



MERGER DECISION NO 2: 2016

DECISION ON THE PROPOSED ACQUISITION OF THE BUSINESSES OF ELLERINE FURNISHERS (BOTSWANA) (PTY) LTD AND ELLERINE RETAIL (BOTSWANA) BY LEWIS STORES BOTSWANA (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 in respect of the proposed acquisition of the businesses of Ellerine Furnishers (Botswana) (Pty) Ltd and Ellerine Retail (Botswana) by Lewis Stores Botswana (Pty) Ltd

The Authority determined to **conditionally authorise** the proposed acquisition of the businesses of Ellerine Furnishers (Botswana) (Pty) Ltd and Ellerine Retail (Botswana) by Lewis Stores Botswana (Pty) Ltd given the fact that:

- i) Though there are competition concerns that will arise with respect to the retailing of household furniture and appliances market, they are less likely to result in substantial lessening of competition, as the market under consideration is contested; and
- ii) There is a significant issue of public interest identified in relation to the provisions of section 59 (2), in that the transaction provides an opportunity to preserve 230 jobs, currently faced with an imminent retrenchment.

Pursuant to the provisions of section 55 of the Competition Act, the Authority has approved the proposed merger, with the following conditions:

1. There shall be no redundancies without the consent of employees of the merging parties, as a result of the proposed transaction. However, this does not prevent Lewis Botswana, in the ordinary course, from retrenching employees as a result of changes to its (Lewis Botswana's) operational requirements, including store closures when such stores are not economically viable;
2. All employees employed in the Beares and Ellerines stores that are assigned at the implementation date will transfer to Lewis Botswana on terms and conditions that are on the whole not less favourable to the

employees than those on which they were employed by the Beares and Ellerines businesses of Ellerine Botswana;

3. Lewis Botswana shall harmonise the employment terms and conditions of employees employed in the Beares and Ellerines stores with the employment terms and conditions of Lewis Botswana. Lewis Botswana will throughout the review and harmonisation process engage in appropriate consultations with staff and the relevant trade union representatives. Lewis Botswana will also ensure that the harmonisation process is undertaken in accordance with relevant labour laws in Botswana;
4. Lewis Botswana shall invite persons from the retrenched workforce (49 affected employees) whenever making new appointments on any created positions or any other positions that may become available, for a period of 12 months from the date of approval of the transaction;
5. In order to facilitate the Invitation Process, and to the extent that the Business Rescue Proceedings have retrenched employees employed at Ellerine Botswana's "Beares" and "Ellerines" stores prior to the implementation date, the Business Rescue Practitioners must on the implementation date provide Lewis Botswana with lists identifying all Affected Employees and Interested Employees. The list of Interested Employees must contain the following information relating to each Interested Employee:
 - 5.1 Full name;
 - 5.2 Positions/ designations held at the Acquired Business and a brief description of relevant experience;
 - 5.3 Contact details (postal address, email address and cellular phone number);
 - 5.4 Preferred mode of communication (letter, email or SMS) as indicated by the Interested Employee; and
 - 5.5 For each Interested Employee:
 - i. The employment positions and/or opportunities in respect of which the Interested Employee would want to be invited to apply;
 - ii. The geographic location(s) where the Interested Employee would be willing to take up an employment opportunity; and
 - iii. The salary or wage at which the Interested Employee would wish to receive.
6. In order to facilitate the invitation of Affected Employees, the Business Rescue Practitioners and/ or Lewis Botswana shall, where appropriate and

having regard to applicable labour laws and employment policies, commence the process whereby Affected Employees can register as Interested Employees in parallel to any consultation processes with potentially Affected Employees;

7. The hiring of Interested Employees by Lewis Botswana shall be subject to the current hiring policies applicable to the various divisions of Lewis Botswana. The Interested Employees shall be required to, *inter alia*, satisfactorily complete application forms and undergo interviews, and possess the requisite skills in respect of the position applied for (that is, the positions are competence based). Furthermore, any Interested Employees who may ultimately be hired by other divisions of Lewis Botswana shall be employed in accordance with the terms and conditions of employment in place for the relevant divisions at the time.

Given these conditions, in order for the Authority to properly monitor compliance with these, the Authority shall require Lewis Botswana to adhere to the following procedures:

- i. Lewis Botswana shall within six months of the date of implementation of the transaction, provide the Authority with an immediate and long term plan of how they shall harmonise the business models of the Beares Stores and Ellerines Stores, as well the employment terms of the transferred employees; and
- ii. Lewis Botswana shall within the 12 months period, from the date of approval, provide the Authority with written reports detailing all vacant positions filled and the recruitment procedure followed (in re-employing the affected employees) as well as the rationale and sufficient proof of its transparency and fairness.

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 3rd day of February, 2016

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