



MERGER DECISION NO 14: 2024

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

MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF LOT 20743 GABORONE FROM ATAF (PTY) LTD BY SEVENTY5 DEGREES (PTY) LTD FOR AND ON BEHALF OF 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 20743 Gaborone (the "Target Property") from Ataf (Pty) Ltd ("Ataf" or the "Target Enterprise") by Seventy5 Degrees (Pty) Ltd ("Seventy5 Degrees" or the "Acquiring Enterprise") for and on behalf of Botswana Public Officers Pension Fund ("BPOPF"), (the "Proposed Transaction"). Following the implementation of the Proposed Transaction, the Target Property will be managed by the Acquiring Enterprise for and on behalf of the BPOPF. The transaction was notified to the Authority on the 22nd April 2024 and the merger assessment was completed on 13th May 2024.

The Acquiring Enterprise, Seventy5 Degrees, is a newly established private company incorporated in accordance with the Laws of Botswana. The Acquiring Enterprise does not control any entities in Botswana. Seventy5 Degrees is a duly appointed property asset manager which makes property asset acquisitions for and on behalf of BPOPF which will then be leased for rental income. 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.

On the other hand, the Target Enterprise, Ataf, is a private limited liability company incorporated in accordance with the Laws of Botswana. Ataf does not control any entities in Botswana.

Relevant Markets

In terms of the activities of the Merging Parties, the Acquiring Enterprise operates as a property asset manager in Botswana and is currently part of an incubation program established by BPOPF. Seventy5 Degrees operates throughout the entire Botswana. In 2022 the BPOPF issued a tender for the provision of property asset management and successfully appointed Seventy5 Degrees as one (1) of two (2) incubation property asset managers. Seventy5 Degrees is therefore a duly appointed property asset manager which carries out property asset acquisitions for and on behalf of BPOPF. For completeness, it is noted that BPOPF holds immovable property through other property asset managers, and these are considered reasonably interchangeable with those of the Target Enterprise.

On the other hand, the Target Enterprise operates in the commercial real estate market in Gaborone.

It is a property investment company and holds Lot 20743, a commercial building located in Phakalane. The Target Property is currently being leased out for rental income.

The assessment indicates that there exists a horizontal overlap in the activities of the merging parties as both parties operate in leasing real estate property for rental income. However, although this is a horizontal merger, the Authority does not anticipate any competition concerns to arise in the relevant market post-merger as the acquirer is a new entrant in the relevant market (6 months old).

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the Acquiring Enterprise and the Target Enterprise both operate in leasing real estate property for rental income. However, the Authority does not anticipate the acquisition to result in any substantial lessening of competition post implementation due to the fact the acquirer is a new entrant in the relevant market (6 months old), therefore there will be insignificant change in the market. In addition, there exist other property investment businesses in Botswana owned by diverse individuals and companies that will act as a constraint on the Acquiring Enterprise, post-merger.

For the analysis of Acquisition of Dominance, it is important to emphasise 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.

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 properties owned by the Target Enterprise and not necessarily the Target Enterprise itself. The merger is only expected to contribute to the investment portfolio of the Acquiring Enterprise and therefore will have an insignificant accretion to its market share. Furthermore, as indicated above in the report, the Merged Enterprise is expected to face strong competition from the existing well-established players including state-owned and private property investment companies.

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. Furthermore, the acquisition of this Target Property is a localisation of an asset previously owned by persons of foreign nationality (Dutch). Therefore, the implementation of the Proposed Merger would enhance citizen empowerment as the ultimate beneficiary being BPOPF, is investing on behalf of its members who are citizens of Botswana. In addition, the proposed acquisition is not expected to have any effects on tenants since the properties are being acquired as a going concern.

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 20743 Gaborone from Ataf (Pty) Ltd by Seventy5 Degrees (Pty) Ltd for and on behalf of 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 13th day of May 2024.

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