

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5407

11 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

FRAMATOME SOUTHERN AFRICA (PTY) LTD

AND

LESEDI NUCLEAR SERVICES (PTY) LTD

CASE NUMBER: 2024JAN0036

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:

Transaction

1. On 25 January 2024, the Competition Commission ("Commission") received notice of an intermediate merger wherein Framatome Southern Africa (Pty) Ltd ("Framatome SA") intends increase its shareholding in Lesedi Nuclear Services (Pty) Ltd ("Lesedi") from 46.62% to 75.62%. The increase in shareholding will result in Framatome SA exercising sole control over Lesedi.

Parties to the transaction

2. The primary acquiring firm is Framatome SA. Framatome SA is a wholly owned subsidiary of Framatome S.A.S. ("Framatome S.A.S"). Framatome S.A.S is controlled by Electricité de France ("EDF"), a public limited company controlled by the French State. In South Africa, EDF controls Framatome SA and EDF Renewables (Pty) Ltd ("EDF Renewables"). EDF and its subsidiaries will collectively be referred to as the Acquiring Group.
3. The Acquiring Group through Framatome SA has joint control joint control over Lesedi, the primary target firm in the instant transaction.

4. The Acquiring Group does not have any shareholding held by Historically Disadvantaged Persons (HDPs) or workers.
5. The Acquiring Group is primarily active in the generation and wholesale supply of electricity (including trade), as well as the transmission, distribution, and retail supply of electricity worldwide. In South Africa, the Acquiring Group is active in the nuclear sector and the renewable energy sector.
6. In the nuclear sector, the Acquiring Group's main activities are the design and manufacture of nuclear islands, the design and supply of safety systems, the supply of nuclear services, and the design and manufacture of fuel assemblies. In South Africa, Framatome S.A.S provides various products and services to Eskom for the operation and maintenance of the Koeberg power plant.
7. In the renewable energy sector, the Acquiring Group's operates through EDF Renewables. EDF Renewables is an independent power producer ("IPP") that develops, finances, builds, owns, and operates commercial renewable energy generation facilities in South Africa. Its field of expertise includes wind, solar PV, battery storage and hybrid solutions, leveraging the expertise of its global parent company, EDF.
8. The primary target firm is Lesedi. Lesedi is jointly controlled by Framatome SA (the primary acquiring firm in the instant transaction) (46.62%), Jay & Jayendra (Pty) Ltd ("J&J") (19.19%), and Group Five Construction (Pty) Ltd ("Group Five") (19,19%). In this regard, the parties indicate that Framatome SA, J&J, and Group Five have a voting pool agreement in terms of which they jointly exercise control over Lesedi.
9. Lesedi controls a number of firms including: Lesedi Renewables Africa (Pty) Ltd ("Lesedi Renewables") and Unyazi Sales and Services (Pty) Ltd ("Unyazi") amongst others.
10. Lesedi has 19.19% of its shareholding held by HDPs. This shareholding is held by J&J, a firm that is 100% owned by HDPs.
11. Lesedi is an engineering, procurement, and construction ("EPC") company, having successfully completed numerous key projects in nuclear, renewable energy, industrial power, mining and oil and gas environments. Lesedi is involved in EPC of turnkey solutions in the nuclear and non-nuclear sectors. Its core service offering comprises

the provision of bespoke engineering solutions, project management, as well as operations and maintenance services.

12. Lesedi's activities in the nuclear sector comprise nuclear power island modifications and upgrades, outage maintenance services (valves and pumps), nuclear and conventional HVAC maintenance and upgrades, OEM support, nuclear fuel handling and life extension modifications and upgrades. In South Africa, Lesedi has been involved in executing upgrade and maintenance projects at Koeberg for almost 30 years, in partnership with Framatome S.A.S.
13. Lesedi through Unyazi also specialises in the sizing, sourcing and supply of control valves, mechanical isolation valves, safety relief valves and actuators. Unyazi supplies all styles of valves and technical-related services to the industrial, oil & gas power and utility, mining, marine, agriculture, and construction sectors.

Competition analysis

14. Notwithstanding the overlaps arising from the merger, the Commission found that the merger is unlikely to result in any substantial prevention or lessening of competition in any relevant market.

Public interest analysis

15. The Commission found that the merger would result in a reduction in HDP ownership at Lesedi. To remedy that dilution, the parties have agreed to a condition that the parties will implement a 10% ESOP within a period of 24 months of the implementation of the proposed transaction. In addition, the merging parties agreed to procure from HDPs and expand existing skills development initiatives which benefit HDPs.
16. The Commission found that the conditions tender by the parties render the merger justifiable on public interest grounds.

Conclusion and recommendations

17. The Commission approves the proposed transaction subject to conditions attached hereto as "**Annexure A**".

ANNEXURE A**FRAMATOME SOUTHERN AFRICA PROPRIETARY LIMITED****AND****LESEDI NUCLEAR SERVICES PROPRIETARY LIMITED****CASE NO: 2024JAN0036**

CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following words will, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) will bear corresponding meanings:

- | | | |
|-------|---------------------------|---|
| 1.1.1 | "Approval Date" | means the date on which the Merger is approved by the Commission, Tribunal or Competition Appeal Court (if applicable); |
| 1.1.2 | "Business Day" | means any day which is not a Saturday, Sunday or public holiday in South Africa; |
| 1.1.3 | "Commission" | means the Competition Commission of South Africa, established in terms of section 19 of the Competition Act; |
| 1.1.4 | "Commission Rules" | means the Rules for the Conduct of Proceedings in the Commission; |
| 1.1.5 | "Competition Act" | means the Competition Act, No. 89 of 1998, as amended; |
| 1.1.6 | "Conditions" | means these merger conditions to the approval of the Merger issued by the Commission; |

- 1.1.7 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties in accordance with its terms;
- 1.1.8 **"DTIC"** means the Department for Trade, Industry and Competition of the South African Government;
- 1.1.9 **"Employees"** means any person that is, in terms of South African labour law, an employee of Lesedi in South Africa, whether on a permanent or a fixed term basis,
- 1.1.10 **"Framatome SAPL"** means Framatome Southern Africa Proprietary Limited;
- 1.1.11 **"Framatome S.A.S"** means Framatome S.A.S, a joint stock limited liability company incorporated under the laws of France;
- 1.1.12 **"HDP"** means a historically disadvantaged person as contemplated in section 3(2) of the Competition Act;
- 1.1.13 **"Lesedi"** means Lesedi Nuclear Services Proprietary Limited;
- 1.1.14 **"Merger Parties"** means the parties to the Merger, being Framatome SAPL and Lesedi;
- 1.1.15 **"Qualifying Employees"** means all permanent and fixed/long-term contract employees of Lesedi who have been in the employ of Lesedi for at least 24 (twenty-four) months and who are not currently benefitting from a short-term incentive scheme (Executives and Managers);
- 1.1.16 **"Merger"** means the transaction in terms of which Framatome SAPL will acquire sole control of Lesedi, through the acquisition of a further 29% of the issued share capital of Lesedi from Jay and Jayendra Proprietary Limited and Group Five Construction Proprietary Limited (in business rescue)**Error! Reference source not found.**;
- 1.1.17 **"R"** means South African Rand, the lawful currency of the Republic of South Africa;

1.1.18 **"Tribunal"** means the Competition Tribunal of South Africa established in terms of section 26 of the Competition Act; and

1.1.19 **"Tribunal Rules"** means the means Rules for the Conduct of Proceedings in the Tribunal.

1.2 In these Conditions, any definition, wherever it appears, will bear the same meaning and apply throughout these Conditions unless otherwise stated or inconsistent with the context in which it appears.

2. **EMPLOYEE SHARE OWNERSHIP PLAN**

2.1 Within 24 (twenty-four) months of the Implementation Date, the Merger Parties shall establish an Employee Share Ownership Plan ("**ESOP**") for the benefit of Qualifying Employees.

2.2 The ESOP shall hold an effective 10% (ten percent) interest in Lesedi as at the date on which the ESOP is established, in accordance with the design principles set out in Annexure B.

3. **PROCUREMENT**

3.1 The Merger Parties shall spend at least **[Confidential]** per annum on the procurement of good and services from HDP-owned businesses in the Merger Parties' value chain for a period of 3 (three) years from the Implementation Date. Such spend shall be incremental to the current spend by Lesedi in respect of its procurement from HDP-owned businesses.

3.2 Framatome S.A.S shall continue using third-party local suppliers, other than Lesedi, for at least **[Confidential]** of valve maintenance work at Koeberg, subject to such arrangements remaining reasonably and commercially viable in terms of the required capacity, competency, quality, pricing and commercial terms.

4. **SKILLS DEVELOPMENT AND BURSARY PROGRAMMES**

4.1 The Merged Parties commit to maintain at least Lesedi's current annual spend of R3.5 million (three million five hundred thousand) for skills development for people with disabilities in the form of learnerships, as well as formal higher education for

Lesedi Employees, student bursaries and professional registration, for a period of 3 (three) years from the Implementation Date.

- 4.2 The Merger Parties further commit to spend an additional R1.5 million (one million five hundred thousand) per annum towards bursaries for the benefit of HDP Employees of the Merger Parties or their children, through the Lesedi Skills Academy, for a period of 3 (three) years from the Implementation Date.
- 4.3 The Merger Parties shall also offer the beneficiaries of the above bursary funding, who complete their studies in fields and expertise required by the Merger Parties, preferential employment opportunities in the event that employment opportunities arise, provided that such persons possess the necessary qualifications, skills, and experience required for the relevant roles.

5. MONITORING

- 5.1 The Merger Parties will circulate a version of the Conditions to all Employees of Lesedi within 10 (ten) Business Days of the Approval Date.
- 5.2 As proof of compliance with clause 5.1, the Merger Parties will, within 5 (five) Business Days of circulating the Conditions, submit to the Commission a signed declaration by a senior official of Lesedi attesting to the circulation of the Conditions.
- 5.3 The Merger Parties will notify the Commission in writing of the implementation of the Merger within 10 (ten) Business Days of the Implementation Date.
- 5.4 Within 45 (forty-five) Business Days of each anniversary of the Implementation Date up until the 3 (three) year anniversary of the Implementation Date, the Merger Parties shall provide to the Commission and DTIC a suitable and appropriately detailed annual report regarding the Merger Parties' compliance with these Conditions.
- 5.5 The report referred to in clause 5.4 shall be accompanied by a signed declaration attested to by a senior official of Lesedi confirming the accuracy of the annual report and full compliance with the Conditions or otherwise in the year to which the reports relate.
- 5.6 The Merger Parties shall within a reasonable time after request by the Commission and/or DTIC respond to any queries that the Commission and/or DTIC may have

in respect of the abovementioned annual report and its compliance with the Conditions.

6. VARIATION

- 6.1 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.

7. APPARENT BREACH

- 7.1 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.

8. GENERAL

- 8.1 All correspondence concerning 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 the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298

ANNEXURE B - CONFIDENTIAL

Design Principle	Applicable Criteria
Structure	<ul style="list-style-type: none"> ○ Will be a unitised structure whereby a trust will be established, and all Qualifying Employees will receive units.
Cost to Workers and participating HDPs	<ul style="list-style-type: none"> ○ No cost to Employees: Qualifying Employees must not be required to pay to participate in the ESOP. ○ Should the ESOP be funded through the notional vendor funding, the notional vendor funding will provide for a fixed trickle dividend in terms of which at least 35% of declared dividends will be paid to the beneficiaries with the remaining 65% used to service the vendor financed loan until such time as it is extinguished. ○ Once any loan funding has been extinguished, 100% of the declared dividends due to the beneficiaries will be distributed to the beneficiaries. ○ The Merging Parties must make provision and cover the reasonable costs for independent legal and financial experts to act on behalf of workers in ESOP establishment negotiations (the "Provision"). For the avoidance of doubt, the Provision shall be at no cost to Employees and must not impact any dividend flows due to workers. ○ Any disputes between the Merging Parties and any independent legal and financial experts as regards the reasonableness of fees / costs must be resolved by arbitration or any other mutually agreed dispute resolution mechanism.
Governance	<ul style="list-style-type: none"> ○ Qualifying Employees will be represented on the board of trustees of the ESOP.
Duration	<ul style="list-style-type: none"> ○ Perpetual / Evergreen
Participants	<ul style="list-style-type: none"> ○ All Qualifying Employees of Lesedi
Participation Benefits	<ul style="list-style-type: none"> ○ All Qualifying Employees will be entitled to dividends ○ Beneficiaries will cease to participate for bad leaver events: resignations and dismissals.