



MERGER DECISION NO 52 OF 2023

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF LOT 51577 GABORONE AS A GOING CONCERN FOR AND ON BEHALF OF BOTSWANA PUBLIC OFFICERS PENSION FUND, FROM KRUGER AGENCIES (PTY) LTD BY SEVENTY5 DEGREES (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 for the proposed acquisition of Lot 51577 Mowana Park, Phakalane, Gaborone as a going concern for and on behalf of Botswana Public Officers Pension Fund ("BPOPF"), from Kruger Agencies (Pty) Ltd ("Kruger" or the "Target Enterprise") by Seventy5 Degrees (Pty) Ltd ["Seventy5" or the "Acquiring Enterprise"]. The proposed transaction is pursuant to the Sale Agreement dated 10th October 2023 and it involves full transfer of ownership of the Property from Kruger to Seventy5. The transaction was notified to the Authority on the 1st November 2023 and the merger assessment was completed on 8th December 2023.

The Acquiring Enterprise, Seventy5, is a private company incorporated in accordance with the Laws of Botswana. It is a newly established company duly appointed as the property asset manager of the BPOPF and makes the acquisition for and on behalf of BPOPF. Seventy5 is controlled by Baalakani Nlumbile and Ronald Kabelo Modikana (both Batswana). BPOPF is a pension fund for the Botswana public service employees. On the other hand, the Target Enterprise, Kruger, is a private limited company incorporated in accordance with the Laws of Botswana. Kruger is a distributor of home and other appliances. It is controlled by one Shareholder namely, Jagdish Natwarlal Shah. The Target Enterprise does not control any enterprise in Botswana.

Relevant Markets

The Merging Parties are companies duly incorporated in accordance with the Laws of Botswana. The assessment indicates that the Target Enterprise predominately operates in the distribution and sale of home appliances and other general goods in Botswana. On the other hand the Acquiring Enterprise is a newly established private company.

In 2022, the BPOPF issued a tender for the provision of property asset management and successfully appointed Seventy5 Degrees as one (1) of two (2)

incubation property asset managers. Seventy5 Degrees is therefore a duly appointed property asset manager which carries out property asset acquisitions for and on behalf of BPOPF which will then be leased for rental income.

The findings of the merger assessment show that the acquiring enterprise is a new entrant into the relevant market and it commenced operation in July 2023 and currently has one client being BPOPF and it has been submitted that as at the date of the merger notice, Seventy5 has no assets under management. Thus, there is currently no overlap in the merging parties' activities in Botswana hence the Authority does not anticipate any competition concerns to arise in the relevant market as a result of the proposed transaction. Furthermore, the acquiring enterprise is expected to face strong competition from existing well-established players including local and multinational commercial property companies.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the Acquiring Enterprise and the Target Enterprise are currently not active in the same market. The Acquiring Enterprise is a new entrant in the relevant market and the target property will be one of the properties it is acquiring to build its portfolio. 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 note 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. In addition, engagements with the

Merging Parties indicated that the proposed acquisition will not have any effects on tenants since the property is being acquired as a going concern.

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 51577 Mowana Park, Phakalane, Gaborone as a going concern for and on behalf of Botswana Public Officers Pension Fund, from Kruger Agencies (Pty) Ltd by Seventy5 Degrees (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 8th day of December 2023.

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