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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

ECONOMIC DEVELOPMENT DEPARTMENT**NOTICE 847 OF 2015****COMPETITION COMMISSION****NOTIFICATION TO PROHIBIT THE TRANSACTION INVOLVING:****IMERYS SOUTH AFRICA PROPRIETARY LIMITED****AND****ANDALUSITE RESOURCES PROPRIETARY LIMITED****CASE NO: 2015JAN0010**

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 prohibited the transaction involving the above-mentioned firms:

Background

1. On 21 January 2015, the Competition Commission (the "Commission") received notice of an intermediate merger whereby Imerys South Africa (Pty) Ltd ("Imerys South Africa") intends to wholly acquire Andalusite Resources (Pty) Ltd ("Andalusite Resources"). Also relevant for purposes of the proposed transaction is the downstream subsidiary of Imerys South Africa, namely, Calderys South Africa (Pty) Ltd ("Calderys").
2. Imerys South Africa is controlled by Imerys Refractory Minerals Glomel SA ("IRMG"), a firm registered in terms of the laws of France and formerly known as Damrec SAS. The remaining shares are held by the Employee Share Ownership Plan and a black economic empowerment vehicle called Ticamode (Pty) Ltd. IRMG is in turn controlled by Imerys SA ("Imerys"). In South Africa, Imerys, through IRMG, controls various firms.

3. Andalusite Resources is controlled by Andalusite Holdings (Pty) Ltd ("SAAH"). The remaining non-controlling shareholder of Andalusite Resources is Simang Holding (Pty) Ltd and Pilvest Equity (Pty) Ltd. SAAH is controlled by Andalusite Investments (Pty) Ltd ("Andalusite Investments"). Andalusite Investments is in turn controlled by Main Street 939 (Pty) Ltd. The remaining non-controlling shareholder of Andalusite Investments is Investec Bank Limited. Main Street is jointly controlled by The Bain Family Trust and Piet Kolbe. Andalusite Resources does not control any firm.

Areas of overlap

4. The activities of the merging parties overlap in respect of the mining and supply of andalusite for use in refractories. Specifically, the merging parties' activities overlap in respect of fine and medium grade (0 to 3 mm) andalusite as Andalusite Resources does not mine the coarse grade (above 3 mm) andalusite. There is also a vertical overlap in the activities of the merging parties through Calderys.

Background of the alumina-silicates products

5. Andalusite forms part of the alumina-silicates group of compounds that include the oxides of aluminium and silicon. Alumina-silicates possess heat resistant properties and are widely used in high-temperature industrial processes e.g. in furnaces, kilns, crucibles and ladles, which require refractories for steel, cement, aluminium, and glass applications. Alumina-silicates are segmented according to the proportion of alumina content (i.e. aluminium oxide Al_2O_3) contained in the alumina-silicate. Andalusite sits within the category of products that contain between 55% and 70% alumina, alongside mullite, kyanite and sillimanite.
6. With the exception of andalusite and chamotte, all other alumina-silicates are not mined in South Africa and are imported from countries such as China, France, Brazil, USA, Russia, Australia and Germany. The merging parties are the only miners and suppliers of andalusite in South Africa. The acquiring firm was also the only producer of andalusite in South Africa until approximately 2001 when Andalusite Resources entered the market.

Relevant product market

7. The merging parties argue that there is a broad upstream market, including all alumina-silicates.
8. In defining the relevant product market, the Commission considered demand-side substitutability in terms of (i) substitutability between andalusite and other alumina-silicates including the reclaim refractory grog (recycled material) and (ii) substitutability between andalusite and blended alumina-silicates.
9. In its assessment, the Commission found that customers of the merging parties in South Africa do not consider other alumina-silicates as viable substitutes to andalusite for the manufacturing of refractories due to differences in characteristics of the different alumina-silicates. The demand-side substitutability between andalusite and other alumina-silicate is also limited because of a number of factors including:
 - (i) The different chemical and physical properties. For example, andalusite's linear expansion on heating is low. The Commission also found that other alumina-silicates contain high levels of impurities (iron and titania traces) which are unacceptable contaminants in many refractory applications. Andalusite based products are also preferred in some industries such as steel due to the higher creep resistance and thermal stability of andalusite;
 - (ii) Functional substitutability in the different applications. The investigation revealed that within the different applications, alumina-silicates are used to complement each other as opposed to being direct substitutes, due to the different temperature requirements that the alumina-silicates can withstand within the applications; and
 - (iii) The cost of switching to other alumina-silicates. The investigation revealed that other alumina-silicates are not available in South Africa and as such have to be imported. These results in substantial differences in the delivered prices of other alumina-silicates compared to andalusite.

10. The Commission also considered the feasibility of blending other alumina-silicates to produce an alumina-silicate with properties similar to andalusite. Customers submitted that blending of alumina-silicates such as bauxite and chamotte would result in far inferior chemical and physical properties compared to andalusite. Furthermore, the customers contacted are of the view that other raw materials can only be imported and on average, it would cost twice more to import than to source andalusite locally.
11. The Commission also found that the market can be narrowed further according to the size fraction of andalusite that the merging parties are able to mine. Market participants have confirmed that the size fraction of 3 mm to 8 mm andalusite cannot be substituted with other size fractions of andalusite for the following reasons:
 - (i) From a demand-side perspective, the andalusite fractions complement each other and producers of refractories cannot substitute coarser grade andalusite, size fractions greater than 3 mm up to 8 mm, with finer grade fractions ranging between 0 mm to 3 mm; and
 - (ii) From a supply-side perspective, suppliers cannot, in a timely manner, switch to mining coarser grade andalusite if the ore body they are currently mining does not contain coarser crystals.
12. Furthermore, in South Africa, Imerys mines and supplies size fractions of andalusite ranging between 0 mm to 8 mm, whilst Andalusite Resources mines and supplies size fractions of andalusite ranging between 0 mm to 3 mm, as a result, the merging parties pre-merger potentially constrain each other on size fractions of andalusite ranging between 0 mm to 3 mm.
13. The Commission therefore concluded on an upstream market for andalusite with respect to the size fraction ranging between 0 mm to 3 mm (fine to medium grade) for the purposes of analysing the effects of the proposed transaction.
14. The Commission did not conclude on whether the downstream product market of refractory products should be narrowed to separate brick refractory products and

monolithic refractory products but conducted an assessment on the broad market for the manufacture of refractories.

Relevant geographic market

15. The merging parties did not conclude on the scope of the geographic market, however, their submissions suggest that the market is international.
16. The Commission found that there have not been any imports of andalusite into South Africa. Other countries that are currently mining andalusite are China, France and Peru. Of the three, Imerys owns andalusite operations in France and China, in addition to their andalusite mining operations in South Africa. All customers contacted confirmed that they do not import andalusite and that it would be costly to do so. Through a simple SSNIP test, the Commission has established that it is unlikely that customers will shift purchases from South Africa to imports from e.g. Peru. As a result, the Commission concluded on a national market.
17. Similarly, the Commission found that there are no imports of andalusite based refractory products and that customers are limited to the local market as a source of supply for these products. The Commission therefore considered a national market for the downstream manufacture of refractory products.

Competitive assessment: Unilateral effects

18. In its assessment of unilateral effects, the Commission considered (i) closeness of competition between the merging parties, (ii) barriers to entry, and (iii) countervailing power.
19. In assessing closeness of competition, the Commission considered evidence based on the following:
 - (i) Market share analysis. The Commission concluded that the proposed transaction will result in the removal of an effective competitor in the market for the mining and supply of fine and medium grade andalusite, as Andalusite Resources has had the ability to capture sales lost by Imerys South Africa over the observed period, and *vice versa*;

- (ii) Qualitative analysis based on customer submissions. Customers consider the merging parties to be close competitors and have either switched from Andalusite Resources to Imerys South Africa or Imerys South Africa to Andalusite Resources for the following reasons: (a) limit on requirements that could be sourced from one of the merging parties (b) prevailing prices such that the customers consider switching to the alternative supplier with lower prices; and (c) unsatisfactory quality. It is evident from customer submissions that there was a large diversion of purchases from Imerys South Africa to Andalusite Resources, particularly during the period 2012 onward when Andalusite Resources had sorted its “quality issues”;
 - (iii) The merging parties internal documents such as strategy document and business plans.
20. Given the above, the Commission is of the view that the proposed transaction will result in the removal of an effective competitor in the market for fine and medium grade andalusite.
21. The Commission considered the countervailing power of customers. In assessing this, the Commission considered evidence based on the following:
- (i) Availability of alternative sources of supply in order to assess whether or not the customers could credibly threaten to resort, within a reasonable timeframe, to alternative sources of supply (such as imports). The Commission found that there are no alternative sources of supply apart from Andalucita S.A. based in Peru. The customers and a simple SSNIP test confirm that it is not economically feasible to import andalusite into South Africa; and
 - (ii) Price formation process. The investigation revealed that suppliers of andalusite are price setters in this market whilst the refractory producers are price takers with limited, if any, negotiating ability. The Commission understands that with the exception of two domestic customers, other domestic customers do not have

supply agreements with suppliers of andalusite. Even in instances where customers have supply agreements with the merging parties, the agreement is for a short duration. This may not be enough to discipline the merged entity post-merger.

22. For these reasons, the Commission is of the view that customers do not have the countervailing power to discipline the merged entity should it behave anti-competitively post-merger.
23. In its assessment of barriers to entry, the Commission considered whether new entry would be likely, sufficient and timely in order to constrain the merged entity post-merger. The Commission identified the following barriers to entry: (i) regulatory requirements; (ii) access to deposits; (iii) capital requirements; (iv) technical know-how; and (v) access to a customer base.
24. The Commission found that barriers to entry into the market for the mining and supply of andalusite are relatively high. This is because the capital requirements, regulatory requirements and access to deposits are significant, making entry unlikely. In addition, a potential entrant would have difficulty in accessing andalusite deposits and reserves.
25. The investigation further revealed that the technical know-how and the technology are critical in the mining and production of andalusite. It took Andalusite Resources approximately 10 years for it to be considered an effective competitor, which happened as soon as the levels of impurity within its andalusite products were within ranges acceptable to customers.
26. Taking the above into consideration, the Commission is of the view that the proposed merger is likely to substantially prevent or lessen competition in the market for the mining and supply of andalusite, through the likelihood of unilateral effects that may arise as a result of the proposed merger.

Competitive: Vertical assessment

27. In its vertical assessment, the Commission considered whether the merged entity has: (i) the ability to engage in an input foreclosure strategy and (ii) the incentive to engage in an

input foreclosure strategy. Further, the Commission also considered whether the vertical integration would have the effect of lessening competition in the downstream market.

28. The proposed transaction constitutes a merger to monopoly. As a result, the merged entity's customers would have no alternative sources of andalusite and are thus solely reliant on the merging parties for the supply of andalusite. There would be no effective competitive constraints that will discipline the merged entity should prices increase as a result of the proposed merger.
29. A common feature in the upstream market, for both Andalusite Resources and Imerys South Africa, is that export prices are higher than domestic prices. Thus the merged entity would have an incentive to engage in an input foreclosure post-merger, as such a strategy would result in higher profits upstream. This however will only be the case if there is sufficient demand in the export market enabling the merged entity to reallocate volumes from the domestic market to the export market. The merging parties submitted that there is an increase in export opportunities and that they are currently reallocating volumes to the export market to the extent possible. However, there was no sufficient evidence submitted in support of these export opportunities.
30. The Commission also considered whether the merged entity would be able to increase profits in the downstream market as a result of engaging in input foreclosure. The investigation revealed that Calderys, the downstream arm of Imerys, has been producing above capacity for the period under observation. Calderys's capacity utilisation implies that Calderys would not have the ability to absorb the downstream refractory demand, should its competitors be driven out of the market. However, the Commission found that it is likely that Calderys would increase its capacity, thus potentially increasing the incentive of the merged entity to engage in input foreclosure.
31. The Commission is of the view that the input foreclosure strategy of the merged entity would have an adverse effect on competition downstream. The exit or weakening of Calderys' competitors would be detrimental to consumers as the foreclosure of andalusite would give rise to an upward pressure on prices of refractories. End-users may be forced to alter their production processes which may also result in price increases of the final industrial products that require refractories in their production processes.

32. In terms of customer foreclosure, there are no competitors upstream (in SA, excluding imports) that can be excluded from having Calderys as a customer. As a result, no assessment of customer foreclosure was conducted.
33. Taking the above into consideration, the Commission is of the view that the proposed merger is likely to lead to input foreclosure concerns.

Efficiencies and other pro-competitive gains

34. The merging parties advanced efficiencies relating to: (i) improved marketing, research and development and application development on an international scale; (ii) the optimisation of sales channels to market and the optimisation of international logistics; (iii) access to increased capital for Andalusite Resources; and (iv) the sharing of know-how and expertise, among others. The Commission is of the view that the efficiencies submitted by the merging parties are not measurable which made it difficult to ascertain whether they are real, verifiable and would eventually be passed on to consumers.
35. However, it is evident from the Commission's findings that Andalusite Resources has been performing well, is more efficient and growing in the market and is thus a competitive constraint to Imerys South Africa. For example, currently Andalusite Resources has managed to increase its quality offering and compete vigorously with Imerys South Africa on its own and has also been able to successfully enter the export markets.

Public interest assessment: Effect on employment

36. The merging parties anticipate that a total of 20 employees which represent 3.6% of the work force are likely to be retrenched as a result of the proposed merger. The Commission engaged with the trade unions of the merging parties' employees, United Association of South Africa ("UASA") and the National Union of Mineworkers ("NUM") and received concerns from both unions. The merging parties engaged with UASA and NUM to resolve concerns in this regard.

37. However, should there be any other employment concerns that remain, the Commission is of the view that these will not materialize if the proposed merger is prohibited, on the grounds that it substantially prevents or lessens competition.

Public interest assessment: Effect on impact on a particular industry or sector

38. The steel industry consumes the vast majority of alumina-silicate based refractories. Alumina-silicate based refractories are also consumed in the industrial minerals applications, such as casting, abrasive, and ceramic applications. In terms of the proportion of andalusite on the production costs, customers estimate that andalusite accounts for approximately 20% - 50% of their total cost of production. For the manufacturers of refractories, approximately 30% to 78% of their products are andalusite based. The Commission gathered that andalusite based refractories account for approximately 3% of the total production costs for end-users.
39. The Commission's concern is that end-users in steel, glass and cement are important contributors to the South African economy and provide important inputs in other sectors of the economy, such as in construction. The likely price increases from this merger will directly affect the customers (producers of refractories) and end-users, who will simply pass on the price increases or be forced to consider costly alternatives such as imports, or to even exit the market.
40. Therefore, the likely effect on the producers of refractories, the end-users and other related sectors is likely to be substantial.

Public interest assessment: Effect on ability of national industries to compete in international markets

41. The Commission is of the view that the merging parties have failed to provide evidence on how the proposed transaction would enable them to become more competitive globally given that they are currently the main players (particularly Imerys) in the global

market for andalusite. Further, given that the proposed merger would lead to a substantial prevention or lessening of competition in the domestic market, as discussed above, as well as the importance of andalusite as an input product for the customers of the merging parties, the Commission is of the view that there are no pro-competitive benefits for the

relevant sector that outweigh the likely anti-competitive effects of the proposed transaction.

Concerns received

42. The Commission received concerns from both the producers of refractories and end-users. In summary, the producers of refractories are concerned that there are no pricing and supply agreements for most customers of the merging parties and as such there is no supply and price guarantee post-merger. Producers of refractories are further concerned that Imerys South Africa has previously reduced its volume allocation for andalusite to local customers and increased its pricing significantly as part of its then strategy to divert local supplies to exports. The merger is also likely to make it uncompetitive for the domestic producers to competitively export their refractories. Further, producers of refractories are concerned that the proposed transaction removes competition as there will be no alternative supplier of andalusite locally, post-merger.
43. End-users are concerned that the proposed transaction will not only affect the producers of refractories but also the end-users, as producers of refractories pass on the price increases to end-users. The end-users will have a difficulty switching from the use of andalusite based products to other applications as the andalusite based refractories outperform other alumina-silicate based refractories and there are costs associated with switching.

Proposed remedies by the merging parties

44. In response to the concerns raised, the merging parties proposed a supply condition limited to two to three years for all grades of andalusite other than coarse grade. The supply would be limited to the annual volumes which are at most equal to the annual purchases by the customer in question over the last twelve months at the prices already agreed with each customer for 2015. Further, after expiry of the three years duration, volumes purchased will be subject to new prices and/or prices prevailing in the market at the time of the purchase.
45. The Commission tested the proposed remedies with customers that were contacted during the investigation. Some customers considered the remedies to be sufficient while

most are sceptical about the remedies. The customers' general view is that the merger should not be allowed as it is not in the interest of South Africa and that it will result in a monopoly in South Africa. The prevailing market prices post the 3 year period is also likely to be high as, in any case, the merging parties are the only producers of andalusite in South Africa and thus price leaders.

46. The Commission is of the view that the removal of Andalusite Resources as an effective competitor would not be remedied post-merger through the conditions proposed by the merging parties. The investigation by the Commission has shown that barriers to entry are high and there are no prospects of timely entry. The Commission is of the view that the structural changes in the market brought about by the proposed transaction are not addressed by the proposed remedy.

Conclusion

47. The Commission concludes that the proposed transaction is likely to lead to a substantial prevention or lessening of competition in the relevant market. There is no evidence of any pro-competitive or public interest benefits that may arise as a result of the proposed transaction that will outweigh the anti-competitive effects as identified.
48. Accordingly, the Commission prohibits the proposed merger.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

ECONOMIC DEVELOPMENT DEPARTMENT**NOTICE 848 OF 2015****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****TRANSPACO PLASTICS (PTY) LTD****AND****EAST RAND PLASTICS DIVISION OF ASTRAPAK MANUFACTURING HOLDINGS
(PTY) LTD****2015APR0151**

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 above mentioned firms subject to conditions as set out below:

Background

1. On 07 April 2015, the Competition Commission (Commission) received notice of an intermediate merger whereby Transpaco Plastics (Pty) (Transpaco Plastics) Ltd intends to acquire the East Rand Plastics (ERP) division of Astrapak Manufacturing Holdings (Pty) Ltd (Astrapak). Post-merger, Transpaco Plastics will wholly-own and control ERP.

Parties and their activities

2. Transpaco Plastics is a dormant company registered in accordance with the company laws of the Republic of South Africa. Transpaco Plastics is wholly-owned and controlled by Transpaco Limited (Transpaco Limited), a company registered in accordance with the company laws of the Republic of South Africa. The activities of Transpaco Limited relevant for the purpose of assessing the competitive effect of the proposed transaction

are undertaken by Transpaco Flexibles (Pty) Ltd and Transpaco Flexibles Mpumalanga (Pty) Ltd, collectively referred to as Transpaco Flexibles.

3. ERP is a business division of Astrapak currently active as a manufacturer of plastic refuse bags. It distributes plastic refuse bags under custom brand names (house brands) for the FMCG retailers as well as its brand called Garbie.

The transaction

4. In terms of Sale of Business Agreement concluded between Transpaco Plastics, Astrapak and Astrapak Limited (Astrapak Limited), Transpaco will acquire the business of ERP.

Area of overlap

5. There is a horizontal overlap between the activities of the merging parties with respect to the manufacture and supply of plastic refuse bags.

Horizontal assessment

6. The Commission finds that ERP has approximately 30% - 40% market share in the national market for the manufacture and supply of plastic refuse bags whilst Transpaco Flexibles has approximately 8% - 10% market share based on revenue. The Commission finds that the post-merger market share of the merged entity will be approximately 38% - 50%.
7. The Commission finds that Transpaco Flexibles and ERP are not direct competitors. ERP manufactures plastic refuse bags and distributes directly to the FMCG retailers under custom brands (Woolworths, Pick 'n Pay or Spar) or its own brand Garbie.
8. The Commission assessed the barriers to entry in this market and finds that they are low.
9. The Commission concludes that based on low barriers to entry, it is unlikely that firms will coordinate their behavior to the detriment of competition and consumers.

Concerns regarding the proposed transaction

10. The proposed merger results in Transpaco Plastics acquiring ERP, a business that is a direct competitor.

11. The Commission is of the view that a condition is required to ensure that the merged entity does not exchange commercially sensitive information amongst business units of Transpaco Limited. In essence, this Condition is intended to ensure the pre-merger status quo remains post-merger as the businesses of Transpaco Limited, particularly Transpaco Plastics and Transpaco Flexibles are prevented by this Condition to share any commercially sensitive information regarding their business activities in general.

Public interest analysis

12. In assessing the effect of the proposed merger on employment, the Commission considered the structure of the transaction and the rationale for the proposed transaction.

13. Given that it is unlikely that Transpaco will relocate the facilities of ERP and the fact that there will be no duplication of functions, the Commission is of the view that it is unlikely that the proposed merger will raise employment concerns.

Conclusion

14. The Commission concludes that the proposed transaction is likely to raise competition concerns. In the event Transpaco stops supplying or unilaterally increase prices for plastic refuse bags, it is likely that competition will be harmed. The Commission is therefore of the view that a Condition is required to ensure that Transpaco continues to supply plastics refuse bags, post-merger. The Commission finds that this condition will be sufficient to address the effect on competition in the market in South Africa.

15. The Commission finds that the proposed merger is unlikely to raise employment concerns as there will be no duplication of functions as a result of the proposed transaction.

16. The Commission therefore approves the proposed transaction with conditions to address the competition concerns.

17. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

**ECONOMIC DEVELOPMENT DEPARTMENT
NOTICE 849 OF 2015
COMPETITION COMMISSION**

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

NEUE HALBERG-GUSS GMBH

AND

ATLANTIS FOUNDRIES (PTY) LTD

CASE NUMBER: 2015MAR0124

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 above mentioned firms subject to conditions as set out below:

Background

1. On 17 March 2015 the Competition Commission ("Commission") received notice of an intermediate merger whereby the primary acquiring firm, Neue Halberg-Guss GmbH ("Halberg"), will acquire the entire issued share capital of Atlantis Foundries (Pty) Ltd ("Atlantis"). It also intends to acquire the Mercedes Benz South Africa ("MBSA") Loan Claim as against Atlantis. Post-merger Halberg will wholly-own Atlantis.

The parties and their activities

2. Halberg is a private company incorporated in accordance with the laws of Germany. Halberg is a wholly-owned subsidiary of H.T.P. Automotive GmbH ("H.T.P. Automotive"), a private company incorporated in accordance with the laws of Germany. Halberg develops and produces cast iron cylinder blocks, crank shafts, and engine blocks for, *inter alia*, passenger cars and trucks engines and industrial engines and supplies these products to all major European car manufacturers.

3. The primary target firm is Atlantis, a private company incorporated in accordance with the company laws of the Republic of South Africa. Atlantis is a wholly-owned subsidiary of MBSA, a public company incorporated in accordance with the company laws of the Republic of South Africa. MBSA is a wholly-owned subsidiary of Daimler AG ("Daimler"), a publicly listed company incorporated in accordance with the laws of Germany. In South Africa, Daimler controls MBSA and its subsidiaries only. Atlantis produces automotive castings for the commercial vehicle industry. Atlantis supplies more than 90% of its products to customers outside of South Africa.

The transaction

4. In terms of the Sale of Shares Agreement, Halberg intends to acquire the entire issued share capital of Atlantis ("Sale Shares"). It also intends to acquire the MBSA Loan Claim as against Atlantis.

Area of overlap

5. There is a horizontal overlap in the activities of the merging parties as the merging parties manufacture cylinder blocks for vehicles.

Competitive analysis

6. The Commission found that although the cylinder blocks manufactured by the merging parties are similar they have different characteristics, intended use and pricing. The products cannot be interchangeable or substitutable by the end-consumer. Further, Halberg is not active in South Africa whereas Atlantis has a presence in South Africa. Therefore there is no geographic overlap in the activities of the merging parties. The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition, as there is no geographic overlap between the activities of the merging parties.

Public interest

7. In terms of retrenchments, the merging parties submit that no job losses are anticipated as a result of the proposed transaction. Halberg had undertaken to secure the employment of all employees of Atlantis for a period of twelve (12) months based on an agreement with the merging parties regarding the production of cylinder blocks.
8. Trade unions representing employees of the merging parties, the National Union of Metalworkers of South Africa ("NUMSA") and the United Association of South Africa

- ("UASA") objected to the period made in the undertaking put forward by the merging parties and proposed a period of between eighteen (18) months and seven (7) years.
9. The Commission engaged both the merging parties and trade unions to address the concern on possible retrenchments after the initial job guarantee of twelve (12) months expires. The merging parties made a submission that if the industry experiences a greater, or lesser, demand for cylinder blocks manufactured by Atlantis Foundries, there may be a need for more or fewer employees at Atlantis Foundries, as the case may be.
 10. The Commission found that there will be no duplication of positions as a result of the proposed transaction and thus no retrenchments as a result of the proposed transaction. However, the fact that the merging parties offered a job guarantee of only twelve (12) months, post-merger, it was likely that they anticipated job losses. It is thus likely that the proposed transaction will have possible retrenchments after the twelve month job guarantee had expired resulting in detrimental consequences for the foundries industry which is in decline in South Africa.
 11. The Commission found that the proposed transaction was likely to have a spill over effect in the foundries sector with job losses in Atlantis, a labour opportunity deprived area within South Africa if the merging parties decreased the manufacturing and supply of cylinder blocks in South Africa.
 12. The Commission engaged the merging parties further on the concern in order to address this adverse effect on employment and the foundries sector in South Africa and proposed a condition that there should be no retrenchments at Atlantis as a result of the proposed transaction. The Commission also engaged the merging parties on Halberg's future plans and development of Atlantis and the merging parties made an undertaking that they will continue the supply relationship for products to be manufactured at Atlantis. The Commission is of the view that given the above undertaking and the business plan of Halberg the merging parties will continue to support and develop Atlantis.
 13. The Commission was also concerned about a possibility of the merging parties moving the production capacity of Atlantis to facilities outside of South Africa to fulfil the supply agreement. The Commission requested the merging parties not to relocate the production capability of Atlantis and the merging parties submit that they will not relocate the production capacity of Atlantis outside of South Africa. Therefore the Commission

imposed a condition that for as long as Halberg has control over Atlantis, the manufacturing plant/facilities of Atlantis shall not be relocated outside of South Africa.

Conclusion

14. The Commission therefore approved the proposed transaction with conditions. The conditions document is attached hereto as Annexure A.

ANNEXURE A**Neue Halberg-Guss Gmbh / Atlantis Foundries (Pty) Ltd****CC CASE NUMBER: 2015Mar0124**

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 Neue Halberg-Guss Gmbh;
- 1.2. **"Affected Employees"** means all employees of the Atlantis Foundries (Pty) Ltd, being the one thousand and fifty (1 050) employees identified by the merging parties who were currently employed on 01 June 2015;
- 1.3. **"Atlantis"** means Atlantis Foundries (Pty Ltd);
- 1.4. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.5. **"Commission"** means the Competition Commission of South Africa;
- 1.6. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.7. **"Conditions"** mean these conditions;
- 1.8. **"Halberg"** means Neue Halberg-Guss Gmbh;
- 1.9. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10. **"Labour Relations Act"** means the Labour Relations Act No. 66 of 1995 (as

amended);

- 1.11. "**Merger**" means the acquisition of control over Atlantis Foundries (Pty) Ltd by Neue Halberg-Guss GmbH;
- 1.12. "**Merging Parties**" means Neue Halberg-Guss GmbH and Atlantis Foundries (Pty) Ltd;
- 1.13. "**Target firm**" means Atlantis Foundries (Pty) Ltd;
- 1.14. "**Tribunal**" means the Competition Tribunal of South Africa.

2. Recordal

- 2.1. The Commission finds that it is likely that the proposed merger will have a negative effect on the foundries industry or sector which is in decline in South Africa. When determining the effect on a particular industrial sector or region, the Commission assesses whether the effect on the industry is merger specific; whether the effect on the industry is substantial, whether there is justification of the effect and the remedy for that particular effect. In the proposed merger, the Commission finds that the proposed transaction is likely to have a negative effect on the foundries sector should retrenchments occur in Atlantis, a labour opportunity deprived area within South Africa. Therefore, should the merging parties decrease the manufacturing of cylinder blocks in South Africa (as indicated in the Supply Agreement) and given that the merging parties submit that demand could change, this would adversely affect the sector. The Commission was concerned about the possibility of the merging parties relocating the production capacity to other production facilities outside of South Africa and the merging parties undertook that there will be no relocation of the production facility outside of South Africa which is also made a condition of the proposed merger.

Conditions to the approval of the Merger

3. Employment

- 3.1. The Merging Parties shall not retrench any of the current employees of Atlantis

Foundries as a direct consequence of the proposed merger.

- 3.2. For the sake of clarity in these Conditions, retrenchments “as a direct consequence of the proposed merger” do not include (i) voluntary separation and resignation arrangements; (ii) voluntary early retirement packages; (iii) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance and/or terminations for operational reasons, (iv) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; and (v) any employee whose employment is terminated by the merging parties in the normal and ordinary course of business including termination owing to the expiry of a temporary and or fixed term contract.

4. Relocation of the Atlantis plant

From the Approval Date and for as long as Halberg has control over Atlantis, the manufacturing plant/facilities of Atlantis shall not be relocated to premises that are outside of South Africa.

5. General

The merging parties may at any time, on good cause shown, including changes in economic conditions, approach the Tribunal for the conditions to be lifted, revised or amended.

6. Monitoring of compliance with the Conditions

6.1. Employment

- 6.1.1. The Merging Parties shall circulate a copy of these Conditions to their employees/and or their respective representatives within seven (7) business days of the Approval Date.
- 6.1.2. As proof of compliance thereof, the Merging Parties shall within five (5) business days of circulating the Conditions, provide the Commission with an affidavit by a senior official attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 6.1.3. The Merged Entity shall advise the Commission of the Implementation Date

within five (5) days of it becoming effective. The Merged Entity shall submit a report on an annual basis confirming that none of the identified employees have been retrenched as a result of the merger. The report shall also indicate the number of retrenchments and the reasons for the retrenchments. The report shall be accompanied by an affidavit confirming the accuracy of the information contained in the report. The affidavit must be duly attested to by senior official of the Merged Entity.

6.1.5. The first report shall be submitted on the anniversary of the Effective Date and the final report a year thereafter.

6.1.6. Any employee who believes that his/her employment with the Merging Parties has been terminated in contravention of these Conditions may approach the Commission with his or her complaint.

6.1.7. All correspondence in relation to these Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za.

6.1.8. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

**ECONOMIC DEVELOPMENT DEPARTMENT
NOTICE 850 OF 2015
COMPETITION COMMISSION**

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

HEBEI IRON & STEEL GROUP CO.LTD

AND

DUFERCO INTERNATIONAL TRADING HOLDING S.A

2015MAR0109

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 above mentioned firms subject to conditions as set out below:

Background

1. On 12 March 2015 the Competition Commission (Commission) received notice of an intermediate merger whereby Hebei Iron and Steel Group Co. Ltd (Hebei) intends to acquire control of Duferco International Trading Holding SA (Luxembourg) (DITH). Post-merger, Hebei will control DITH.

Parties and their activities

2. Hebei is a state owned company incorporated under the laws of China. Its sole shareholder is the state owned Assets Supervision and Administration Commission of the People's Government of Hebei Province (ASAC). Hebei is active as a manufacturer of iron and steel products.
3. The primary target firm, DITH, is a private company incorporated in Luxembourg. DITH is active as a steel trader and distributor worldwide. The activities of DITH relevant for the purposes of assessing the effect of the proposed transaction in South Africa are

undertaken by Duferco Steel Processing (Pty) Ltd (DSP) and Duferco Distribution Services (Pty) Ltd (DDS). DSP is a joint venture between DITH and the Industrial Development Corporation of South Africa Limited (IDC). DSP's activities involve the processing of Hot Rolled Coil (HRC) into galvanised steel and cold rolled steel. DDS is wholly-owned and controlled by DITH and its activities in South Africa are related to the sale and distribution of steel.

The transaction

4. Currently Hebei has shareholding in DITH through its subsidiary Tangshan Iron and Steel Group (Tangsteel). The proposed merger entails a move from minority shareholding to majority shareholding in DITH. Hebei may form a special purpose vehicle through which it acquires the shares in DITH. Similarly, Tangsteel may instead transfer its shareholding to the special purpose vehicle as well. However, the ultimate result of the proposed transaction is that Hebei will own, directly and/or indirectly, the shares in DITH.

Areas of overlap

5. The Commission finds that the proposed transaction raises a horizontal overlap between the activities of the merging parties with respect to the manufacture and supply of flat steel products. The proposed transaction also presents a vertical overlap between the activities of the merging parties because Hebei supplies DSP with HRC which is used to manufacture the cold rolled steel and galvanised steel.

Competition assessment

6. The Commission finds that the upstream market for the manufacture of HRC is national. However, given that Hebei supplies HRC to DSP in South Africa, the Commission considers the geographic scope of this market to be national with imports. The Commission finds that in the manufacture and supply of HRC into South Africa, Hebei has low market shares. Therefore the proposed transaction is unlikely to substantially prevent or lessen competition in the upstream market for the manufacture and supply of HRC.
7. The Commission finds that there are two downstream markets being the market for the manufacture and supply of cold rolled steel; and the market for the manufacture and

supply of galvanised steel. The Commission finds that the geographic scope of both downstream markets is national. However, in order to assess the impact of the proposed transaction in South Africa, the Commission assesses the geographic scope of this market as national with imports as a worst case scenario.

8. In relation to input foreclosure, the Commission assesses the impact of the proposed transaction on the market for the manufacture and supply of HRC in South Africa.
9. The Commission finds that it is unlikely that the proposed transaction will result in input foreclosure, however, required an undertaking from the merging parties, to continue sourcing from local suppliers provided they are able to provide competitive pricing.

Public interest analysis

10. The Commission finds that the proposed transaction does not raise any duplication of functions at DSP and DDS. However, the Commission finds that the likely impact of the proposed transaction on employment may not necessarily result from a duplication of functions.
11. The Commission requested Hebei's plans regarding the post-merger business of DSP and DDS. The main objective was to assess whether or not Hebei has intentions to continue with the businesses of DSP and DDS post-merger.
12. The Commission finds that Hebei is likely to increase its export of the HRC and other finished steel products into South Africa. As a result, Hebei is likely to stop the production of some steel products currently produced by DSP. This is likely to affect employment at DSP and DDS. The Commission is of the view that a condition is required to ensure that DSP and DDS continue to operate and do not retrench any employees, post-merger.
13. The Commission therefore required the merging parties to make a financial investment in the business of DSP such that it continues operating, post-merger. The merging parties have agreed to this undertaking. The Commission is of the view that a condition on this undertaking will be sufficient to address any concerns likely to arise from the merger.
14. The merging parties also indicate that Hebei has plans to develop a steel mill in South Africa.

15. Therefore, the Commission finds that it is unlikely that the development of this steel mill is unlikely to raise significant competition concerns within South Africa. There are no further investment plans by Hebei in the South African market.
16. The Commission further required the merging parties to make an undertaking that the proposed merger will not change Hebei's plans regarding the development of the steel mill in South Africa.

Conclusion

17. The Commission concludes that the proposed transaction does not raise competition concerns. The Commission however finds that the proposed transaction is likely to raise public interest concerns related to the effect on the steel sector as well as the effect on employment. The Commission required the following undertakings, which were subsequently accepted as the Conditions by the merging parties in order to address public interest concerns:
 - The businesses of DSP and DDS will continue operating post-merger.
 - Hebei will not change its plans of developing a steel plant in South Africa.
 - Hebei does not retrench any employee of DDS and DSP as a result of this proposed transaction.
 - Hebei does not change the terms and conditions of employment of the employees of DSP and DDS.
 - Hebei shall make financial investment in the business of DSP such that it continues to operate, post-merger.
18. The Commission finds that these conditions will be sufficient to address the public interest concerns raised by the proposed transaction.
19. The Commission therefore approves the proposed transaction with the Conditions to address the public interest concerns.
20. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

**ECONOMIC DEVELOPMENT DEPARTMENT
NOTICE 851 OF 2015
COMPETITION COMMISSION**

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

GRUPO FERROATLÁNTICA S.A.

AND

GLOBE SPECIALTY METALS INC.

CASE NUMBER: 2015MAR0108

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 above mentioned firms subject to conditions as set out below:

Background

1. On 12 March 2015 the Competition Commission ("Commission") was notified of an intermediate merger whereby Grupo FerroAtlántica S.A. ("FA") intends to acquire the issued share capital of Globe Specialty Metals Inc. ("GSM"). Post-merger, Grupo Villar Mir S.A. ("GVM"), the holding company of Grupo F.A. will have an indirect control over GSM.

The parties and their activities

2. FA is a company that is duly incorporated in accordance with the laws of Spain. FA is a wholly owned subsidiary of Grupo Villar Mir S.A. ("GVM"), which is in turn a Spanish industrial group owned by the Villar Family. In South Africa, GVM controls Silicon Smelters (Pty) Ltd ("SS"), Thaba Chueu Mining (Pty) Ltd ("TCM") and Rebone Mining (Pty) Ltd ("Rebone"). In South Africa, the activities of FA are conducted through its subsidiary, SS which is a vertically integrated company which supplies part of its inputs for the manufacture of silicon metal, ferrosilicon ("FeSi") and microsilica (a by-product of the production of both silicon metal and FeSi).

3. GSM is a firm duly incorporated in accordance with the company laws of Florida, in the United States of America ("USA"). GSM is listed on the NASDAQ Stock Exchange. No single shareholder controls GSM. GSM owns several subsidiaries that are based in the USA, Canada, Argentina, China and the Netherlands. In South Africa, GSM owns Silicon Technology (Pty) Ltd ("Siltech"), which is incorporated in accordance with the company laws of the Republic of South Africa. Siltech manufactures FeSi and microsilica.

The transaction

4. In terms of the Business Combination Agreement, GVM will form a new wholly-owned subsidiary to be known as HoldCo, which will have a wholly-owned subsidiary known as MergerSub. There will be an internal restructuring within the GVM Group in terms of which FA will be transferred to HoldCo. GSM will integrate with MergerSub. As consideration, the existing shareholders of GSM will be issued with shares in HoldCo such that these shareholders will collectively hold 43% of the shares in HoldCo. The other 57% shares will be held by GVM. Post-merger, GVM will indirectly acquire control over GSM. None of the GVM shareholders will enjoy any rights of negative control in respect of HoldCo. The proposed transaction is global and was notified in Germany and the United States of America. The proposed transaction has received unconditional clearance in Germany while investigations are ongoing in the USA.

Areas of overlap

5. There is a horizontal overlap in relation to the production of FeSi and microsilica. In addition, the activities of the merging parties overlap vertically in the proposed transaction as Siltech sources silica from SS. Furthermore, SS produces charcoal and wood that is required by Siltech as a reductant for the production of FeSi. SS further produces electrode paste, also a key input required by Siltech for the production of FeSi.

Definition of the relevant markets and competitive assessment

6. The Commission relied on the approach established by the Commission in its definition of the relevant market for the production of FeSi and silica in the matter between ***Thaba Chueu and SamQuarz ("Thaba/SamQuarz matter")***. The Commission also defined the related markets for microsilica and electrode paste.

Market for the production of FeSi

7. The Commission defined a global market for FeSi, regardless of silica content. The Commission found that there are over 30% imports of FeSi into South Africa and there are customers that import FeSi. The Commission concluded on a global market for the production of FeSi as data shows that FeSi is being traded globally. Post-merger, the merged entity will account for a small percentage of the FeSi global sales and will still face competition from other global players such as RFA International, Elkem and others, including Ferroalloy and Ferbasa. For completeness sake it is noted that the merging parties are the only producers of FeSi nationally.
8. The Commission further found that there are other customers within the national market, which indicate that they view the merging parties as the only alternative suppliers because they do not view imports as an alternative. However, the Commission further found that small customers and foundries source FeSi from distributors that source FeSi from Zambia, Russia and China. The Commission further found that there are a few customers that currently rely on the imports of FeSi from the stated countries.
9. The Commission finds that although the merged entity will be constrained by imports for customers who can import, the merged entity will continue to act as a monopoly to the customers who cannot import. Customers further indicate that FeSi prices were relatively lower when SS and Siltech were competing in the market before Siltech ceased production in 2012 as compared to when SS was operating as a monopoly, within the national market. The lack of competitive prices is cited as the reason which drove the few customers to imports.
10. The re-entry of Siltech into the national market in 2014 restored competition which benefitted FeSi customers. However, the proposed transaction is likely to remove that national competitive constraint. While the Commission notes the role played by imports, it is concerned of the price differences between the prices charged by each of the merging parties and is of the view that a pricing condition be imposed to ameliorate this concern on the price of FeSi for local customers.

Market for production of microsilica

11. The Commission further defined the national market of microsilica. In the national market the merged entity will be a monopoly in South Africa as SS is the only supplier in the market as Siltech has not yet commercialised its microsilica since it re-entered the market in 2014. The Commission further found that all of the customers of microsilica submit that they are able to negotiate prices with SS, which has been operating as a monopoly within South Africa since Siltech's shut down. The Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the national market for microsilica as the proposed transaction does not change the market structure; there has always been one supplier of the product and Siltech has not commercialised its product.

Vertical assessment

Markets for charcoal, wood and timber

12. In relation to the market for charcoal, wood and timber, the Commission found that SS is not active in the open market for the supply of these inputs. SS requires these inputs for the downstream production of FeSi and silicon metal. SS self-supplies these materials to its downstream operations. Therefore, the Commission is of the view that the proposed transaction does not raise foreclosure concerns because SS is not active in the open market for these materials.

Markets for silica

13. In the regional market for silica products; being silica rock, silica sand and silica chip. The proposed transaction raises a vertical overlap in that the acquiring firm owns a silica mine, SamQuartz, from which SS sources silica rock for the production of FeSi. Siltech currently sources some of its silica rock requirements from SamQuartz and obtains some from SamQuartz's competitor. If Siltech discontinues or reduces its procurement of sourcing silica rock from the affected SamQuartz's competitor, there is a risk that the competitor may be foreclosed of a significant customer. The merging parties have undertaken to continue to source silica rock from the affected SamQuartz's competitor and the Commission has made the undertaking to be a condition.

14. The Commission found that the merged entity will continue to supply silica sand and silica chip into the downstream markets due to supply conditions imposed by the

Competition Tribunal ("Tribunal") in the *Thaba/SamQuartz matter*. Furthermore, the merged entity is not active in those downstream operations. Therefore there are no foreclosure concerns

Market for electrode paste

15. In the national market for electrode paste, SS produces electrode pastes which are used as an input in the production of FeSi and silicon metal. Siltech also requires electrode pastes in its FeSi production. Therefore the proposed transaction raises a vertical overlap in this regard. Siltech currently sources electrode pastes from an electrode pastes producer which is in competition with SS. The affected electrode pastes producer submits that it will be negatively impacted if Siltech decides to discontinue sourcing from it, as Siltech is an important customer. The merging parties undertook to continue to source electrode pastes from the affected electrode producer and the Commission has made this undertaking a condition of the proposed transaction.

Public interest concerns

16. The Commission assessed the effect of the proposed transaction on a particular industrial sector or region. Since the re-entry of Siltech in the market for the production of FeSi, the new owner injected investments into Siltech and would have revived competition or restored competition between the merging parties to the pre-shut down level. However, the proposed transaction may lead to the consolidation of the operations and rationalisation of the activities of the merged entity, which would not be the case without the proposed transaction. The proposed transaction may thus slow the expansion of the Siltech assets and the sector at large which is a concern to the Commission.
17. Therefore the Commission considered this concern as it has negatively effect on FeSi customers in South Africa. The Commission is of the view that conditions should be imposed on the proposed transaction to ameliorate the concern. The Commission engaged with the merging parties on the concern, including those relating to investments and to ensure the continued operation of Siltech post-merger. The merging parties made an undertaking as follows:

- To have a pricing condition for the supply of FeSi within the national market.
- To continue to operate the Siltech facility and invest as needed, to maintain the facility.
- To continue to source from the current silica rock supplier.
- To continue to source from the current electrode paste supplier.

18. The Commission has made these undertakings to be conditions for the approval of the proposed transaction.

19. There are no other public interest concerns.

Conclusion

20. The Commission approved the proposed transaction with conditions as in Annexure A.

ANNEXURE A

GRUPO FERROATLÁNTICA S.A.

AND

GLOBE SPECIALTY METALS INC.

CASE NUMBER: 2015MAR0108

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below:

- 1.1 **"Acquiring Firm"** means Grupo F.A. a company registered in accordance with the laws of Spain;
- 1.2 **"Approval Date"** means the date referred to in the Commission's merger Clearance Certificate (Form CC15);
- 1.3 **"Clearance Date"** means the date referred to in the Commission's merger Clearance Certificate (Form CC15);
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Competition Commission Rules"** means the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"Days"** means business days;

- 1.8 **“End-User customers”** means South African FeSi customers of Siltech and SS that (i) use FeSi in the manufacture of metallurgical or foundry products; and (ii) do not trade in FeSi.
- 1.9 **“FeSi”** means ferrosilicon;
- 1.10 **“Grupo F.A.”** means Grupo Ferroántlantica S.A. a company registered in accordance with the laws of Spain and a subsidiary of GVM;
- 1.11 **“GSM”** means Globe Specialty Metals Inc. a company registered in accordance with the company laws of Florida, United States of America (“USA”);
- 1.12 **“GVM”** means Grupo Villa Mir S.A. an industrial Group registered in accordance with the laws of Spain;
- 1.13 **“Implementation Date”** means the date, occurring after the Approval date, on which the merger is implemented by the Merging Parties;
- 1.14 **“Large customers”** means SS and Siltech’s 3 (three) end-user customers (on the basis of volume).
- 1.15 **“Material changes to operating or economic changes”** mean a change in input costs (such as electricity or labour) or exchange rates, or other factors that will result in Siltech operating at a loss or experiencing negative cash flows.
- 1.16 **“Merger”** means the acquisition of control over GSM (including Siltech) and all its subsidiaries by GVM;
- 1.17 **“Merged Entity”** means the merged business activities of GVM and GSM;
- 1.18 **“Merging Parties”** for the purposes of these Conditions mean GVM and GSM and their subsidiaries;

- 1.19 “**Siltech**” means Silicon Technology (Pty) Ltd or the target firm in this transaction;
- 1.20 “**Siltech Facility**” means Siltech’s FeSi production facility in Newcastle, KwaZulu-Natal;
- 1.21 “**SS**” means Silicon Smelters (Pty) Ltd, a company registered in accordance with the company laws of South Africa and a subsidiary of Grupo F.A.
- 1.22 “**Target Firm**” means Globe Specialty Metals Inc and its subsidiaries, specifically Siltech;
- 1.23 “**The Act**” means the Competition Act 89 of 1998, as amended;
- 1.24 “**The Tribunal**” means the Competition Tribunal of South Africa as established in terms of section 26 of the Act;

2. **RECORDAL**

- 2.1 On 12 March 2015, the Merging Parties filed an intermediate merger transaction with the Commission. Following the investigation of the Merger, the Commission is of the view that the merger is likely to raise competition concerns as well as public interest concerns. The Commission finds that the merger will enable the Merged Entity to price close to export parity because the merger will end the existing competition between SS and Siltech in South Africa. Competition between SS and Siltech appears to be disciplining the merging parties to sell FeSi to local customers at prices below import parity and export parity pricing. The merger is likely to remove that competitive element which keeps the local prices of FeSi competitive. The Commission is of the view that competitive prices

of FeSi for local customers will cease to apply. The Commission has expressed a concern about the ability of some customers to import ferrosilicon. The Commission further finds that Siltech is currently sourcing silica rock and electrode pastes from third party suppliers. These suppliers submit that they will be negatively impacted by the merger should Siltech discontinue sourcing from them. On the other hand, the merger is likely to lead to consolidation and rationalisation of the Merged Entity's operations and impact negatively on the national metallurgical sector by keeping the prices of FeSi high. The merging parties have submitted proposed conditions on which the merger should be approved to address the concerns raised. In order to remedy the abovementioned concerns, the Commission hereby imposes the Conditions as set out in paragraph 3 below.

3. CONDITIONS

PURCHASE OF SILICA ROCK

- 3.1 Siltech shall continue sourcing silica rock from the affected silica rock supplier, provided that the latter is willing to sell, on the same or substantially similar terms and conditions as those prevailing at the Clearance Date.
- 3.2 The condition set out in paragraph 3.1. above will cease to apply if Siltech is able to purchase silica rock on more favourable terms and conditions from other suppliers that are not affiliated to Siltech.

PURCHASE OF ELECTRODE PASTE

- 3.3 Siltech shall continue sourcing electrode paste from the affected electrode pastes producer, provided that the latter is willing to sell, on the same or substantially similar terms and conditions as those prevailing at the Clearance Date.
- 3.4 The condition set out in paragraph 3.3 will cease to apply if Siltech is able to purchase electrode paste on more favourable terms and conditions from other suppliers that are not affiliated to Siltech.

CONTINUED INVESTMENT IN THE FeSi FACILITY

- 3.5 It is recorded that Siltech has recently made substantial investments for the purpose of upgrading the Siltech Facility.
- 3.6 The Merged Entity shall continue to operate the Siltech Facility and invest as needed to maintain the Siltech Facility for as long as the Merged Entity operates the Siltech Facility, provided that there are no material changes to operating and economic conditions.
- 3.7 It is recorded that the Siltech Facility may shut down temporarily during the winter months due to electricity price increases. Any such shut down will not be regarded as a breach of clause 3.6.

SUPPLY OF FeSi

- 3.8 The prices that SS and Siltech will charge to End-User Customers will be for FeSi equivalent specification.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 As proof of compliance hereof, Siltech shall produce an affidavit by a senior official of Siltech, attesting to the circulation of the Conditions to Bronx and Chartech contemplated in 3.4. and 3.6 above and provide a copy of the notice that was circulated within 5 business days of the circulation of the conditions. Each of Siltech and SS will, within 30 (thirty) Days of the completion of its annual audit, submit to the Commission an affidavit prepared by a senior official confirming that it has completed with the Conditions set out in clause 3.9.
- 4.2 In the event that the Commission receives any complaint in relation to non-compliance with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach will be dealt with in terms of Rule 39 of the Competition Commission Rules.

- 4.3 The Merged Entity may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.
- 4.4 All correspondence in relation these Conditions should be forwarded to: mergerconditions@compcom.co.za.
- 4.5 An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.

WARNING!!!

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The Government Printing Works would like to warn members of the public against an organised syndicate(s) scamming unsuspecting members of the public and claiming to act on behalf of the Government Printing Works.

One of the ways in which the syndicate operates is by requesting quotations for various goods and services on a quotation form with the logo of the Government Printing Works. Once the official order is placed the syndicate requesting upfront payment before delivery will take place. Once the upfront payment is done the syndicate do not deliver the goods and service provider then expect payment from Government Printing Works.

Government Printing Works condemns such illegal activities and encourages service providers to confirm the legitimacy of purchase orders with GPW SCM, prior to processing and delivery of goods.

To confirm the legitimacy of purchase orders, please contact:

Renny Chetty (012) 748-6375 (Renny.Chetty@gpw.gov.za),

Anna-Marie du Toit (012) 748-6292 (Anna-Marie.DuToit@gpw.gov.za) and

Siraj Rizvi (012) 748-6380 (Siraj.Rizvi@gpw.gov.za)

IMPORTANT

Information

from Government Printing Works

Dear Valued Customers,

Government Printing Works has implemented rules for completing and submitting the electronic Adobe Forms when you, the customer, submits your notice request.

Please take note of these guidelines when completing your form.

GPW Business Rules

1. No hand written notices will be accepted for processing, this includes Adobe forms which have been completed by hand.
2. Notices can only be submitted in Adobe electronic form format to the email submission address submit.egazette@gpw.gov.za. This means that any notice submissions not on an Adobe electronic form that are submitted to this mailbox will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
3. Notices brought into GPW by "walk-in" customers on electronic media can only be submitted in Adobe electronic form format. This means that any notice submissions not on an Adobe electronic form that are submitted by the customer on electronic media will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
4. All customers who walk in to GPW that wish to submit a notice that is not on an electronic Adobe form will be routed to the Contact Centre where the customer will be taken through the completion of the form by a GPW representative. Where a customer walks into GPW with a stack of hard copy notices delivered by a messenger on behalf of a newspaper the messenger must be referred back to the sender as the submission does not adhere to the submission rules.
5. All notice submissions that do not comply with point 2 will be charged full price for the notice submission.
6. The current cut-off of all Gazette's remains unchanged for all channels. (Refer to the GPW website for submission deadlines – www.gpwonline.co.za)
7. Incorrectly completed forms and notices submitted in the wrong format will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email info.egazette@gpw.gov.za)
8. All re-submissions by customers will be subject to the above cut-off times.
9. All submissions and re-submissions that miss the cut-off will be rejected to the customer to be submitted with a new publication date.
10. Information on forms will be taken as the primary source of the notice to be published. Any instructions that are on the email body or covering letter that contradicts the notice form content will be ignored.

You are therefore advised that effective from **Monday, 18 May 2015** should you not comply with our new rules of engagement, all notice requests will be rejected by our new system.

Furthermore, the fax number **012- 748 6030** will also be **discontinued** from this date and customers will only be able to submit notice requests through the email address submit.egazette@gpw.gov.za.

