

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 966

1 October 2021

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

MACSTEEL SERVICE CENTRES SA (PTY) LTD

AND

CERTAIN ASSETS OF ROBOR (PTY) LTD (IN LIQUIDATION)

CASE NUMBER: 2020AUG0077

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:

1. On 24 August 2020, the Competition Commission (Commission) received notice of an intermediate merger whereby Macsteel Service Centres SA (Pty) Ltd (MSCSA) intends to acquire certain assets of Robor (Pty) Ltd (in liquidation) (Robor Assets). Post-merger, MSCSA will control the Robor Assets.
2. The primary acquiring firm is MSCSA, a private company incorporated in South Africa. MSCSA is controlled by Macsteel Holdings Luxembourg SARL (MacLux), a company incorporated in Luxembourg. MSCSA controls a number of firms across Africa including South Africa. MSCSA produces and distributes a broad range of steel products including carbon steel, stainless steel, speciality steels and aluminium products. MSCSA's tubes and pipes division (MT&P) is the most relevant for the assessment of this transaction. The primary products produced by MT&P are standard Tubes and Pipes (T&P), limited to small bore products. This includes structural steel tubes and straight-line steel pipes.

3. The primary target firm is the Robor Assets which includes various plant, machinery, equipment, immovable, and intellectual property owned by and related to the tube and pipe business of Robor. The Robor Assets are owned by Robor, a private company incorporated in South Africa. Pursuant to a liquidation order granted by the South Gauteng High Court in September 2019, Robor has been put in liquidation. Prior to its liquidation, Robor was controlled by Tiso Blackstar Holdings SE (Tiso Holdings), a company incorporated in England and Wales. The Robor Assets are primarily the assets which form part of Robor's tube and pipe operations. These assets comprise those used in the manufacturing business previously supplying standard small-bore T&P and open sections. In addition, the Robor Assets also include assets previously supplying value-added products.
4. The Commission found that the Robor Assets are currently not operational as Robor is under liquidation and therefore there are no products or services offered by the target firm. However, given the fact that the Robor Assets have the production capacity to produce tube and pipe products, the Commission is of the view that there is a notional horizontal overlap in the merging parties' activities in relation to the production and supply of tube and pipe products. More specifically, the Commission considered the activities of the merging parties in relation to the production and supply of (i) small-bore T&P products; (ii) open sections; (iii) value added T&P products including small bore value add and large diameter value add products.
5. The Commission found that the merger is unlikely to result in a substantial prevention or lessening of competition in any of the markets identified above. This was based on the post-merger market shares of the merging parties which are relatively low in all relevant markets. Furthermore, Robor is not an effective competitor since it was liquidated in 2018. In addition, the Commission did not receive any concerns from the customers contacted.
6. With regards to public interest considerations, particularly the effect of the merger on employment, the Commission received concerns from stakeholders regarding current retrenchments at MSCSA as well as the fact that Robor's employees were retrenched when Robor was liquidated. The said stakeholders proposed that the parties should give preference to the former employees of Robor when employment opportunities arise.

7. The Commission did not find any evidence to suggest that the current or past retrenchments at MSCSA are linked to the current merger. With regards to the retrenched employees, the merging parties agreed to a condition that the merged entity shall for a period of 3 years, fill available vacancies with the retrenched MSCSA employees. In the event that a vacancy cannot be filled with the retrenched MSCSA employees, the merged entity will consider the retrenched Robor employees who meet the relevant criteria for the post.
8. There are no other public interest concerns arising.
9. The Commission finds that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition. The Commission approves the proposed transaction subject to employment conditions as reflected in **Annexure A**.

ANNEXURE A

**MACSTEEL SERVICE CENTRES SA (PTY) LTD
AND
CERTAIN ASSETS OF ROBOR (PTY) LTD (IN LIQUIDATION)**

CASE NUMBER: 2020AUG0077

NON-CONFIDENTIAL CONDITIONS

1 DEFINITIONS

- 1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings, namely:
- 1.1.1. "**Act**" means the Competition Act No. 89 of 1998;
- 1.1.2. "**Approval Date**" means the date referred to in the Commission's clearance certificate;
- 1.1.3. "**Affected employees**" means the employees retrenched by MSCSA during the last two years (2019 and 2020) and the Robor Employees;
- 1.1.4. "**Available Vacancies**" means the [confidential] vacancies available at MSCSA at the Implementation Date arising from the Merger;
- 1.1.5. "**Commission**" means the Competition Commission of South Africa;
- 1.1.6. "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.1.7. "**Conditions**" means these conditions;
- 1.1.8. "**Days**" mean any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;
-

- 1.1.9. **"Implementation Date"** means the date, occurring after the Approval Date, on which the merger is implemented by the Merging Parties;
- 1.1.10. **"MSCSA"** means Macsteel Service Centres SA Proprietary Limited;
- 1.1.11. **"Merger"** means the acquisition by MSCSA of the Robor Assets;
- 1.1.12. **"Merging Parties"** means MSCSA and the Robor Assets;
- 1.1.13. **"Tribunal"** means the Competition Tribunal of South Africa;
- 1.1.14. **"Trade Unions"** means National Union of Metalworkers of South Africa ("NUMSA") and Solidarity Union;
- 1.1.15. **"Robor"** means Robor Proprietary Limited (in liquidation)
- 1.1.16. **"Robor Assets"** means Certain assets of Robor (Pty) Ltd (in liquidation) acquired by MSCSA pursuant to the Merger;
- 1.1.17. **"Robor Employees"** means the employees of Robor whose employment was terminated in terms of the Insolvency Act, 24 of 1936.

2 RECORDAL

- 2.1. When Robor went into liquidation in September 2019, the employment of a total of [confidential] employees were terminated in terms of the Insolvency Act, 24 of 1936. In addition, MSCSA has undertaken a number of retrenchment processes in terms of Section 189 of the Labour Relations Act 66 of 1995 between 2018 and 2020. In November 2018, MSCSA undertook a section 189 process which led to the retrenchment of [confidential] employees. In December 2019, [confidential] employees were retrenched by MSCSA. In June 2020, MSCSA began a further section 189 process which is anticipated to be completed by December 2020. MSCSA estimates that a total of [confidential] employees are likely to be affected by this current retrenchment process.
- 2.2. MSCSA has made commitments to the employees that it has retrenched during the above mentioned processes to re-employ them should employment opportunities arise. This is subject to the employees having the necessary skills and qualifications.

- 2.3. The Commission understands that MSCSA has committed to re-employing its former employees when opportunities arise. However, the Commission is of the view that the Robor Employees should also be considered when such opportunities arise. The Commission engaged the Merging Parties on this and, while the Merging Parties do not acknowledge that the abovementioned retrenchments or the termination of the Robor Employees are related to the Merger, the Merging Parties undertook to employ the Robor Employees who meet the necessary criteria in terms of skills and qualifications, subject to MSCSA's existing obligations to its own former employees.
- 2.4. The Merging Parties anticipate that at this stage, MSCSA is likely to have [confidential] vacancies as a result of the Merger. The Merging Parties have indicated that the Robor Employees will be considered in filling these vacancies.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

- 3.1. The Merging Parties shall fill the Available Vacancies with the employees that MSCSA has retrenched during the above-mentioned processes, and in the event that none have the required qualifications, skills, know-how and experience, with the Robor Employees with the required qualifications, skills, know-how and experience.
- 3.2. The Merging Parties shall fill all vacancies that arise beyond the Available Vacancies for a period of 3 years post Implementation Date with the Affected Employees with the required qualifications, skills, know-how and experience. Where former MSCSA employees are unable to fill any such vacancies, the Merging Parties will give first preference to the Robor Employees, with the required qualifications, skills, know-how and experience to fill such vacancies for a period of 3 (three) years from the Implementation Date.

4. Monitoring compliance with the Conditions

-
- 4.1. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
 - 4.2. The Merging Parties shall circulate a copy of the Conditions within 5 (five) Days of the Approval Date to all employees of the Merging Parties and/or their employee representatives, including relevant Trade Unions.
 - 4.3. As proof of compliance herewith, the Merging Parties shall within 10 (ten) Days of circulating the Conditions, provide the Commission with an affidavit by the Chief Executive Officer or Managing Director of MSCSA attesting to the circulation of the Conditions and attaching a copy of the said notice.
 - 4.4. The Merging Parties shall submit a report on each anniversary of the Implementation Date, setting out its compliance with these Conditions for a period of 3 (three) years. This report shall be accompanied by an affidavit, attested to by the Chief Executive Officer or Managing Director of MSCSA, confirming the accuracy of the report.

5. Apparent breach

- 5.1. In the event that the Commission receives any complaint in relation to non-compliance with the Conditions or otherwise determines that there has been an apparent breach of any of the Conditions by the Merging Parties, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.
- 5.2. Any employee of the Merging Parties who believes that his or her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her grievance.

6. Variation of the Condition

- 6.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended, in exceptional circumstances. Should a
-

dispute arise in relation to the variation of the conditions, the Merging Parties shall apply to the Competition Tribunal, on good cause shown, for the conditions to be lifted, revised or amended, in exceptional circumstances. "Good cause" must be premised on facts arising subsequent to these Conditions being confirmed by the Competition Tribunal.

7. General

All correspondences in relation to these conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za

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