



## **MERGER DECISION NO 18 OF 2023**

### **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 AND ALL SALE CLAIMS OF MTN BUSINESS SOLUTIONS BOTSWANA (PTY) LTD BY MASCOM WIRELESS BOTSWANA (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 proposed acquisition of 100% of the issued share capital and all sale claims of MTN Business Solutions Botswana (Pty) Ltd ["MTN Botswana"] by Mascom Wireless Botswana (Pty) Ltd ["Mascom"]. The transaction was notified to the Authority on 8<sup>th</sup> February 2023, and the merger assessment was completed on 15<sup>th</sup> June 2023.

The Acquiring Enterprise, Mascom is a company incorporated in accordance with the Laws of the Republic of Botswana. Mascom is controlled by Deci Investments (Pty) Ltd at 60% and Econet Wireless Citizens at 40%. Mascom wholly controls Direct Bpo (Pty) Ltd, a Botswana registered company. It is principally a mobile carrier operating in Botswana, and operates a global system for mobile communications network in Botswana. It also sells various products and services ancillary to its operations mobile telecommunications network provider such as cellular devices, modems, tablets, internet and wireless fidelity (WIFI) services.

The Target Enterprise, MTN Botswana, is a company incorporated in accordance with the Laws of Republic of Botswana. MTN Botswana does not control any entity in Botswana. MTN Botswana is controlled by MTN Business Solutions (Pty) Ltd, a company registered in South Africa. MTN Botswana is an internet service provider. It offers internet services and other business solutions through a virtual private network.

##### **Relevant Markets**

In terms of the relevant markets, the assessment of the Proposed Transaction revealed that the Merging Parties are both licence holders of Network and Facilities Provider ("NFP") and Services and Applications Providers ("SAP"). The two aforementioned licenses are among the functions that allow an entity to operate

as an Internet Service Provider (ISP). The highlighted services are licenced by the Botswana Communications Regulatory Authority (BOCRA). The assessment of the merger established that over and above the NFP and SAP licenses, the Acquiring Enterprise holds the Public Telecommunications Operator (PTO) license, which is a multi service license that allows the holder to build wireline, wireless, satellite infrastructure, and provide voice, data and internet services at both national and international levels.

It is important to note that there is an overlap in the activities of the Merging Parties as they are both licensed to operate in the ISP market and the only distinction is that the acquiring entity utilises a mobile router (sim drive and depends on cellular network) while the Target Entity uses fixed routers.

For completeness, the Authority also identified that, in the ISP market, there are corporate service providers and household service providers as well as the ISP, which is a service that dabble in both spaces. MTN operates in the corporate ISP market while Mascom provides internet services to both businesses (corporate) and households. The general industry practice is that local Internet Service Providers lease out the fibre network infrastructure (including *inter alia* network towers) from the Botswana Fibre Networks' (BoFiNet), and then lease out these network towers services further to (local Mobile Network Operators (MNO's).

The assessment further revealed that Mascom owns a cellular network infrastructure being a cellular tower and it uses the facility to provide internet access to other Internet Service Providers ("ISPs") including the Target Entity, as well as other businesses and consumers. It is worth noting that though the Target Entity has an NPF license, it does not have the internet infrastructure.

### **Competitive Analysis and Public Interest**

The Authority's assessment did not reveal any substantial lessening of competition concerns that would arise as a result of the Proposed Transaction due to the following:

- a) The Authority notes that though the market for the provision of internet services in Botswana is highly concentrated, this is not on account of the proposed transaction; and as such it is not expected that there will be substantial lessening of competition post-merger;
- b) In addition, the Authority notes that the acquirer is already dominant in the market under consideration but it should be noted that Mascom is acquiring a minimal market share of the Target Firm hence the proposed merger will lead to an insignificant market share accretion. Thus, the Authority is of the view that the state of competition is expected to insignificantly change post implementation as the result of the transaction at hand;

- c) Furthermore, there is a limited countervailing power in the market under consideration due to the fact that, there is only one (1) wholesaler in Botswana (BoFiNet) where most of the downstream players source their services. However, the market is regulated and both the wholesale and retail pricing structure is transparent. In the event of major disagreement, BOCRA intervenes and makes a determination on matters under dispute as a regulator of the relevant market. The Authority is therefore of the view that such interventions by the sector regulator will make Substantial Lessening of Competition unlikely;
- d) Moreover, the implementation of this transaction is expected to slightly change the structure of the market as Target Firm has an insignificant market share. Therefore, the proposed transaction does not constitute the removal of an effective competitor in the market under consideration;
- e) Also, the existence of the top two (2) players (BTC and Orange Botswana) and other smaller ISPs, will ensure continued post-merger competitive pressure; and as such act as a constraint on the Merged Entity;
- f) Additionally, though the Merging Parties' activities overlap with respect to the provision of internet services, it is noted that the overlap is minimal. Therefore, unilateral effects are not expected to arise in the market under consideration as the merging parties will continue to face competition from the larger players currently in the market; and
- g) Likewise, the proposed transaction will result in the Merged Entity acquiring a market share which is significantly below the dominance threshold of 25%. Therefore, it is unlikely for the merger to enhance or give the merged entity any market power. Post-merger the Merged enterprise will continue to have larger players such as BTC and Orange Botswana posing a competitive constraint.

In terms of Public Interest Considerations, the findings of the assessment revealed that the employment of the Target Entity will be retained under the Merged Entity post implementation of the Proposed Transaction. Taking this consideration into account, the Authority does not envisage any adverse public interest concerns as a result of the implementation of the proposed transaction.

In light of the above, the Authority does not anticipate any competition concerns and public interests concerns to arise in the relevant market in Botswana post implementation of the Proposed Merger.

## The Determination

The Authority determined through the analysis of the facts of the merger, that there are no substantive competition concerns that will arise in the *market for the provision of internet services in Botswana*, given the fact that:

- a) The proposed transaction will slightly alter the structure of the markets under consideration;
- b) The merger would result in the Merged Entity attaining dominant position in the market under consideration, however the dominance is not as a result of the merger, it's a pre-existing position on behalf of the Acquiring Entity;
- c) The merger would not enhance the Merged Entity's ability to abuse dominant position because there will be no incentive to engage in input foreclosure post-merger; and
- d) In terms of Public Interest considerations, the findings of the assessment revealed that there are no public interest concerns that would arise as a result of the proposed transaction.

Pursuant to the provision of section 53 of the Act, the Authority has decided to *unconditionally approve* the proposed acquisition of 100% of the issued share capital and all sale claims of MTN Business Solutions Botswana (Pty) Ltd by Mascom Wireless Botswana (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 15<sup>th</sup> day of June 2023.

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