



MERGER DECISION NO 30: 2020

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

THE PROPOSED SALE AND PURCHASE OF AN IMMOVABLE PROPERTY SITUATED ON PORTION 1113 (A PORTION OF PORTION 3) OF THE FARM FOREST HILL NO.9-KO GABORONE FROM LEAL HOLDINGS (PTY) LTD TO KENSAL RISE (PTY) LTD

Introduction of the Merging Parties

- i. 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 sale and purchase of an immovable property situated on portion 1113 (a portion of portion 3) of the Farm Forest Hill NO.9-KO Gaborone from Leal Holdings (Pty) Ltd ("Leal Holdings") to Kensal Rise (Pty) Ltd ("Kensal Rise"). The transaction was notified to the Authority on 2th December 2020 and the merger assessment was completed on 17th December 2020.
- ii. The Acquiring Enterprise, Kensal Rise, is a company incorporated in accordance with the Laws of the Republic of Botswana. Kensal Rise is directly controlled by IHS Fund II SSA and indirectly controlled by IHS Fund Two (Namibia GP) Proprietary Limited. Both IHS Fund II SSA and IHS Fund Two (Namibia GP) Proprietary Limited are companies incorporated in accordance with Laws of Namibia. Kensal Rise is involved in the renting out of residential properties in Gaborone and the company also intends to sell residential property.
- iii. The Target Enterprise, Leal Holdings is a company incorporated in accordance with the Laws of the Republic of Botswana. The following companies directly or indirectly controls Leal Holdings: Distant Horizons (Pty) Ltd; Elmsway Consultancy (Pty) Ltd; Brightlad Holdings (Pty) Ltd; and E-man Enterprises (Pty) Ltd. Leal Holdings is involved in property development market (mainly residential apartments) in Botswana.

Relevant Markets

- iv. In terms of the relevant market, the assessment of the proposed transaction revealed that both the acquirer and the target are active in the same line of business (residential property) and therefore there is presence of product overlap in the business activities of the Merging Parties.

- v. The Acquiring Enterprise, Kensal Rise, is involved in renting out of residential properties in Gaborone and the company also intends to sell residential property.
- vi. On the other hand, the target enterprise, Leol Holdings, is engaged in the property development business that mainly focuses on residential apartments in Gaborone.
- vii. Therefore, for purposes of analysing the proposed transaction, and in view of the nature of the products and services offered by the Merging Parties, precisely the target entity, the Authority determined the relevant product market as residential property development in Gaborone area.

Competitive Analysis and Public Interest concerns

- viii. In the assessment of Substantial Lessening of Competition, the Authority discovered that there is presence of product overlap in the activities of the Merging Parties since the target enterprise and the acquiring enterprise are active in the same line of business. However, the Authority is cognisant of the fact that there are other real estate investment companies in Gaborone owned by diverse individuals and institutions that will act as a constraint on the merged entity, post-merger. In this regard, the Authority does not expect the proposed transaction to give rise to any substantial lessening of competition or restrict trade or the provision of services or to endanger the continuity of supplies in the relevant market in Botswana.
- ix. In terms of the Acquisition of a Dominant Position, the analysis shows that the proposed merger will not result in the acquisition of a dominant position by the merged entity. The Authority acknowledges that the continued existence of a plethora of property investment companies in Gaborone will pose a competitive constraint to the merged entity post-merger, and ensure that rivalry continues to discipline the commercial behavior of the merged firms and, as such, the merged entity will not attain a dominant position on account of the transaction. Therefore the Authority does not foresee an acquisition of a dominant position in the market under consideration or any other market on the account of the proposed transaction.
- x. With regards to Public Interest Considerations, the merger assessment findings did not reveal any detriment to matters of public interest that will arise as result of the transaction under consideration.

The Determination

- xi. The Authority determined through the analysis of the facts of the merger, that the proposed transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service 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 of 2018.

- xii. Pursuant to the provision of section 53 of the Act, the Authority has unconditionally approved the proposed sale and purchase of an immovable property situated on portion 1113 (a portion of portion 3) of the Farm Forest Hill NO.9-KO Gaborone from Leodal Holdings (Pty) Ltd to Kensal Rise (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.

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