ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 851 OF 2015

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

GRUPO FERROATLÁNTICA S.A.

AND

GLOBE SPECIALTY METALS INC.

CASE NUMBER: 2015MAR0108

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 12 March 2015 the Competition Commission ("Commission") was notified of an intermediate merger whereby Grupo FerroAtlántica S.A. ("FA") intends to acquire the issued share capital of Globe Specialty Metals Inc. ("GSM"). Post-merger, Grupo Villar Mir S.A. ("GVM"), the holding company of Grupo F.A. will have an indirect control over GSM.

The parties and their activities

2. FA is a company that is duly incorporated in accordance with the laws of Spain. FA is a wholly owned subsidiary of Grupo Villar Mir S.A. ("GVM"), which is in turn a Spanish industrial group owned by the Villar Family. In South Africa, GVM controls Silicon Smelters (Pty) Ltd ("SS"), Thaba Chueu Mining (Pty) Ltd ("TCM") and Rebone Mining (Pty) Ltd ("Rebone"). In South Africa, the activities of FA are conducted through its subsidiary, SS which is a vertically integrated company which supplies part of its inputs for the manufacture of silicon metal, ferrosilicon ("FeSi") and microsilica (a by-product of the production of both silicon metal and FeSi).

3. GSM is a firm duly incorporated in accordance with the company laws of Florida, in the United States of America ("USA"). GSM is listed on the NASDAQ Stock Exchange. No single shareholder controls GSM. GSM owns several subsidiaries that are based in the USA, Canada, Argentina, China and the Netherlands. In South Africa, GSM owns Silicon Technology (Pty) Ltd ("Siltech"), which is incorporated in accordance with the company laws of the Republic of South Africa. Siltech manufactures FeSi and microsilica.

The transaction

4. In terms of the Business Combination Agreement, GVM will form a new wholly-owned subsidiary to be known as HoldCo, which will have a wholly-owned subsidiary known as MergerSub. There will be an internal restructuring within the GVM Group in terms of which FA will be transferred to HoldCo. GSM will integrate with MergerSub. As consideration, the existing shareholders of GSM will be issued with shares in HoldCo such that these shareholders will collectively hold 43% of the shares in HoldCo. The other 57% shares will be held by GVM. Post-merger, GVM will indirectly acquire control over GSM. None of the GVM shareholders will enjoy any rights of negative control in respect of HoldCo. The proposed transaction is global and was notified in Germany and the United States of America. The proposed transaction has received unconditional clearance in Germany while investigations are ongoing in the USA.

Areas of overlap

5. There is a horizontal overlap in relation to the production of FeSi and microsilica. In addition, the activities of the merging parties overlap vertically in the proposed transaction as Siltech sources silica from SS. Furthermore, SS produces charcoal and wood that is required by Siltech as a reductant for the production of FeSi. SS further produces electrode paste, also a key input required by Siltech for the production of FeSi.

Definition of the relevant markets and competitive assessment

6. The Commission relied on the approach established by the Commission in its definition of the relevant market for the production of FeSi and silica in the matter between ***Thaba Chueu and SamQuarz ("Thaba/SamQuarz matter").*** The Commission also defined the related markets for microsilica and electrode paste.

Market for the production of FeSi

7. The Commission defined a global market for FeSi, regardless of silica content. The Commission found that there are over 30% imports of FeSi into South Africa and there are customers that import FeSi. The Commission concluded on a global market for the production of FeSi as data shows that FeSi is being traded globally. Post-merger, the merged entity will account for a small percentage of the FeSi global sales and will still face competition from other global players such as RFA International, Elkem and others, including Ferroalloy and Ferbasa. For completeness sake it is noted that the merging parties are the only producers of FeSi nationally.

8. The Commission further found that there are other customers within the national market, which indicate that they view the merging parties as the only alternative suppliers because they do not view imports as an alternative. However, the Commission further found that small customers and foundries source FeSi from distributors that source FeSi from Zambia, Russia and China. The Commission further found that there are a few customers that currently rely on the imports of FeSi from the stated countries.

9. The Commission finds that although the merged entity will be constrained by imports for customers who can import, the merged entity will continue to act as a monopoly to the customers who cannot import. Customers further indicate that FeSi prices were relatively lower when SS and Siltech were competing in the market before Siltech ceased production in 2012 as compared to when SS was operating as a monopoly, within the national market. The lack of competitive prices is cited as the reason which drove the few customers to imports.

10. The re-entry of Siltech into the national market in 2014 restored competition which benefitted FeSi customers. However, the proposed transaction is likely to remove that national competitive constraint. While the Commission notes the role played by imports, it is concerned of the price differences between the prices charged by each of the merging parties and is of the view that a pricing condition be imposed to ameliorate this concern on the price of FeSi for local customers.

Market for production of microsilica

11. The Commission further defined the national market of microsilica. In the national market the merged entity will be a monopoly in South Africa as SS is the only supplier in the market as Siltech has not yet commercialised its microsilica since it re-entered the market in 2014. The Commission further found that all of the customers of microsilica submit that they are able to negotiate prices with SS, which has been operating as a monopoly within South Africa since Siltech's shut down. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the national market for microsilica as the proposed transaction does not change the market structure; there has always been one supplier of the product and Siltech has not commercialised its product.

Vertical assessment

Markets for charcoal, wood and timber

12. In relation to the market for charcoal, wood and timber, the Commission found that SS is not active in the open market for the supply of these inputs. SS requires these inputs for the downstream production of FeSi and silicon metal. SS self-supplies these materials to its downstream operations. Therefore, the Commission is of the view that the proposed transaction does not raise foreclosure concerns because SS is not active in the open market for these materials.

Markets for silica

13. In the regional market for silica products; being silica rock, silica sand and silica chip. The proposed transaction raises a vertical overlap in that the acquiring firm owns a silica mine, SamQuartz, from which SS sources silica rock for the production of FeSi. Siltech currently sources some of its silica rock requirements from SamQuartz and obtains some from SamQuartz's competitor. If Siltech discontinues or reduces its procurement of sourcing silica rock from the affected SamQuartz's competitor, there is a risk that the competitor may be foreclosed of a significant customer. The merging parties have undertaken to continue to source silica rock from the affected SamQuartz's competitor and the Commission has made the undertaking to be a condition.
14. The Commission found that the merged entity will continue to supply silica sand and silica chip into the downstream markets due to supply conditions imposed by the

Competition Tribunal ("Tribunal") in the ***Thaba/SamQuartz matter***. Furthermore, the merged entity is not active in those downstream operations. Therefore there are no foreclosure concerns

Market for electrode paste

15. In the national market for electrode paste, SS produces electrode pastes which are used as an input in the production of FeSi and silicon metal. Siltech also requires electrode pastes in its FeSi production. Therefore the proposed transaction raises a vertical overlap in this regard. Siltech currently sources electrode pastes from an electrode pastes producer which is in competition with SS. The affected electrode pastes producer submits that it will be negatively impacted if Siltech decides to discontinue sourcing from it, as Siltech is an important customer. The merging parties undertook to continue to source electrode pastes from the affected electrode producer and the Commission has made this undertaking a condition of the proposed transaction.

Public interest concerns

16. The Commission assessed the effect of the proposed transaction on a particular industrial sector or region. Since the re-entry of Siltech in the market for the production of FeSi, the new owner injected investments into Siltech and would have revived competition or restored competition between the merging parties to the pre-shut down level. However, the proposed transaction may lead to the consolidation of the operations and rationalisation of the activities of the merged entity, which would not be the case without the proposed transaction. The proposed transaction may thus slow the expansion of the Siltech assets and the sector at large which is a concern to the Commission.
17. Therefore the Commission considered this concern as it has negatively effect on FeSi customers in South Africa. The Commission is of the view that conditions should be imposed on the proposed transaction to ameliorate the concern. The Commission engaged with the merging parties on the concern, including those relating to investments and to ensure the continued operation of Siltech post-merger. The merging parties made an undertaking as follows:

- To have a pricing condition for the supply of FeSi within the national market.
- To continue to operate the Siltech facility and invest as needed, to maintain the facility.
- To continue to source from the current silica rock supplier.
- To continue to source from the current electrode paste supplier.

18. The Commission has made these undertakings to be conditions for the approval of the proposed transaction.

19. There are no other public interest concerns.

Conclusion

20. The Commission approved the proposed transaction with conditions as in Annexure A.

ANNEXURE A

GRUPO FERROATLÁNTICA S.A.

AND

GLOBE SPECIALTY METALS INC.

CASE NUMBER: 2015MAR0108

CONDITIONS

1. **DEFINITIONS**

The following expressions shall bear the meanings assigned to them below:

1.1 **"Acquiring Firm"** means Grupo F.A. a company registered in accordance with the laws of Spain;

1.2 **"Approval Date"** means the date referred to in the Commission's merger Clearance Certificate (Form CC15);

1.3 **"Clearance Date"** means the date referred to in the Commission's merger Clearance Certificate (Form CC15);

1.4 "**Commission**" means the Competition Commission of South Africa;

1.5 "**Competition Commission Rules**" means the Rules for the Conduct of Proceedings in the Competition Commission;

1.6 "**Conditions**" means these conditions;

1.7 **"Days"** means business days;

1.8 **"End-User customers"** means South African FeSi customers of Siltech and SS that (i) use FeSi in the manufacture of metallurgical or foundry products; and (ii) do not trade in FeSi.

1.9 **"FeSi"** means ferrosilicon;

1.10 **"Grupo F.A."** means Grupo Ferroántlantica S.A. a company registered in accordance with the laws of Spain and a subsidiary of GVM;

1.11 "**GSM**" means Globe Specialty Metals Inc. a company registered in accordance with the company laws of Florida, United States of America ("USA");

1.12 "**GVM**" means Grupo Villa Mir S.A. an industrial Group registered in accordance with the laws of Spain;

1.13 **"Implementation Date"** means the date, occurring after the Approval date, on which the merger is implemented by the Merging Parties;

1.14 **"Large customers"** means SS and Siltech's 3 (three) end-user customers (on the basis of volume).

1.15 **"Material changes to operating or economic changes"** mean a change in input costs (such as electricity or labour) or exchange rates, or other factors that will result in Siltech operating at a loss or experiencing negative cash flows.

1.16 **"Merger"** means the acquisition of control over GSM (including Siltech) and all its subsidiaries by GVM;

1.17 "**Merged Entity**" means the merged business activities of GVM and GSM;

1.18 **"Merging Parties"** for the purposes of these Conditions mean GVM and GSM and their subsidiaries;

1.19 **"Siltech"** means Silicon Technology (Pty) Ltd or the target firm in this transaction;

1.20 **"Siltech Facility"** means Siltech's FeSi production facility in Newcastle, KwaZulu-Natal;

1.21 "**SS**" means Silicon Smelters (Pty) Ltd, a company registered in accordance with the company laws of South Africa and a subsidiary of Grupo F.A.

1.22 **"Target Firm**" means Globe Specialty Metals Inc and its subsidiaries, specifically Siltech;

1.23 **"The Act"** means the Competition Act 89 of 1998, as amended;

1.24 **"The Tribunal"** means the Competition Tribunal of South Africa as established in terms of section 26 of the Act;

2. **RECORDAL**

2.1 On 12 March 2015, the Merging Parties filed an intermediate merger transaction with the Commission. Following the investigation of the Merger, the Commission is of the view that the merger is likely to raise competition concerns as well as public interest concerns. The Commission finds that the merger will enable the Merged Entity to price close to export parity because the merger will end the existing competition between SS and Siltech in South Africa. Competition between SS and Siltech appears to be disciplining the merging parties to sell FeSi to local customers at prices below import parity and export parity pricing. The merger is likely to remove that competitive element which keeps the local prices of FeSi competitive. The Commission is of the view that competitive prices of FeSi for local customers will cease to apply. The Commission has expressed a concern about the ability of some customers to import ferrosilicon. The Commission further finds that Siltech is currently sourcing silica rock and electrode pastes from third party suppliers. These suppliers submit that they will be negatively impacted by the merger should Siltech discontinue sourcing from them. On the other hand, the merger is likely to lead to consolidation and rationalisation of the Merged Entity's operations and impact negatively on the national metallurgical sector by keeping the prices of FeSi high. The merging parties have submitted proposed conditions on which the merger should be approved to address the concerns raised. In order to remedy the abovementioned concerns, the Commission hereby imposes the Conditions as set out in paragraph 3 below.

3. CONDITIONS

PURCHASE OF SILCA ROCK

3.1 Siltech shall continue sourcing silica rock from the affected silica rock supplier, provided that the latter is willing to sell, on the same or substantially similar terms and conditions as those prevailing at the Clearance Date.

3.2 The condition set out in paragraph 3.1. above will cease to apply if Siltech is able to purchase silica rock on more favourable terms and conditions from other suppliers that are not affiliated to Siltech.

PURCHASE OF ELECTRODE PASTE

3.3 Siltech shall continue sourcing electrode paste from the affected electrode pastes producer, provided that the latter is willing to sell, on the same or substantially similar terms and conditions as those prevailing at the Clearance Date.

3.4 The condition set out in paragraph 3.3 will cease to apply if Siltech is able to purchase electrode paste on more favourable terms and conditions from other suppliers that are not affiliated to Siltech.

CONTINUED INVESTMENT IN THE FeSi FACILITY

3.5 It is recorded that Siltech has recently made substantial investments for the purpose of upgrading the Siltech Facility.

3.6 The Merged Entity shall continue to operate the Siltech Facility and invest as needed to maintain the Siltech Facility for as long as the Merged Entity operates the Siltech Facility, provided that there are no material changes to operating and economic conditions.

3.7 It is recorded that the Siltech Facility may shut down temporarily during the winter months due to electricity price increases. Any such shut down will not be regarded as a breach of clause 3.6.

SUPPLY OF FeSi

3.8 The prices that SS and Siltech will charge to End-User Customers will be for FeSi equivalent specification.

4. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1 As proof of compliance hereof, Siltech shall produce an affidavit by a senior official of Siltech, attesting to the circulation of the Conditions to Bronx and Chartech contemplated in 3.4. and 3.6 above and provide a copy of the notice that was circulated within 5 business days of the circulation of the conditions. Each of Siltech and SS will, within 30 (thirty) Days of the completion of its annual audit, submit to the Commission an affidavit prepared by a senior official confirming that it has completed with the Conditions set out in clause 3.9.

4.2 In the event that the Commission receives any complaint in relation to non-compliance with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach will be dealt with in terms of Rule 39 of the Competition Commission Rules.

4.3 The Merged Entity may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

4.4 All correspondence in relation these Conditions should be forwarded to: mergerconditions@compcom.co.za.

4.5 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.