



MERGER DECISION NO 23 OF 2023

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

DECISION ON THE PROPOSED ACQUISITION OF 100% OF THE ISSUED SHARE CAPITAL IN SYNDICATE CAPITAL (PTY) LTD BY TSETSENG RETAIL GROUP (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 100% of the issued share capital in Syndicate Capital (Pty) Ltd ("Syndicate Capital" or "the Target Enterprise") by Tsetseng Retail Group (Pty) ("TRG" or "the Acquiring Enterprise"). The transaction was notified to the Authority on 11th May 2023 and the merger assessment was completed on 15th June 2023.

The Acquiring Enterprise, TRG, is a company duly registered in accordance with the Laws of the Republic of Botswana. The shareholders of TRG are Kevin Peter Gerard Lawless (Zimbabwean), Ride Investments (Pty) Ltd ("Ride Investments") and Fega Holdings (Pty) Ltd ("Fega Holdings") which are both Botswana registered companies. Ride Investments in turn controls Derek Brink Holdings and Rita Brink Holdings (Pty) Ltd. The Acquiring Enterprise wholly controls Beamwaters (Pty) Ltd ("Beamwaters"). Furthermore, the Target Enterprise, Syndicate Capital, is also a company incorporated in accordance with the Laws of the Republic of Botswana. It does not control any entity and is neither directly nor indirectly controlled by any firm.

Relevant Markets

The assessment of the proposed merger has revealed that the activities of the Merging Parties are not related. TRG is active in the retail business of Fast Moving Consumer Goods (FMCGs) and related products across Botswana, operating through Spar stores. Furthermore, the Beamwaters which is an entity controlled by TRG, is not currently active in any other business activity apart from its investment in a warehouse property at Phakalane that is leased to TRG for their warehouse needs.

On the other hand, Syndicate Capital is in the business of renting its only property being Kgale Shopping complex to various tenants. The Acquiring Enterprise is an anchor tenant operating its Kgale Superspar in the target property. The shopping

complex which measures 3785 square meters, is built on a land leased from the Roman Catholic Church, Diocese of Gaborone.

In light of the above and in view of the nature of products and services offered, there are no overlaps in the activities of the Merging Parties which the Authority needs to consider for the assessment. The target property is used for rental of business/ commercial space, a market within which the Acquiring Enterprise is not active. 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, there is lack of product overlaps in the activities of the Merging Parties as the Acquiring Enterprise is not active in the market of the Target Enterprise, which is the commercial property rental market in Botswana. The relevant market is highly contestable with big players, as well as diverse individuals that would continue to impose a competitive constraint on the merged enterprise post-merger. Based on the aforementioned, the Authority does not anticipate that the proposed merger will substantially lessen competition post implementation.

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 due to the absence of product overlap in the activities of the Merging Parties. As such, the implementation of the proposed merger is not expected to result in acquisition of dominant position in the relevant market in Botswana.

In consideration of Public Interest concerns, the Authority does not foresee any detriment to matters of public interest that may arise as result of the transaction under consideration. Specifically, no merger specific job losses are anticipated following the implementation 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 is not expected to change upon the implementation of the purchase of an immovable asset owned by the Target Enterprise, and the proposed transaction is not likely to result in any adverse effects on competition, nor endanger the continuity of service in the relevant market in Botswana. 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 Act.

Pursuant to the provision of section 53 of the Act, the Authority has decided to unconditionally approve the proposed acquisition of 100% of the issued share capital in Syndicate Capital (Pty) Ltd by Tsetseng Retail Group (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 15th day of June 2023.

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