



## MERGER DECISION NO 05: 2021

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

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF BUSINESS AND ASSETS OF PAYLESS SUPERMARKETS (PTY) LTD IN LIQUIDATION BY ELLIS RETAIL GROUP (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 business and certain assets of Payless Supermarkets (Pty) Ltd (“Payless”) in liquidation, by Ellis Retail Group (Pty) Ltd (“ERG”). The transaction was notified to the Authority on 9<sup>th</sup> December 2020 and the merger assessment was completed on 18<sup>th</sup> January 2021.

The Acquiring Enterprise, ERG, is a limited liability company incorporated in accordance with the Laws of Botswana. ERG is a Special Purpose Vehicle (“SPV”) being utilised to effect the proposed merger transaction. The Acquiring Enterprise is described as a private investor with focus on insurance, petroleum and Fast Moving Consumer Goods (“FMCG”). According to the Merging Parties’ submissions, ERG has not had any form of trading activity in, into or from Botswana since its incorporation. ERG is wholly owned by Acute Global Limited (“Acute Global”), an investment holding company which is in turn wholly owned by Accurate Component (Pty) Ltd (“Accurate Component”). Both Acute Global and Accurate Component are companies incorporated in accordance with the Laws of Botswana.

The Target Enterprise, Payless, is a private company incorporated in accordance with the Laws of Botswana. The target enterprise is specifically described as the business and certain assets wholly owned by Payless. Payless is active in the FMCG market and operates a chain of retail stores in Botswana with six (6) stores in Gaborone, and one (1) store in Mochudi; Tlokweng; and Molepolole, respectively. Payless has been under liquidation by order of Court dated 3 June 2020.

##### **Relevant Markets**

ERG is an SPV being utilised to effect the proposed merger transaction and has not commenced its operation. It is described as a private investor with focus on insurance, petroleum and FMCG. Since the ERG is not yet operational, the merger assessment did not reveal any overlap between the Merging Parties’ activities, and therefore the relevant market is regarded as that in which the Target Enterprise is currently active. Payless operates under a model of ‘one stop shopping’ in terms of

which the shopping for the bulk of household's weekly grocery needs, is carried out in a single trip and under one roof. Thus the relevant market is the FMCG market and in particular the retail supermarket sector.

### **Geographic Market**

Payless Stores are found in Tlokweng, Mochudi, Molepolole and Gaborone, therefore the geographical market is Greater Gaborone area.

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

In the assessment of Substantial Lessening of Competition, the assessment of the proposed merger did not reveal any overlap between the Merging Parties' activities. ERG is not active in the relevant market and as such, the transaction under assessment is not anticipated to change the structure of the relevant market post implementation. Therefore, the Authority does not expect the proposed transaction to give rise to any Substantial Lessening of Competition; restrict trade or the provision of services; or to endanger the continuity of supplies in the relevant market in Botswana.

The analysis further indicate that the proposed merger will not result in any Acquisition of a Dominant Position by the merged entity as the Acquiring Enterprise has never started operating. Additionally, there exists well established players including South African franchise stores such as: Choppies Enterprises; SPAR; Pick'n Pay; Shoprite; and Shoppers. These would impose competitive constraints on the merged entity post implementation of the proposed merger.

With regards to Public Interest Considerations, the merger assessment findings did not reveal any detriment to matters of public interest that will arise as a result of the transaction under consideration. However, in the event that the transaction does not proceed, a total of 190 jobs will be lost throughout all Payless stores nationally and nine (9) commercial rental spaces will be left vacant in Gaborone, Mochudi and Molepolole. The Acquirer is a Citizen of Botswana and therefore the proposed acquisition promotes Citizen Empowerment.

### **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 the implementation of the proposed transaction. Therefore, the proposed merger is not likely to endanger the continuity of the goods and services offered in the market under consideration. Furthermore, the proposed merger will promote citizen empowerment 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 business and certain assets of Payless Supermarkets (Pty) Ltd in liquidation, by Ellis Retail Group (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 19<sup>th</sup> day of January 2021.

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