



MERGER DECISION NO 46: 2023

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF LOT 67977, FAIRGROUNDS, GABORONE, FROM TIME PROJECTS (BOTSWANA) (PTY) LTD BY KHUMO PROPERTY ASSET MANAGEMENT (PTY) LTD ON BEHALF OF BOTSWANA PUBLIC OFFICERS PENSION FUND THROUGH BPOPF KHUMO MANAGED PROPERTY FUND

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 Lot 67977, Fairgrounds, Gaborone (the "Target Property"), from Time Projects (Botswana) (Pty) Ltd ("Time Projects" or "the Target Enterprise") on behalf of Botswana Public Officers Pension Fund ("BPOPF") by Khumo Property Asset Management (Pty) Ltd ("Khumo Asset Management") through BPOPF Khumo Managed Property Fund ("BPOPF Khumo Fund or the "Acquiring Enterprise"). The transaction was notified to the Authority on the 26th September 2023 and the merger assessment was completed on 24th November 2023.

The Acquiring Enterprise, BPOPF Khumo Fund is a newly set up Fund through which BPOPF invests in property assets, which are in turn leased. For completeness, the acquiring enterprise, was established by Khumo Asset Management to acquire investment assets on behalf of BPOPF. As such the transaction is an acquisition of Lot 67977, Gaborone, by the acquiring enterprise on behalf of BPOPF from Time Projects. This is the first property being acquired through this fund.

On the other hand, the Target Enterprise, Time Projects, is a private company incorporated under the Companies Act CAP 42:01 and was re-registered under section 4 of the Companies Reregistration Act. Time Projects does not control nor is it controlled by any entities in Botswana.

Relevant Markets

In terms of the activities of the merging parties, the acquiring enterprise is a newly set up fund managed by Khumo Asset Management. The Asset manager has been mandated to acquire property on behalf of BPOPF hence the acquisition of Lot 67977, Fairgrounds - Gaborone.

As the ultimate acquirer of the target property, BPOPF is a pension fund duly licensed and established in accordance with the provisions of the Retirement Funds Act No. 38 of 2022 and licensed to operate as such by the Non-Bank

Financial Institutions Regulatory Authority ("NBFIRA") under No. 10/1/69 (020). BPOPF through Khumo Fund, invests in property assets which are then leased.

On the other hand, the target enterprise is in the business of property investment and development for the construction industry in Gaborone, Kanye and Letlhakane. Specifically, Time Projects is engaged in commercial and residential property development, asset management and property management in Botswana and Zambia. It was established in 1986 to undertake projects ranging from low cost housing, through to executive residential complexes to multi-million pula commercial office blocks, shopping centres and industrial developments.

The assessment indicates that the acquiring enterprise is a newly set up fund while the target enterprise is in the business of property investment and development for the construction industry in Botswana. As such, the acquiring enterprise is not yet active in the relevant market but the assessment of the merger shows that there will be an overlap in the merging parties' activities in Botswana post-merger.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, The investigations have revealed that the acquiring and target enterprises are not currently active in the same market. The acquiring enterprise is a new entrant in the relevant market and the target property will be its first property asset. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition post implementation due to the fact that there exists other property investment businesses in Botswana owned by diverse individuals and companies that will act as a constraint on the acquiring enterprise, post-merger.

For the analysis of Acquisition of Dominance, it is important to emphasise that a dominant position in the context of section 2 of the Competition Act 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 implementation of the proposed merger is not expected to result in the acquisition of a dominant position in the relevant market in Botswana. The merger is only expected to contribute to the investment portfolio of the acquiring enterprise and therefore will have an insignificant accretion to its market share. Furthermore, as indicated above in the report, the Merged Enterprise is expected to face strong competition from the existing well-established players including state-owned and private property investment companies.

In terms of 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 implementation of the proposed merger would enhance citizen empowerment as the ultimate beneficiary being BPOPF is investing on behalf of its members who are citizens of Botswana.

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, as the proposed transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the market under consideration. 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 decided to unconditionally approve the proposed acquisition of Lot 67977, Fairgrounds, Gaborone, from Time Projects (Botswana) (Pty) Ltd on behalf of Botswana Public Officers Pension Fund by Khumo Property Asset Management (Pty) Ltd through BPOPF Khumo Managed Property Fund.

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 24th day of November 2023.

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