

NOTICE 250 OF 2008**COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:****DPI PLASTICS (PTY) LTD****AND****INCLEDON CAPE (PTY) LTD**

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings' in the Competition Commission, that it has prohibited the transaction involving the above-mentioned firms.

The primary acquiring firm is DPI Plastics (Pty) Ltd ("DPI Plastics"), a company incorporated under the laws of the Republic of South Africa. DPI Plastics is controlled by DPI Holdings (Pty) Ltd ("DPI Holdings"), a wholly owned subsidiary of Distribution and Warehousing Network Limited ("DAWN"). DAWN is a public company listed on the JSE Limited, accordingly no single entity controls it. DAWN controls DPI-Kwanzi (Pty) Ltd ("DPI-Kwanzi"), Incledon- DPI (Pty) Ltd ("Incledon- DPI"), Waterlinx & Irrigation (Pty) Ltd ("Waterlinx") and Pipex Plastics Botswana (Pty) Ltd ("Pipex"). DPI Plastics is involved in the manufacturing and distribution of plastic pipes and fittings for various applications including civil building, construction, plumbing, industrial, mining and irrigation. DAWN and its other subsidiaries are involved in the wholesale trading and distribution of local and international quality branded sanitaryware, plumbing and hardware products such as door locks, pad locks, screws, taps, basins and urinals.

The primary target firm is Incledon Cape (Pty) Ltd ("Incledon Cape"). Incledon Cape is controlled by Kovacs Investments 602 (Pty) Ltd ("Kovacs"). Incledon Cape operates as a wholesaler and supplier of a wide range of products including pipes, fittings, valves, flanges, threading machines, water meters, plumbing and related products used in the engineering, civils, agricultural, plumbing and municipal industries.

In terms of the structure of the proposed transaction, DAWN, through its wholly owned subsidiary DPI Plastics, intends to acquire the entire business of Incledon Cape as a going concern. Pursuant to the implementation of the proposed transaction, DPI Plastics will exercise sole control over the business of Incledon Cape.

There is a horizontal overlap in the activities of the merging firms in the market for the wholesale distribution of pipeline solutions used in the engineering, civils, agricultural, plumbing and municipal sectors. The proposed transaction also results in vertical integration in that DPI Plastics and DAWN are manufacturers of plastic pipes and fittings, sanitaryware, plumbing and hardware products while Incledon Cape is a distributor of said products.

The Commission has concluded its analysis and has identified various concerns.

The Commission established through its investigation that the merging parties' have understated their respective market shares in respect of the relevant product market in the relevant geographic locations. The Commission established that the parties would in fact have a post merger market share for the distribution of pipeline solutions (downstream market) in the Western Cape of approximately 45% with a market share accretion of 20%. In the upstream market for the manufacture of PVC pipes, DPI Plastics enjoys a significant national market share of 30% and the regional market share would be even more significant, taking into account the fact that there are only three manufacturers of pipeline solutions with plants in the Western Cape region (namely DPI, Andrag and McNeil).

The Commission further established evidence relating to collusion between the merging firms and other independents in the downstream market for distribution of pipeline solutions in respect of tenders and ad hoc quotations for the supply of piping solutions to municipalities. Evidence also that suggests that market allocation took place in the upstream market for the manufacturing of pipeline solutions in the Western Cape. The acquiring firm appears to have an agreement with other manufacturers not to compete in certain segments, particularly the mining sector. The Commission is of the view that the collusive arrangements, besides the fact that they are per se illegal, also have the effect of artificially maintaining market conditions in that it would have the effect or at least increase the likelihood of creating serious foreclosure concerns and raising barriers to entry in both upstream and downstream markets in that any potential new entrant at either level would have to enter at both levels to effectively compete in any one market.

With regards to entry barriers, the Commission is of the opinion that the risk faced by a potential new entrant would be greatly increased as it has to consider entering a market (or both) where it has to compete with a very significant player (DPI Plastics), which already controls a large share of critical inputs and also has access to a large customer base such that the new entrant has greater uncertainty in terms of access to inputs and/or a sufficient customer base should it enter one or both markets.

The Commission further established that new entrants are also likely to be faced with potential aggressive predatory tactics by the merging parties as evidenced in the past. The information submitted to the Commission suggests that new entrants found it difficult to enter and expand in the market because of these tactics.

The proposed transaction does not raise any significant public interest concerns.

The Commission therefore prohibits the transaction.

Enquiries in this regard may be addressed to Ms. Edwina Ramohlola at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3285, or Facsimile: (012) 394 4285.
