



MERGER DECISION NO 27: 2019

Notice in Terms of Section 60(4)(a)(ii) of the Competition Act

THE PROPOSED ACQUISITION OF 100% SHARES IN NGOMA LODGE (PTY) LTD BY SKYBIRD (PTY) LTD

Pursuant to section 60(4)(a)(ii) of the Competition Act (Cap 46:09), notice is hereby given on the decision made by the Competition Authority ("the Authority") in respect of the proposed acquisition of 100% shares in Ngoma Lodge (Pty) Ltd ("Ngoma") by Skybird (Pty) Ltd ("Skybird").

The Competition Authority determined through the analysis of the facts of the merger, that the proposed transaction is not likely to result in the prevention or substantial lessening of competition, or endanger the continuity of the services offered in the market under consideration, in Botswana given the fact that:

- i. The proposed transaction will not alter the structure of the market for the provision of safari lodge accommodation and related activities in the Chobe District; and
- ii. The implementation of the proposed merger would not result in the merged entity attaining any dominant position.

However, it is noted that the proposed acquisition gives rise to public interest concerns under section 59(2)(f) of the Competition Act in that clause 14.5 of the Joint Venture Agreement ("JVA") between Chobe Enclave Conservation Trust ("CECT") and Ngoma which talks to Citizen empowerment has never been enforced. The CECT and Ngoma agreed that the operator shall recruit an understudy from the community to be attached to the lodge for training/capacity building in anticipation of taking over as General Manager for the Lodge between year six and eight of operation.

Taking the public interest concerns into account as well as the commitments/undertakings made by the acquiring enterprise, Skybird with respect to abiding by the JVA of CECT and Ngoma, pursuant to the provisions of section 60 of the Competition Act of Botswana, the Authority has approved the proposed acquisition with the following conditions:

- i. There shall be no retrenchment of any employee as a result of the Merger;
- ii. The employees of Ngoma Lodge should continue to work on terms and conditions substantially no less favourable than their current terms and conditions of employment;
- iii. The merged entity shall ensure that the recruitment and appointment of a citizen as an Assistant General Manager who will be an understudy to the General Manager at Ngoma Lodge is finalised within six (6) months from the date of this decision;
- iv. Within a period of two (20) years, the Assistant General Manager above shall be appointed as General Manager;
- v. The merged entity shall in accordance with the provisions of clause 15.1 of the Joint Venture Agreement between CECT and Ngoma, hire labour and procure supplies, including: fish, poultry, thatch grass, vegetables, bricks, building supplies and so on from the CECT community;
- vi. The merged entity shall use all its endeavours to ensure that they continue to harmoniously work with CECT with terms and conditions that are not less favourable than the ones stated in the existing Joint Venture Agreement between CECT and Ngoma; and
- vii. In the event that the merged entity is considering to sell the Ngoma business, priority must then be given to CECT through the principle of Right of First Refusal, failing which, a clear justification for the decision not to sell to CECT must be communicated to the Competition Authority at least two (2) months before selling the business.

However, as stated under section 66 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 5th day of July 2019.

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