



MERGER DECISION NO 31: 2020

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

THE PROPOSED ACQUISITION OF A CERTAIN IMMOVABLE PROPERTY BEING A FARM IN THE GHANZI DISTRICT, FARM BRAKPAN NO. 111-NL FROM LAMBERTUS JOHANNES VORSTER TO TSHUKUDU METALS BOTSWANA (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 acquisition of a certain immovable property being a farm in the Ghanzi District, farm Brakpan No. 111-NL from Lambertus Johannes Vorster ("Vorster") to Tshukudu Metals Botswana (Pty) Ltd ("*Tshukudu Metals*"). The transaction was notified to the Authority on 8th December 2020 and the merger assessment was completed on 17th December 2020.
- ii. The Acquiring Enterprise, Tshukudu Metals, is a limited liability company incorporated in terms of the company Laws of the Republic of Botswana. The acquirer is a full subsidiary of Sandfire Resources Limited (Sandfire), a company incorporated in terms of the company Laws of Australia and is listed on the Australian Stock Exchange. Sandfire is not directly or indirectly controlled by any firm. However, Sandfire controls the following entities, none of which has operations in Botswana: Sandfire Resources America Inc; Sandfire BC Holdings (Australia Pty Ltd; Sandfire BC Holdings Inc; Sandfire Copper & Gold Peru S.A.; Sandfire (RMP) Pty Ltd; Sandfire (RMP) Inc. EMEA(BIH) Pty Ltd and Triassic Resources d.o.o. Sandfire entered the Botswana market last year (2019) through the acquisition of MOD Resources Limited(now Sandfire Resources Botswana Pty Ltd) which at the time, was involved in the feasibility study of the Motheo copper project and copper exploration in the country through MOD Resources Botswana (Pty) Ltd; Tshukudu Exploration Botswana (Pty) Ltd; and Tshukudu Metals.
- iii. Tshukudu Metals is directly controlled by Metal Capital Limited and indirectly controlled by Sandfire Resources Botswana (Pty) Ltd. The acquirer is a mineral exploration company that has recently completed a definitive feasibility study on the Motheo copper project which is intended to commence development of the Motheo Copper Project in early 2021. Therefore, it suffices to indicate that Tshukudu Metals has not yet

commenced mining and, as such, does not provide any service or sell any goods into or from Botswana.

- iv. The Seller, Lambertus Johannes Vorster, is a Motswana residing at Farm 111-NL, Ghanzi District. Vorster has interest in the following companies: Tshukudu Transport (Pty) Ltd; Tshukudu Carriers (Pty) Ltd; Tebaliah (Pty) Ltd; Neorider (Pty) Ltd; Rich Tone (Pty) Ltd; Tshukudu Earth Moving (Pty) Ltd; Gharial (Pty) Ltd; Gainline (Pty) Ltd; Webble Enterprises (Pty) Ltd; Netcordia (Pty) Ltd; Habourwell (Pty) Ltd; and Bushventure Trading (Pty) Ltd.

Relevant Markets

- v. In terms of the relevant market, the assessment of the proposed transaction revealed that the acquiring enterprise are incorporated in accordance with the Laws of Botswana. Investigation reveal that the Merging Parties are not active in the same line of business and therefore there is no product overlap in the business activities of the Merging Parties.
- vi. The Acquiring Enterprise, Tshukudu Metals, is a mineral exploration company that has recently completed a definitive feasibility study on the Motheo copper project which is intended to commence development of the Motheo copper project in early 2021. Presently Tshukudu Metals has not developed the Motheo Project or any of its projects yet and has not commenced mining. Therefore, it can be concluded that it does not provide any service or sell any goods into or from Botswana.
- vii. On the other hand, the Target Enterprise, Vorster, is an individual who owns multiple farms in Ghanzi District in Republic of Botswana.
- viii. From the description of the markets of the parties, it is deduced that the acquirer is into mineral explorations, though it has not commenced operations and the seller is an owner of a farm which is being targeted by the acquirer. The seller (or his businesses) has no any business interest in mineral exploration or mining. Furthermore, it is exigent to note that presently the seller does not trade and the acquirer is not yet operational hence the Authority maintains that it is not necessary to reach a definitive view on the exact scope of the product market.

Competitive Analysis and Public Interest concerns

- ix. In the assessment of Substantial Lessening of Competition, the Authority discovered that there is absence of product overlap in the activities of the Merging Parties since the target enterprise and the acquiring enterprise are not active in the same line of business. 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 or in any market in Botswana.

- 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 acquisition of a certain immovable property being a farm in the Ghanzi District, farm Brakpan No. 111-NL from Lambertus Johannes Vorster to Tshukudu Metals 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.

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