



## **MERGER DECISION NO 32: 2024**

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

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION BY SHERASHIYA PROPRIETARY LIMITED OF CERTAIN ASSETS OF THE BUSINESS OF BCL LIMITED (IN LIQUIDATION)**

##### **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 by Sherashiya Proprietary Limited ("Sherashiya" or the "Acquiring Enterprise"), of certain assets of the business of BCL Limited (In Liquidation) ("BCL" or the "Target Enterprise").

For completeness, the Target Assets being acquired consist of certain business assets owned by BCL, which were used in the Selebi Mine, more particularly the property, slag, tailings, mining and processing assets from its mining and smelting facility as situated on the BCL lease area. The proposed transaction is pursuant to the Asset Sale Agreement (ASA) signed on the 30<sup>th</sup> day of November 2022, between Sivalutchmee Moodliar N.O. (in her capacity as Liquidator of BCL Limited (In Liquidation), and BCL Limited (In Liquidation) and Sherashiya (Pty) Ltd.

The Acquiring Enterprise, is a limited liability company incorporated in accordance with the Laws of Botswana. The shareholders of Sherashiya are Ramesh Lavji Sherashiya, Punitkumar Mohanlal Chovatiya, Gopalkrishna Hebbar, Vasantben Rameshbhai Sherashiya, Navin Mohanbhai Chovatiya, Jaykishan Rameshbhai Sherasiya, Kirit Dayalal Nandasana (all Indians). On the other hand, the Target Enterprise, is a firm incorporated in Botswana and having its principal place of business at the BCL Mine Site, Selebi Phikwe.

It is important to note that, as an entity, BCL is not disposing off its shares but it is selling its certain business assets. BCL is wholly owned by the Government of the Republic of Botswana. BCL Limited has been in Liquidation since October 2016 and its affairs are under the control of the Liquidator, Sivalutchmee Darusha Moodliar N.O. (South African).

##### **Relevant Markets**

In terms of the activities of the Merging Parties, the assessment indicates that the Acquiring Enterprise is a steel works company that produces industrial steel products and exports them. Sherashiya controls a steel plant in Selebi-Phikwe which was previously owned by Pula Steel and Casting Manufacturing Proprietary Limited. The plant is currently used to manufacture steel billets from steel scrap and shall provide for the subsequent conversion of the billets into end products

including angle irons, round bars, man-hole covers, pots, fencing products and other products in the near future.

With regards to the Target Enterprise, prior to being placed in liquidation in 2016, the BCL ran the BCL mine (now in care and maintenance) which produced nickel-copper-cobalt group metals (Ni-Cu-Co). These minerals were smelted into a high-grade sulphide matte, containing nickel, copper and cobalt, which were then exported to international markets.

It should also be noted that the Acquiring Enterprise is only buying liquidated assets owned by the Target Enterprise through a disposal process undertaken by the Liquidator to raise money to pay the main creditor of BCL being the Government of Botswana. Based on the fact that the properties being disposed are part of the liquidation process and that the BCL hospital is not being sold as an operating entity, 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 substantially change post implementation of the proposed transaction.

### **Competitive Analysis and Public Interest**

In the assessment of Substantial Lessening of Competition, the assessment has revealed that the Merging Parties are currently not active in the same market. The Acquiring Enterprise processes and produces steel billets from steel metal scrap and export the same to other countries markets such as Zimbabwe, Uganda and India. On the other hand, the Target Enterprise has been in Liquidation since October 2016 and is considered to be active by virtue of being constantly engaged in various asset disposal transactions which amount to gain or reward with possible effects on competition in the relative markets. The Authority therefore does not anticipate the acquisition to result in any substantial lessening of competition post implementation due to the fact that the target assets have been under care and maintenance and will only be utilised under the ownership of the Acquiring Enterprise post- merger.

For the analysis of Acquisition of Dominance, it is important to note 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.

Since the Acquiring Enterprise is not active in the production and processing of Ni-Cu-Co, a market in which the Target Enterprise was active in Botswana, the proposed transaction will not result in any accretion in market share, in any relevant market in Botswana. As a result, there can similarly be no unilateral or coordinated effects arising from the proposed transaction. The implementation of the proposed merger is only expected to contribute to the investment portfolio of the Acquiring Enterprise and therefore will have an insignificant accretion to its market share.

In terms of Public Interest considerations, it is important to highlight that the current acquisition is to ensure that certain raw materials are obtained from the assets being acquired which are to be used as input steel metal scrap in the Pula Steel plant. The role of the Authority in affirming that the merger has an impact on public interest matters (employment, citizen empowerment, industrialisation, exports etc.) in line with commitments made by the Acquiring Enterprise is to ensure that the steel metal scrap which is intended to be used as an input for the Pula Steel plant is not exported out of Botswana to facilitate economic growth in other countries.

## **The Determination**

The Authority determined through the analysis of the facts of the merger and resolved that there is a need to ensure contribution by the proposed merger to the enhancement of 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 approve the proposed acquisition by Sherashiya Proprietary Limited, of certain assets of the business of BCL Limited (In Liquidation), with the following conditions:

1. There shall be no exportation of steel metal scrap generated from the target assets and therefore the steel metal scrap obtained from BCL that forms part of the current transaction must be used as an input raw material for the Pula Steel plant as per the commitment of the Acquiring Enterprise;
2. Sherashiya must invest in the installation of a rolling mill in order to produce consumable products through the conversion of billets into end products including angle iron, round bars, man-hole covers, fencing products and other products. The installation must be finalised within twenty-four (24) months from the date of approval; and
3. The Acquiring Enterprise shall for a period of five (5) years from the date of approval submit to the Authority, a report on each anniversary of the approval date, detailing its compliance with the conditions of approval and demonstrate its contribution to Industrialisation through manufacturing, Environmental Conservation, as well as Employment in addition to its current commitments.

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 12<sup>th</sup> day of September 2024.

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