



MERGER DECISION NO 17 OF 2023

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 51% SHAREHOLDING IN HOISTING SOLUTIONS (PTY) LTD BY EUNICE MPOLOKA

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 51% shareholding in Hoisting Solutions (Pty) Ltd ("Hoisting Solutions" or the "Target Enterprise") by Eunice Mpoloka ("Eunice" or the "Acquiring Enterprise"). As a result of the proposed transaction, Eunice Mpoloka will acquire a controlling stake over Hoisting Solutions and will be appointed as an Executive Board Director. The transaction was notified to the Authority on 12th May 2023 and the merger assessment was completed on 13th June 2023.

The Acquiring Enterprise, Eunice is a Motswana individual of full legal capacity. Eunice owns and controls Pick'N Shovel Proprietary Limited ("Pick'N Shovel"), a company incorporated in accordance with the Laws of Botswana. On the other hand, Hoisting Solutions is a private company incorporated in accordance with the Laws of Botswana. Hoisting Solutions is currently owned and controlled by Ian Nuttall-Smith, as an individual and The Netcollective (Pty) Ltd ("The Netcollective"), as a private company incorporated in accordance with the Laws of Botswana. Hoisting Solutions controls Hoistings (Pty) Limited ("Hoistings Limited"), a company incorporated in accordance with the Laws of Botswana.

Relevant Markets

The assessment of the proposed merger has revealed that the activities of the Merging Parties are not related. For completeness, it should be noted that the Acquiring Enterprise is an individual and she is not in any way active in the market within which the Target Enterprise operates. Furthermore, Pick'N Shovel which is an entity controlled by the Acquiring Enterprise is a newly registered entity incorporated on 9th February 2023 with the objective to partake in the business of mining services.

In addition, the Target Enterprise's footprint in terms of its service offering is national and it covers areas like Molembo, Tsabong, Jwaneng, Sowa, Selebi – Phikwe, Orapa, Maun, and Ghanzi. Its services are provided to an array of organisations and individuals including: mining houses (diamond, gold, coal, copper, soda ash); construction industry (Quarries); Government institutions and Private Sector Contractors; and Individuals.

Based on the aforementioned and in view of the nature of products and services offered by the Merging Parties, there are no horizontal or vertical relations, which the Authority needs to consider for the assessment. 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 proposed transaction involves an acquisition of shares by an individual who is currently not involved in any business activity that is horizontally or vertically related to that of the Target Enterprise. Therefore, the proposed merger is not expected to substantially reduce the level of competition in the relevant market or any other market that exist in Botswana.

For analysis of Acquisition of Dominance, the findings of the merger assessment indicate that the structure of the relevant market will not change post-merger since the Merging Parties are not active in the same market. The proposed merger is not expected to result in a market accretion of any entity in Botswana.

In terms of Public Interest considerations, specifically citizen empowerment, the merger involves acquisition of shares and a controlling stake by a Motswana citizen hence the merger enhances citizen empowerment by contributing to the Citizen Economic Empowerment Policy thus, ensuring that Batswana take part in the supply chain of different industries and contribute to economic growth.

In addition, the proposed merger has a bearing on the pillars of Vision 2036 particularly PILLAR 1 - SUSTAINABLE ECONOMIC DEVELOPMENT, which states that - By 2036 Botswana will be a high-income country, with an export-led economy underpinned by diversified, exclusive and sustainable growth driven by high levels of productivity. This pillar encompasses Knowledge based economy, human capital, doing business and competitiveness, infrastructure development, informal sector and the micro and small enterprises, mineral sector, agricultural sector, manufacturing sector, tourism, services, information technology, financial and business services, transport and logistics, creative industries and sport. Based on the above, the Authority does not foresee any detriment to matters of public interest that will arise as result of the proposed transaction.

The Determination

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market will not 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 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 51% shareholding in Hoisting Solutions (Pty) Ltd by Eunice Mpoloka.

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 13th day of June 2023.

Tebelelo Pule, Chief Executive Officer, Competition and Consumer Authority,
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