

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5379

4 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

FRANCIS CARRUTHERS
AND
LESEDI NUCLEAR SERVICES (PTY) LTD

CASE NUMBER: 2023SEP0045

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 29 September 2023, the Competition Commission ("Commission") received notice of an intermediate merger whereby Stirling Investments Proprietary Limited ("Stirling") intends to acquire [Confidential] shareholding in Lesedi Nuclear Services Proprietary Limited ("Lesedi").
2. The primary acquiring firm is Stirling, a South African firm. Stirling is wholly owned by Mr Francis Carruthers ("Carruthers"). Carruthers currently owns [Confidential] shareholding in Lesedi, in his personal capacity. The proposed transaction envisages Stirling acquiring [Confidential] of the shareholding in the target firm, resulting in Carruthers having majority shareholding, [Confidential], post-transaction. Stirling is newly incorporated and will be used by Carruthers as a special purpose vehicle to acquire shareholding of the target firm, Lesedi.
3. The acquiring firm does not have any shareholding held by historically disadvantaged persons ("HDPs").
4. The primary target firm is Lesedi, a South African firm. Lesedi is an engineering firm providing specialist engineering services to clients *inter alia* within the power generation, mining, oil and gas industries.

5. The target firm is currently held [Confidential] by HDPs being [Confidential].

Competition assessment

6. The Commission considered the activities of the merging parties and found that they do not overlap as Lesedi is an engineering firm providing specialist engineering services, whilst Carruthers does not control any other firm besides Stirling. Stirling is a special purpose vehicle with no current activities. The Commission is of the view that the proposed transaction is unlikely to change the structure of any market. As such, it is unlikely to substantially prevent or lessen competition in any market.

Public interest assessment

7. The address the dilution in HDP shareholding arising from the merger, the merging parties have agreed that should the transaction be implemented, to pursue a HDP transaction at Lesedi post-merger. In addition, subject to certain shareholders exiting Lesedi, the merging parties will implement an employee share ownership plan ("ESOP") at Lesedi.
8. These commitments are set out in the conditions attached as **Annexure A** hereto.
9. The merger does not raise any further public interest issues.

ANNEXURE A
FRANCIS CARRUTHERS
AND
LESEDI NUCLEAR SERVICES (PTY) LTD
CASE NUMBER: 2023SEP0045

CONDITIONS

1. DEFINITIONS

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

- 1.1 **“Acquiring Firm”** means Francis Carruthers;
- 1.2 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.3 **“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);
- 1.4 **“Commission”** means the Competition Commission of South Africa;
- 1.5 **“Conditions”** means the merger conditions included in this Annexure A;
- 1.6 **“Days”** means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.7 **“ESOP”** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.8 **“ESOP Establishment Period”** means 18 (eighteen) months following [Confidential];
- 1.9 **“Framatome”** means Framatome Southern Africa Proprietary Limited, which holds [Confidential] shareholding in Lesedi;
- 1.10 **“HDPs”** means historically disadvantaged persons as contemplated in section 3(2) of the Act;
- 1.11 **“HDP Transaction”** means the Acquiring Firm’s commitment to introduce an HDP shareholder/ HDP shareholders as contemplated in section 3(2) of the

Act, that will hold no less than [Confidential] of the issued share capital in the Target Firm.

- 1.12 **“Implementation Date”** means the date, occurring after the last condition precedent to the Merger is fulfilled or waived, as the case may be, on which the Merger is implemented in accordance with its terms;
- 1.13 **“Merger”** means the proposed acquisition of the Target Firm by the Acquiring Firm as notified to the Commission under Case No. 2023SEP0045;
- 1.14 **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.15 **“South Africa”** means the Republic of South Africa;
- 1.16 **“Target Firm”** means Lesedi Nuclear Services (Pty) Ltd;
- 1.17 **“Tribunal”** means the Competition Tribunal of South Africa;
- 1.18 **“Qualifying Workers”** means Workers employed by the Target Firm; and
- 1.19 **“Worker”** means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

2. ESOP AND HDP OWNERSHIP

- 2.1. Within [Confidential], the Merging Parties shall establish the ESOP for the benefit of the Qualifying Workers. The ESOP shall hold no less than 10% of the issued shares in the Target Firm, in accordance with the design principles set out in Annexure B; and
- 2.2. Within 36-months (thirty-six) of the Implementation Date, the Merging Parties shall establish an HDP Transaction pursuant to which one or more HDP shareholder shall hold no less than [Confidential] of the issued shares in the Target Firm.

3. MONITORING

- 3.1. Within 5 (five) days after the Implementation Date, the Merging Parties shall notify the Commission in writing of the Implementation Date.
- 3.2. By no later than 36-months (thirty-six) months of the Implementation Date, the Merging Parties shall submit a compliance report to the Commission confirming that:
 - 3.2.1. the ESOP referred to in Clause 2.1 above, subject to the applicable conditions, has subscribed to 10% of the issued shares of the Target Firm; and
 - 3.2.2. the Target Firm has implemented an HDP ownership transaction as required under Clause 2.2.

- 3.3. Prior to the implementation of the HDP Transaction, the Acquiring Firm will provide the Commission with details of the HDP Transaction in writing. These details shall set out:
- 3.3.1. the structure of the HDP Transaction;
 - 3.3.2. the identities of the HDP shareholder/s;
 - 3.3.3. evidence that the prospective participants to the HDP Transaction are HDPs.
 - 3.3.4. the proportion of shareholding in the Acquiring firm that each prospective HDP shareholder(s) will receive; and
 - 3.3.5. confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.
- 3.4. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval, which if details are in compliance with the conditions in clause 2.2 and 3.3 will be approved by the Commission within 30 Days of written notification, or such other period as may be agreed in writing.
- 3.5. The compliance report shall be accompanied by a copy of the trust deed for the registration of the ESOP and an affidavit from a director of the Merging Parties confirming the accuracy of the information contained in the report.
- 3.6. The Merging Parties shall submit a report on each anniversary of the Implementation Date, setting its compliance with Clause 2 of the Conditions. This report shall be accompanied by an affidavit, attested to by a director of the Merging Parties, confirming the accuracy of the report.
- 3.7. 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.

4. APPARENT BREACH

- 4.1. Should the Commission receive 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 Commission Rules.

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, 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. GENERAL

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail 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