



MERGER DECISION NO 57: 2023

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

MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF LEASE AREA NO. 2791-KO, PHAKALANE INDUSTRIAL FROM SOUTHERN BUSINESS SOLUTIONS (PTY) LTD BY SEVENTY5 DEGREES (PTY) LTD FOR AND ON BEHALF OF THE BOTSWANA PUBLIC OFFICERS PENSION 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 Unit 9 Caramba Business Park, Lease Area No. 2791-KO in Phakalane Industrial ("the Target Property") from Southern Business Solutions (Pty) Ltd ("Southern Business" or "the Target Enterprise") by Seventy5 Degrees (Pty) Ltd ("Seventy5 Degrees" or "the Acquiring Enterprise") for and on behalf of the Botswana Public Officers Pension Fund ("BPOPF"). Following the implementation of the proposed transaction, the Target Property will be managed by the Acquiring Enterprise. The transaction was notified to the Authority on the 27th October 2023 and the merger assessment was completed on 12th December 2023.

The Acquiring Enterprise, Seventy5 Degrees, is a newly established private company incorporated in accordance with the Laws of Botswana. The Acquiring Enterprise does not control any entities in Botswana. Seventy5 Degrees is a duly appointed property asset manager which makes property asset acquisitions for and on behalf of BPOPF which will then be leased for rental income. BPOPF is a pension fund duly licensed and established in accordance with the provisions of the Retirement Funds Act No. 38 of 2022 for public service employees.

On the other hand, the Target Enterprise, Southern Business, is a company incorporated in accordance with the laws of Botswana. The Target Enterprise is not controlled by any entities in Botswana. Southern Business controls Phakalane Data Centre (Pty) Ltd ("Phakalane Data Centre"), a company incorporated in Botswana that operates in data storage and recovery as its core business.

Relevant Markets

In terms of the activities of the Merging Parties, 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 the incubation property asset managers. Seventy5 Degrees is therefore a duly appointed property asset manager which undertakes property asset

acquisitions for and on behalf of the BPOPF thereafter, are leased for rental income. Seventy5 Degrees currently has no assets under management.

As the ultimate acquirer of the Target Property, BPOPF holds commercial immovable rental property through other property asset managers.

On the other hand, the Target Enterprise operates in the supply of computer equipment, maintenance and providing such services as system administration for software solutions that include virtualization, back up and support, disaster recovery and business continuity, servicing hardware maintenance on Dell & IBM servers and storage. Furthermore, as indicated above, Phakalane Data Centre, a subsidiary of the Target Enterprise, operates in data storage and recovery.

The assessment indicates that the Acquiring Enterprise is a new entrant in the relevant market and it is not yet active whereas Southern Business is a company involved in offering Information Technology (IT) and Information Communication Technology (ICT) services and only owns the Target Property, which it has been occupying for its business. Thus, there is currently no overlap in the merging parties' activities in Botswana.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the Acquiring Enterprise and the Target Enterprises are not currently active in the same market. The Acquiring Enterprise is a new entrant in the relevant market and currently has no assets under its management. 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. Furthermore, the acquisition of this Target Property is a localisation of an asset previously owned by persons of foreign nationality (South

Africans). Therefore, the proposed transaction's ultimate beneficial owners are citizens of Botswana through the Acquiring Enterprise which is acquiring this property on behalf of the BPOPF which will enhance citizen empowerment. BPOPF would be investing on behalf of its members who are citizens of Botswana. The property is expected to earn rentals through leasing, therefore, the proposed transaction will continue to sustain job creation.

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 office Unit 9 at Caramba Business Park, Lease Area No. 2791-KO in Phakalane Industrial from Southern Business Solutions (Pty) Ltd by Seventy5 Degrees (Pty) Ltd for and on behalf of the Botswana Public Officers Pension 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 12th day of December 2023.

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