



MERGER DECISION NO 30: 2024

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

MERGER DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF CONTROL BY KPMG SOUTHERN AFRICA LLP ON A TECHNICAL BASIS OVER THE SOUTHERN AFRICA ENTERPRISES INCLUDING KPMG PARTNERSHIP IN BOTSWANA AND KPMG SERVICES 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 the proposed acquisition of control by KPMG Southern Africa LLP ("KPMG LLP", or the "Acquiring Enterprise") on a technical basis over the Southern Africa Enterprises including KPMG Partnership in Botswana ("KPMG Partnership") and KPMG Services Botswana (Pty) Ltd ("KPMG Services"), (collectively "KPMG Botswana" or the "Target Enterprises").

Following implementation of the proposed transaction, the Acquiring Enterprise will exercise material influence over the Target Enterprises and the Acquiring Enterprise's members will be the current partners, shareholders and members of the Southern Africa Enterprises (including the current partners, shareholders and members of the Target Enterprises). The transaction was notified to the Authority on the 4th June 2024 and the merger assessment was completed on 23rd August 2024.

The Acquiring Enterprise, KPMG LLP, is incorporated under the Laws of Mauritius. KPMG LLP is incorporated for the purposes of the proposed transaction. The Acquiring Enterprise does not directly or indirectly control any enterprises that are incorporated in or have operations in Botswana. The Acquiring Enterprise is not controlled by any other enterprise(s).

KPMG is the brand under which the member firms (enterprises) of KPMG International ("KPMG International") operate and provide professional services. Each firm is a separate legal entity and together they form the KPMG global organisation. KPMG International is a company limited by guarantee incorporated in England and Wales. KPMG does not control the various member firms including KPMG Partnership and KPMG Services. Furthermore, KPMG International does not own any shares in these member firms.

The Target Enterprises, KPMG Partnership and KPMG Services are both organised and existing under the Laws of Botswana. Neither KPMG Partnership nor KPMG Services are controlled by any enterprise(s). KPMG Partnership and KPMG Services do not control any enterprise(s).

Relevant Markets

In terms of the activities of the Merging Parties, the Acquiring Enterprise does not conduct any business activities as it was solely incorporated for the purposes of the proposed transaction. Moreover, KPMG LLP has no presence in Botswana and therefore it does not provide any products or services in Botswana.

For the Target Enterprises, KPMG Services is a dormant entity. On the other hand, KPMG Partnership provides audit, accounting, tax and corporate advisory services in Botswana. In respect of auditing and accounting services, it performs independent audits of the annual financial statements of companies. In respect of tax services, it prepares tax computations and returns. It also reviews tax computations and tax computation templates prepared in-house. Additionally, it provides assistance in respect of the management of tax compliances processes. In respect of corporate advisory services, it provides deal advisory, management consulting, accounting advisory and risk consulting services.

The assessment indicates that there exists no horizontal overlap in the activities of the merging parties given that the proposed transaction essentially amounts to an internal restructuring; and the Acquiring Enterprise does not conduct any business activities. KPMG Services is dormant while KPMG Partnership provides audit, accounting, tax and corporate advisory services in Botswana. The Acquiring Enterprise will not acquire any shares or membership interests in the Target Enterprises. Instead, an internal restructuring transaction will be implemented to enable the Acquiring Enterprise to exercise material influence over the Target Enterprises. As such, there will be no impact on the day to day operation and management of the KPMG business in Botswana. Moreover, there are active alternative service providers available within the industry for the provision of audit, accounting, tax and corporate advisory services in Botswana. In addition, this market is regulated by the Botswana Accountancy Oversight Authority and the Botswana Institute of Chartered Accountants. The preliminary assessment of the merger therefore shows that the proposed transaction will not have the effect of substantially preventing or lessening competition in the relevant market that may be found to exist as this is merely an internal restructuring.

Competitive Analysis and Public Interest

In the assessment of Substantial Lessening of Competition, the investigations have revealed that the proposed transaction is an internal restructuring to enable the Acquiring Enterprise to exercise material influence over the Target Enterprises. In addition, the industry for the provision of audit, accounting, tax and corporate advisory services in Botswana is highly competitive and characterised by a number of players in the market. As such, the Merged Enterprise is expected to continue to face strong competition from well-established players who are engaged in this market segment.

For the analysis of Acquisition of Dominance, it is important to emphasise that a dominant position in the context of section 2 of the Competition Act 2018, refers to a situation in which one or more enterprises possess such economic strength in a market as to allow the enterprise or enterprises to adjust prices or output without effective constraint from competitors or potential competitors.

The implementation of the Proposed Merger is not expected to result in the acquisition of a dominant position in the relevant market in Botswana as the market share of the Target Enterprise(s) will remain the same post-merger. The Acquiring Enterprise will only be acquiring material influence over the Target Enterprise and will not be acquiring any shares in the Target Enterprises. Moreover, the Acquiring Enterprise is not active nor present in Botswana. Furthermore, as indicated above, the Merged Enterprise is expected to face strong competition from existing players who are engaged in this market segment.

In terms of Public Interest considerations, the Authority does not foresee any detriment to matters of public interest that will arise as a result of the transaction under consideration. No job losses or negative impact on enhancing the competitiveness of citizen-owned small and medium sized enterprises are anticipated in Botswana as a result of the proposed merger.

The Determination

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market is not going to change upon implementation of the proposed transaction, as it is an internal restructuring. As such, no competition concerns will arise. Furthermore, the proposed merger will not have any negative effects 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 decided to unconditionally approve the proposed acquisition of control by KPMG Southern Africa LLP on a technical basis over the Southern Africa Enterprises including KPMG Partnership in Botswana and KPMG Services 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 23rd day of August 2024.

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