



MERGER DECISION NO 14: 2021

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

DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 100% OF THE ISSUED SHARE CAPITAL IN KRUGER AGENCIES TECHNOLOGY (PTY) LTD BY MR. JAGDISH SHAH

Introduction of the Merging Parties

Pursuant to section 53(4)(a)(ii) of the Competition Act of 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 6000 shares, being 100% of the issued share capital of Kruger Agencies (Pty) Ltd ("Kruger Agencies" or "the Target Enterprise") by Mr. Jagdish Shah ("the Acquirer"). The transaction was notified to the Authority on 23rd February 2021 and the merger assessment was completed on 12th March 2021.

The Acquirer, Mr. Jagdish Shah, is an adult Motswana male of full legal capacity trading as a business man with diverse business interests registered and operating in accordance to the Laws of Botswana.

The Target Enterprise, Kruger Agencies, is a company registered in accordance to the Laws of Botswana. The Target Enterprise is in the business of the wholesale and supply of household appliances, camping items, garden items and electronic items to retailers in Botswana. Kruger Agencies is situated and operates in Gaborone but its products are supplied to all major towns in Botswana. The shareholders of the target are Mr. Robert Kruger (75%) and Mrs Sian Kathryn Kruger (25%).

Relevant Markets

The Acquirer trades as a business man and has interests in various businesses which are registered and operate in accordance with the Laws of Botswana. These mentioned businesses fall within categories such as: Gym & Fitness; Farms; Loan Funding; Pharmacies; Soccer Management; Football League management; Medical supplies; Agricultural products; Advertising and marketing, Pharmaceutical wholesale; Merchandise sales; Internet provider, Warehouse property; and Insurance provider.

The Target Enterprise is in the business of the wholesale and supply of household appliances, camping items, garden items and electronic items to retailers in Botswana. Kruger Agencies is situated and operates in Gaborone but its products

are supplied to all major cities and towns (Gaborone, Jwaneng, Francistown, Selibe-Phikwe, Palapye, Mahalapye as well as Maun, Ghanzi, Tsabong and Kasane in Botswana).

The assessment of the proposed merger has revealed that the Acquirer does not own any business which is engaged in activities similar to those of the Target Enterprise hence the Acquirer is not involved in the markets in which the Target Enterprise is active.

Geographic Market

The geographical market is national hence the entire Botswana country.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the proposed transaction is not expected to reduce the level of competition in the market under consideration in Botswana. The assessment of the proposed merger did not reveal any overlap between the Merging Parties' activities. Therefore, the transaction under assessment is not anticipated to change the structure of the relevant market post implementation of the merger. The Authority does not expect the proposed transaction to give rise to any Substantial Lessening of Competition; restrict trade or the provision of services; or to endanger the continuity of supplies in the relevant market in Botswana.

The analysis further indicates that the proposed merger will not result in any Acquisition of a Dominant Position by the merged entity or by any enterprise in Botswana, due to the absence of product overlap in the activities of the Merging Parties. Therefore, the merged entity will not attain any dominant position on account of the proposed transaction.

In terms of Public Interest Considerations, the merger assessment findings did not reveal any detriment to matters of public interest that will arise as a result of the transaction under consideration. The Acquirer intends to maintain the current employees in the Target Enterprise and undertakes not to terminate any of the current employees' contracts.

With regard to skills transfer, the Director of the Kruger Agencies, shall continue to be employed as a Managing Director in the company for at least a year with the intention to train a citizen with the skills necessary to undertake the role and position. Furthermore, for all positions which are held by expatriate staff in the company, the Acquirer shall appoint Citizen Understudies who shall take over the roles performed by the expatriates when their contracts come to an end.

It is important to note that the proposed transaction involves the disposal of the entire shares capital of a Botswana domiciled company which at present is wholly owned by non-citizens to a citizen of Botswana. The Authority does not foresee any

detriment to matters of public interest that will arise as a result of the transaction under consideration particularly as the parties have made undertakings to empower citizens through employment.

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 the implementation of the proposed merger and the proposed transaction is not likely to result in any adverse effects on competition, nor endanger the continuity of the supply of goods and services in the relevant market in Botswana. 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.

However, based on the undertakings submitted by the Merging Parties regarding Public Interest considerations, the Authority is dedicated to monitor and ensure that the Merged Enterprise delivers on its Commitments.

Pursuant to the provision of section 53 of the Act, and based on the Commitments advanced by the Merging Parties, the Authority has approved the proposed acquisition of 6000 shares, being 100% of the issued share capital of Kruger Agencies (Pty) Ltd by Mr. Jagdish Shah, with the undertakings that:

1. There shall be no termination of any of the current employees of the Target Enterprise;
2. The Director of the Kruger Agencies, shall continue to be employed as a Managing Director in the company for at least one (1) year with the intention to train a Citizen with the skills necessary to undertake the role and position within 18 months from the date of implementation. Furthermore, for all positions which are held by expatriate staff in the company, the Acquirer shall appoint citizen understudies who shall take over the roles performed by the expatriates when their contracts come to end; and
3. The Merged Enterprise should revert to the Competition and Consumer Authority within 24 months from the date of approval, with a status report regarding the above undertakings.

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 12th day of March 2021.

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