

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NOTICE 3074 OF 2025****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****KINETIC DEVELOPMENT GROUP LTD****AND****MC MINING LTD****CASE NUMBER: 2024SEP0035**

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 20 September 2024, the Competition Commission ("Commission") was notified of an intermediate merger in terms of which Kinetic Development Group Limited ("Kinetic") (or its wholly owned subsidiary) proposes to acquire at least 51% of the issued share capital of MC Mining Limited ("MCM"). Post-merger, Kinetic will control MCM.
2. The primary acquiring firm is Kinetic, a Cayman Islands registered company listed on the Hong Kong Stock Exchange. Kinetic is controlled by King Lok Holdings Ltd. Kinetic controls various companies which are active in the coal mining and the agricultural sectors. Kinetic, its controllers, and the firms it controls are collectively referred to as the "Kinetic Group".
3. The Kinetic Group does not have any shareholding by historically disadvantaged persons (HDPs) as contemplated by section 3(2) of the Competition Act No. 89 of 1998 (as amended) (the Act).
4. Kinetic Group is an integrated coal enterprise whose operations span the entirety of the metallurgical and thermal coal industry value chain including coal production, loading and transport, and coal trading. These activities take place in China. Of relevance for competition assessment in that the Kinetic Group is involved in the mining of hard coking coal, a type of metallurgical coal.

5. The primary target firm is MCM, which is listed on both the Australian Securities Exchange and the Johannesburg Stock Exchange. MCM is not controlled by any firm. MCM controls several firms in South Africa. MCM and the firms it directly and indirectly controls are collectively referred to as the "MCM Group".
6. In South Africa, the MCM Group is a producer of thermal coal, semi-soft coking coal, pulverised coal injection and has hard coking coal deposits which are currently under development.
7. MCM Group has some HDPs ownership by virtue of certain community trusts which are shareholders in various of MCM Group's operations.

Competition Assessment

8. The Commission found that the proposed transaction is unlikely to result in any substantial prevention or lessening of competition in any relevant markets.

Public Interest considerations

9. To address public interest concerns, the parties have agreed to the conditions as set out in **Annexure A** hereto.
10. The Commission therefore approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.

ANNEXURE A**KINETIC DEVELOPMENT GROUP LIMITED AND MC MINING LIMITED****CASE NUMBER: 2024SEP0035****CONDITIONS**

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings –

- 1.1 **"Acquiring Firm"** means Kinetic Development Group Limited, or its wholly owned subsidiary;
- 1.2 **"Act"** means the Competition Act 89 of 1998, as amended;
- 1.3 **"Adverse Market Event"** means the occurrence of any circumstance, event, fact, condition (financial or otherwise) or change (including any change in the financial and/or commodity markets applicable to the currencies and/or commodities that the Merged Entity engages in), which in the reasonable opinion of the Merging Parties rendered, or is reasonably likely to render it no longer economically viable for the Merged Entity to carry out the South African Coal Mining Projects;
- 1.4 **"AMSA"** means ArcelorMittal South Africa Limited;
- 1.5 **"Approval Date"** means the date referred to on the Commission's merger clearance certificate (Form CC 15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.6 **"Baobab"** means Baobab Mining & Exploration Proprietary Limited, a subsidiary of the Target Firm and owner of the Makhado Project;
- 1.7 **"Base Amount"** means an amount of R8 000 000 (eight million Rands);
- 1.8 **"Capital Raise"** means [CONFIDENTIAL];
- 1.9 **"Capitalisation"** means [CONFIDENTIAL];

- 1.10 **"Commission"** means the Competition Commission of South Africa;
- 1.11 **"Community Trust"** means the trustees for the time being of the Makhado Colliery Community Development Trust which is a beneficial shareholder in Baobab;
- 1.12 **"Control"** means "*control*" as defined in section 12(2) of the Act;
- 1.13 **"Conditions"** means the merger conditions included in this Annexure A;
- 1.14 **"CPI"** means the average rate of change for the relevant Measurement Period (expressed as a percentage) in the Consumer Price Index for all metropolitan areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in South Africa as may replace it;
- 1.15 **"Days"** means any day that is not a Saturday, Sunday, or public holiday in South Africa;
- 1.16 **"Destabilising Event"** means an event or events that are beyond the control of the Merging Parties that prevent the Merger Parties from performing according to the plan of the mine, such as government restrictions, land disputes, civil disturbances, strikes, lockouts and other employee conflicts, floods, explosions, radiation or other hazardous thing brought to the mine, non-availability of electrical power, gas, water or other utilities, damage to or unavailability of materials, equipment or supplies and any other event which the Merging Parties could not reasonably be expected to prevent or control;
- 1.17 **"DMRE"** means Department of Mineral Resources and Energy;
- 1.18 **"ESOP"** means the Employee Share Ownership Programme to be established pursuant to these Conditions;
- 1.19 **"ESOP Establishment Period"** means 5 (five) years from the Implementation Date;
- 1.20 **"Export Parity Pricing"** means in respect of the HCC Allocation, the prevailing South African Rand equivalent to the United States Dollar price for HCC 64 MID VOL (Platts Symbol HCCAU00) per ton with material being collected from the Musina Siding;
- 1.21 **"Financial Year Start Date"** means the first day of the Target Firm's financial year immediately following the Implementation Date;

- 1.22 **"HCC Allocation"** means, 50% (fifty per cent) of the Merged Entity's annual production of HCC 64 MID VOL during the HCC Allocation Period, provided that such allocation shall not exceed 400Ktpa in any Measurement Period;
- 1.23 **"HCC Allocation Period"** means a period of 5 (five) years from the date the Merged Entity's Makhado Project commences production of HCC 64 MID VOL;
- 1.24 **"HCC 64 MID VOL"** means the hard coking coal to be produced at the Merged Entity's Makhado Project;
- 1.25 **"HDPs"** means historically disadvantaged persons as contemplated in section 3(2) of the Act;
- 1.26 **"Human Resource Programme and Local Development Programme"** means the programmes developed and to be implemented at Uitkomst Colliery Proprietary Limited for purposes of providing (i) adult education, training and skills relating to, amongst other schemes, core and portable skills training in respect of mining and non-mining skills that improve opportunities for employment within the Target Firm and outside of the Target Firm, needs analysis based training within Uitkomst Colliery and legal compliance for operational roles, (ii) internal and external bursaries and internships relating to, amongst other things, development of local community youth undertaking undergraduate studies in mining and allied studies such as Mechanical Engineering and Chemical Engineering, Bachelor of Accounting and Electrical Engineering, and (iii) interest free business loans and training to local entrepreneurs;
- 1.27 **"Implementation Date"** means the date on which the Merger is implemented by the Merging Parties;
- 1.28 **"Ktpa"** means thousand tonnes per annum;
- 1.29 **"Makhado Project"** means the hard coking coal and thermal coal exploration and evaluation project, owned by Baobab;
- 1.30 **"Management"** means Workers at Paterson Grade D1-D5 and above;
- 1.31 **"Measurement Period"** means the relevant 12 month period, the first of which shall commence on the Financial Year Start Date;

- 1.32 **"Merger"** means the proposed acquisition by the Acquiring Firm of such number of issued shares in the Target Firm that will result in the Acquiring Firm's shareholding in the Target Firm being 51% (fifty-one per cent) of the issued shares in the Target Firm, as notified to the Commission under Case No 2024SEP0035;
- 1.33 **"Merged Entity"** means the Target Firm subject to the Control of the Acquiring Firm following the Implementation Date;
- 1.34 **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 1.35 **"Mtpa"** means million tons per annum;
- 1.36 **"Phase 2 of the Makhado Project"** means the financing, construction and operation of a 2Mtpa processing facility for the Makhado Project;
- 1.37 **"Phase 3 of the Makhado Project"** means the upgrading of the 2Mtpa plant to a 4Mtpa plant for the Makhado Project;
- 1.38 **"Qualified Retrenched Employee"** means, in relation to a specific new employment opportunity in the Target Group, a Retrenched Employee who is suitably qualified and meets the Target Group's requirements for such new employment opportunity in the Target Group;
- 1.39 **"Qualifying Workers"** means Workers employed by Baobab at the relevant time and who (i) have been so employed for a minimum of 2 (two) years; and (ii) are not Management;
- 1.40 **"Retrenched Employee"** means a person who was employed by one of the firms in the Target Group and was retrenched by that firm as a direct result of the retrenchment process contemplated in terms of section 189 of the Labour Relations Act, 1995 which process was commenced and concluded prior to the Approval Date;
- 1.41 **"Sale Offer Date"** means the date that the Merged Entity notifies AMSA of an opportunity for AMSA to purchase the Merged Entity's production of hard coking coal;
- 1.42 **"South Africa"** means the Republic of South Africa;

- 1.43 **"South African Coal Mining Projects"** means the Uitkomst Colliery, the Makhado Project, the Vele Colliery and the GSP (Greater Soutpansberg) Projects as defined in the merger agreement;
- 1.44 **"Target Firm"** means MC Mining Limited;
- 1.45 **"Target Group"** means the Target Firm and the firms which it controls as at the Implementation Date;
- 1.46 **"Tribunal"** means the Competition Tribunal of South Africa;
- 1.47 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal; and
- 1.48 **"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. CAPITAL EXPENDITURE

- 2.1 Within a period of 2 (two) years from the Approval Date, the Merged Entity shall invest R847 000 000 (eight-hundred and forty-seven million Rands) in the Makhado Project,¹ in accordance with the mine plan and provided that the plan of the mine is not affected by a Destabilising Event or an Adverse Market Event.
- 2.2 Subject to the successful implementation of Phase 2 of the Makhado Project, the Merged Entity shall use its reasonable commercial endeavours to implement Phase 3 of the Makhado Project, within 5 (five) years from the date of the implementation of Phase 2 of the Makhado Project, provided that the plan of the mine is not affected by the occurrence of a Destabilising Event or an Adverse Market Event.
- 2.3 In respect of paragraphs 2.1 and 2.2 above, the Merged Entity undertakes to notify the Commission of any Destabilising Event or Adverse Market Event within 15 (fifteen) Days of its occurrence.

¹ It being accepted by the Commission that the R847 000 000 (eight-hundred and forty-seven million Rands) includes an amount of R147 000 000 (one-hundred and forty-seven million Rands) of planned capital expenditure in terms of the current works at the Makhado Project, which expenditure has commenced and is intended to be completed by the end of 2024.

3. EMPLOYMENT

- 3.1 Within a period of 12 (twelve) months from the Implementation Date, the Merged Entity shall create at least 58 (fifty-eight) permanent jobs in South Africa at the Merged Entity for purposes of carrying out the Makhado Project.²
- 3.2 Over and above the commitment in clause 3.1 above and during the 5 (five) year period commencing on the Implementation Date, the Merged Entity shall use its reasonable commercial endeavours to procure that 50.1% of the third party independent mining contractors appointed for the Makhado Project are South African and to the extent feasible, HDPs.
- 3.3 For a period of 24 (twenty-four) months from the Implementation Date, the Merged Entity shall procure that:
- 3.3.1 none of the firms in the Target Group shall retrench any employees as a direct result of the Merger; and
- 3.3.2 if any of the firms in the Target Group are required to appoint new employees at any of their operations, then such firms shall offer such positions to the Qualified Retrenched Employees first.

4. ESOP AND HDP OWNERSHIP

- 4.1 If [CONFIDENTIAL], Baobab shall, within the ESOP Establishment Period, implement certain vendor funded transactions which will result in Qualifying Workers and the Community Trust holding [CONFIDENTIAL] of the issued share capital in Baobab.
- 4.2 [CONFIDENTIAL].

5. SUPPLY OF HARD COKING COAL TO AMSA AND AT PREFERENCIAL PRICING TO THE ESTIMATED EXPORT PARITY PRICE

- 5.1 The Merged Entity shall make the HCC Allocation available to AMSA for the duration of the HCC Allocation Period on a right of first refusal basis at no more than Export Parity Pricing.

² It being accepted by the Commission that the appointment of a portion of the 58 (fifty-eight) permanent employees in relation to the Makhado Project may already be in process or partially completed prior to the Implementation Date.

- 5.2 For purposes of paragraph 5.1, the Merged Entity shall notify AMSA of an opportunity to purchase the HCC Allocation reserved for AMSA.³ AMSA shall within 15 (fifteen) Days of the Sale Offer Date, make an offer to the Merged Entity to purchase the whole or portion of the HCC Allocation on ordinary commercial and market related terms. On the expiry of the 15 (fifteen) Day period, should the Merged Entity not have received an offer that is reasonably acceptable, the Merged Entity shall be entitled to offer the available HCC Allocation to the export market.
- 5.3 For the avoidance of doubt, nothing in these conditions precludes the Merged Entity and AMSA from concluding an offtake agreement for the supply of HCC 64 MID VOL and renewing the HCC Allocation Period.

6. UITKOMST PROJECT ENTERPRISE AND SUPPLIER DEVELOPMENT INITIATIVES

- 6.1 For each of the 5 (five) years commencing on the Financial Year Start Date, the Merged Entity shall spend, in aggregate, no less than the Base Amount per Measurement Period on initiatives which are aimed at the development of experience, skills and knowledge of local entrepreneurs, including initiatives in relation to the Uitkomst Colliery, such as the Human Resource Programme and Local Development Programme.
- 6.2 The Base Amount shall increase at the end of each Measurement Period, in line with the CPI for the preceding Measurement Period.

7. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 7.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.
- 7.2 The Merged Entity shall inform the Commission in writing of the date of the implementation of Phase 2 of the Makhado Project within 5 (five) Days of the date of implementation.

³ It being accepted by the Commission that if and to the extent that a supply agreement is entered into between Baobab (or any company within the Target Group) and AMSA for the supply of hard coking coal produced at the Makhado Project, the volume of hard coking coal supplied to AMSA in terms of such supply agreement will be deducted from the HCC Allocation available to AMSA in terms of paragraph 5.

- 7.3 The Merged Entity shall inform AMSA and the Commission in writing of the commencement of the HCC Allocation period within 5 (five) Days of such commencement.
- 7.4 The Merged Entity shall, within 10 (ten) Days of the Implementation Date, procure the delivery of a non-confidential version of the Conditions to the trade unions representing the employees of the Target Group. As proof of compliance herewith, the Merged Entity shall, within 10 (ten) Days of such delivery, submit to the Commission an affidavit deposed to by a senior official of the Merged Entity, attesting to such compliance.
- 7.5 Prior to the implementation of the ESOP, the Merged Entity must provide the Commission with, for the Commission's information purposes only, the salient details pertaining to the ESOP. This information will include the rights of Qualifying Workers in respect of the ESOP and the total number of Qualifying Workers at the time of implementation of the ESOP.
- 7.6 Within 10 (ten) Days of the adoption and implementation of the ESOP, the Acquiring Firm shall provide the Commission with an affidavit attested to by a senior official of the Acquiring Firm, detailing the steps taken by the Acquiring Firm and Merged Entity to implement the ESOP and confirming their compliance with the Condition relating thereto.
- 7.7 The Merged Entity shall, for a period of 5 (five) years, within 10 (ten) Days of each anniversary of the Implementation Date, provide the Commission with an affidavit attested to by a senior official of the Acquiring Firm, confirming compliance with the Conditions.
- 7.8 The Commission may request such additional information from the Merging Parties, which the Commission may, from time to time, deem reasonably necessary to monitor the extent of compliance with these Conditions.

8. APPARENT BREACH

- 8.1 Should the Commission receive any complaint in relation to non-compliance with the Conditions, or otherwise determine 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.

- 8.2 Notwithstanding paragraph 8.1, the Merging Parties shall not be deemed to be in breach of the Conditions if such breach was as a result of an Adverse Event or a Destabilising Event.

9. VARIATION OF CONDITIONS

- 9.1 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 may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

10. GENERAL

- 10.1 All correspondence concerning the 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 3200.