



MERGER DECISION NO 27: 2021

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

DECISION ON THE PROPOSED ACQUISITION OF 10% ISSUED SHARE CAPITAL OF JTTM PROPERTIES (PTY) LTD BY MOTOR VEHICLE ACCIDENT FUND FROM BOTSWANA RAILWAYS ORGANISATION

Introduction of the Merging Parties

- i. Pursuant to section 53(4)(a)(ii) of the Competition Act of 2018 ("the Act"), notice is hereby given on the decision made by the Competition and Consumer Authority ("the Authority") in respect of the proposed acquisition of 10% issued share capital of JTTM Properties (Pty) Ltd ("JTTM Properties") by Motor Vehicle Accident Fund ("MVAF") from Botswana Railways Organisation ("BRO"). The transaction was notified to the Authority on 26th July 2021 and the merger assessment was completed on 12th August 2021.
- ii. The acquirer, MVAF, is a fund established as a body corporate under section 3 of the Motor Vehicle Accident Fund Act No. 15 of 2007 of the Laws of the Republic of Botswana ("MVAF Act"). MVAF's mandate includes the provision of third-party insurance cover to motor vehicle owners in Botswana and compensation in terms of section 20 of the MVAF Act. Additionally, MVAF is empowered under section 16 of the MVAF Act, *inter alia*, to: purchase or otherwise acquire land, buildings, shares, debentures, stocks, securities and any other kinds or classes of movable property; and invest any monies, not immediately required for the conduct of its business, in such manner as may be for the benefit of the Fund, and to realise, alter, reinvest such investment or otherwise deal with such monies or investments as may be to the benefit of the Fund.
- iii. The target enterprise is JTTM Properties, a company incorporated in accordance with the Laws of the Republic of Botswana. JTTM Properties is owned by B.R. Properties (Pty) Ltd and BRO. BRO holds 96.838% shares in JTTM Properties while the remaining 3.162% is held by B.R. Properties. BRO is a statutory corporation established under the Botswana Railways Act to offer seamless, rail-based transport logistics solutions to its customers. B.R. Properties on the other hand, is a 100% subsidiary of BRO whose core mandate is to unlock the potential of BR's real estate through sound property management and development practices. JTTM Properties is a property investment vehicle which owns the Railpark Mall development, a shopping complex in Gaborone.

Relevant Markets

- iv. Though MVAF's mandate includes provision of third-party insurance cover to motor vehicle owners in Botswana and compensation in terms of section 20 of MVAF Act, it primarily holds interests in publicly traded securities property companies. It therefore suffices to note that MVAF has shares in the following properties: Riverwalk Mall; Airport Junction Mall; Game City Mall; Masa Square and various small to medium sized shopping malls in Botswana. With regards to the target entity, JTTM Properties is a property investment vehicle which owns the Railpark Mall development, a shopping complex in Gaborone.
- v. It is therefore evident from these descriptions that there is an overlap in the activities of the merging parties as both the acquirer and target entity are operational in the shopping mall space in Gaborone. Therefore, the product market can be termed as that of shopping mall properties in Gaborone.

Competitive Analysis and Public Interest

- vi. The Authority's assessment revealed that the transaction under assessment is not expected to substantially lessen competition due to the fact that there will be insignificant effects in the market as there are other real estate investment companies in Gaborone owned by diverse individuals and institutions that will act as a constraint on the merged entity, post-merger.

The Determination

- vii. The 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 relevant market. Furthermore, no public interest concerns have been identified.
- viii. Pursuant to the provision of section 53 of the Competition Act, the Authority has decided to unconditionally approve the proposed acquisition of 10% issued share capital of JTTM Properties (Pty) Ltd ("JTTM Properties") by Motor Vehicle Accident Fund ("MVAF") from Botswana Railways Organisation ("BRO").

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 12th day of August 2021.

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