

MERGER DECISION NO 42 OF 2023

MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED SALE AND PURCHASE OF SECTIONAL TITLE ON LOT 54366, FROM M3 PROPRIETARY LIMITED BY LETSEMA PROPERTY FUND II ON BEHALF OF BOTSWANA PUBLIC OFFICERS PENSION FUND THROUGH MESSIDOR INVESTMENTS (PTY) LTD

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 Sectional Title No. 1 of Peelo Place Scheme on Lot 54366, Gaborone (the "Target Property"), from M3 Proprietary Limited ("M3" or "the Target Enterprise") by Letsema Property Fund II ("Letsema" or "the Acquiring Enterprise") on behalf of Botswana Public Officers Pension Fund ("BPOPF"), through Messidor Investments (Pty) Ltd ("Messidor"). The transaction involves full transfer of ownership of the Target Property from M3 to Letsema. The transaction was notified to the Authority on the 26th September 2023 and the merger assessment was completed on 10th November 2023.

The Acquiring Enterprise, Letsema is an asset class managed by Messidor on behalf of the BPOPF. Messidor is an asset manager and advisor in real estate, which manages, advises and invests on behalf of Letsema Property Fund II which is owned by BPOPF. 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 in Botswana.

On the other hand, the Target Enterprise, M3, is a company incorporated in accordance with the Laws of Botswana. The Target Enterprise is not controlled by any entities nor does it control any other entity in Botswana.

Relevant Markets

The Merging Parties are companies duly incorporated in accordance with the Laws of Botswana. The Acquiring Enterprise, Letsema acquires property on behalf of the BPOPF, which are then leased for rental income. For completeness, as part of its alternative asset classes, BPOPF allocated funds through its Letsema Property Fund II to Messidor Investments as the Property Asset Manager of the Fund, for investment purposes. On the other hand, the Target Enterprise is a civil engineering consulting firm that has been in existence for more than 20 years. M3 offers civil engineering design and supervision services to the government and private sector. M3 had bought the property in question from BPOPF in 2020 as part of an agreement and is now reselling it back to them. The Target Property is the

only property that M3 owns and is currently being rented out, thus the Target Enterprise is also currently engaged in the business of property leasing. As such, there exists an overlap in the activities of the Merging Parties.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigation has revealed that both the Acquirer and the Target Entity own rental property and derive rental income hence are active in Botswana's rental property market. However, the Target Enterprise only owns the property which is the subject of the proposed merger. Based on the fragmented nature of the rental property market, this merger is not anticipated to result in any significant changes in the relevant market. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition post implementation due to the fact that there exists a number of other property investment companies in Botswana owned by diverse individuals and companies that will act as a constraint on the merged entity, 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. As such, 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 merger constitutes an acquisition of a property owned by the Target Enterprise which constitutes an insignificant market share. In addition the Proposed Transaction is only expected to contribute to the investment portfolio of the Acquiring Enterprise and therefore will have an insignificant accretion to its market share. 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. The implementation of the proposed merger would enhance citizen empowerment as BPOPF is investing 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 sale and purchase of Sectional Title on Lot

54366, from M3 Proprietary Limited by Letsema Property Fund II on behalf of Botswana Public Officers Pension Fund through Messidor Investments (Pty) Ltd.

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 10th day of November 2023.

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