

ECONOMIC DEVELOPMENT DEPARTMENT**NOTICE 849 OF 2015****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****NEUE HALBERG-GUSS GMBH****AND****ATLANTIS FOUNDRIES (PTY) LTD****CASE NUMBER: 2015MAR0124**

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 approved the transaction involving the above mentioned firms subject to conditions as set out below:

Background

1. On 17 March 2015 the Competition Commission ("Commission") received notice of an intermediate merger whereby the primary acquiring firm, Neue Halberg-Guss Gmbh ("Halberg"), will acquire the entire issued share capital of Atlantis Foundries (Pty) Ltd ("Atlantis"). It also intends to acquire the Mercedes Benz South Africa ("MBSA") Loan Claim as against Atlantis. Post-merger Halberg will wholly-own Atlantis.

The parties and their activities

2. Halberg is a private company incorporated in accordance with the laws of Germany. Halberg is a wholly-owned subsidiary of H.T.P. Automotive Gmbh ("H.T.P. Automotive"), a private company incorporated in accordance with the laws of Germany. Halberg develops and produces cast iron cylinder blocks, crank shafts, and engine blocks for, *inter alia*, passenger cars and trucks engines and industrial engines and supplies these products to all major European car manufacturers.

3. The primary target firm is Atlantis, a private company incorporated in accordance with the company laws of the Republic of South Africa. Atlantis is a wholly-owned subsidiary of MBSA, a public company incorporated in accordance with the company laws of the Republic of South Africa. MBSA is a wholly-owned subsidiary of Daimler AG ("Daimler"), a publicly listed company incorporated in accordance with the laws of Germany. In South Africa, Daimler controls MBSA and its subsidiaries only. Atlantis produces automotive castings for the commercial vehicle industry. Atlantis supplies more than 90% of its products to customers outside of South Africa.

The transaction

4. In terms of the Sale of Shares Agreement, Halberg intends to acquire the entire issued share capital of Atlantis ("Sale Shares"). It also intends to acquire the MBSA Loan Claim as against Atlantis.

Area of overlap

5. There is a horizontal overlap in the activities of the merging parties as the merging parties manufacture cylinder blocks for vehicles.

Competitive analysis

6. The Commission found that although the cylinder blocks manufactured by the merging parties are similar they have different characteristics, intended use and pricing. The products cannot be interchangeable or substitutable by the end-consumer. Further, Halberg is not active in South Africa whereas Atlantis has a presence in South Africa. Therefore there is no geographic overlap in the activities of the merging parties. The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition, as there is no geographic overlap between the activities of the merging parties.

Public interest

7. In terms of retrenchments, the merging parties submit that no job losses are anticipated as a result of the proposed transaction. Halberg had undertaken to secure the employment of all employees of Atlantis for a period of twelve (12) months based on an agreement with the merging parties regarding the production of cylinder blocks.
8. Trade unions representing employees of the merging parties, the National Union of Metalworkers of South Africa ("NUMSA") and the United Association of South Africa

- ("UASA") objected to the period made in the undertaking put forward by the merging parties and proposed a period of between eighteen (18) months and seven (7) years.
9. The Commission engaged both the merging parties and trade unions to address the concern on possible retrenchments after the initial job guarantee of twelve (12) months expires. The merging parties made a submission that if the industry experiences a greater, or lesser, demand for cylinder blocks manufactured by Atlantis Foundries, there may be a need for more or fewer employees at Atlantis Foundries, as the case may be.
 10. The Commission found that there will be no duplication of positions as a result of the proposed transaction and thus no retrenchments as a result of the proposed transaction. However, the fact that the merging parties offered a job guarantee of only twelve (12) months, post-merger, it was likely that they anticipated job losses. It is thus likely that the proposed transaction will have possible retrenchments after the twelve month job guarantee had expired resulting in detrimental consequences for the foundries industry which is in decline in South Africa.
 11. The Commission found that the proposed transaction was likely to have a spill over effect in the foundries sector with job losses in Atlantis, a labour opportunity deprived area within South Africa if the merging parties decreased the manufacturing and supply of cylinder blocks in South Africa.
 12. The Commission engaged the merging parties further on the concern in order to address this adverse effect on employment and the foundries sector in South Africa and proposed a condition that there should be no retrenchments at Atlantis as a result of the proposed transaction. The Commission also engaged the merging parties on Halberg's future plans and development of Atlantis and the merging parties made an undertaking that they will continue the supply relationship for products to be manufactured at Atlantis. The Commission is of the view that given the above undertaking and the business plan of Halberg the merging parties will continue to support and develop Atlantis.
 13. The Commission was also concerned about a possibility of the merging parties moving the production capacity of Atlantis to facilities outside of South Africa to fulfil the supply agreement. The Commission requested the merging parties not to relocate the production capability of Atlantis and the merging parties submit that they will not relocate the production capacity of Atlantis outside of South Africa. Therefore the Commission

imposed a condition that for as long as Halberg has control over Atlantis, the manufacturing plant/facilities of Atlantis shall not be relocated outside of South Africa.

Conclusion

14. The Commission therefore approved the proposed transaction with conditions. The conditions document is attached hereto as Annexure A.

ANNEXURE A**Neue Halberg-Guss Gmbh / Atlantis Foundries (Pty) Ltd****CC CASE NUMBER: 2015Mar0124**

CONDITIONS**1. Definitions**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Acquiring Firm"** means Neue Halberg-Guss Gmbh;
- 1.2. **"Affected Employees"** means all employees of the Atlantis Foundries (Pty) Ltd, being the one thousand and fifty (1 050) employees identified by the merging parties who were currently employed on 01 June 2015;
- 1.3. **"Atlantis"** means Atlantis Foundries (Pty Ltd);
- 1.4. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.5. **"Commission"** means the Competition Commission of South Africa;
- 1.6. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.7. **"Conditions"** mean these conditions;
- 1.8. **"Halberg"** means Neue Halberg-Guss Gmbh;
- 1.9. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10. **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as

amended);

- 1.11. **"Merger"** means the acquisition of control over Atlantis Foundries (Pty) Ltd by Neue Halberg-Guss GmbH;
- 1.12. **"Merging Parties"** means Neue Halberg-Guss GmbH and Atlantis Foundries (Pty) Ltd;
- 1.13. **"Target firm"** means Atlantis Foundries (Pty) Ltd;
- 1.14. **"Tribunal"** means the Competition Tribunal of South Africa.

2. Recordal

- 2.1. The Commission finds that it is likely that the proposed merger will have a negative effect on the foundries industry or sector which is in decline in South Africa. When determining the effect on a particular industrial sector or region, the Commission assesses whether the effect on the industry is merger specific; whether the effect on the industry is substantial, whether there is justification of the effect and the remedy for that particular effect. In the proposed merger, the Commission finds that the proposed transaction is likely to have a negative effect on the foundries sector should retrenchments occur in Atlantis, a labour opportunity deprived area within South Africa. Therefore, should the merging parties decrease the manufacturing of cylinder blocks in South Africa (as indicated in the Supply Agreement) and given that the merging parties submit that demand could change, this would adversely affect the sector. The Commission was concerned about the possibility of the merging parties relocating the production capacity to other production facilities outside of South Africa and the merging parties undertook that there will be no relocation of the production facility outside of South Africa which is also made a condition of the proposed merger.

Conditions to the approval of the Merger

3. Employment

- 3.1. The Merging Parties shall not retrench any of the current employees of Atlantis

Foundries as a direct consequence of the proposed merger.

- 3.2. For the sake of clarity in these Conditions, retrenchments “as a direct consequence of the proposed merger” do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; (iii) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance and/or terminations for operational reasons, (iv) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; and (v) any employee whose employment is terminated by the merging parties in the normal and ordinary course of business including termination owing to the expiry of a temporary and or fixed term contract.

4. Relocation of the Atlantis plant

From the Approval Date and for as long as Halberg has control over Atlantis, the manufacturing plant/facilities of Atlantis shall not be relocated to premises that are outside of South Africa.

5. General

The merging parties may at any time, on good cause shown, including changes in economic conditions, approach the Tribunal for the conditions to be lifted, revised or amended.

6. Monitoring of compliance with the Conditions

6.1. Employment

- 6.1.1. The Merging Parties shall circulate a copy of these Conditions to their employees/and or their respective representatives within seven (7) business days of the Approval Date.
- 6.1.2. As proof of compliance thereof, the Merging Parties shall within five (5) business days of circulating the Conditions, provide the Commission with an affidavit by a senior official attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 6.1.3. The Merged Entity shall advise the Commission of the Implementation Date

within five (5) days of it becoming effective. The Merged Entity shall submit a report on an annual basis confirming that none of the identified employees have been retrenched as a result of the merger. The report shall also indicate the number of retrenchments and the reasons for the retrenchments. The report shall be accompanied by an affidavit confirming the accuracy of the information contained in the report. The affidavit must be duly attested to by senior official of the Merged Entity.

- 6.1.5. The first report shall be submitted on the anniversary of the Effective Date and the final report a year thereafter.
- 6.1.6. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.
- 6.1.7. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

6.1.8. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.