

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 5370****4 October 2024****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****DISCOVERY ENERGY HOLDINGS, L.P.****AND****THE ENERGY BUSINESS OF KOHLER CO.****CASE NUMBER: 2024JAN0024**

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:

Background

1. On 19 January 2024, the Competition Commission ("Commission") received a notice of an intermediate merger wherein Discovery Energy Holdings, L.P. ("Discovery Energy Holdings"), an exempted limited partnership organised under the laws of the Cayman Islands, intends to acquire sole control of certain entities controlled by Kohler Co. ("Kohler") constituting its energy business ("Kohler Energy or the Target Firm").
2. The primary acquiring firm Discovery Energy Holdings is among the entities that are fully-owned, directly or indirectly managed and/or advised (including through intermediaries and funds) by Platinum Equity Advisors, LLC (Platinum Equity Advisors) and ultimately controlled by Platinum Equity, LLC ("Platinum Equity"), a limited liability company incorporated in accordance with the laws of the United States of America (USA). All those entities that are fully owned, directly or indirectly managed and/or advised (including through intermediaries and funds) by Platinum Equity Advisors and ultimately controlled by Platinum Equity are collectively referred to as Platinum Equity Group. Discovery Energy Holdings controls several firms in South Africa, including Calderys South Africa Proprietary Limited ("Calderys SA").

3. Neither Discovery Energy Holdings, nor Platinum Equity, have any shareholding by historically disadvantaged persons (“HDPs”) as contemplated in the Competition Act No.89 of 1998, as amended (the “Act”)
4. Platinum Equity Group is active in firms that provide services and solutions to customers in a broad range of businesses, including information technology, telecommunications, logistics, metal services, manufacturing, and distribution.
5. The primary target firm comprises certain entities controlled by Kohler Co. (“Kohler”) constituting its energy business (“Kohler Energy”). In South Africa, the Target Firm comprises only Clarke Energy South Africa Proprietary Limited (“Clarke South Africa”). Kohler is not controlled by any HDPs.
6. Kohler Energy is a manufacturing company that offers industrial energy systems, powertrain technologies and home energy solutions. Kohler Energy is headquartered in the USA. In South Africa, through Clarke South Africa, the Target Firm engages in the provision of distributed power plant solutions, including the engineering, installation, and maintenance of power plants used for industrial and mining activities.

Competition assessment

7. The Commission found that the proposed transaction will unlikely result in a substantial lessening or prevention of competition in any relevant market in South Africa.

Public interests

8. The merging parties tendered commitments which the Commission considers will render the merger justifiable on public interest grounds. These commitments are set out in **Annexure A**.

ANNEXURE A**DISCOVERY ENERGY HOLDINGS, L.P.****AND****THE ENERGY BUSINESS OF KOHLER CO.****CASE NUMBER: 2024JAN0024****CONDITIONS**

1. DEFINITIONS

The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meaning: -

- 1.1 **"Acquiring Firm"** means Discovery Energy Holdings, L.P.;
- 1.2 **"Approval Date"** means the date referred to in the Commission's decision;
- 1.3 **"Business Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.4 **"Clarke South Africa"** means Clarke Energy South Africa Proprietary Limited;
- 1.5 **"Commission"** means the Competition Commission of South Africa;
- 1.6 **"Competition Act"** means the Competition Act, No. 89 of 1998 (as amended);
- 1.7 **"Conditions"** means these conditions;
- 1.8 **"HDP"** means historically disadvantaged persons as contemplated in section 3(2) of the Competition Act;
- 1.9 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Acquiring Firm acquires sole control of the Target Firm;
- 1.10 **"Kohler"** means Kohler Co.;
- 1.11 **"LRA"** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.12 **"Merger"** means the acquisition of sole control by the Acquiring Firm of the Target Firm;
- 1.13 **"Merging Parties"** means the Acquiring Firm and the Target Firm;

1.14 **"Target Firm"** means certain entities (including Clarke South Africa) controlled by Kohler constituting its energy business; and

1.15 **"Tribunal"** means the Competition Tribunal of South Africa.

2. **CONDITIONS**

2.1 **Employment**

2.1.1 The Merging Parties shall not effect any merger specific retrenchments as a result of the proposed Merger.

2.1.2 For the sake of clarity, retrenchments do not include (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; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.

2.2 **Procurement from HDPs**

2.2.1 For a period of 3 (three) calendar years, being 2025, 2026 and 2027, Clarke South Africa will ensure that it procures to the total value of at least R 500,000 [CONFIDENTIAL], on an annual basis, the goods and/or services listed below, from firms owned or controlled by HDPs:

2.2.1.1 advertising services;

2.2.1.2 cleaning products;

2.2.1.3 motor vehicle parts;

2.2.1.4 printing and stationery;

2.2.1.5 security services; and

2.2.1.6 travel agency services.

2.3 Capital expenditure

- 2.3.1 For a period of 3 (three) calendar years, being 2025, 2026 and 2027, Clarke South Africa will incur capital expenditure of at least R 185,000 [CONFIDENTIAL], on an annual basis, to ensure continued growth of its business.
- 2.3.2 The capital expenditure referred to in paragraph 2.3.1 will:
- 2.3.2.1 relate to capital expenditure in respect of (i) motor vehicles, (ii) information technology equipment and (iii) fixtures and fittings; and
- 2.3.2.2 will be directed towards firms owned or controlled by HDPs.

3. MONITORING OF COMPLIANCE WITH THE CONDITION

- 3.1 The Merging Parties shall circulate a non-confidential version of the Conditions to their employees in South Africa within 5 (five) Business Days of the Approval Date.
- 3.2 As proof of compliance with clause 3.1 a senior executive of each of the Merging Parties 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 notices that were circulated to the employees and their employee representatives.
- 3.3 The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Business Days of it becoming effective.
- 3.4 By no later than 31 March 2026, 31 March 2027 and 31 March 2028, respectively, Clarke South Africa shall submit a report confirming compliance with all the Conditions. Each such report shall be accompanied by an affidavit attested to by a director of each of the Merging Parties confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 3.5 The Commission may request any additional information from the Merging Parties which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

4. BREACH

- 4.1 In the event that the Commission determines that there has been an apparent breach by the Merging Parties of any of the above Conditions, this shall be dealt with in terms

of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

5. VARIATION

- 5.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, amended and/or the time period for fulfilment of the Conditions to be extended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, amended and/or the time period for fulfilment to be extended as aforementioned.

6. GENERAL

- 6.1 All correspondence in relation to the 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