



MERGER DECISION NO 32: 2021

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

DECISION ON THE PROPOSED ACQUISITION OF THE 100% SHARES IN BLUE PEBBLES (PTY) LTD T/A MEGA PAVE BY ZEXMON INVESTMENTS (PTY) LTD

Introduction of the Merging Parties

- i. 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 acquisition of the 100% shares in Blue Pebbles (Pty) Ltd t/a Mega Pave ("Mega Pave") by Zexmon Investments (Pty) Ltd ("Zexmon"). The transaction was notified to the Authority on 08th September 2021 and the merger assessment was completed on 05th October 2021.
- ii. The Acquiring Enterprise, Zexmon, is a company incorporated under the Laws of the Republic of Botswana. It is a special purpose vehicle established for the purpose of this transaction. Zexmon does not control any business enterprise.
- iii. The Target Enterprise, Mega Pave, is a company incorporated under the Laws of the Republic of Botswana. Mega Pave is a manufacturing company specialising in cement products that include, but are not limited to, dry cast paving products; kerb stones; concrete and natural stone products; cobble stones; block and slabs; stepping stones; slate blocks; copings and cladding products. These products are used in driveways, patios, pools, large residential projects for roads and walkways. Mega Pave offers these products, delivery and installation services to clients nationwide.

Relevant Markets

- i. In terms of the relevant market, the assessment of the Proposed Transaction revealed that the Acquiring Entity is a shelf company acquired as a special purpose vehicle and has never traded before. On the flip side, the Target Entity specialises in cement products that include, but are not limited to the following: (i) dry cast paving products - interlocking pavers, diplomat and satin pavers, bevel edge pavers, and double cobble pavers; kerb stones; concrete and natural stone products; cobble stones; block and slabs; stepping stones; slate blocks; copings and cladding products. These products are used in driveways, patios, pools, large residential projects for roads and walkways.

- ii. The Target Firm offers these products, delivery and installation services to clients nationwide; and these products are specified for industrial, commercial, and residential projects by architects, Government, and planners for large projects alike. Additionally, these products are registered with the Botswana Bureau of Standards and each product is manufactured to the exact standard. It is reported that currently there is no standard for wet-cast products that make up about 10% to 12% of the turnover of the Target Entity. In light of that, there is lack of product overlap between activities of the Merging Parties in Botswana.

Competitive Analysis and Public Interest

- i. The Authority's assessment did not reveal any substantial lessening of competition concerns that would arise as result of the Proposed Transaction due to the absence of product overlap in the activities of the Merging Parties. Accordingly, the proposed transaction is not expected to alter the market structure in the relevant market post implementation; and as such, the Authority does not anticipate any competition concerns to arise in the relevant market in Botswana post-merger. However, the proposed merger *may* have negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act of 2018.

The Determination

- i. The Authority determined through the analysis of the facts of the merger, that the proposed transaction is not likely to result in the prevention or substantial lessening of competition, or endanger the continuity of the service offered in the relevant market. However, the proposed merger *may* have negative effect on public interest matters in Botswana as per the provisions of section 52(2) of the Competition Act of 2018.
- ii. Pursuant to the provision of section 53 of the Competition Act, the Authority has decided to approve the proposed acquisition of the 100% shares in Blue Pebbles (Pty) Ltd t/a Mega Pave by Zexmon Investments (Pty) Ltd, with the condition that:
 - A. *There will be no merger specific retrenchments for a period of three (3) years from the date of implementation. For clarity, merger specific retrenchments or redundancies do not include:*
 - a) *voluntary retrenchment and/or voluntary separation arrangements;*
 - b) *voluntary early retirement packages;*
 - c) *unreasonable refusals to be redeployed;*
 - d) *resignations or retirements in the ordinary course of business;*
 - e) *retrenchments lawfully effected for operational requirements unrelated to the Merger; and*

f) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

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 05th day of October 2021.

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