



## **MERGER DECISION NO 31: 2024**

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

#### **MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 50 ORDINARY SHARES REPRESENTING 50% SHAREHOLDING IN WHEKI (PTY) LTD BY SEVENTY5 DEGREES (PTY) LTD FOR AND ON BEHALF OF BOTSWANA PUBLIC OFFICERS PENSION FUND**

##### **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 50 ordinary shares representing 50% shareholding in Wheki (Pty) Ltd ("Wheki" or the "Target Enterprise") by Seventy5 Degrees (Pty) Ltd ("Seventy5 Degrees" or the "Acquiring Enterprise") for and on behalf of the Botswana Public Officers Pension Fund ("BPOPF"), (the "Proposed Transaction"). The transaction involves the acquisition of 50% of the shares currently held by Time Projects (Pty) Ltd ("Time Projects") in the Target Enterprise by Seventy5 Degrees for and on behalf of BPOPF. Following the implementation of the Proposed Transaction, the Target Enterprise will be 50% owned by the Acquiring Enterprise. The transaction was notified to the Authority on the 7<sup>th</sup> August 2024 and the merger assessment was completed on 26<sup>th</sup> August 2024.

The Acquiring Enterprise, Seventy5 Degrees, is a newly established private company incorporated in accordance with the Laws of Botswana. The Acquiring Enterprise does not control any entities in Botswana. Seventy5 Degrees is a duly appointed property asset manager which makes property asset acquisitions for and on behalf of BPOPF which will then be leased for rental income. BPOPF is a pension fund duly licensed and established in accordance with the provisions of the Retirement Funds Act No. 38 of 2022 for public service employees.

On the other hand, the Target Enterprise, Wheki, is a private company duly incorporated in accordance with the Laws of Botswana. Wheki is controlled by C.C. Projects (Pty) Ltd ("C. C. Projects") which owns 50% shareholding, and Time Projects which also holds 50% shareholding. Both C. C. Projects and Time Projects are incorporated in Botswana. C. C. Projects does not control any other enterprise save for the Target Enterprise. Time Projects controls a number of other enterprises, a majority of which are either dormant, except for FSA Property Holdings (Pty) Ltd which is in the business of property investment. The Target Enterprise does not control any enterprise in Botswana.

## **Relevant Markets**

In terms of the activities of the Merging Parties, the Acquiring Enterprise operates as a property asset manager in Botswana and is currently part of an incubation program established by BPOPF. Seventy5 Degrees operates throughout the entire Botswana. In 2022 the BPOPF issued a tender for the provision of property asset management and successfully appointed Seventy5 Degrees as one of two incubation property asset managers. Seventy5 Degrees is therefore a duly appointed property asset manager which makes property asset acquisitions for and on behalf of BPOPF. For completeness, it is noted that BPOPF does hold immovable property through other property asset managers, and these are considered reasonably interchangeable with those of the Target Enterprise. Seventy5 Degrees manages numerous industrial and commercial properties nationally.

On the other hand, the Target Enterprise is a property development company and currently holds one property in its portfolio being Capricorn House, LOT 74768 in the Central Business District, Gaborone.

The assessment indicates that there exists an overlap in the activities of the merging parties as both parties operate in the commercial real estate market. Although this is a horizontal merger, the Authority does not anticipate any competition concerns to arise in the relevant market post-merger as the Target Enterprise's portfolio comprises of only one property, making it a small player in the market. The Acquiring Enterprise is itself a fairly new player in the commercial real estate market. Moreover, the Acquiring Enterprise is expected to face strong competition from existing well-established players including local and multinational commercial property companies. As such, the merged enterprise is expected to continue to face strong competition from the well-established players who are engaged in this market segment.

## **Competitive Analysis and Public Interest**

In the assessment of Substantial Lessening of Competition, the investigations have revealed that both parties operate in the commercial real estate market. However, the Authority does not anticipate the acquisition to result in any substantial lessening of competition post implementation due to the fact that the acquirer is a fairly new entrant in the relevant market, therefore there will be an insignificant change in the market. In addition, there exist other property investment businesses in Botswana owned by diverse individuals and companies that will act as a constraint on the Acquiring Enterprise post-merger.

For the analysis of Acquisition of Dominance, it is important to emphasise 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 not expected to result in the acquisition of a dominant position in the relevant market in Botswana as both the acquirer and the seller are relatively small players in the commercial real estate market. The Target Enterprise's portfolio comprises of only one property and therefore this will have an insignificant accretion to the Acquiring Enterprise's market share. Furthermore, as indicated above, the merged enterprise is expected to face strong competition from the existing well-established players including state-owned and private property investment companies.

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 implementation of the proposed merger would enhance citizen empowerment as the ultimate beneficiary being BPOPF is acquiring these shares on behalf of its members who are citizens of Botswana.

### **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 of 50 ordinary shares representing 50% shareholding in Wheki (Pty) Ltd by Seventy5 Degrees (Pty) Ltd for and on behalf of the Botswana Public Officers Pension Fund, be unconditionally approved.

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 26<sup>th</sup> day of August 2024.

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