



MERGER DECISION NO 48: 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 32.79% OF THE ISSUED SHARE CAPITAL IN JTTM PROPERTIES (PROPRIETARY) LIMITED BY LETLOLE LA RONA LIMITED

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 to the proposed acquisition of 32.79% of the issued share capital in JTTM Properties (Pty) Ltd ("JTTM Properties") by Letlole La Rona Ltd ["LLR"]. The transaction was notified to the Authority on 19th November 2021 and the merger assessment was completed on 7th December 2021.

The Acquiring Enterprise, LLR, is a public listed company on the Botswana Stock Exchange Limited, its two (2) major unitholders are Botswana Development Corporation Ltd ("BDC") and Grit Services Limited ("Grit") with 70% and 30% respectively. BDC, is a government of Botswana owned entity and the country's main agency for commercial and industry development. Grit is a Mauritius based company focused on investing in and actively managing a diversified portfolio of assets underpinned by predominantly US\$ and Euro long-term leases with high quality multi-national tenants.

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 84.60%; B.R Properties (Pty) Ltd ("B.R Properties") at 3.162%; Motor Vehicle Accident Fund ("MVAF") at 10% and the Botswana Railways Staff Pension Fund at 2.21%. 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. 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 the Merging Parties are companies duly incorporated in accordance with the Laws of Botswana. The Acquiring Enterprise is a commercial, retail and residential market in Botswana. Thus, the Acquiring Enterprise owns immovable properties in Botswana, including industrial properties, commercial office spaces, retail spaces and residential spaces and it derives income primarily from rentals and property instruments. The Target Enterprise is a property investment vehicle which holds immovable property in Botswana being 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.

The assessment has revealed that the retail space services offered by the parties to the merger are reasonably interchangeable, but there are various alternatives in the retail real estate market which are regarded by consumers as interchangeable. It is therefore safe to conclude that the commercial property market in Botswana is highly fragmented with a multitude of players. As such, the Merged Enterprise is expected to face strong competition from well-established players including local and multinational commercial property companies.

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, the relevant market to analyse 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 a product overlap in the activities of the Merging Parties. However, the transaction under assessment is not expected to substantially lessen 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 due to the fact that there will be insignificant effects in the market as there is a number of 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 terms of the Acquisition of a Dominant Position, it is important to note that a dominant position in the context of Section 2 of the Competition Act of 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 approval of the proposed transaction is not expected to result in an acquisition of a dominant

position by the merged entity. Thus, the implementation of the proposed merger will not result in the Merged Enterprise attaining a 25% market share which is a threshold for dominance.

With regards to 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 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 expected to significantly 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 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 32.79% of the issued share capital in JTTM Properties (Pty) Ltd from Botswana Railways Organisation by Letlole La Rona 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 7th day of December 2021.

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