



MERGER DECISION NO 20: 2021

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

DECISION ON THE PROPOSED ACQUISITION OF THE REMAINING ISSUED SHARES IN MASHATU INVESTMENTS (PTY) LTD, FROM DAVID EVANS INVESTMENT TRUST BY PULA PROPERTIES LIMITED, RESULTING IN SOLE CONTROL

Introduction of the Merging Parties

- i. 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 respect of the proposed acquisition of the remaining issued shares in Mashatu Investment (Pty) Ltd [“Mashatu Investment”], from David Evans Investment Trust (“DEIT”) by Pula Properties Limited [“Pula Properties”]. The transaction was notified to The Authority on 7th April 2021 and the merger assessment was completed on 28th May 2021.
- ii. The Acquiring Enterprise, Pula Properties, is a company incorporated under the Laws of Guernsey. Pula Properties is an investment holding company, with a wide range of investments including lodges, aircraft leasing and financing.
- iii. The Target Enterprise, Mashatu Investment, is a company incorporated under the Laws of South Africa. Mashatu Investments is currently controlled equally by Pula Properties and DEIT, a Trust based in South Africa. Mashatu Investment and Botswana Development Corporation control Mashatu Nature Reserve (Pty) Ltd. Mashatu Nature Reserve operates Mashatu Game Reserve, which is located in the Northern Tuli Game Reserve.

Relevant Markets

- i. In terms of the relevant market, the assessment of the Proposed Transaction revealed that the Acquiring Firm is an investment holding company, with a wide range of investments including lodges, aircraft leasing and financing while the Target Entity provides a range of management services to Mashatu Nature Reserve.
- ii. Due to the transaction being an internal restructuring, the Authority maintains that it is not necessary to reach a definitive view on the exact scope of the product market, as the market structure is not expected to change post implementation of the proposed transaction.

Competitive Analysis and Public Interest

- i. The Authority's assessment did not reveal any substantial lessening of competition concerns that would arise as result of the Proposed Transaction due transaction being purely a restructuring and amounts to a realignment of the business activities of the entities involved; and as such, there will be no change in the market as the status quo will be maintained. However, the proposed merger *may* have negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act of 2018.

The Determination

- i. The Authority determined through the analysis of the facts of the merger, that the proposed transaction is not likely to result in the prevention or substantial lessening of competition, or endanger the continuity of the service offered in the relevant market. However, the proposed merger *may* have negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act of 2018.
- ii. Pursuant to the provision of section 53 of the Competition Act, the Authority has decided to approve the proposed acquisition of the remaining issued shares in Mashatu Investment (Pty) Ltd, from David Evans Investment Trust by Pula Properties Limited, with the condition that:
 - A. *There will be no merger specific retrenchments. For clarity, merger specific retrenchments or redundancies do not include:*
 - a) *voluntary retrenchment and/or voluntary separation arrangements;*
 - b) *voluntary early retirement packages;*
 - c) *unreasonable refusals to be redeployed;*
 - d) *resignations or retirements in the ordinary course of business;*
 - e) *retrenchments lawfully effected for operational requirements unrelated to the Merger; and*
 - f) *terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.*
 - B. *The conditions shall last for a period of three (3) years from the date of implementation*

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 28th day of May 2021.

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