



MERGER DECISION NO 46: 2022

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 100% OF THE TOTAL ISSUED SHARE CAPITAL IN OLIFANTEN S.A.R.L TOGETHER WITH ITS BOTSWANA SUBSIDIARY ABU PRIVATE RESERVE (PROPRIETARY) LIMITED BY SAPHIRE HOLDINGS 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 for the proposed acquisition of 100% of the total issued share capital in Olifanten S.á.r.l ("Olifanten") together with its Botswana subsidiary Abu Private Reserve (Proprietary) Limited ("Abu") by Sapphire Holdings Limited ("Sapphire"). The transaction was formally notified to the Authority on 6th September 2022 and the merger assessment was completed on 21st December 2022.

The Acquiring Enterprise, Sapphire, is an investment holding company incorporated in accordance with the Laws of the Republic of Mauritius. Sapphire is controlled equally by Pawling Holdings Limited (based in Mauritius) and Wildland International Limited (registered in the United Kingdom).

The Target Enterprise, Olifanten, is a private liability company incorporated in accordance with the Laws of Luxembourg. Olifanten is wholly owned by Juno Properties S.á.r.l, a 100% subsidiary of Old World Properties LLC, which is in turn ultimately controlled by Jo Lynn Allen, Executor of the Estate of Paul G. Allen. These aforementioned entities are based in Seattle Washington, USA. Olifanten is an investment holding company controlling Abu (a Botswana based company). Abu operates within the tourism and hospitality industries and it operates two safari lodges outside Maun.

Relevant Markets

The Acquiring Enterprise is an investment holding company, and it controls and wholly owns Sapphire Botswana International (Proprietary) Limited and Singita Botswana (Proprietary) Limited, both registered in Botswana, but are not yet operational. As such the Acquiring Enterprise has no activities in Botswana.

On the other hand, the Target Entity is an investment holding company, and its investment interests in Botswana are concentrated in its wholly owned Botswana subsidiary Abu. Abu is active in the tourism and hospitality industries and it operates

two (2) safari lodges in the NG26 private concession bordering the Moremi Game reserve in the Okavango Delta. These safari lodges provide bed nights sold on an all-inclusive basis.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the transaction under assessment entails an acquisition of shares by a new entrant, who although has two subsidiaries in Botswana, has never traded in Botswana before. As such, the Merging Parties are not active in the same geographical market hence not direct competitors therefore, the merger will not alter the level of competition in the relevant market. The Authority does not expect the proposed transaction to give rise to a Substantial Lessening of Competition; restrict trade or the provision of services; or to endanger the continuity of supplies in the relevant market in Botswana.

The implementation of the proposed merger will not result in any market share accretion for any entity in Botswana. The status quo of the relevant market will prevail post-merger and the Merged Enterprise will continue to face competition from a number of rivals that exist in Botswana.

The assessment of the proposed merger revealed public interest concerns centred on the disposal of shares not being publicly advertised to accommodate citizens/citizen owned companies, consequently limiting the participation of citizens in the proposed sale.

In an effort to address the said concerns, the Authority identified a lack of coherence between Botswana's Tourism policy and Tourism Act in relation to how these two pieces of legislation advocate for citizen empowerment in regulating the tourism industry. According to the Tourism Act, the relevant market is not reserved for citizens while the tourism policy advocates for considerations of citizens in the issuing or acquirement of tourism land without necessarily drawing a distinction between markets reserved for citizens and those that are not.

This conflict lead to a difference in interpretation of the two pieces of legislation and ultimately had a bearing on the classification of tourism markets. Further to ascertaining the role of citizens in the tourism industry, licensing data relating to business operations in the Tourism sector was assessed. The data revealed, citizens dominate all sub-sectors of the tourism industry nation-wide including those that are not reserved for citizens.

The Determination

Taking the public interest concerns raised into account as well as the commitments made by the Merging Parties and pursuant to the provisions of section 53 of the Act, the Authority has approved the proposed acquisition of 100% of the total issued share capital in Olifanten S.á.r.l together with its Botswana subsidiary Abu

Private Reserve (Pty) Ltd by Sapphire Holdings Limited, subject to the following conditions:

- a) To enhance Citizen Empowerment by disposal in (aggregate) of a minimum of 30% of the shares in Abu Private Reserve (Pty) Ltd (as the concession operator) to citizens (including, without limitation, individuals, citizen companies, consortia, joint ventures and/or community trusts) within twelve (12) months from the implementation date. The expectation is that the disposal would be publicly advertised for transparency and fairness reasons;
- b) The Merged Enterprise shall inform the Authority of the date of implementation within ninety (90) business days from the Approval date;
- c) There shall be no merger specific retrenchments or redundancies. For clarity, merger specific retrenchments or redundancies do not include (the list is not exhaustive):
 - i. voluntary retrenchment and/or voluntary separation arrangements;
 - ii. voluntary early retirement packages;
 - iii. unreasonable refusals to be redeployed;
 - iv. resignations or retirements in the ordinary course of business;
 - v. retrenchments lawfully effected for operational requirements unrelated to the Merger; and
 - vi. terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance;
- d) The Merged Enterprise shall inherit all employees of the Target Enterprise on the same or better terms and conditions of employment;
- e) The Merged Enterprise shall provide details (Full Name; Identification Number; Gender; Position; and; contact number) of the current employees of the Target Enterprise within ninety (90) business days from the Approval date;
- f) The Merged Enterprise shall share a copy of the conditions of approval to all employees of the target and/or their respective representatives within ninety (90) business days from the Approval date;
- g) The Merged Enterprise shall as per its commitment, terminate the contract Abu has with the current management company within twelve (12) months from the Approval date and appoint a different company which will be a new entrant to manage the two lodges on its behalf; and
- h) The merged enterprise shall for a period of (three) 3 years from the implementation date submit to the Authority, a report on each anniversary of the implementation date, detailing its compliance with the conditions of approval and demonstrate its contribution to citizen empowerment, employment, community and conservation.

However, as stated under Section 61 of the Act, this approval shall not relieve an enterprise from obtaining such other approvals as may be required from bodies in exercise of their statutory responsibilities.

Dated at Gaborone on this 21st day of December 2022.

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