



## **MERGER DECISION NO 27: 2023**

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

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED SALE AND ACQUISITION OF LOT 9975 (REMAINING EXTENT OF FARM 153-NL) GHANZI FROM CAREL LEMCKE BY TSHUKUDU METALS BOTSWANA (PTY) LIMITED.**

##### **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 sale and acquisition of Lot 9975 (remaining extent of farm 153-NL) Ghanzi from Carel Lemcke (the "Target Enterprise") by Tshukudu Metals Botswana (Pty) Ltd ("Tshukudu Metals" or the "Acquiring Enterprise"). As an affected stakeholder of the mine, the sale of the Property will allow the Target Enterprise to relocate his primary residence and farming related activities. The transaction was notified to the Authority on the 27<sup>th</sup> June 2023 and the merger assessment was completed on 21<sup>st</sup> August 2023.

The Acquiring Enterprise, Tshukudu Metals is a company incorporated in accordance with the Laws of Botswana. Tshukudu Metals is controlled by Metal Capital Limited, a company registered in the United Kingdom. The Acquiring Enterprise does not control any entity in Botswana. The Acquiring Enterprise owns mining and prospecting licences and has been producing copper concentrates since June 2023. Carel Lemcke is an adult male of full legal capacity and a citizen of Botswana. The Target Enterprise is an individual and a sole trader farmer operating as such from Lot 9975 (the remaining extent of Farm 153-NL) located in Ghanzi. The Target Enterprise is not controlled by any entity.

##### **Relevant Markets**

The Merging Parties are companies duly incorporated in accordance with the Laws of Botswana. The findings of the assessment show that the Acquiring Enterprise owns mining and prospecting licences while the Target Enterprise is an individual involved in the business of farming. Therefore, for the purpose of this transaction there's no product overlap in the activities of the Merging Parties.

For completeness, in terms of the activities of the merging parties, the Acquiring Enterprise has commenced producing copper concentrates at its Motheo Copper Mine situated around 70 kilometres from Ghanzi, Botswana.

Tshukudu Metals commenced production in June 2023 quarter and first sale is expected in the September 2023 quarter.

The findings of the assessment indicate Copper concentrate produced by the mine is sold to copper smelters. Copper is a critical commodity for the drive for cleaner energy and lower carbon emissions. Furthermore, Copper is the highest electrical conductor of all metals and is therefore used in the electrical and electronic products markets among other things.

The product offerings of the Acquiring Enterprise is the global commodity market, i.e. exports and the Merging Parties expect that most of the products of Tshukudu Metals will be exported to Asia or Europe. The demand for Copper concentrate in Botswana is regarded to be insignificant.

On the other hand, the Target Enterprise is in the business of cattle and goat farming, oats, barley and maize crop farming and provides safari assistance services. The Target Enterprise uses the Property as their main residence, for farming related activities and irrigation. The Target Enterprise provides its services in the Ghanzi District and exports to South Africa.

### **Competitive Analysis and Public Interest**

In the assessment of Substantial Lessening of Competition, the investigation has revealed no product overlap in the activities of the Merging Parties since Tshukudu Metals and Carel Lemcke are not involved in the same business activities. Therefore, the transaction under assessment is not expected to substantially lessen competition or restrict trade or the provision of services or to endanger the continuity of supplies in the relevant market or in any market in Botswana.

For the analysis of Acquisition of Dominance, the approval of the proposed transaction is not expected to result in an acquisition of a dominant position by the merged entity or by any enterprise in the market under consideration or any other market in Botswana due to the nature of the industry. The proposed merger will not cause any significant change in the relevant market. Even though no commitments were submitted by the Merging Parties, the expansion of the mining project has the potential to contribute to employment creation.

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. No job losses are anticipated in Botswana 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 ("the Act").

Pursuant to the provision of section 53 of the Act, the Authority has decided to unconditionally approve the proposed Sale and Acquisition of Lot 9975 (remaining extent of farm 153-NL) Ghanzi from Carel Lemcke by Tshukudu Metals Botswana (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 21<sup>st</sup> day of August 2023.

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