



## MERGER DECISION NO 26: 2021

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

#### **DECISION ON THE ASSESSMENT OF THE PROPOSED ACQUISITION OF THE ENTIRE ISSUED SHARE CAPITAL OF PPC AGGREGATE QUARRIES BOTSWANA PTY LTD FROM PPC BOTSWANA PTY LTD BY DANOHER BOTSWANA PTY LTD**

##### **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 the entire issued share capital of PPC Aggregate Quarries Botswana (Pty) Ltd ("PPC Aggregate") from PPC Botswana (Pty) Ltd ("PPC Botswana") by Danohier Botswana Pty Ltd ("Danohier Botswana").

The proposed transaction involves acquisition of the entire issued share capital of PPC Aggregate Quarries Botswana (Pty) Ltd ("PPC Aggregate") from PPC Botswana (Pty) Ltd ("PPC Botswana") by Danohier Botswana Pty Ltd ("Danohier Botswana"). The transaction was notified to the Authority on 2<sup>nd</sup> June 2021 and the merger assessment was completed on 15<sup>th</sup> July 2021.

The Acquirer, Danohier Botswana, is a company incorporated in accordance with the Laws of Botswana. Danohier Botswana is a wholly-owned subsidiary of Danohier Contracting (Pty) Ltd ("Danohier Contracting"). In turn Danohier Contracting is a wholly subsidiary of Danohier Holdings (Pty) Ltd which is ultimately owned by Jacaranda Trust. Danohier Botswana does not directly or indirectly control any enterprise in Botswana.

The Target Enterprise, PPC Aggregate, is a company incorporated in accordance with the Laws of Botswana. It is directly or indirectly controlled by PPC Botswana, a company incorporated in Botswana. PPC Botswana is a wholly owned subsidiary of PPC Limited. PPC Aggregate does not directly or indirectly control any enterprise in Botswana.

##### **Relevant Markets**

In terms of the relevant market, the assessment of the proposed transaction revealed that both the target enterprise and the acquiring enterprise are incorporated in accordance with the Laws of Botswana. However, investigation findings further show that the nature of the product or services provided by the two entities under scrutiny are distinct and therefore not considered substitutes.

The services they offer are rather complementary as the acquirer is in the downstream market of drilling, blasting, crushing and screening (mobile or static) services on contractual basis while the target is involved in the mining and manufacturing of quality aggregates.

The acquirer's business activities include the provision of drilling, blasting, crushing and screening (mobile or static) services in Botswana on a subcontracting basis. On the other hand, the target is in the business of mining, manufacturing, extracting and distribution of quality aggregates (crushed stone and crushed sand).

Therefore, for purposes of analysing the proposed transaction, and in view of the nature of the products and services offered by the merging parties, precisely the target entity, the Authority determined the relevant product market to be the market of the mining, extraction and distribution of construction aggregates stones.

### **Geographic Market**

The geographical market is national (Botswana).

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

In the assessment of Substantial Lessening of Competition, the Authority discovered that there is absence of product overlap in the activities of the merging parties since the target enterprise and the acquiring enterprise are active in distinct line of business. The merger is not expected to result in the reduction of the number of players in the market as the acquiring entity is not in the market of mining, extraction and distribution of construction aggregates in Botswana. Therefore, acquisition will not affect the structure of the market upon implementation of this transaction.

With regards to Public Interest Considerations, the merger assessment findings did not reveal any detriment to matters of public interest that will arise as result of the transaction under consideration. However, a submission from Botswana Mine Workers Union highlighted issues that may have implications on public interest matters such as employment. The Authority is of the view that such issues must be resolved adequately by the affected parties.

### **The Determination**

The Authority determined through the analysis of the facts of the merger, that the proposed transaction is not likely to result in a substantial lessening of competition, nor endanger the continuity of service in the relevant market in Botswana.

However, the assessment of the merger and the information received from the relevant stakeholders indicates that there are pending issues which may impede on employment as well as remunerations of employee and therefore have a

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 approved the proposed acquisition of the entire issued share capital of PPC Aggregate Quarries Botswana (Pty) Ltd from PPC Botswana (Pty) Ltd by Danoher Botswana Pty Ltd subject to the following conditions:

- a) There shall be no merger specific retrenchments or redundancies that may affect the employees of the merged enterprises. For clarity, merger specific retrenchments or redundancies do not include (the list is not exhaustive):
  - i. voluntary retrenchment and/or voluntary separation arrangements;
  - ii. voluntary early retirement packages;
  - iii. unreasonable refusals to be redeployed;
  - iv. resignations or retirements in the ordinary course of business;
  - v. retrenchments lawfully effected for operational requirements unrelated to the Merger; and
  - vi. terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance;
- b) The merged enterprise shall provide details (Full Name; Identification Number; Gender; Position; and Contact Number) of all the employees of the target within thirty (30) days of the Approval date;
- c) The merged enterprise shall share a copy of the conditions of approval to Botswana Mine Workers Union within ten (10) days of the Approval date;
- d) The merged enterprise shall for a period of three (3) years from the merger decision date, submit a report on each anniversary of the merger decision date, detailing its compliance with the conditions of approval;
- e) The merged enterprise shall inform the Authority of the date of implementation within thirty (30) days of the Approval date; and
- f) Any person who has reasonable ground(s), suspicion(s) and/or believes that the merged enterprise has failed to comply with any of the conditions of approval may approach the Authority with his/her complaint.

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 15<sup>th</sup> day of July 2021.

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