



MERGER DECISION NO 29: 2020

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

THE PROPOSED ACQUISITION OF A LETTING ENTERPRISE SITUATED AT TRIBAL LOT 1299 MAUN, TOGETHER WITH THE UNDERLYING LEASES AND THE RIGHT TO COLLECT RENTAL, AS A GOING CONCERN FROM EL ALAMEIN (PTY) LTD BY NEW AFRICAN PROPERTIES LTD

Introduction of the Merging Parties

- i. 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 respect of the proposed acquisition of a letting enterprise situated at Tribal Lot 1299 Maun, together with the underlying leases and the right to collect rental, as a going concern from El Alamein (Pty) Ltd ["ELA"] by New African Properties Ltd ["NAP"]. The transaction was notified to the Authority on 27th August 2020 and the merger assessment was completed on 10th December 2020.
- ii. The acquiring enterprise, NAP, is a variable rate loan stock company listed on the Botswana Stock Exchange; its major beneficial unitholders are: Botswana Public Officers Pension Fund ["BPOPF"] at 41.3%; Debswana Pension Fund ["DPF"] at 17.8%; Cash Bazaar Holdings (Pty) Ltd ["CB Holdings"] at 15.9%; Motor Vehicle Accident Fund ["MVA"] at 6.1% and Botswana Insurance Fund Management ["BIFM"] at 4.8%. BPOPF, DPF, MVA and BIFM are Botswana registered pension funds and fund managers, and the other major investor, CB Holdings, is an investment and holding company, controlling certain entities in Botswana.
- iii. NAP, owns a portfolio of strategically located retail properties in prime shopping malls throughout Botswana and a portfolio of Namibian retail properties. In Botswana, NAP, owns *inter alia* the following: (i) Riverwalk; (ii) Kagiso Centre; (iii) Gaborone Shopping Centre; (iv) Riverwalk Plaza; (v) Plot 8 Station; (vi) Madirelo Centre, all in Gaborone; (vii) Mafenyatlala Mall in Molepolole; (viii) Kasane Mall in Kasane; (ix) Mokoro Centre in Maun and (x) Tlokweng Shopping Centre in Tlokweng. The Directors of NAP are John Tobias Mynhardt; Tobias Louis John Mynhardt; Fact Badzile Lebala (all Batswana); Lauren Carole Tapping; Jerome Patrick McLoughlin (both South Africans) and Seshadri Venkatakrishnan (Indian).

- iv. The Selling Enterprise, ELA, is a private company incorporated with limited liability in accordance with the Laws of Botswana.

ELA is owned by Kalahari Crafts (Pty) Ltd ["Kalahari Crafts"] and Harry Charalambous (Motswana) at 55% and 45% respectively. Kalahari Crafts is a property company registered in Botswana. Charalambous is also a Director of ELA, with other business interests in the tourism sector in Botswana through Isidawana Safaris (Pty) Ltd; Johan Calitz Hunting Safaris (Pty) Ltd; African Field Sports (Pty) Ltd; and Nemesis Botswana (Pty) Ltd. ELA is in the business of property development, based in Maun, with only one property under its belt being Tribal Lot 1299 Maun (the property being sold/the proposed transaction). The other Director of ELA is Christopher Hugh Macintyre (Motswana).

Relevant Market

- i. The assessment of the proposed transaction revealed horizontal and geographical overlaps in the activities of the Merging Parties. A broad view of the market revealed that the Merging Parties are active in Botswana's retail property market. However, the Authority adopted a more precise definition of the market, which considers the differences in size/space of the retail properties in Maun's relevant geographic market. It is worthy to note that both parties have housed a major chain retail store as an anchor tenant in the form of a Shoppers Store (Sefalana).
- ii. The Authority applied two methodologies in the calculation of market shares of players active in the relevant market. The first methodology was based on the number of tenants in shopping complexes, while the second methodology was based on the total lettable space of shopping complexes.
- iii. Consistent with this, the Authority is of the view that different tenants have different requirements for trade and as such, the degree of substitutability between types of retail space varies depending on:
 - a) The density of their store network (tenants mix);
 - b) The demographics of customers visiting the shopping destination; and
 - c) The number, type, and range of other shops and amenities in the wider shopping destination.
- iv. Therefore, based on the aforementioned, and considering the presence of both product and the geographic overlaps in the activities of the parties to the transaction, the relevant product market is the market for the provision of rental retail space in shopping complexes in Maun.

Competitive Analysis and Public Interest concerns

- i. In the assessment of Substantial Lessening of Competition (SLC), the Authority assessment unraveled that there would be a significant change in the market structure post-merger due to this merger. It suffices to say that the merger will enhance NAP's dominance. The merger is expected to increase concentration in the already highly concentrated retail rental space market in Maun. Therefore, it raises competition concerns, including the possibility of unilateral market power being exercised by the merged entity to the detriment of customers (tenants).
- ii. In addition, the Authority is of the view that even though Maun seems to have seen a proliferation of malls/shopping centres in the past, entering this market certainly wasn't easy, particularly as prospective entrants would first be required to buy commercial plots (otherwise, one has to wait for over 15 years to be allocated a land). For newly established companies without financial muscle, overcoming this financial requirement is often not smooth (*albeit* surmountable). Therefore, currently, it is not easy to penetrate Maun's retail property market, especially the market under consideration based on the current scarcity of commercial plots.
- iii. Moreover, the Authority is of the view that there is limited countervailing power in the market under consideration due to the fact that players in the relevant market have limited alternatives to switch because of the shortage of retail rental space.
- iv. Furthermore, the implementation of this transaction is expected to remove an effective competitor in the market under consideration, in that the property which is a subject to the proposed transaction is situated in a lucrative area, and also has an undeveloped space in which the acquiring entity is likely to develop in order to expand its rental offering. This means that, although the target firm is not a maverick firm, together with other players, they pose a competitive constraint on NAP, and thus this merger has the potential to weaken the competitive rivalry posed by the target and other similar competitors to NAP.
- v. The removal of an effective competitor will likely result in unilateral effects. The Authority believes that the proposed transaction will result in two competing enterprises ceasing to be distinct, thereby removing competitive rivalry between the two. This will allow the merged entity to unilaterally exercise market power. For instance, market power may allow the generation of supernormal profits by raising the rental fees in one or both the Merging Parties' services without any competitive constraints

- vi. There is potential for coordinated effects through the current established cross-shareholding and cross-directorship between the acquiring entity and Delta Palms Mall (which is expected to operate in mid-2021). Firms subject to cross-shareholding may exchange competitively sensitive information more subtly, increasing transparency and reducing market uncertainties in relation to future competitive conduct. Cross-shareholdings in competitor firms can create an element of transparency, and shareholder meetings could provide a forum for active coordination. Cross-shareholdings may generate some element of temptation that may result in a firm providing a competitor with information relating to its future pricing, the allocation of markets, and violating the competition legislation as a result thereof.
- vii. In terms of the Acquisition of a Dominant Position, the Authority noted that both NAP's pre-merger and post-merger market share are above the 25% dominant position threshold; and as such, allowing the consummation of the proposed transaction will result in NAP increasing its concentration in Maun; and consequently increasing its market power in the market under consideration. Furthermore, it should be noted that this increase in concentration has the likely effect of enhancing entry barriers into the relevant market for potential rivals, particularly as the relevant market is already highly concentrated.
- viii. In terms of Public Interest Considerations, the findings of the assessment revealed that there are no public interest concerns that would arise as a result of the proposed transaction.

The Determination

- i. The Authority determined to decline to give approval to the proposed acquisition of a letting enterprise situated at Tribal Lot 1299 Maun, together with the underlying leases and the right to collect rental, as a going concern from El Alamein (Pty) Ltd by New African Properties Ltd, on the grounds that the facts, analysis and the conclusions of the assessment have shown that there are competition concerns that will arise in the market for the provision of rental retail space in shopping complexes on account of the aforementioned acquisition in Maun. The Authority further took cognisance of the fact that:
 - a) The proposed transaction is likely to result in a substantial lessening of competition, due to the removal of a competitor in the form of the target enterprise;
 - b) The implementation of the proposed merger is expected to result in the acquiring entity enhancing its dominant position. The post-merger market shares in the relevant geographic area are considerably higher

than the 25% dominance threshold prescribed by the Competition Act, which raises potential competition concerns;

- c) There are high barriers to entry in the relevant market owing to the difficulty in acquiring commercial land in the relevant market; and
 - d) Finally, cross-shareholding exists between the upcoming mall Delta Palms Mall and the acquiring enterprise through a common shareholder in the form of Cash Bazaar Holdings (Pty) Ltd. This cross-shareholding element has the potential to give rise to both coordinated and unilateral effects to the detriment of consumers and competitors of the merged enterprise.
- ii. Pursuant to the provision of Section 53 of the Act, the Authority has declined to give approval to the proposed acquisition of a letting enterprise situated at Tribal Lot 1299 Maun, together with the underlying leases and the right to collect rental, as a going concern from El Alamein (Pty) Ltd by New African Properties Ltd.

Dated at Gaborone on this 14th day of December 2020.

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