

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 972

1 October 2021

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

CARLMAC STEEL PROPRIETARY LIMITED

AND

THE ALRODE BUSINESS OF AVENG DURASET, AN OPERATING DIVISION OF AVENG
MANUFACTURING, WHICH IS A DIVISION OF AVENG AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2020AUG0006

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 04 August 2020, the Competition Commission (the “Commission”) received notice of an intermediate merger whereby Carlmac Steel Proprietary Limited (“Carlmac”) intends to acquire sole control of the Alrode Business of Aveng Duraset (“Alrode Business”), as a going concern, from Aveng Africa Proprietary Limited (“Aveng Africa”). Post-merger, the Alrode Business will be wholly owned by Carlmac.
2. The primary acquiring firm, Carlmac, is duly incorporated in the laws of the Republic of South Africa. Carlmac is jointly controlled by Mole Trust, as to [Confidential] and Carlden Trust, as to [Confidential]. The Mole Trust controls Bustard Tourism Investments Proprietary Limited, as to [Confidential]. The Carlden Trust does not control any other firm.
3. Carlmac directly controls Reinforcing Steel Holdings Proprietary Limited (“RSH”), as to [Confidential] and Hinton Rock Properties Proprietary Limited, as to [Confidential]. Further, RSH in turn controls Reinforcing Steel Contractors Proprietary Limited, as to

[**Confidential**] and Reinforcing Steel Holdings Services Proprietary Limited, as to [**Confidential**]. Carlmac, all the firms controlled by Carlmac, all the firms controlling Carlmac, and all the firms controlled by those firms will henceforth be referred to as the “Acquiring Group”.

4. By way of background, the Commission had recently investigated a merger whereby Videx Wire Products (Pty) Limited (“Videx”) attempted to acquire sole control of the Alrode Business (“Videx/Alrode”). However, the transaction was prohibited by the Commission based on competition considerations. However, the merging parties alleged that Alrode Business was a failing firm and in the absence of merger approval, Alrode Business would cease to operate by end of October 2019.
5. Subsequent to the prohibition of *Videx/Alrode*, additional funds were invested to keep the Alrode Business operational, with a view to securing a sale of the Alrode Business as a going concern. However, due to the Alrode Business having endured financial losses over several years, a sizeable number of its employees were being retrenched.
6. In this *Carlmac/Alrode Business* transaction, it has also been submitted that the Alrode Business is a *failing firm* and absent the merger, the Alrode Business will cease operating, resulting in a total retrenchment of all its employees. However, with the merger, at least half of the employees of the Alrode Business will transfer to the Acquiring Group in terms of section 197 of the Labour Relations Act (“LRA”).

Parties’ activities

7. Relevant to the proposed transaction are the activities of the merging parties which overlap horizontally as they both manufacture and supply resin bolts and bearing plates. The merger does not give rise to any vertical overlap as the merging parties are not active at different levels of the same value chain.

Competition assessment

8. In *Videx/Alrode* the Commission assessed resin bolts and bearing plates as separate products / components. In the instant transaction, the Commission found that from both a

demand and supply side perspective, resin bolts and bearing plates are considered as a single product. Put differently, resin bolts and bearing plates are typically procured together as a single product by customers (mines). This is reflected in the tenders issued by mines which are for the procurement of resin bolts, including their accompanying bearing plates. In addition, customers indicated that resin bolts and bearing plates are procured from the same and not different manufacturers to manage health and safety liability. Accordingly, without taking a definitive view on the relevant product market given the lack of competition concerns, the Commission assessed the impact of the merger on the supply of resin bolts and bearing plates as a complete unit ("Resin Bolts").

9. Without taking a definitive view on the geographic market, the Commission assessed the impact of the merger on the national market for the supply of Resin Bolts given that Resin Bolts are supplied and procured on a national basis.
10. Market shares were calculated based on revenues and sales volumes. The Commission found that the merged entity will account for low market shares based on both metrics. In view of these, the Commission is of the view that the merger is unlikely to result in a substantial lessening or prevention of competition in the relevant market.
11. Although some market participants raised concerns, the Commission found that the concerns did not require further intervention, given the conditions tendered by the merging parties.

Failing Firm Defence

12. The Commission found that the merging parties have failed to satisfy the failing firm defence for the following reasons:
 - 12.1. The parties did not establish that absent the merger, the Alrode Business will exit the relevant market/s soon. The Commission notes that the Alrode Business has continued to operate and that does not suggest that the Alrode Business' failure is imminent.

12.2. A failing firm defence requires that absent the merger, the assets of the Alrode Business would inevitably exit the market. This element has not been satisfied as the merging parties, by their own admission, submitted that the assets / contracts of Alrode Business would not exit the relevant market, but would be sold to existing market players.

13. In view of the foregoing, the Commission concluded that the merging parties have failed to establish the *failing firm defence*. However, given the market share assessment conducted, the Commission notes that the transaction nonetheless raises no competition concerns.

Public interest

14. Whereas the Alrode Business has not met the requirements for a failing firm defence, an assessment of its financials indicates the Alrode Business is in dire financial distress. Thus, the Commission is of the view that the retrenchments at Alrode Business are unlikely to be merger specific. However, to pre-empt employment concerns, the merging parties and the Commission have agreed to employment conditions contained as **Annexure A** hereto.
15. To address concerns raised regarding the merger's impact on the ability of historically disadvantaged persons ("HDPs") to participate in and become competitive in the relevant market, the merging parties and the Commission have agreed to the conditions contained as **Annexure A** hereto.

ANNEXURE A**CARLMAC STEEL PROPRIETARY LIMITED
AND**

**ALRODE BUSINESS OF AVENG DURASET, AN OPERATING DIVISION OF AVENG
MANUFACTURING, WHICH IS A DIVISION OF AVENG AFRICA PROPRIETARY LIMITED**

CASE NUMBER: 2020AUG0006

NON-CONFIDENTIAL CONDITIONS

1. DEFINITIONS

- 1.1 **"Acquiring Group"** means Carlmac Steel (Pty) Ltd and its controlling shareholders;
- 1.2 **"Act"** means the Competition Act 89 of 1998, as amended;
- 1.3 **"Affected Employees"** means up to [] employees of the Alrode Business who will be retrenched for operational reasons, pursuant to the Section 189 Notices issued by the Alrode Business in June 2020;
- 1.4 **"Alrode Business"** means the Target Business, an operating division of Aveng Manufacturing, which is a division of Aveng Africa Proprietary Limited;
- 1.5 **"Approval Date"** means the date referred to on the Commission's merger Clearance Certificate;
- 1.6 **"B-BBEE"** means broad-based economic empowerment;
- 1.7 **"Carlmac Steel"** means Carlmac Steel Proprietary Limited, the primary acquiring firm;
- 1.8 **"Commission"** means the Competition Commission of South Africa;
- 1.9 **"Conditions"** mean these conditions;

- 1.10 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.11 **"HDI's"** mean historically disadvantaged individuals, as defined in section 3(2) of the Act;
- 1.12 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.13 **"LRA"** means the Labour Relations Act 66 of 1995, as amended;
- 1.14 **"Merged Entity"** means the entity that will exist after the implementation of the Merger;
- 1.15 **"Merger"** means the Acquiring Group's acquisition of the Alrode Business as a going concern;
- 1.16 **"Merging Parties"** means the Acquiring Group and the Alrode Business;
- 1.17 **"Mining roof support products"** means all the Merged Entity's products utilized by the mines as mining roof or mining wall support in the mines;
- 1.18 **"NQF"** means the South African National Qualifications Framework as defined in the National Qualifications Framework Act No. 67 of 2008;
- 1.19 **"Restructure"** means the Acquiring Group's proposal to within 8 months of the Implementation Date, restructure the Merged Entity to provide a **[Confidential]**% effective interest therein to HDIs;
- 1.20 **"South Africa"** means the Republic of South Africa;
- 1.21 **"Target Firm"** means the Alrode Business;
- 1.22 **"Training and Mentorship Programme"** means the training and mentorship programme to be offered by the Merged Entity to certain HDI individuals with a duration of at least 10 consecutive months and which will take place at the premises of the Merged Entity or at the premises of any of its subsidiaries or affiliates;
- 1.23 **"Transferring Employees"** mean **[Confidential]** Employees who will transfer from the Alrode Business to the Acquiring Group, pursuant to section 197 of the LRA, on the Implementation Date. The Transferring Employees will be selected by the Acquiring Group, having regard to employees with critical skills, qualification and experience that the Merged Entity will require for the viable operation of its business post-Merger; and

1.24 “**Tribunal**” means the Competition Tribunal of South Africa.

2. **RECORDAL**

2.1 On 04 August 2020, the Merging Parties filed the Merger.

2.2 The Commission found that the Merger is unlikely to result in any substantial lessening or prevention of competition in any relevant market/s.

2.3 The Commission further found that the [Confidential]]. However, the Merging Parties have committed that the Merger will save jobs by virtue of the Transferring Employees.

2.4 The Commission assessed the extent to which the Merger impacts HDIs given, *inter alia*, concerns received from third parties. The Merging Parties have made commitments to provide HDIs with skills development and [Confidential]].

2.5 The Merging Parties and the Commission have agreed to these Conditions to address any public interest concerns arising from the Merger.

3. **CONDITIONS TO THE APPROVAL OF THE MERGER**

Employment

3.1 No employees at the Merging Parties shall be retrenched because of the Merger for a period of three (3) years from the Approval Date.

3.2 Other than the Affected Employees, there shall be no further involuntary retrenchments at the Alrode Business.

3.3 The Transferring Employees will transfer to the Acquiring Group on the Implementation Date.

- 3.4 For a period of six (6) months post the Implementation Date, in the event that the Merged Entity requires additional employees, first preference to apply for vacancies at the Merged Entity will be offered to the Affected Employees.
- 3.5 For the sake of clarity, retrenchments exclude: (i) voluntary separation arrangements; or (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, excluding but not limited to, dismissals as a result of misconduct or poor performance; (vii) any decision not to renew or extend a contract of a contract worker; and (viii) any transfer of employees to the employment of a third party as a result of any sale of business operations, including related assets and liabilities, or any joint venture or similar business arrangements.

Skills Transfer – students

- 3.6 For a period of 3 (three) years post the Implementation Date, the Merged Entity will enroll onto the Training and Mentorship Programme, a minimum of 4 HDI students who are registered to study industrial, mechanical, chemical and/or civil engineering degrees at academic institutions of higher learning within the NQF.
- 3.7 The Training and Mentorship Programme will be for 10 (ten) for each year and must expose the HDI students to the Merged Entity's operations and enable the HDI students to gain practical work experience relevant to the studies for which they are enrolled during the relevant year.
- 3.8 The Merged Entity will pay a monthly stipend of R4 500 per month to each HDI student for a cumulative value of at least R180 000 per year of the Training and Mentorship Programme.

Skills Transfer – unskilled / semi-skilled HDIs

- 3.9 For a period of (3) three years post the Implementation Date, the Merged Entity will select at least two unskilled/semi-skilled HDIs per year who are resident within the vicinity of the Merged Entity's customers and provide them with training in relation to the full spectrum of the Merged Entity's products and operations with a view to upskilling each candidate and increasing their prospects of finding permanent employment following the completion of the programme. Such training may take place at the premises of the Merged Entity or at the premises of any of its subsidiaries or affiliates and/or at the mining operations of the Merged Entity's customers where the Merged Entity's products are being supplied and installed.
- 3.10 The training programme will be for a period of at least 12 consecutive months and the Merged Entity will pay a monthly stipend of R8 333 per month to each HDI at a cumulative value of R200 000.

Skills Transfer – Transferring Employees

- 3.11 For a period of twelve months after the Implementation Date, the Merged Entity will provide skills development training to upskill all Transferring Employees. The training will relate to Human Factor Training, crane and forklift operations, operation of Resin Bolt machines, operation of IT systems, and HR systems relevant to the Merged Entity's business. In addition, the Merged Entity will provide relevant skills development training to existing employees of the Acquiring Group relating to the operation of the Target Firm's mining roof bolt machines.

Restructure

- 3.12 Within 18 months of the Implementation Date, the Acquiring Group will Restructure the Merged Entity. For the purposes of the Restructure, the Acquiring Group will, in its sole discretion, determine the identities of such HDIs as well as the proportion of shares that will be allotted to each such HDI.

3.13 Prior to the implementation of the Restructure, the Acquiring Group will provide the Commission with details of the Restructure in writing. The Commission shall, within (sixty) 60 Days of receipt thereof, provide its approval or any comments or queries. For the avoidance of doubt, the Restructure may not be implemented without the Commission's approval.

3.14 To the extent necessary, the Restructure shall be notified to the Commission as a merger notification in the prescribed manner or form, irrespective of whether the notification thresholds have been met.

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

4.1 The Merging Parties shall circulate a copy of the Conditions to all their employees within 5 (five) Business Days of the Approval Date.

4.2 As proof of compliance with 4.1 above, a director of each Merging Party shall within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees in that regard.

4.3 The Acquiring Group shall inform the Commission in writing of the Implementation Date within 5 (five) Business Days of its occurrence.

4.4 The Acquiring Group shall, on each anniversary of the Implementation Date, during the periods referred to in **Error! Reference source not found.** to 3.14 above submit an affidavit confirming compliance with the Conditions.

4.5 In the event that the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Rules read together with Rule 37 of the Competition Tribunal Rules.

5. **VARIATION**

- 5.1 The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

6. **GENERAL**

- 6.1 All correspondence in relation these conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.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