



MERGER DECISION NO 58: 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 PLOT 132, GABORONE FROM VICTORIA PROPERTIES (PTY) LTD BY SKYWAYS HOLDINGS (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 the proposed acquisition of Plot 132, Gaborone (the "Target Property") from Victoria Properties (Pty) Ltd ("Victoria Properties" or the "Target Enterprise") by Skyways Holdings (Pty) Ltd ("Skyways" or the "Acquiring Enterprise"). Following the implementation of the proposed transaction, the Acquiring Enterprise shall exercise control over the Target Property, a commercial rental business property located in Independence Avenue, Main Mall, Gaborone, with existing tenants from the Target Enterprise. The transaction was notified to the Authority on the 14th November 2023 and the merger assessment was completed on 14th December 2023.

The Acquiring Enterprise, Skyways is a newly registered company in accordance with the Laws of Botswana. The Acquiring Enterprise does not directly or indirectly control any entity in Botswana.

On the other hand, the Target Enterprise, Victoria Properties is a company registered in accordance with the Laws of Botswana. Victoria Properties does not directly or indirectly control any entities in Botswana.

Relevant Markets

In terms of the activities of the Merging Parties, the Acquiring Enterprise is a newly established special purpose vehicle established for the purpose of acquiring the Target Property. Skyways is yet to commence its operations.

On the other hand, the Target Enterprise supplies commercial office space for rental and currently only owns the Target Property.

The assessment indicates that at the time of the merger notice, the activities of the Merging Parties do not overlap as the Acquiring Enterprise is not operational in any market in Botswana currently. Post-merger, the Acquiring Enterprise will supply commercial office space for rental while the Target Enterprise will cease operations in Botswana.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the Acquiring Enterprise is not operational in any market in Botswana and was established for the purpose of acquiring the Target Property in order to ensure the uninterrupted continuity of Skyways Travel Agency in the same premises, whereas, the

Target Enterprise supplies commercial office space for rental and currently only owns the Target Property. Post-merger, the Target Enterprise is expected to cease operations in Botswana. 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 as the Acquiring Enterprise will only assume the Target Enterprise's market share. In addition, the market for rental of commercial office space in Botswana is highly competitive and characterised by a number of players in the market who will continue to provide competitive pressure on the Merged Enterprise.

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 proposed acquisition is not expected to 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 Plot 132, Gaborone, from Victoria Properties (Pty) Ltd by Skyways Holdings (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 14th day of December 2023.

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