



MERGER DECISION NO 22: 2021

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

DECISION ON THE PROPOSED ACQUISITION OF 35% OF THE ISSUED SHARE CAPITAL IN FOUDELLO (PTY) LTD BY BOTSWANA OPPORTUNITY PARTNERSHIP

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 acquisition of 35% of the issued share capital in Foudello (Pty) Ltd ("Foudello" or the "Target Enterprise") by Botswana Opportunity Partnership ("BOP" or the "Acquiring Enterprise"). The transaction was notified to the Authority on 16th April 2021 and the merger assessment was completed on 3rd June 2021.

The proposed transaction is described as a share restructuring undertaking which involves BOP acquiring 25% of the issued share capital from Capital Management Botswana (Pty) Ltd ("CMB") and 10% from the Bona Life Employee Share Incentive Trust ("ESS") and ultimately increasing its shareholding in Foudello to 75%.

CMB is a limited company registered in accordance with the Laws of Botswana and is currently under liquidation. The Acquiring Enterprise, BOP, is described as an *en commandite* partnership which is set to acquire, hold and dispose of investments and it is duly established in accordance with the Laws of Botswana. BOP is represented by its General Partner, Vilttry (Pty) Ltd which is in-turn controlled by Botswana Public officers Pension Fund ("BPOPF").

BPOPF is a pension fund for public service employees registered under the Pension Fund and Provident Funds Act. BOP has a 50% controlling stake in Cell City.

The Target Enterprise, Foudello, is a holding company registered in accordance with the Laws of Botswana. Foudello has no operations and it is not controlled by any enterprise or group of enterprises. The shareholders of Foudello are: Dumilano Reginah Sikalesele (25%); (CMB) (25%); Botswana Opportunities Partnership (40%); and Bona Life Employee Share Incentive (10%). Foudello wholly owns Bona Life Insurance (Pty) Ltd ("Bona Life"), a company also registered in accordance with the Laws of Botswana and active in the insurance industry.

Relevant Markets

The Target Enterprise, Foudello, is a holding company registered in accordance with the Laws of Botswana and has its operations through its wholly owned subsidiary, Bona Life. Bona Life is a registered life insurer offering retirement and annuity as well as group and individual funeral products to Botswana. In view of the nature of the products and services offered by the Target Enterprise through Bona Life, the market under consideration is defined as the provision of long term insurance specifically: Retirement and Annuity; and Funeral (both group and individual).

Geographic Market

The geographical market is national (Botswana).

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the proposed transaction involves an internal share restructuring which entails BOP acquiring 25% of the issued share capital from CMB and 10% from ESS ultimately increasing its shareholding in Foudello to 75%. The proposed transaction is not expected to reduce the level of competition in the market under consideration in Botswana. Therefore, 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 of the proposed transaction further revealed that the structure of the relevant market will not significantly change post-merger, therefore the merged entity will not attain any dominant position on account of the proposed transaction. The proposed transaction is therefore not expected to result in a market share accretion of the merged entity or any other entity in Botswana.

In terms of Public Interest Considerations, the Authority does not foresee any detriment to matters of public interest that will arise as result of the proposed transaction. Particularly, the proposed merger is not expected to have any adverse effects on employment. The findings of the assessment of the proposed transaction shows that the adopted restructuring of Bona Life was in the public interest as all other credible options explored (taking into account the corrective sequence as articulated under section 46 of the Insurance Industry Act, 2015) would have resulted in severe and irreversible prejudice to the 600+ Pensioners of Bona Life and to the other Life Assurance Policy holders.

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.

Pursuant to the provision of section 53 of the Act, the Authority has unconditionally approved the proposed acquisition of 35% of the issued share capital in Foudello (Pty) Ltd by Botswana Opportunity Partnership.

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 4th day of June 2021.

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