

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5371

4 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

EPIROC GROUP

AND

CERTAIN BUSINESS ACTIVITIES AND ASSETS OF WECO (PTY) LTD

CASE NUMBER: 2024JAN0033

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 23 January 2024, the Competition Commission ("Commission") received a notice of an intermediate merger wherein Epiroc Group intends to acquire certain business activities and assets of Weco (Pty) Ltd ("Weco"). Upon implementation of the proposed transaction, Epiroc Group will own and solely control the business activities and assets of Weco.
2. The primary acquiring firms include Epiroc Holdings South Africa (Pty) Ltd ("Epiroc Holdings SA"), and other subsidiaries of Epiroc AB ("Epiroc AB"), a Swedish listed entity. In South Africa, Epiroc Holdings SA directly and indirectly controls several firms, including Aard Mining Equipment (Pty) Ltd ("AARD"). All the firms directly and indirectly controlled by Epiroc AB are referred to as Epiroc or the Acquiring Group.
3. Epiroc SA is held as to 26% by Tirisano Trust, which is a historically disadvantaged persons ("HDP") as contemplated in the Competition Act No.89 of 1998, as amended (the "Act"). Epiroc SA is also in the process of implementing an Employee Share Ownership Programme ("ESOP") of 5% in respect of AARD.
4. Epiroc develops and provides rock excavation and construction equipment and tools for surface and underground mining applications, including rock drills. Relevant to the proposed transaction are Epiroc's activities in respect of service and aftermarket support

(which entails selling parts, providing repairs & servicing and providing technical knowledge/expertise) (“aftermarket support”) for rock drills. Rock drills are components in drilling equipment used for underground and surface mining in order to drill holes into rock into which explosives are placed for excavation purposes. Epiroc provides aftermarket support for its own rock drills (Epiroc and AARD) and also for Sandvik’s (a competitor) rock drills.

5. The primary target firm comprises certain business activities and corresponding assets of Weco. These assets of Weco are referred to as the Target Firm.
6. The Target Firm is currently held as to 26% by the Weco Education Trust, an HDP empowerment trust.
7. The Target Firm provides service and aftermarket support for rock drills. Specifically, the Target Firm provides service and aftermarket support for rock drills manufactured by Original Equipment Manufacturers (“OEMs”) such as Epiroc (including AARD), Sandvik and Montabert, on behalf of its customers, mining houses and operators of the rock drills. In other words, the Target Firm does not own any rock drills, the rock drills are owned by the mining houses and construction companies. These mining houses/construction companies will use firms like the Target Firm for aftermarket support of the rock drills, such support may also be obtained from the OEMs directly. The Target Firm also sells Montabert rock drills as a non-exclusive agent, as well as rock drills that it remanufactures, and other components and spares, specifically for drill rigs.

Competition assessment

8. 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

9. 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
THE EPIROC GROUP
AND
CERTAIN BUSINESS ACTIVITIES AND ASSETS OF WECO PROPRIETARY LIMITED
CASE NUMBER: 2024JAN0033

1. DEFINITIONS

In this document, the expressions used below will have the appropriate meaning assigned to them and the following and related expressions will bear the following meaning:

- 1.1 **“Acquiring Firms”** means collectively Epiroc Holdings South Africa Proprietary Limited, Epiroc SPV and Epiroc South Africa Proprietary Limited.
- 1.2 **“Approval Date”** means the date referred to on the Commission’s Merger Clearance Certificate;
- 1.3 **“Business”** means all assets of Weco relating to the manufacture, repair and supply and sale of hydraulic rock drills (also known as drifters) as well as other components and spares to the mining industry;
- 1.4 **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5 **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.6 **“Competition Act”** means the Competition Act, No. 89 of 1998, as amended;
- 1.7 **“Conditions”** means collectively, the conditions referred to in this document;
- 1.8 **“Days”** means any day that is not a Saturday, Sunday or official public holiday in South Africa;
- 1.9 **“Eligible Workers”** means at least all current or future Workers of the Target Firm below a managerial level who have been employed for a period of at least 2 (two) years, specifically excluding any Workers on fixed term contracts, independent contractors or any person who renders services at any time through the involvement

of a labour brokerage or otherwise by temporary contract other than as a permanently employed Worker of the Merged Firm;

- 1.10 “**Epiroc**” means Epiroc South Africa Proprietary Limited;
- 1.11 “**Epiroc SPV**” means K2023247076 (South Africa) Proprietary Limited;
- 1.12 “**ESOP**” means an employee share ownership programme, to be structured by way of a trust, to be implemented within the ESOP Establishment Period;
- 1.13 “**ESOP Establishment Period**” means a period of 24 (twenty-four) months reckoned from the Implementation Date;
- 1.14 “**HDP**” means a historically disadvantaged person as defined in section 3(2) of the Competition Act;
- 1.15 “**Implementation Date**” means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.16 “**Labour Relations Act**” means the Labour Relations Act, No. 66 of 1995;
- 1.17 “**Merger**” means the acquisition of the Target Firm by the Acquiring Firms;
- 1.18 “**Merged Firm**” means the Target Firm as controlled by the Acquiring Firms;
- 1.19 “**Merging Parties**” means the Acquiring Firms and the Target Firm;
- 1.20 “**NPAT**” means net profit after tax;
- 1.21 “**NVF**” means notional vendor financing or similar financing;
- 1.22 “**Prime Rate**” means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by Citibank at the relevant point in time as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it shall not be necessary to prove;
- 1.23 “**SMMes**” means either a small business or a medium-sized business, as defined in the Competition Act;
- 1.24 “**South Africa**” means the Republic of South Africa;

- 1.25 **“Target Firm”** means the business of Weco relating to the manufacture, repair and supply and sale of hydraulic rock drills as well as other components and spares to the mining industry;
- 1.26 **“Tribunal”** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.27 **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal;
- 1.28 **“Weco”** means Weco Proprietary Limited; and
- 1.29 **“Worker”** means the permanent employees (as contemplated under the Labour Relations Act) of the Target Firm who are South African resident.

2. ESTABLISHMENT OF THE ESOP

- 2.1 On or before the expiry of the ESOP Establishment Period, the Merged Firm shall establish the ESOP for the benefit of Eligible Workers. The ESOP shall hold (either directly or through Epiroc SPV) an interest equivalent to 5% of the value of the Target Firm as at the Implementation Date, in accordance with the design principles set out in **Annexure B**.

3. MANAGEMENT OF THE TARGET FIRM

- 3.1 The majority of the board of directors of Epiroc SPV shall be comprised of HDPs.

4. MONITORING

- 4.1 The Merging Parties shall circulate non-confidential versions of the Conditions to Workers of the Target Firm within 10 (ten) Days of the Approval Date.
- 4.2 As proof of compliance with Clause **Error! Reference source not found.** above, the Merging Parties shall, within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official attesting to the circulation of the Conditions and provide a copy of the notices circulated.
- 4.3 Within 5 (five) days after the Implementation Date, the Merging Parties shall notify the Commission in writing of the Implementation Date.
- 4.4 The Merging Parties shall submit to the Commission a copy of the trust deed for the ESOP within 10 (ten) Days of it being duly signed and executed.

- 4.5 The Merging Parties shall submit a report on each anniversary of the Implementation Date, up until the 3rd (third) anniversary, setting out its compliance with these Conditions. This report shall be accompanied by an affidavit, attested to by a director of the Merged Firm, confirming the accuracy of the report.
- 4.6 The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. VARIATION OF CONDITIONS

- 5.1 The Merging Parties may at any time, and on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. 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, or amended.

6. APPARENT BREACH

- 6.1 Any person who believes that the Merged Firms have failed to comply with these Conditions may approach the Commission with their complaint.
- 6.2 If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach by the Merging Parties of any of the Conditions, this shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

7. GENERAL

- 7.1 All correspondence concerning 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

ANNEXURE B - CONFIDENTIAL

Item No.	Design Principle	Applicable Criteria
1.	Structure	<ul style="list-style-type: none"> ➤ The ESOP will be established as a unitised structure in which Eligible Workers will receive units. ➤ The ESOP will hold (either directly or through Epiroc SPV) an interest equivalent to 5% (five percent) of the value of the Target Firm as at the Implementation Date.
2.	Cost to Workers	<ul style="list-style-type: none"> ➤ Eligible Workers will not be required to pay anything to participate in the ESOP. ➤ The ESOP will be funded by way of NVF to be provided by Epiroc SPV, or an affiliate company. The NVF will bear interest at the Prime Rate. ➤ The NVF will provide for a trickle dividend to the ESOP of 35% for distribution to Eligible Workers, with the remaining 65% used to service the NVF, until such time that it is extinguished. ➤ Once the NVF has been extinguished, 100% of the declared dividends due to the ESOP will be distributed to the ESOP and thereafter distributed to Eligible Workers.
3.	Governance	<ul style="list-style-type: none"> ➤ Eligible Workers shall be entitled to appoint at least 50% of the trustees of the ESOP and Epiroc SPV shall be entitled to appoint the remaining trustees. Decisions will be taken by a majority of trustees and in the event of any deadlock, the trust deed for the ESOP will contain appropriate deadlock breaking mechanisms.
4.	Duration	<ul style="list-style-type: none"> ➤ Evergreen.
5.	Participants	<ul style="list-style-type: none"> ➤ All Eligible Workers of the Target Firm.

Item No.	Design Principle	Applicable Criteria
6.	<i>Participation Benefits</i>	➤ The ESOP will, after having complied with the terms of the NVF Loan, distribute the net income of the ESOP to Eligible Beneficiaries in the ratio stipulated in 2 above until such time that the NVF is extinguished (whereafter 100% of the declared dividends due to the ESOP will be distributed by the ESOP to Eligible Workers).