



MERGER DECISION NO 17: 2024

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

MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION BY AGILE HOLDINGS (PTY) LTD, DIAGNO FIRM (PTY) LTD, BPOMAS PROPERTY HOLDINGS (PTY) LTD OF CERTAIN ASSETS OF THE BUSINESS OF BCL LIMITED (IN LIQUIDATION)

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 by Agile Holdings (Pty) Ltd ("Agile Holdings"), Diagno Firm (Pty) Ltd ("Diagno Firm"), and BPOMAS Property Holdings (Pty) Ltd ("BPOMAS Property") (collectively the "Acquiring Enterprises") of certain assets of the business of BCL Limited (in Liquidation) ("BCL"), more particularly, the BCL Hospital buildings and fixtures as situated on the BCL lease area (herein the "BCL Hospital"). The proposed transaction is pursuant to an Asset Purchase Agreement signed on the 7th day of July 2023. The transaction was notified to the Authority on 5th March 2024 and the merger assessment was completed on 24th May 2024.

The Acquiring Enterprises, consist of: Agile Holdings, Diagno Firm and BPOMAS Property and the aforementioned enterprises are all limited liability companies incorporated in accordance with the Laws of the Republic of Botswana. On the other hand, the Target Enterprise is BCL by virtue of being the owner and seller of the assets being disposed. It is a company incorporated under the Laws of Botswana. BCL has been in Liquidation since 9th October 2016.

Relevant Markets

According to the assessment findings, the activities of the Acquiring Enterprises are described as follows:

- a) *BPOMAS Property* – is a real estate investment company which engages in the business of letting out properties. BPOMAS Property does not directly or indirectly control any entity in Botswana.
- b) *Agile Holdings* – is a hospital management holding company offering comprehensive management services for hospitals and other healthcare organisations through its subsidiaries. Agile is a multi-portfolio entity that provides services in the healthcare value chain, such as hospital management services, IT systems, medical equipment and accessories.

- c) *Diagno Firm* – is a medical laboratories services provider and it provides pathology services in Botswana to all healthcare professionals and their patients. For completeness, Diagno Firm specialises in delivering diagnostic testing services, concentrating on laboratory analysis and pathology-related services.

On the other hand, the assessment of the merger has revealed that prior to liquidation, BCL ran the BCL mine (now in care and maintenance) which produced nickel, cobalt and copper. In addition, BCL was responsible for the operation of the BCL Hospital, which is a mine hospital whose mandate is to provide vital healthcare services mainly to the BCL employees and the local community.

It should also be noted that the Acquiring Enterprise is only buying immovable and movable assets owned by the Target Enterprise through a disposal process undertaken by the Liquidator to raise money to pay the main creditor of BCL being the government of Botswana. Based on the fact that the properties being disposed are part of the liquidation process and that the BCL hospital is not being sold as an operating entity, 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 substantially change post implementation of the proposed transaction.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed, although the merging parties are active within the health sector, their product differentiation neutralises any competition concerns which may arise. Furthermore, there are various alternatives in the relevant markets which are regarded by consumers as interchangeable. The merger is not expected to result in a reduction in the number of players in the market and hence will not affect the current structure of the market under consideration. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition post implementation.

For the analysis of Acquisition of Dominance, it is important to note 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 only expected to contribute to the investment portfolio of the acquiring enterprise and therefore will have an insignificant accretion to its market share. Furthermore, the Merged Enterprise is expected to face strong competition from the existing well-established players.

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. The proposed merger entails acquisition of assets, mainly from a company which is in Liquidation and therefore the implementation of the proposed transaction will ensure continuation of availability health services to the Selebi Phikwe residents as well as the Bobirwa region. The Acquiring Enterprise have the ability to improve service delivery and intends to bring health specialists which are currently not available in the region.

Furthermore, the Acquiring Enterprise has the ability to safeguard the employment of former BCL Hospital employees after the implementation of the merger. Currently Agile Holdings has re-employed most of the employees on short-term contracts basis. In addition, it is important to highlight that, as Premier Nickel Resources is trying to realise their investment in Selebi Phikwe, there is a need of the Mine Hospital for a mine to run, as it needs such a facility. Therefore, the continuation of the hospital operation plays an important role in making sure that, people who are currently engaged in different mining activities such as exploration, are able to access medical services nearby.

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 by Agile Holdings (Pty) Ltd, Diagno Firm (Pty) Ltd, and BPOMAS Property Holdings (Pty) Ltd (collectively the Acquiring Enterprises), of certain assets of the business of BCL Limited (in Liquidation), more particularly, the BCL Hospital buildings and fixtures as situated on the BCL lease area.

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 24th day of May 2024.

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