



## **MERGER DECISION NO 21: 2024**

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

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF 71.88% ISSUED SHARE CAPITAL IN CONCOR HOLDINGS BY THE GOVERNMENT EMPLOYEES PENSION FUND**

##### **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 of 71.88% issued share capital in Concor Holdings (Pty) Ltd ("Concor Holdings" or "Target Enterprise") by the Government Employees Pension Fund ("GEPF" or "Acquiring Enterprise"). The proposed merger notification involves the acquisition by the GEPF of 71.88% of the issued share capital in Concor Holdings which will result in the GEPF's shareholding increasing from 9.37% to 81.25%. The transaction was notified to the Authority on 17<sup>th</sup> May 2024, and the merger assessment was completed on 20<sup>th</sup> June 2024.

The Acquiring Enterprises, GEPF, is a juristic entity governed by the Government Employees Pension Law, No. 21 of 1996 (as amended), of South Africa. The GEPF is represented by the Public Investment Corporation SOC Limited ("PIC"), a company registered in terms of the Laws of the Republic of South Africa ("RSA"). The PIC is wholly owned by the South African Government. The GEPF is a pension fund and is not controlled directly or indirectly by any enterprise. The GEPF is managed by a board of trustees, appointed for a four-year term.

On the other hand, the Target Enterprise, Concor Holdings, is a company registered in accordance with the Laws of RSA. The current shareholders of Concor Holdings are: Southern Palace Group of Companies Proprietary Limited ("SPG"); Nicasio Proprietary Limited ("Nicasio"); Unemployment Insurance Fund; and the GEPF. In Botswana, Concor Holdings controls Concor Botswana Proprietary Limited ("Concor Botswana").

##### **Relevant Markets**

The assessment of the proposed merger indicates that the Acquiring Enterprise is statutorily mandated to manage and administer pensions and other benefits for government employees in South Africa. All South African government employees whose conditions of service fall under the South African Public Service Act 103 of 1994 are members of the GEPF. The GEPF provided benefits to 1,261,363 active members and 499,726 pensioners and beneficiaries in South Africa as at 31 March

2022. These benefits include retirement benefits (normal retirement, early retirement, late retirement, and ill-health retirement), resignation benefits, death benefits, spouse annuity, orphan's annuity, and funeral benefits, amongst others. However, the GEPP does not control any enterprises in Botswana. Thus, the GEPP does not own any assets in Botswana and does not derive any turnover in, into or from Botswana.

On the other hand, Concor Holdings and its subsidiaries (the "Target Group") are engaged in the construction business offering diversified infrastructure and services in South Africa and other African countries, with core competencies in the infrastructure, building, mining, and property development sectors. In Botswana, the Target Group, through Concor Botswana, provides civil engineering services as well as general building and construction services.

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

In the assessment of Substantial Lessening of Competition, the investigation has revealed that the Acquiring Enterprise and the Target Enterprise mainly operate in distinct markets. In addition, the Acquiring Enterprise is not domiciled in Botswana and does not derive any turnover from any market in Botswana. On the other hand, the Target Enterprise is only present in Botswana by virtue of its Botswana registered subsidiary Concor Botswana. The Authority therefore does not anticipate that the merger would substantially lessen competition post implementation due to the fact that there is a lack of geographical overlap in the activities of the merging parties.

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. As such, the implementation of the proposed merger is not expected to result in the acquisition of a dominant position in the relevant market in Botswana. Furthermore, the Merged Enterprise is expected to continue to face strong competition from the existing well-established players in the construction sector, especially in relation to the provision of civil engineering services as well as general building and construction.

In terms of 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. There are no merger specific retrenchments which would emanate from the implementation 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 under consideration. 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 decided to unconditionally approve the proposed acquisition of 71.88% Issued Share Capital in Concor Holdings (Pty) Ltd by the Government Employees 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 20<sup>th</sup> day of June 2024.

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