



MERGER DECISION NO 39: 2023

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

DECISION ON THE ASSESSMENT OF THE PROPOSED SALE AND PURCHASE OF LOT 18906, SELEBI PHIKWE AND CERTAIN LISTED ASSETS BY SHERASHIYA PROPRIETARY LIMITED FROM PULA STEEL AND CASTING MANUFACTURING PROPRIETARY 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 Sale and Purchase of Lot 18906, Portion of Lot 1, Selebi Phikwe and certain listed assets by Sherashiya (Pty) Ltd ("Sherashiya" or the "Acquiring Enterprise") from Pula Steel and Casting Manufacturing (Pty) Ltd ("Pula Steel" or the "Target Enterprise") (in liquidation). A Purchase Agreement relating to movable and immovable Property was entered into between Pula Steel as represented by the appointed Liquidator, John Hinchliffe and Sherashiya. The transaction was notified to the Authority on 7th of July 2023 and the merger assessment was completed on 25th October 2023.

The Acquiring Enterprise, Sherashiya, is a company incorporated in accordance with the Laws of Botswana. Sherashiya is a relatively new company, as such does not currently provide any products or services in Botswana. The Acquiring Enterprise does not control nor is it controlled by any entities in Botswana.

The Target Enterprise, Pula Steel, is a company incorporated in accordance with the Laws of Botswana. Pula Steel was established on 11th March 2009 as a steel manufacturing company based in Selebi-Phikwe. The Target Enterprise is not controlled by any enterprises nor does it control any entities in Botswana. Pula Steel has been placed under liquidation by order of the court dated 23 February 2018, under the control of a Liquidator, John Hinchliffe. As such, the control and affairs of Pula Steel are vested on the Liquidator.

Relevant Markets

The assessment indicates that the Merging Parties are not involved in the same market. The findings show that the Acquiring Enterprise is a relatively new company which currently does not provide any services in, into or from Botswana. Prior to liquidation, the Target Enterprise was formed to carry out business as a manufacturer of steel billets from steel scrap and subsequent conversion of the billets into end products including angle irons, round bars, man-hole covers, pots, fencing products and other products. Pula Steel does not currently provide any services in or from Botswana but it owns a steel manufacturing plant in Selebi-

Phikwe. Based on the aforementioned and in view of the nature of products and services offered by the Merging Parties, there is no product overlap in the activities of the Merging Parties in Botswana.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigation has revealed that the Merging Parties are not involved in the same market as the target has since stopped operations since 2016. The takeover of the plant by the Acquiring Enterprise will afford the plant an opportunity to resume operations, as such, there are no overlaps in the activities of the Merging Parties.

However, once in operation as a large capacity steel billet manufacturing business in Botswana, it is possible that the Acquiring Enterprise might enter into exclusive supply agreements with scrap metal suppliers in the country which might lead to closure of businesses owned by competitors and depriving market entrants access to scrap material, thereby, contribute to a reduction in competition.

For analysis of Acquisition of Dominance, the findings of the merger assessment indicate that the approval of the proposed transaction would result in the Acquiring Enterprise being a large capacity steel manufacturing business that trades in steel billets in Botswana once in operation. Any other steel manufacturer in Botswana produces steel billets for further processing into finished goods within their own plants. Thus, Sherashiya will be dominant by virtue of acquiring a large capacity manufacturing plant and being the only manufacturer of steel billets for sale. However, since both the Acquiring and Target Enterprises are currently not operational, and are therefore not in the same market, this means that Pula Steel does not have any market share and as such, there will be no market share accretion post implementation of the merger.

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 as the proposed transaction will result in a benefit to the economy of Botswana when the manufacturing of steel resumes. Furthermore, the transaction is likely to benefit a particular industrial sector or region and it may maintain or promote exports and employment among others. Thus the implementation of this merger will lead to employment creation, skills transfer, consumer benefits and citizen economic empowerment. The Authority therefore does not envisage any negative public interest concerns as a result of the same.

The Determination

The Authority determined through the analysis of the facts of the merger that there will be a change in the structure of the relevant market as the new entrant who will undertake the operations of the Pula Steel plant has the ability to use significant volumes of scrap and has the ability to offer attractive buying prices to the scrap suppliers at the detriment of the existing steel manufacturer.

Therefore in an effort to promote market entry, there is need to ensure that potential entrants are not deprived access to metal scrap raw material by virtue of the Acquiring Enterprise undertaking exclusive supply agreements with scrap metal suppliers in Botswana.

Pursuant to the provision of section 53 of the Act, and taking into account the possible competition concerns in relation to the ability of the Acquiring Enterprise to increase barriers to entry into the market for the production of steel products by engaging in exclusive agreements with steel scrap suppliers, the Authority has decided to approve the proposed Sale and Purchase of Lot 18906, Portion of Lot 1, Selebi Phikwe and certain listed assets by Sherashiya (Pty) Ltd from Pula Steel and Casting Manufacturing (Pty) Ltd (in liquidation) with the following conditions:

- a) Sherashiya will not conclude exclusive supply agreements with any of the scrap metal suppliers in Botswana;
- b) Subject to the undertaking, in the event that the merged entity resolves to enter into exclusive supply agreements with scrap metal suppliers in Botswana, they would notify the Authority; and
- c) The merged enterprise shall for a period of (three) 3 years from the implementation date submit to the Authority, a report on each anniversary of the implementation date, detailing its compliance with the conditions of approval and demonstrate its contribution to citizen empowerment, SMMEs, employment and skills transfer.

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 25th day of October 2023.

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