



MERGER DECISION NO 38: 2023

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF THE ENTIRE ISSUED SHARE CAPITAL IN A-CAP ENERGY LIMITED BY LOTUS RESOURCES LIMITED

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 the entire issued share capital in A-Cap Energy Limited ("A-Cap" or the "Target Enterprise") by Lotus Resources Limited ("Lotus Resources" or the "Acquiring Enterprise").

As a result of the transaction, Lotus Resources shall become the sole shareholder of A-Cap Energy and indirectly, A-Cap Resources (Botswana) Limited ("A-Cap Botswana") and Pulse Resources (Botswana) ("Pulse Resources"). The transaction was notified to the Authority on 18th August 2023 and the merger assessment was completed on 10th October 2023.

The Acquiring Enterprise, Lotus Resources, is a public company listed on the Australian Stock Exchange (ASX: LOT) and it is owned by shareholders, who individually do not hold controlling interest. Lotus Resources owns and controls Lily Resources (Pty) Ltd, a holding company whose principal activity is the holding of Lotus' investment in Lotus (Africa) Limited. Lotus (Africa) Limited is a Malawi registered company owned 85% by Lily Resources and 15% by the Government of Malawi.

Furthermore, the Target Enterprise, A-Cap, is a public company listed on the Australian Stock Exchange (ASX: ACB) and it is owned by shareholders, who individually do not have a controlling interest. A-Cap has presence in Botswana through its subsidiary, A-Cap Botswana, which is a company duly registered in accordance with the Laws of Botswana, as the secondary Target Enterprise.

Relevant Markets

The assessment of the proposed merger has revealed that the Acquiring Enterprise and its controlled entities do not conduct any business activities in Botswana. The Acquiring Enterprise holds the Kayelekera Mining License ML0152 and seven (7) exploration licenses through Lotus Africa, all in Malawi.

Lotus Resources also controls Providence Metals (Pty) Ltd, an Australian registered company that is currently dormant and does not carry out any business activities.

In addition, the Target entity does not currently provide any goods or services in Botswana. The Target Enterprise, through A-Cap Botswana, is a minerals exploration and development company focused on the development of the Letlhakane Uranium Project. The project is not yet in production. A-Cap also controls Pulse Resources (Botswana), a dormant company duly registered in accordance with the Laws of Botswana and Wilconi (Australia) (Pty) Ltd, a company involved in the exploration and development of Wilconi Nickel-Cobalt Project in Australia.

Based on the aforementioned and in view of the nature of products and services offered by the Merging Parties, there is no geographical or product overlap between the Merging Parties' activities in Botswana.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigation has revealed an absence of product overlap in the activities of the Merging Parties in Botswana. The Proposed Transaction is not expected to alter the market structure post implementation. On this basis, the Authority does not anticipate that the implementation of the proposed merger would result in a substantial lessening of competition or any other competition concerns to arise in the relevant market in Botswana post-merger.

For analysis of Acquisition of Dominance, the findings of the assessment indicate that 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 transaction is not expected to accrete nor decrease market shares of the merged enterprise since it is not yet operational. The market structure is also expected to remain the same post implementation.

In terms of Public Interest considerations, the Authority anticipates that the implementation of the Proposed Transaction will bring positive benefits to the economy of Botswana in terms of employment and skill transfer.

The Determination

Pursuant to the provision of section 53 of the Act, the Authority has decided to unconditionally approve the proposed acquisition of the entire issued share capital in A-Cap Energy Limited by Lotus Resources Limited.

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 10th day of October 2023.

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