



MERGER DECISION NO 26 OF 2022

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF ENTIRE SHARES IN SUNSET PARK PROPRIETARY LIMITED (LOT 200 IN MOKOLODI) BY MR RAMACHANDRAN OTTAPATHU AND MR ANGUS BOXHALL SMITH

Introduction of the merging parties

Pursuant to section 53(4)(a)(ii) of the Competition Act of 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 shares equating to 100% of the total issued shares in Sunset Park (Pty) Ltd by Ramachandran Ottapathu and Angus Boxhall Smith (each holding 50% of the shares). The transaction was notified to the Authority on 14th July 2022 and the merger assessment was completed on 12th August 2022.

The Acquirers, Mr. Ottapathu and Mr. Smith are both citizens of Botswana and the Target Enterprise, Sunset Park, is a company incorporated in accordance with the Laws of the Republic of Botswana and has not commenced trading.

Relevant Markets

In terms of the relevant market, the assessment of the proposed transaction has revealed that the Acquirers are both citizens of Botswana and are shareholders in various companies active in different markets. On the other hand, the Target Enterprise has not commenced trading and does not control any enterprise. It holds its sole asset Lot 200, which is part of portion two of the farm Traquair 10 KO, located in Mokolodi.

The assessment has revealed that the market under consideration is populated by various investors ranging from individuals, property holding companies as well as diverse businesses. It is therefore safe to state that the market under review is exceedingly congested and highly competitive. The Acquirers are expected to face strong competition from well-established players including individuals, local and multinational commercial property companies such as: New African Properties Limited; RDC Properties; Turnstar; and Prime time.

Therefore, the relevant market was defined based on the activities of the Target Enterprise, specifically the asset which is the subject of the proposed acquisition, and as such it is described as the supply of immovable property in Botswana.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigation has revealed no product overlap in the activities of the Merging Parties since the Acquirers are buying an undeveloped immovable property at personal capacity. However, the Acquirers have investments or shares in businesses trading in the property market which means that they have an indirect presence in the market under consideration. Nonetheless, the transaction under assessment is not expected to substantially lessen competition or restrict trade or the provision of services or to endanger the continuity of supplies in the relevant market or in any market in Botswana due to the fact that there will be insignificant effects in the market as there is a number of other Property investment companies in Botswana owned by diverse individuals and institutions that will act as a constraint on the merged entity, post-merger.

In terms of the Acquisition of a Dominant Position, it is important to note that a dominant position in the context of Section 2 of the Competition Act of 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. The approval of the proposed transaction is not expected to result in an acquisition of a dominant position by the merged entity or by any enterprise in the market under consideration or any other market in Botswana. Furthermore, the Merged Enterprise is expected to face strong competition from well-established players including local and multinational commercial property companies.

With regards to 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 is not expected to significantly change upon implementation of the proposed merger. The proposed transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of services 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 Competition Act 2018.

Pursuant to the provision of section 53 of the Act, the Authority has unconditionally approved the proposed acquisition of shares equating to 100% of the total issued shares in Sunset Park (Pty) Ltd by Ramachandran Ottapathu and Angus Boxhall Smith (each holding 50% of the shares).

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 12th day of August 2022.

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