



## MERGER DECISION NO 11: 2023

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

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF ADDITIONAL 51% OF THE TOTAL ISSUED SHARES IN OMOGOLO (PTY) LTD BY CAROLINE BOLTEN FROM MSASA CONSULT (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 an additional 51% of the total issued shares in Omogolo (Pty) Ltd (“Omogolo” or “Target Enterprise”) by Caroline Christine Margarethe Bolten (“Ms. Bolten” or “Acquirer”) from Msasa Consult (Pty) Ltd (“Msasa”). The transaction was notified to the Authority on 21<sup>st</sup> March 2023 and the merger assessment was completed on 12<sup>th</sup> May 2023.

The Acquirer, Ms. Bolten is a citizen of Germany with full legal capacity. She currently has 49% shareholding in Omogolo (Pty) Ltd (“Omogolo”). The remaining shares in Omogolo are controlled by Msasa Consult (“Msasa”). Msasa is a holding company which currently owns three companies being the Target Enterprise; At Home (Pty) Ltd and Crocodile Sun (Pty) Ltd. On the other hand, the Target Enterprise, Omogolo is a company incorporated in accordance with the Laws of the Republic of Botswana. Omogolo does not control any entity in Botswana.

##### **Relevant Markets**

In terms of the description of the merging parties’ activities, it is noted that Omogolo is in the tourism accommodation (self-catering units) business, and is located at Omogolo conservancy, situated 30 kilometres North of Tsau in Ngamiland). The packages offered by Omogolo include: Bush & Cruise, Tsodilo Hills, and Omogolo Hideaways & Okavango Delta. Furthermore, the findings of the assessment have revealed that the Acquirer is a non-citizen. However, the target business is licensed under licence category B, and as such, the market under consideration is not reserved for citizens hence it is open to non-citizens.

The proposed merger entails a share restructuring within the Target Enterprise therefore there is no horizontal or vertical relations which the Authority needs to consider for assessment. The Authority maintains that it is not necessary to reach a definitive view on the exact scope of the product market as the market structure is not expected to change post implementation of the proposed transaction.

## **Competitive Analysis and Public Interest**

In the assessment of Substantial Lessening of Competition, the transaction under assessment is not expected to substantially lessen competition as it is an internal restructuring where a minority shareholder is increasing her stake in the business to gain control. Therefore, the merger is not expected to result in the reduction of the number of players in the market under consideration, hence will not affect the current structure of the market.

The merged entity will not attain any dominant position on account of the proposed transaction. The transaction is not expected to accrete nor decrease market shares of the merged enterprise since it is an internal share restructuring neither would it impact on rivalry nor harm consumers. In addition, there are renowned entities that will continue to pose competitive constraints on the merged entity post-merger.

In terms of Public Interest, it is noted that the acquirer will be increasing its shareholding in the Target Enterprise and will be the sole owner of Omogolo post-merger. This increase in shareholding does not change the running activities of the Target Entity so there will be no loss of employment.

## **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 change upon implementation of this transaction since it is an internal restructuring. Therefore, the proposed transaction is not likely to result in the prevention or substantial lessening of competition, or endanger the continuity of the service offered in the market under consideration. Furthermore, it is noted that the proposed merger will not give rise to any loss of employment for the merging parties in Botswana.

Pursuant to the provision of section 53 of the Act, the Authority has unconditionally approved the proposed acquisition of an additional 51% of the total issued shares in Omogolo (Pty) Ltd by Caroline Christine Margarethe Bolten from Msasa Consult (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 12<sup>nd</sup> day of May 2023.

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