

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 1828

4 March 2022

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

K2021511200 (SOUTH AFRICA) PROPRIETARY LIMITED**AND****CONSOLIDATED STEEL INDUSTRIES PROPRIETARY LIMITED****CASE NUMBER: 2021MAY0007**

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 abovementioned firms subject to conditions set out below:

1. On 05 May 2021, the Competition Commission (Commission) received notice of an intermediate merger in terms of which K2021511200 (South Africa) (Pty) Ltd (NewCo) intends to acquire Consolidated Steel Industries (Pty) Ltd's (CSI) Global Roofing Solutions business (GRS Division).
2. NewCo will acquire the GRS Division as a going concern as well as shareholding in GRS Botswana (Pty) Ltd (GRS Botswana) and Country Roofing (Pty) Ltd (Country Roofing Namibia).

The parties and their activities

3. The primary acquiring firm is NewCo, a private company incorporated in South Africa. NewCo is owned by Rockwood Private Equity Proprietary Limited (Rockwood). The shares in Rockwood are held by various individuals.

4. The primary target firm is CSI in respect of its GRS Division. The shares in CSI are held by Tiso Blackstar Holdings SE, which is in turn owned by Tiso Blackstar Group SE. CSI comprises two divisions, being the GRS Division and the Stalcor Division. Of relevance to the proposed transaction is the GRS Division which controls Global Roofing Solutions Zambia Limited; GRS Botswana; and Country Roofing Namibia. The Target Firm is a subsidiary of Tiso Blackstar Holdings SE and its HDP shareholding therefore depends on the B-BBEE shareholding of Tiso Blackstar Holdings SE. According to the Target Firm, publicly available information as of December 2020 reveals that the Black Ownership percentage of Blackstar Holdings Group Proprietary Limited is 58.16%. Based on the foregoing, it may be assumed that the Target Firm's B-BBEE % shareholding was 58.16%.
5. The GRS Division is principally a manufacturing business servicing the metal roofing and roofing accessories market in South Africa. The primary products of the GRS Division include steel roofing profiles and roofing accessories (clips), steel decking profiles and roof sheeting products.

Overlaps and Competition assessment

6. The Commission considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal or vertical overlaps. Therefore, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

7. *Public Interest*

Employment

8. The merging parties submit that the proposed transaction will not result in an adverse effect on employment. In particular, it was submitted that there will be no job losses or retrenchments arising from the proposed transaction as the employees of the GRS Division will be transferred to NewCo in terms of section 197 of the Labour Relations Act 66 of 1995 (LRA).
 9. The employees of the Target Group are represented by National Union of Metalworkers of South Africa (NUMSA) and Solidarity. The Commission contacted both trade unions in order to ascertain whether concerns were raised by the employees.
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10. In relation to the employees represented by Solidarity, it was submitted that the notice was received and that no concerns were raised. In relation to NUMSA, it was submitted that employees were not notified of the proposed transaction and as such, NUMSA had not received concerns from the members. The Commission engaged the merging parties and in response, the merging parties submitted that they have discharged their obligation by sending a copy of the merger filing to NUMSA in terms of section 13A of the Competition Act 89 of 1998 (the Act). In addition, the merging parties submitted that NUMSA acknowledged receipt of the notice and further requested that the notice be sent to NUMSA's legal department, which the merging parties did.
11. The Commission notes that the merging parties have given an unequivocal undertaking that the proposed transaction will not result in any job losses. Further, the target firm's employees would be transferred to the Acquiring Firm in terms of section 197 of the LRA. As such, the Commission is of the view that the proposed transaction will not result in any employment concerns.

Participation by the Department of Trade Industry and Competition (DTIC)

12. The DTIC requested that the proposed transaction be approved subject to a condition that for 24 months post-implementation of the merger, the GRS Division consider the 80 retrenched employees when suitable employment opportunities become available.
13. The Commission considered the request from the DTIC and is of the view that an imposition of such condition to the proposed transaction will alleviate the effects of the merger on employment. The Commission has thus engaged the merging parties regarding the proposal. On 18 May 2021, the merging parties made a submission indicating that they agree to the approval of the proposed transaction with employment conditions.

The effect on the promotion of a greater spread of ownership

14. The Commission found that the proposed transaction would result in a negative impact on the promotion of a greater spread of ownership, in particular, ownership by HDPs.
15. The Commission notes that while the diminution of HDI shareholding in the Target Firm is a concern, in the instant case the target firm is in business rescue with no prospect of an
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alternative suitor in the short to medium term. Therefore, a balance had to be struck between two competing public interest grounds (i.e., HDI ownership and employment). It is also noted that the Tiso Blackstar Group (i.e., the seller who is currently represented by the business rescue practitioners) will not receive any proceeds from the proposed transaction. The Tiso Blackstar Group COO in South Africa confirmed that they will not receive anything for this sale and articulated that the Acquiring Firm would have to settle the debts or otherwise compromise the Target Firm's creditors.

16. Absent the merger, a substantial number of employees would lose their jobs. The Commission further notes that the Acquiring Firm has committed to giving preference to some retrenched employees of the Target Firm should vacancies arise in the merged entity within a 2-year period post-merger. The merger thus has a positive effect on employment.
17. Notwithstanding the above, the Commission requested the merging parties to establish a B-BBEE scheme in the merged entity for the benefit of employees. To this end, the Acquiring Firm agreed to a condition in terms of which the merged entity will introduce a share ownership scheme for its black employees across all levels of employment whereby a certain percentage of the voting equity of the merged entity will directly or indirectly vest in participants of the scheme, within 24 (twenty-four months) of the implementation date. Furthermore, the acquiring firm would be required to provide to the Commission six monthly report regarding the implementation of the B-BBEE scheme.
18. Under the circumstances, the Commission considers that the tendered condition of introducing a worker-ownership scheme in the merged entity post-merger is adequate in addressing transformation challenges brought about by the proposed transaction.

Impact on other public interest grounds

19. The Commission also found that the proposed transaction is unlikely to result in any other public interest concerns.

Conclusion

20. The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.
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21. The Commission has imposed conditions to alleviate any employment concerns that may arise as a result of the transaction. In addition, a condition has been imposed to address the challenges arising from the effect of the merger on the promotion of a greater spread of ownership.
22. The Commission therefore approves the proposed merger subject to the conditions marked **"Annexure A"**.

ANNEXURE A
K2021511200 (SOUTH AFRICA) (PTY) LTD
AND
CONSOLIDATED STEEL INDUSTRIES (PTY) LTD
CC CASE NUMBER: 2021MAY0007

CONDITIONS

1. DEFINITIONS

- 1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –
- 1.1.1. **“Acquiring Firm”** means NewCo
 - 1.1.2. **“Act”** means the Competition Act, No. 89 of 1998 (as amended);
 - 1.1.3. **“Affected Employees”** means the 80 (eighty) employees retrenched by CSI through GRS following a retrenchment process CSI embarked upon at the beginning of August 2020;
 - 1.1.4. **“Approval Date”** means the date on which the Merger is approved by the Commission and as set out in the Commission’s clearance certificate (Notice CC 15);
 - 1.1.5. **“Commission”** means the Competition Commission of South Africa;
 - 1.1.6. **“Conditions”** means the conditions set out herein;
 - 1.1.7. **“CSI”** means Consolidated Steel Industries Proprietary Limited;
 - 1.1.8. **“Days”** means any calendar day other than a Saturday, a Sunday or an official
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public holiday in South Africa;

- 1.1.9. **“DTIC”** means the Department of Trade, Industry and Competition (South Africa);
- 1.1.10. **“GRS”** means Global Roofing Solutions, which is one of the two principal business units of CSI; being a metal roofing and roofing accessory manufacturer in South Africa servicing the construction and roofing industries in South Africa and Sub-Saharan Africa;
- 1.1.11. **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12. **“LRA”** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.13. **“Merged Entity”** means, after the Implementation Date, NewCo and the business of GRS acquired by NewCo from CSI;
- 1.1.14. **“Merger”** means the acquisition by NewCo from CSI, as a going concern, of the business conducted by CSI in its GRS division together with shares in GRS Botswana Proprietary Limited and Country Roofing Proprietary Limited, being the companies through which the GRS division conducts business in Botswana and Namibia.
- 1.1.15. **“Merging Parties”** means NewCo and CSI;
- 1.1.16. **“Moratorium Period”** means the period between the Approval Date and the Implementation Date and, thereafter, a period of 24 months from the Implementation Date;
- 1.1.17. **“NewCo”** means K2021511200 (South Africa) Proprietary Limited;
- 1.1.18. **“Target Firm”** means CSI; and
- 1.1.19. **“Tribunal”** means the Competition Tribunal of South Africa.

2. RECORDAL

- 2.1. 06 May 2021, the Merging Parties notified an intermediate Merger to the Commission wherein NewCo intends to acquire GRS, a division of CSI. Following its investigation of the Merger, the Commission found that on 2 July 2020, the CSI board resolved to place CSI into business rescue. CSI submitted that as a direct result of the CSI business rescue process, CSI engaged in an employment restructuring process at the beginning of August 2020. As a result of this process, all staff were offered a voluntary retrenchment option in terms of the LRA. CSI submitted that some employees elected to accept voluntary retrenchment. The remaining employees were retrenched. In addition, the Merging Parties confirm that the Merger would have a positive impact on employment in that it will ensure that some employees of GRS would retain their employment.
- 2.2. Both the Commission and the DTIC are concerned about the impact of the retrenchments of the employees of GRS. In particular, the DTIC filed a notice of intention to participate in the Merger process. In this regard, the DTIC requested the Commission to consider approving the Merger on the condition that the Merged Entity commit to offering the Affected Employees re-employment opportunities should any vacancies arise post-merger for a period of 24 months.
- 2.3. The Commission and the DTIC are also concerned about the fact that the Merger will result in a reduction in the percentage black ownership of the business of GRS which is to be acquired by Newco.
- 2.4. In order to address the employment and ownership transformation concerns identified by the Commission and the DTIC, the Merger is approved subject to these Conditions, which the Merging Parties have agreed to.

3. CONDITIONS

- 3.1. For the duration of the Moratorium Period, the Merged Entity shall give first preference to the Affected Employees over other potential employees for any vacancies at the Merged Entity, provided the Affected Employees have the requisite qualifications, skills, know-how and experience for those specific vacancies.
- 3.2. The Merged Entity shall use its best endeavours to communicate available vacancies at
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the Merged Entity to Affected Employees for the duration of the Moratorium Period.

- 3.3. The Merged Entity shall publish communications via SMS to the last known number and email at the last known email address to all the Affected Employees, providing them with the information and details of any vacant position as well as the contact details of the relevant personnel, to enable them to apply for the job, should they wish to do so.
- 3.4. The Merged Entity shall, within a period of 24 (twenty-four) months from the Implementation Date, introduce a share ownership scheme for its black employees across all levels of employment in terms of which not less than 10% (ten percent) of the voting equity of the Merged Entity will directly or indirectly vest in participants of the scheme.

4. MONITORING OF COMPLIANCE WITH CONDITIONS

- 4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. The Merging Parties shall circulate a copy of the Conditions to the employees of GRS, the Affected Employees and/or their respective representatives within 5 Days of the Approval Date.
- 4.3. As proof of compliance thereof, the Merging Parties shall within 10 Days of circulating the Conditions, provide the Commission with an affidavit by a director employed by each of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.4. The Merged Entity shall submit an affidavit within 5 Days after the first and second anniversary of the Implementation Date, to the Commission and the DTIC, confirming compliance with clause 3 of the Conditions. This affidavit must be deposed to by a director of the Merged Entity.
- 4.5. For every 6 (six) months of the Moratorium Period, the Merged Entity shall provide a detailed progress report to the Commission regarding the status of compliance with paragraph 3.4 of the Conditions, which includes amongst others the steps taken to ensure compliance thereof.
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- 4.6. Any employee of the Merged Entity who believes that the Merged Entity has not complied with or has acted in breach of the Conditions may approach the Commission.
- 4.7. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

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 to these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

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