

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5412

11 October 2024

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SOLAR MINING (PTY) LTD

AND

PROBLAST BS (PTY) LTD AND ITS SISTER COMPANIES, WHICH INCLUDE (I) PROBLAST B-BBEE INVESTMENT CO (PTY) LTD, (II) MAXIGEAR (PTY) LTD, (III) FRAG SHARED SERVICES (PTY) LTD AND (IV) PROCAPTURE (PTY) LTD

CASE NUMBER: 2024MAR0015

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 11 March 2024, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Solar Mining Services (Pty) Ltd ("Solar Mining") intends to acquire Problast BS (Pty) Ltd ("Problast") and its sister companies, namely, (i) Problast B-BBEE Investment Co (Pty) Ltd ("Problast B-BBEE"), (ii) Maxigear (Pty) Ltd ("Maxigear"), (iii) Frag Shared Services (Pty) Ltd ("Frag Shared") and (iv) Procapture (Pty) Ltd ("Procapture"). Post-merger, Problast and its sister companies will be controlled by Solar Mining.

Description of the merging parties

2. The primary acquiring firm, Solar Mining, is a private company duly incorporated under the laws of the Republic of South Africa. Solar Mining is controlled by Solar Overseas Netherlands Co-operative ("SONC"), as to 87.43%, with Ortiz Investments (Pty) Limited ("Ortiz") owning the remaining minority interest of 12.57%. SONC is in turn controlled by Solar Overseas Mauritius Limited ("SOML"). SOML is a wholly owned subsidiary of Solar

Industries India Limited ("SIIL"). Apart from its operational entity also known as Solar Mining, Solar Mining does not control any company in South Africa. Solar Mining and all its controllers will henceforth be referred to as the "Acquiring Group".

3. Solar Mining is 6.41% held by historically disadvantaged persons ("HDPs"). Ortiz which is 51% held by an HDP shareholder, holds 12.57% of shares in Solar Mining, which translates into 6.41%.
4. The primary target firms, Problast and sister companies, namely, (i) Problast B-BBEE, (ii) Maxigear, (iii) Frag Shared and (iv) Procapture, are all duly incorporated under the laws of the Republic of South Africa.
5. ProBlast is jointly controlled by Problast Holdco Co (Pty) Ltd ("Problast Holdco") and Problast B-BBEE, as to 49% and 51% respectively. Problast B-BBEE is jointly controlled by SMC Trust ("SMC") as to 49% and Problast Empowerment Trust ("Problast Empowerment"), as to 36%. Problast Empowerment is an employee trust for the benefit of Problast Employees. K2018397819 (SA) (Pty) Ltd ("K2018397819"), which holds a minority interest of 15% in Problast B-BBEE, is held by a private person in an individual capacity. Apart from Problast and Problast B-BBEE, all Problast sister companies are wholly owned by Problast Holdco. Problast and sister companies will henceforth be referred to as the "Target Firms" or "Target Group" and Problast Holdco and its shareholders will be referred to as the "Selling Group".
6. Problast B-BBEE is 51% held by HDPs and this shareholding will remain post-merger as the HDP shareholders are not disposing of their shareholding in the instant transaction.

Description of the transaction

7. In terms of the Sale of Shares and Cession of Claims Agreement between the merging parties, SONC will subscribe for shares in Solar Mining and the proceeds from the share sale will be utilised for the purposes of acquiring the shares in Problast and the sister companies. Post-merger, Solar Mining will directly own 49% of the entire issued share capital in Problast B-BBEE, 74% of the entire issued share capital in Problast and 100% of the entire issued share capital in the other Problast sister companies, namely, Maxigear, Frag Shared and Procapture.

8. The incumbent HDP shareholders, namely Problast Empowerment and K2018397819 will continue to jointly own 51% of the entire issued shares in Problast B-BBEE which enables them to continue to hold 26% of Problast.

Overlapping markets and assessment

9. The Commission considered the activities of the merging parties and found that they overlap vertically as Solar Mining manufactures and supplies (i) commercial explosives (in the form of emulsion) and (ii) Initiating Systems (in the form of boosters) which are utilised by Problast in its downstream drilling and blasting activities offered to the mining houses.
10. The Commission is of the view that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition within the affected markets.

Public interest

11. The parties have tendered commitments which address the public interest concerns arising from the merger. These are set out in the conditions attached as **Annexure A** hereto.

Conclusion

12. Based on the foregoing, the Commission approves the merger subject to Conditions included as **Annexure A**

ANNEXURE A: CONDITIONS**SOLAR MINING SERVICES (PROPRIETARY) LIMITED****AND****PROBLAST BS (PROPRIETARY) LIMITED ET AL****CASE NUMBER:2024MAR0015**

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 **“Act”** means the Competition Act No. 89 of 1998, as amended;
- 1.2 **“Acquiring Firm”** means Solar Mining Services (Pty) Ltd;
- 1.3 **“Commission”** means the Competition Commission of South Africa;
- 1.4 **“Conditions”** means these merger conditions, included in this Annexure A;
- 1.5 **“Days”** means any day that is not a Saturday, Sunday or public holiday in South Africa;
- 1.6 **“HDPs”** means Historically Disadvantaged Persons in terms of section 3(2) of the Act;
- 1.7 **“Implementation Date”** means the date on which the Merger is implemented by Solar Mining and the Target Firms;
- 1.8 **“LRA”** means the Labour Relations Act, No. 66 of 1995 (as amended);
- 1.9 **“Merger”** means the proposed acquisition by Solar Mining of the Target Firms, as notified to the Commission under Case No. 2024Mar0015;
- 1.10 **“Merged Firm”** means the combination of Solar Mining and the Target Firms pursuant to the Merger;
- 1.11 **“Merging Parties”** means Solar Mining and the Target Firms;

- 1.12 **“Problast”** means Problast BS (Pty) Ltd;
- 1.13 **“Problast et al”** means Problast BS (Pty) Ltd and its sister companies, which include (i) Problast B-BBEE Investment Co (Pty) Ltd, (ii) Maxigear (Pty) Ltd, (iii) Frag Shared Services (Pty) Ltd and (iv) Procapture (Pty) Ltd the primary target firm collectively referred to as the Target Firms;
- 1.14 **“Solar Mining”** means the primary acquiring firm;
- 1.15 **“South Africa”** means the Republic of South Africa;
- 1.16 **“Target Firms”** means Problast BS (Pty) Ltd and its sister companies, as described in 1.11 above;
- 1.17 **“Tribunal”** means the Competition Tribunal of South Africa;
- 1.18 **“Tribunal Rules”** means the Rules for the Conduct of Proceedings in the Tribunal;

2. EMPLOYMENT

- 2.1 The Merged Firm shall not retrench any employees as a result of the Merger for a period of 3 (three) years after the Implementation Date.
- 2.2 For the sake of clarity, retrenchments for purposes of these Conditions, will not include (i) voluntary separation arrangements; (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.
- 2.3 Within 3 (three) years of Implementation Date, the Merging Parties will create employment of approximately an additional 20 permanent positions and an additional approximately 14 (fourteen) contract positions within Solar Mining and Problast entities. This will be a 10% increase from merged entity's workforce of 341.

3. SUPPLIER DEVELOPMENT

- 3.1 The Merging Parties shall commit to source at least 50% of the raw materials including equipment and consumable material requirements from HDP-owned businesses.
- 3.2 Solar Mining and Problast's supplier development expenditure, which is aimed at developing South African HDP-owned suppliers, was approximately R116 577 504.00 for the Preceding Annual Period. The Merging Parties commit to increase such

expenditure to R128 235 254.00 per annum (amounting to total expenditure of R384 705 762.00 over the 3 (three) year period following the Implementation Date).

4. **MONITORING**

- 4.1 Within 45 (forty-five) calendar days of each anniversary of the Approval Date up until the 3rd (third) anniversary of the Implementation Date, the Merging Parties shall provide a suitable and appropriately detailed annual report to the Commission regarding compliance with the Conditions.
- 4.2 These compliance reports shall be accompanied by an affidavit (deposed to by a senior official of the merged entity) confirming the accuracy of the information contained in the compliance reports.
- 4.3 The Commission may request the Merging Parties to provide any documents which the Commission considers necessary for monitoring compliance with the Conditions.

5. **APPARENT BREACH**

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

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. **GENERAL**

- 7.1 All correspondence in relation to these Conditions must be submitted to the following e-mail 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