



MERGER DECISION NO 39: 2024

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

DECISION ON THE ASSESSMENT OF THE PROPOSED SALE AND ACQUISITION OF LOT 684, EXTENSION 2, GABORONE AND SHARES IN MAGNUM DEVELOPMENTS (PTY) LTD BY NAZAR KUMAR AND JYOTI BALA

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 acquisition of Lot 684, Extension 2, Gaborone (the "Target Property") and shares in Magnum Developments (Pty) Ltd ("Magnum" or the "Target Enterprise") by Nazar Kumar and Jyoti Bala ("Nazar" and "Jyoti" or the "Acquiring Enterprise").

Following the implementation of the Proposed Transaction, the Acquiring Enterprise will solely own shares in the Target Enterprise as well as the Target Property. The transaction was notified to the Authority on 14th August 2024, and the merger assessment was completed on 25th September 2024.

The Acquiring Enterprise comprises individuals, Nazar and Jyoti. Nazar is an adult male of full legal capacity and Jyoti is an adult female of full legal capacity, both of Indian descent.

Magnum, is a private company duly incorporated in accordance with the Laws of Botswana. Magnum is owned by Shyam Sunder Arora ("Shyam") and Autash Arora (both Botswana) at 50% shareholding each and are both the Target Enterprise's Directors. Magnum does not control any enterprise in Botswana.

Relevant Markets

In terms of the activities of the Merging Parties, the Acquiring Enterprise is made up of Nazar and Jyoti, two individuals with shareholder interests in Optical Centre (Botswana) (Pty) Ltd ("Optical Centre"), along with Shyam Sunder Arora. Optical Centre is an optometry practice health care in the business of eye care specialty.

On the other hand, the Target Enterprise is a property rental company and currently holds one property in its portfolio, being the Target Property.

The assessment indicates that there exists no overlap in the activities of the merging parties as the Acquiring Enterprise are individuals whereas the Target Enterprise is a property rental company. However, the Acquiring Enterprise, along with one of the shareholders from the Target Enterprise, Shyam Sunder Arora, are all shareholders and directors (in their individual capacities) in Optical Centre. Further, Optical Centre is a tenant of the property owned by the Target Enterprise.

Nonetheless, Optical Centre is not party to the proposed transaction, nor does it operate in the same market as the Target Enterprise. Therefore, the Authority does not anticipate

any competition concerns to arise in the relevant market post-merger as the Target Enterprise's portfolio comprises only one property, making it a fairly small player in the market.

Moreover, the Acquiring Enterprise is expected to face strong competition from existing well-established players including local and multinational commercial property companies. For this reason, it's clear that the market under consideration is highly competitive and is characterised by many active participants.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the Acquiring Enterprise is made up of individuals, whereas the Target Enterprise operates in the commercial real estate market. The Authority does not anticipate the acquisition to result in any substantial lessening of competition post implementation since the seller is a fairly small player in the relevant market, and there is no overlap in the activities of the Merging Parties. 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.

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 the acquirers are individuals and the seller are indifferent markets. The Target Enterprise's portfolio comprises of only one property which will then be owned by the Acquiring Enterprise post-merger. Furthermore, as indicated above in the report, 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. All tenants will remain unaffected by the proposed transaction.

The Determination

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market is not going to change upon implementation of the proposed transaction. As such, no competition concerns will arise. Furthermore, the proposed merger will not have any negative effects 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 sale and acquisition of Lot 684, Extension 2, Gaborone and shares in Magnum Developments (Pty) Ltd by Nazar Kumar and Jyoti Bala.

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 September 2024.

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