



## MERGER DECISION NO 37: 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 100% OF THE ISSUED SHARE CAPITAL IN CRADLE ARC INVESTMENTS (PTY) LTD (IN PROVISIONAL LIQUIDATION) FROM CRADLE ARC PLC (IN LIQUIDATION) BY MAX POWER 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 the 3000 ordinary shares constituting 100% of the issued share capital in Cradle Arc Investments (Pty) Ltd (in provisional liquidation) ("Cradle Arc" or the "Target Enterprise") from Cradle Arc Plc in liquidation) by Max Power Limited ("MPL" or the "Acquiring Enterprise"). The transaction was notified to the Authority on 17<sup>th</sup> September 2021 and the merger assessment was completed on 14<sup>th</sup> October 2021.

The Target Enterprise is a limited liability company incorporated in accordance to the Laws of Botswana. Cradle Arc is wholly owned by Cradle Arc Plc, a company incorporated in accordance with the Laws of the United Kingdom and it is submitted to be under liquidation under the control of joint liquidators presented by Antony Batty & Company LLP. Cradle Arc directly controls and owns approximately 60% of the issued share capital of Leboam Holdings (Pty) Ltd (in judicial management) ("Leboam"). The Target Enterprise is described as an investment holding company and its major assets are the shares it owns in Leboam. Leboam is a mining entity that operates Mowana Copper Mine ("Mowana Mine") situated at Dukwi, in the North-East of Botswana. Leboam has been in judicial management since December 2018. The Target Enterprise on the other hand has been in provisional liquidation since 15<sup>th</sup> October 2020 and in the hands of the Provisional Liquidator, Mr. Terence Dambe N.O.

The Acquiring Enterprise, MPL, is an investment holding company incorporated in accordance with the Laws of Mauritius. MPL is wholly owned by Mr. Gregory Elias ("Mr. Gregory") - a citizen of Netherlands who is also the sole director in the company. Mr. Gregory directly and indirectly controls United International Holdings ("United International"), a holding company that has interests in companies that provide trust and banking services.

In Botswana, Mr. Gregory controls M P Mining (Pty) Ltd ("MP Mining") which is a limited liability company incorporated in accordance with the Laws of Botswana. The Acquiring Enterprise is a special purpose vehicle (SPV) which is established to

enter into a series of transactions pursuant to which (through its subsidiary – MP Mining (Pty) Ltd, it seeks to restore the Mowana Mine which has been under care and maintenance since December 2018 to full production and subsequently take over Mowana Mine. MPL does not produce or sell any products into or from Botswana.

## **Relevant Markets**

The Acquiring Enterprise is an SPV, which is established to enter into a series of transactions pursuant to which (through its subsidiary – MP Mining), it seeks to restore the Mowana Mine to full production and subsequently take over Mowana Mine. The Acquiring Enterprise has no operations in, into or from Botswana and therefore the relevant market to analyse is that of the Target Enterprise. A subsidiary of the Acquiring Enterprise, MP Mining, holds a permit to purchase, acquire and possess explosives, issued under the Explosives Act [CAP 24:02].

The Target Enterprise, Cradle Arc, is an investment company incorporated in Botswana and owns 60% shares of Leboam (the subject of the proposed transaction). Leboam owns and operates Mowana Mine, situated at Dukwi in the North-East of Botswana and it holds a mining licence held under Mining Licence No 2006/53L issued under the Mines and Minerals Act [CAP 66:01]. The key output/product of Mowana Mine is copper metal in concentrate form, although small deposits of other minerals may be found occasionally. The copper concentrate is then exported from Botswana to international markets such as the Republic of China. No copper concentrate is sold in Botswana. It is important to highlight that Leboam has been placed in judicial management since December 2018, and has not been active in the copper mining and exportation of the same.

## **Geographic Market**

The geographical market is national (Botswana).

## **Competitive Analysis and Public Interest**

In the assessment of Substantial Lessening of Competition, The proposed transaction involves an acquisition of shares by an entity that is not active in the market within which the Target Enterprise is active. Therefore, the merger is not expected to reduce the level of competition in the market under consideration in Botswana. The resuscitation of the Mowana Mine will result in increased competition in Botswana's copper mining sector. The Authority therefore, does not expect the proposed transaction to give rise to any Substantial Lessening of Competition; restrict trade or the provision of services; or to endanger the continuity of the mining of copper and production of copper concentrate in Botswana.

Since there are no horizontal or vertical overlaps in the activities of the Merging Parties, the structure of the relevant market is not expected to significantly change post-merger. The merged entity will not attain any dominant position because of

the proposed transaction. Therefore, the proposed transaction is not expected to result in a market share accretion of the merged entity or any other entity in Botswana.

In terms of Public Interest Considerations, the Authority does not foresee any detriment to matters of public interest that will arise as result of the proposed transaction. The findings of the assessment show that the proposed transaction will not have any adverse effects on levels of employment in Botswana. In actual fact, the proposed transaction will increase the levels of employment and as at the time of the assessment, MPL through its subsidiary, MP Mining, employed 317 people in addition to the existing 11 Leboam employees as at 20 September 2021; and out of the 271 workforce, 265 are Botswana citizens. Additionally, MPL is hiring and directly paying foreign experts who are educating local management, and there is a program in place to send key people abroad to study a new processing technology which MPL intends to invest in, which is expected to create an additional 100+ job opportunities. The proposed transaction will have a positive impact on the competitiveness of SMMEs since the revival of Mowana Mine has resulted in the Acquiring Enterprise sub-contracting SMMEs for food and lodging at site; security; and service and repairs of equipment.

### **The Determination**

The Authority determined through the analysis of the facts of the merger that the structure of the relevant market will not significantly change upon the implementation of the proposed merger and the proposed transaction is not likely to result in any adverse effects on competition, nor endanger the continuity of the *mining of copper and production of copper concentrate in Botswana*. 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 the 3000 ordinary shares constituting 100% of the issued share capital in Cradle Arc Investments (Pty) Ltd (in provisional liquidation) from Cradle Arc Plc (in liquidation) by Max Power Limited.

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 14<sup>th</sup> day of October 2021.

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