



## MERGER DECISION NO 18: 2016

### **DECISION ON THE PROPOSED ACQUISITION OF THE ENTIRE ISSUED SHAREHOLDING OF WARBLER HOLDINGS (PTY) LTD IN IT4AFRICA (PTY) LTD; GOLDTECH (PTY) LTD; HEALTHWEST AFRICA (PTY) LTD; AND SOLID LOGISTICS (PTY) LTD, TOGETHER WITH ALL ASSETS RELATED TO THE BUSINESS OPERATIONS OF THE AFOREMENTIONED ENTITIES BY BLUEHEARTS (PTY) LTD**

PURSUANT to section 60(4)(a)(ii) of the Competition Act (Cap 46:09), notice is hereby given on the decision made by the Competition Authority ("The Authority") in respect of the proposed acquisition of the entire issued shareholding of Warbler Holdings (Pty) Ltd in IT4Africa Botswana (Pty) Ltd; Goldtech (Pty) Ltd; Healthwest Africa (Pty) Ltd; and Solid Logistics (Pty) Ltd, together with all assets related to the business operations of the aforementioned entities by Bluehearts (Pty) Ltd.

The Authority determined to *conditionally authorise* the proposed transaction in the markets for the markets for (i) the distribution of branded consumer electronics (domestic and commercial) to resellers and (ii) the retailing of branded consumer electronics, with respect to the acquisition of Warbler Holdings (Pty) Ltd by Bluehearts (Pty) Ltd given the fact that:

- i. The proposed transaction is not likely to result in the prevention or substantial lessening of competition, or endanger the continuity of the services offered in the distribution of branded consumer electronics (domestic and commercial) to resellers. The market structure in the distribution of branded consumer electronics (domestic and commercial) to resellers will not be altered as the acquiring entity will be inheriting the position of the target enterprise;
- ii. The Authority's analysis identifies potential competition concerns which could arise in the retailing of branded consumer electronics market, given that post-merger, the acquirer will be present in both the upstream and downstream markets, and as such potentially have the ability and incentive to foreclose players in the downstream market, particularly in instances where the merged entity is a sole distributor of the branded products, and where it enjoys a dominant position; and

- iii. No significant negative effect on public interest in Botswana has been identified, in relation to the provisions of section 59 (2).

Pursuant to the provisions of section 55 of the Competition Act, the Authority approves the proposed transaction with the following conditions:

- a) Bluehearts (Pty) Ltd will continue to supply the same retailers that were previously supplied by Warbler Holdings (Pty) Ltd on terms no less favourable to those offered by Warbler Holdings (Pty) Ltd to the retailers, pre-merger;
- b) Bluehearts (Pty) Ltd to annually, for a period of five (5) years from the implementation date, submit to the Authority a detailed report indicating a list of its new and old customers and the trading terms referred to in (a) above. The report is to be compiled by an Independent Consultant approved by the Authority, and Bluehearts (Pty) Ltd shall bear the costs of engaging such a Consultant. Warbler Holdings (Pty) Ltd shall in two weeks after the decision date, submit a detailed list of Warbler Holdings (Pty) Ltd's current customers and trading terms to the Authority;
- c) Within 12 months from the decision date, Mr. Ramachandran Ottapathu is to divest his interests in the following companies: Montrose Investments (Pty) Ltd t/a RiteFurn; Callao (Pty) Ltd t/a RiteFurn; Peardale (Pty) Ltd t/a RiteFurn; Decolite (Pty) Ltd t/a RiteFurn; and Mont Catering and Refrigeration, and shall inform the Authority of this disposal within 30 business days of concluding the final sale agreement(s) and submit a signed copy of the sale agreement(s) to the Authority as proof thereof. In addition, for a period of five (5) years from the implementation date, Mr. Ottapathu should not either as a principal, agent, partner, representative, shareholder, director, employee, consultant, advisor, financier, or in other like or similar capacity, directly or indirectly be associated with, interested or engaged in any firm, business, company or other association of persons which carries on a business activity similar to the business carried on by the companies listed above;
- d) In view of the fact that Mr. Ramachandran Ottapathu also has controlling interests in enterprises that deal with the retailing of branded consumer electronics, Choppies Enterprises Limited shall for a period of five (5) years from the date of this decision, not enter the market for the retailing of branded consumer electronics currently traded by Warbler Holdings (Pty) Ltd, for as long as Mr. Ramachandran Ottapathu has a stake in Choppies Enterprises Limited. However, in the event that Choppies Enterprises Limited decides to enter this market, Mr. Ramachandran Ottapathu is to

immediately notify the Authority of this intent and the terms under which Choppies would be supplied by Bluehearts (Pty) Ltd;

- e) For a period of five (5) years from the decision date, Cotton Valley (Pty) Ltd t/a Office Berry shall not trade in the branded consumer electronics currently distributed by the merging parties and will only trade in the sale of stationary, office equipment, computers and associated accessories as per the merging parties' undertaking. However, in the event that Cotton Valley (Pty) Ltd decides to enter this market, Mr. Ramachandran Ottapathu is to immediately notify the Authority of this intent and the terms under which it would be supplied by Bluehearts (Pty) Ltd; and
- f) The Authority is cognisant of the merging parties' commitment to retain the current employees of the target entity. In light of this, the merged entity shall ensure that there are no retrenchments of any employee associated with this merger commencing from the approval date.

### **Monitoring of compliance with conditions**

To facilitate the effective monitoring of compliance to the conditions outlined above, the merging parties shall:-

- i. Inform the Authority of the implementation date within five (5) business days of it becoming effective;
- ii. Submit the reports referred to under conditions (a) and (b) above, under the cover of an affidavit to authenticate the submission;
- iii. Be cognisant that the Authority may at any time from the decision date, carry out an inspection within the concerned companies to confirm compliance by the merged entity with the conditions referred to above.

In the event that the Authority determines that there has been an apparent breach by the merging parties of these conditions, this will be dealt with in terms of section 64 of the Competition Act.

However, as stated under section 66 of the Act, this approval does not override or negate any other mandatory statutory approvals or processes that any of the parties to these mergers must comply with under the Laws of Botswana.

Dated at Gaborone, this 11<sup>th</sup> day of August 2016

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