



MERGER DECISION NO 30: 2023

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF LOT 22013, GABORONE WEST INDUSTRIAL FROM SHOEBILL (PTY) LTD BY 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 Lot 22013, Gaborone West Industrial from Shoebill (Pty) Ltd ("Shoebill" or "the Target Enterprise") by Botswana Public Officers Pension Fund ("BPOPF" or "the Acquiring Enterprise"). The transaction involves full transfer of ownership of the Property from Shoebill to BPOPF. The transaction was notified to the Authority on 14th July 2023, and the merger assessment was completed on 22nd August 2023.

The Acquiring Enterprise, 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. The Acquiring Enterprise manages and administers pensions and other benefits for government employees. The Acquiring Enterprise is not controlled by any entities nor does it control any entities in Botswana. On the other hand, the Target Enterprise, Shoebill, is a private company incorporated in accordance with the Laws of Botswana. Shoebill is a wholly owned subsidiary of Mont-Trade (Pty) Ltd (holding company), a private company duly incorporated under the company Laws of Botswana. The Target Enterprise does not control any entities in Botswana.

Relevant Markets

The Merging Parties are companies duly incorporated in accordance with the Laws of Botswana. The Target Enterprise is dormant and therefore currently does not provide any services or goods as at the date of this transaction. For completeness, in terms of the activities of the Merging Parties, it should be noted that the Acquiring Enterprise manages and administers pensions and other benefits for government employees. Through Letsema Property Fund II, BPOPF invests in selected portfolio of property assets which are then leased.

The BPOPF through Letsema, currently has property assets in the Gaborone and Francistown areas. The BPOPF has also recently acquired Lots 1298 and 1299 Ghanzi through Letsema, a transaction that was notified with the Authority on 3rd March 2023. On the other hand, the Target Enterprise was incorporated to be in the business of holding investment assets and is the registered owner of the target property which is used for industrial purposes. However, it was noted that Shoebill has never been operational and currently does not provide any services. The Holding Company, Mont-Trade, is a leading agricultural service provider, offering a wide range of agricultural products.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigation has revealed that both the Acquiring Enterprise and the Target Enterprise operate in the property market in Botswana. However, the Target Enterprise is dormant and the property that is being acquired has never been used. The Authority therefore does not anticipate the merger to substantially lessen competition post implementation due to the fact that there exists a number of other industrial property investment companies in Botswana owned by diverse individuals and companies that will act as a constraint on the merged entity, post-merger.

For the analysis of Acquisition of Dominance, 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 merger constitutes an acquisition of a property owned by the Target Enterprise and not necessarily the Target Enterprises itself. This is only expected to contribute to the investment portfolio of the Acquiring Enterprise and therefore will have an insignificant accretion to its market share.

In terms of Public Interest considerations, consideration of the Merging Parties' submissions, the Authority does not foresee any detriment to matters of public interest that will arise as a result of the transaction under consideration. The target Property is not leased or rented out to any business and has not been under any usage hence no direct or indirect job losses are anticipated as a result of the proposed acquisition. The implementation of the proposed transaction would enhance citizen empowerment as BPOPF is investing on behalf of its members who are citizens of Botswana.

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 22013, Gaborone West Industrial from Shoebill (Pty) Ltd by 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 22nd day of August 2023.

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