



MERGER DECISION NO 15: 2021

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

DECISION ON THE ASSESSMENT OF THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 100% OF THE ISSUED SHARE CAPITAL OF BARLOWORLD MOTOR BOTSWANA (PTY) LTD BY NMI DURBAN SOUTH MOTORS (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 100% of the issued share capital of Barloworld Motor Botswana (Pty) Ltd ("Barloworld Motor") by NMI Durban South Motors (Pty) Ltd ("NMI DSM"). The transaction was notified to the Authority on 26th February 2021 and the merger assessment was completed on 15th March 2021.

The Acquiring Enterprise, NMI DSM, is a company duly incorporated in terms of the company Laws of the Republic of South Africa. NMI DSM is a joint venture company controlled 50/50 by entities owned or controlled by the Akoo Family (South Africans) and Barloworld South Africa (Pty) Ltd. NMI DSM is a retailer of new and used passenger vehicles, light, medium, heavy and extra heavy commercial vehicles.

The Target Enterprise, Barloworld Motor, is a private company incorporated in accordance with the Laws of the Republic of Botswana. Barloworld Motor, is a wholly-owned subsidiary of Barloworld Ltd, a public company incorporated in accordance with the Laws of the Republic of South Africa. Barloworld Ltd is primary listed on the Johannesburg Stock Exchange and secondary listed on the London and Namibia Stock Exchanges, and it is part of the Barloworld Group.

Relevant Markets

NMI DSM is a South African based retailer of new and used passenger vehicles, light, medium, heavy and extra heavy commercial vehicles. The brands that its dealerships sell include Mercedes-Benz; Jeep; Smart; Fuso; Freightliner; Western Star; GWM; Haval and Mitsubishi. NMI DSM also provides associated services including the sale of automotive parts and accessories and undertakes repairs. NMI DSM also arranges motor vehicle finance and insurance services for purchasers of its motor vehicles.

Barloworld Motor on the other hand, is a Botswana based motor retailer selling new and used passenger, light, medium, and heavy commercial vehicles and buses. The Target Enterprise's business holds the national franchise in Botswana for Audi; Ford; Volkswagen Passenger; Volkswagen Commercial; Mazda; and Volvo brands. Barloworld Motors also provides motor vehicle associated services and parts distribution centres, and maintenance service centres for vehicles.

It can be determined from the activities of the Merging Parties, that they are both active in the motor retail sector, specifically: the retail of new and used passenger vehicles; the retail of new and used commercial vehicles; the supply of parts and accessories; and vehicle maintenance, services and repairs. However, an overlap in the said products and services is only established in South Africa and not in Botswana by virtue of the absence of the Acquiring Enterprise in Botswana.

Geographic Market

In Botswana, the Target Enterprise offers its products and services primarily in Gaborone, Maun, Francistown, Jwaneng, and Orapa. The Acquiring Enterprise has no operations and does not generate any revenue in, into or from Botswana and therefore it is not involved in the geographical markets in which the Target Enterprise is active. Thus, in view of the products and services offered by the Target Enterprise, the geographical market is considered to be national or the entire Botswana country.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the assessment findings revealed that the Acquiring Enterprise does not have presence in Botswana and as such, the proposed transaction will not lead to a change in the number of players in the relevant market in Botswana. It is therefore not expected that the proposed merger will 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.

In terms of the Acquisition of Dominant Position, the analysis revealed that there is absence of a geographical overlap in the activities of the Merging Parties, and therefore the structure of the relevant market is not expected to change post-merger. Consequently, the Authority does not foresee an acquisition of a dominant position in the market under consideration or any other market on account of the proposed transaction.

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, merger transactions of this nature, may result in retrenchment as new owners come with their own business strategies hence the Authority needs to guard against such an outcome.

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 merger and the proposed transaction is not likely to result in any adverse effects on competition, nor endanger the continuity of the supply of goods and services in the relevant market in Botswana.

As per the submission from the Parties, 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. However, this kind of transaction may result in retrenchments as a result of new owners implementing their own strategies.

Pursuant to the provision of section 53 of the Act, and in an effort to guard against merger specific retrenchments, the Authority has approved the proposed acquisition of 100% of the issued share capital of Barloworld Motor Botswana (Pty) Ltd by NMI Durban South Motors (Pty) Ltd, with the conditions that:

1. There shall be no merger specific retrenchments or redundancies that may affect the employees of the Merged Enterprise; and
2. The Merged Entity should revert to the Competition and Consumer Authority within 12 months from the date of approval, with a status report regarding the abovementioned condition, stating the number of employees who have left the company, their names, and the reasons for leaving.

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 15th day of March 2021.

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