



## MERGER DECISION NO 34: 2024

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

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED SALE AND PURCHASE OF AN IMMOVABLE PROPERTY CONSISTING OF LAND AND BUILDING SITUATED IN THE REMAINING EXTENT OF LOT 68289, PHAKALANE (A PORTION OF LOT 65878, PHAKALANE, FROM, TKM ENGINEERING (PTY) LTD BY BEAMWATER (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 respect of the proposed sale and purchase of an immovable property consisting of land and building situated in the remaining extent of Lot 68289, Phakalane (a portion of Lot 65878, Phakalane, from, TKM Engineering (Pty) Ltd [“TKM Engineering” or “the Selling Enterprise”] by Beamwater (Pty) Ltd [“Beamwater” or “Acquiring Enterprise”]. The transaction was notified to the Authority on 30<sup>th</sup> August 2024, and the merger assessment was completed on 4<sup>th</sup> October 2024.

The Acquiring Enterprise, Beamwater, is a company incorporated in accordance with the Laws of the Republic of Botswana. It is a 100% subsidiary of Tsetseng Retail Group (Pty) Ltd; trading as Spar Supermarket and operates certain Spar stores in Botswana.

The Selling Enterprise, TKM Engineering, is a company incorporated in accordance with the Laws of Botswana. It is controlled by Tshotlego Kagiso, Boipuso Masala, Zenzo Mabutho and Oratile Godfrey Rapula (all Batswana).

#### **Relevant Market**

The Acquiring Enterprise is a property company, and currently owns a warehouse property situated in Phakalane at Plot No. 79992. This warehouse is rented to Tsetseng Group for its warehouse needs. On the other hand, the Selling Enterprise is in the business of construction and engineering as follows: (i) civil engineering works – water supplies, sanitation reticulation and irrigation works; (ii) building construction works and maintenance (Roads, Infrastructure, Airfields). It provides these services locally, regionally and internationally. In addition, the Selling Enterprise owns several properties across Botswana, including an immovable property consisting of land and building situated in the remaining extent of Lot 68289, Phakalane (a portion of Lot 65878, Phakalane [the Property being Sold]. The Property being sold is currently used as the head office for the Selling Enterprise.

Considering the above, the proposed transaction gives rise to a horizontal overlap as both merging parties operate within the real estate rental market. Specifically, the Acquirer currently holds a warehouse in Phakalane, while the Target manages a diverse portfolio of properties, including residential, industrial, agricultural, and office spaces across Phakalane, Palapye, Gamodubu, Bokaa, Jwaneng, and Tlokweng. This overlap is particularly evident in Phakalane. However, it is worth noting that the Acquiring Enterprise has only one property under its portfolio.

It can therefore be concluded that the Acquiring Entity is a small player in the property rental market in Phakalane. As such, the identified overlap will make an insignificant change in the relevant market. Therefore, no competition concern is expected to arise as result of the merger post implementation. In addition, the relevant market is characterised by a myriad of players, both at individual and company levels, who will pose competitive constraints to the merged entity post-merger.

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

The Authority has established that the Proposed Transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the market relevant in Phakalane. Furthermore, the proposed merger will not have a negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act of 2018.

### **The Determination**

Pursuant to the provision of Section 53 of the Competition Act, 2018, the Authority has decided to unconditionally approve the proposed sale and purchase of an immovable property consisting of land and building situated in the remaining extent of Lot 68289, Phakalane (a portion of Lot 65878, Phakalane, from, TKM Engineering (Pty) Ltd by Beamwater (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 4<sup>th</sup> day of October 2024.

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