



MERGER DECISION NO 12: 2024

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

DECISION OF THE ASSESSMENT OF THE PROPOSED ACQUISITION OF AN ADDITIONAL 50% ISSUED SHARE CAPITAL IN OPTIMAL SOLUTIONS (PTY) LTD BY SEAN BYRON IRISH

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 an additional 50% of the issued share capital in Optimal Solutions (Pty) Ltd ("Optimal" or the "Target Enterprise") by Sean Byron Irish ("Mr. Irish" or the "Acquiring Enterprise"), (the "Proposed Transaction"). Following the implementation of the proposed transaction, Mr. Irish will have sole control of the Target Enterprise.

The proposed sale is pursuant to a Sale of Shares Agreement ("the Agreement") made and entered into by and between "The Estates of the late Sundar Yegnaswami" (the Seller), and Sean Byron Irish (the Purchaser), in respect of Optimal Solutions (Pty) Ltd, dated 1st March 2023. The transaction was notified to the Authority on 18th March 2024, and the merger assessment was completed on 24th April 2024.

The Acquiring Enterprise, Mr. Irish, is an adult Botswana citizen male of full legal capacity to complete this transaction. On the other hand, the Target Enterprise, Optimal, is a company incorporated in accordance with the Laws of Botswana. The shareholders of Optimal are Mr. Irish (50%) and the late Sundar Rajan Yegnaswami (50%), both Botswana.

Relevant Markets

The assessment of the merger revealed that the Target Enterprise is involved in providing rental services to its resident companies which include Primetel (Pty) Ltd, Technique (Pty) Ltd, Redroots (Pty) Ltd, Nest Computing (Pty) Ltd and Stature (Pty) Ltd. Furthermore, as the Acquiring Enterprise, Mr. Irish is already a shareholder in the Target Enterprise at 50%, and he has interests in other various companies incorporated in accordance with the Laws of Botswana.

For completeness, the proposed merger represents an internal shareholder restructuring whereby an existing controlling shareholder intends to increase its shares to become the sole owner of the Target Enterprise and it is not anticipated that the proposed transaction will have any competitive effects in any market that may be found to exist in Botswana.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigation findings revealed that the proposed merger is an internal share restructuring which is as a result of the death of another shareholder in the Target Enterprise. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition in Botswana as a result of the merger and therefore the status quo will be maintained 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. Thus, 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 change the internal share structure in the target enterprise and therefore will not result in any accretion to its market share.

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. There are no merger specific retrenchments expected as a result of the proposed merger.

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 unconditionally approved the proposed acquisition of an additional 50% of the issued share capital in Optimal Solutions (Pty) Ltd by Sean Byron Irish.

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 April 2024.

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