



## MERGER DECISION NO 43: 2021

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

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 2.21% ISSUED SHARE CAPITAL OF JTTM PROPERTIES (PTY) LTD FROM BOTSWANA RAILWAYS ORGANISATION BY BOTSWANA RAILWAYS STAFF PENSION FUND**

#### **Introduction of the Merging Parties**

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 the proposed acquisition of 2.21% issued share capital of JTTM Properties (Pty) Ltd ("JTTM Properties" or "Target Enterprise") from Botswana Railways Organisation ("BRO") by Botswana Railways Staff Pension Fund ("BRSPF"). The transaction was notified to the Authority on 22<sup>nd</sup> October 2021 and the merger assessment was completed on 11<sup>th</sup> November 2021.

The Acquiring Enterprise, BRSPF, is a body corporate registered in accordance with the Laws of Botswana as a retirement fund under the Retirement Funds Act, 2014 [Chapter 61:05]. It is described as an independent non-bank financial institution regulated by the Non-Bank Financial Institution Regulatory Authority ("NBFIRA") and is not controlled, directly or indirectly, by any enterprise. The Acquiring Enterprise is empowered, under Section 6 of the Retirement Act, to –

1. purchase or otherwise acquire land, buildings, shares, debentures, stocks, securities, and any other kinds or classes of moveable or immovable property; and
2. invest any monies, not immediately required for the conduct of its business in such manner as may be for the benefit of the Fund, and to realise, alter, reinvest such investment or otherwise deal with such monies or investments as may be to the benefit of the Fund.

The Target Enterprise, JTTM Properties, is a private limited liability company duly incorporated in accordance with the Laws of Botswana. It is described as a property investment vehicle which owns the Railpark Mall development which is a shopping mall situated in Gaborone.

The Target Enterprise is currently owned by the Botswana Railway Organisation (BRO) at 86.839%; B.R Properties (Pty) Ltd ("B.R Properties") at 3.162%; and Motor Vehicle Accident Fund ("MVAF") at 10%. BRO is a statutory corporation established under [Chapter 70:01] the Botswana Railways Act. BRO also controls B.R. Properties (Pty) Ltd; Rail Diamond (Pty) Ltd; Sea Rail (Pty) Ltd; and Gaborone Container Terminal (Pty) Ltd. B.R Properties is a private limited liability company incorporated in accordance with the Laws of Botswana.

Furthermore, the MVAF is a fund established as a body corporate under section 3 of the Motor Vehicle Accident Fund Act No. 15 of 2007 ("MVAF Act"), to provide third party insurance cover to motor vehicle owners in Botswana, and compensation in terms of Section 20 of MVAF Act. The Target Enterprise does not control directly or indirectly any enterprise in Botswana.

## **Relevant Markets**

In terms of the relevant market, the assessment of the proposed transaction has revealed that both the target and acquiring enterprises are incorporated in accordance with the Laws of Botswana. However, investigation findings further show that the parties to the merger are not active in the same line of business and therefore there is no product overlap in the business activities of the Merging Parties.

The Acquiring Enterprise is a retirement fund whose Board is empowered by the Retirement Funds Act, 2014 and the Rules of the BRSPF to invest funds not immediately required for its operations. The Acquiring Enterprise is not a shareholder nor does it exercise directorship with respect to any company in Botswana, whether listed or not. In execution of its statutory function to invest funds not immediately required for its operations, the Acquiring Enterprise has made investments in entities which are investment managers such as: Ninety-One Botswana; Morula Capital Partners (Pty) Ltd; and Botswana Insurance Fund Management Limited.

The Target Enterprise is a property investment vehicle which owns the Railpark Mall development, a shopping mall situated in Gaborone. Its business is therefore anchored on the collection of rentals from the Railpark Mall development.

Therefore, for purposes of analysing the proposed transaction, and in view of the nature of the products and services offered by the parties to the merger, it is important to note that there is no overlap in the activities of the Merging Parties

and as such, the relevant market to analyse is that of the Target Enterprise which is defined as *shopping mall rental properties in Gaborone*.

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

In the assessment of Substantial Lessening of Competition, the investigation has revealed no product overlap in the activities of the Merging Parties since the target and acquiring enterprises 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.

In terms of the Acquisition of a Dominant Position, the proposed merger is not expected to result in the acquisition of a dominant position by the merged entity or by any enterprise in Botswana. The Merging Parties are not direct competitors hence the proposed acquisition will not result in the enhancement of the market share for any party or a third party to this merger.

Furthermore, the Merged Enterprise is expected to face strong competition from well-established players including local and multinational commercial property companies such as: New African Properties Limited; The Far Property; Real Development Company Properties (RDC Properties); Turnstar; Prime time; and Letlole La Rona. Therefore the Authority does not foresee an acquisition of a dominant position in the market under consideration or any other market as a result of the approval of the proposed transaction.

With regards to Public Interest Considerations, the Authority does not foresee any detriment to matters of public interest that will arise as result of the transaction under consideration. No job losses 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 will not change upon implementation of the proposed merger as the proposed transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the market of shopping mall rental properties in Gaborone. 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 2.21% issued share capital of JTTM Properties

(Pty) Ltd from Botswana Railways Organisation by Botswana Railways Staff Pension Fund.

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 11<sup>th</sup> day of November 2021.

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