehouse having a double storey office section, under construction shed, machine stock storage facilities and ancillary developments all enclosed within clear view fence boundaries. The services available in the area and connected to the property include mains water, electricity and drainage.

Furthermore, it is important to note that the relevant market is characterised by well-established players and these will offer a competitive pressure on the Acquiring Enterprise post-merger. These players include local and multinational commercial property companies such as: New African Properties Limited; The Far Property; RDC Properties Limited; and Turnstar Holdings Limited.

As such, it is clear that the competition landscape of the relevant market would not significantly change in Botswana as a result of the proposed acquisition. The Authority therefore maintains that it is not necessary to reach a definitive view on the exact scope of the product market as the market structure is not expected to substantially change post implementation of the proposed transaction.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the assessment findings show that the Acquiring Enterprise and the Target Enterprise are currently not active in the same market. Furthermore, the market within which the Target Enterprise operates has numerous well-established players who will offer choice to customers. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition in Botswana post implementation as there are sufficient competitors who will act as a constraint on the Acquiring Enterprise, post-merger.

For the analysis of Acquisition of Dominance, it is important to note 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. Therefore, 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.

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 Determination

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market will not significantly change upon the implementation of the proposed merger and the proposed transaction is not likely to result in any adverse effects on competition, nor endanger the continuity of services in the relevant market. Furthermore, the proposed merger will not have any negative effects 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 unconditionally approved the proposed acquisition of Lot 68277 Gaborone by Barloworld Equipment Botswana (Pty) Ltd from Treesource (Pty) Ltd.

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 4th day of March 2024.

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