

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM003Apr21

In the matter between:

Sandvik Aktiebolag plc

Primary Acquiring Firm

And

DSI Underground Holdings S.à.r.l.

Primary Target Firms

Panel	:	Y Carrim (Presiding Member)
	:	AW Wessels (Tribunal Panel Member)
	:	I Valodia (Tribunal Panel Member)
Heard on	:	07 June 2021
Decided on	:	07 June 2021

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Yasmin Tayob Carrim

Presiding Member
Ms Yasmin Carrim

07 June 2021
Date

Concurring: Mr Andreas Wessels and Prof. Imraan Valodia

Merger Clearance Certificate

Date : 07 June 2021

To : Norton Rose Fulbright Attorneys

Case Number: LM003Apr21

Sandvik Aktiebolag plc And DSI Underground Holdings S.à.r.l.

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

You applied to the Competition Commission on **29 March 2021** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

☐ no conditions.

☒ the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM003Apr21

Sandvik Aktiebolag plc (Primary Acquiring Firm)
and
DSI Underground Holdings S.à.r.l. (Primary Target Firm)

REASONS FOR DECISION

- [1] On 7 June 2021, the Competition Tribunal conditionally approved a large merger between Sandvik Aktiebolag plc (“Sandvik”) and DSI Underground Holdings S.à.r.l. (“DSI”).
- [2] The transaction involves Sandvik, a global engineering group, acquiring 100% of the shareholding in DSI, a mining and tunnelling products provider. Sandvik will also acquire 100% of the shares in a South African joint venture between DSI and Frank Calandra Inc (“Jennmar JV”). Post-merger, Sandvik will solely control DSI as well as the Jennmar JV.
- [3] Sandvik is a publicly listed Swedish company and is not controlled by any shareholder. Sandvik controls several firms in South Africa.¹ DSI is a company incorporated in Luxembourg. In South Africa, Sandvik is predominantly active in the provision of mining and rock solutions, as well as manufacturing and machining solutions. In South Africa, DSI, through its subsidiaries,² manufactures and supplies specialised ground control products to the South African underground mining and geotechnical industries.
- [4] The Competition Commission considered the activities of the merging parties and found a horizontal overlap in the market for the provision of hard rock bolts in South Africa. However, the merged entity’s accretion would be below 2%, and therefore raised no competition concerns.
- [5] The Department of Trade, Industry and Competition (“DTIC”) raised employment concerns regarding the fact that the merging parties had not made an absolute commitment to protect jobs. The DTIC requested the implementation of a condition for approval, that no merger related retrenchments should be implemented in South Africa after the merger’s approval for a period of 24 months. The merging parties agreed to the condition.

¹ Sandvik Holdings Southern Africa (Pty) Ltd, Sandvik (Pty) Ltd, Seco Tools South Africa, Sandvik Financial Services (Pty) Ltd, South Africa Newtrax (Pty) Ltd and Sandvik Mining and Construction Delmas (Pty) Ltd.

² Rocbolt Technologies Holdings (Pty) Ltd, Rocbolt Technologies Africa (Pty) Ltd and RB Technology Holdings Pty. These firms are controlled by the Jennmar JV.

- [6] We concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on any other aspect of the public interest contemplated in section 12A(3). The transaction was accordingly approved on the basis of the conditions attached hereto as Annexure A.

Ms Yasmin Carrim

Mr Andreas Wessels and Prof Imraan Valodia concurring

7 June 2021

Date

Tribunal Case Manager:

For the Merging Parties:

For the Commission:

P Kumbirai

M Wagener of Norton Rose Fulbright

R Maphwanya and B Makgabo

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meaning: –

- 1.1. **“Acquiring Firm”** means Sandvik Aktiebolag Plc;
- 1.2. **“Acquiring Group”** means the Sandvik Group;
- 1.3. **“Affected Employees”** means any employees of the Merging Parties in South Africa that may be retrenched as a result of the Merger after the Moratorium period;
- 1.4. **“Approval Date”** means the date referred to on the Competition Tribunal’s merger Clearance Certificate;
- 1.5. **“Commission”** means the Competition Commission of South Africa;
- 1.6. **“Competition Act”** means the Competition Act, No. 89 of 1998, as amended;
- 1.7. **“Conditions”** means the conditions set out herein;
- 1.8. **“Days”** means any calendar day which is not a Saturday, a Sunday, or an official public holiday in South Africa;
- 1.9. **“Employees”** means all employees of the Merging Parties in South Africa;
- 1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11. **“LRA”** means the Labour Relations Act 66 of 1995, as amended;
- 1.12. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.13. **“Merging Parties”** means the Acquiring Firm and the Target Firm;
- 1.14. **“Moratorium Period”** means the period between the Approval Date and the Implementation Date, and thereafter, a period of 2 years from the Implementation Date;
- 1.15. **“Sandvik Group”** means Sandvik Aktiebolag Plc and all firms which it directly and indirectly controls;
- 1.16. **“Target Firm”** means DSI Underground Holdings S.à.r.l.; and
- 1.17. **“Tribunal”** means the Competition Tribunal of South Africa.

2. EMPLOYMENT CONDITIONS

- 2.1. The Merging Parties shall not retrench any Employees in South Africa as a result of the Merger for the Moratorium Period.
- 2.2. For the sake of clarity, retrenchments for purposes of clause 2.1 above will not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and/or (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.
- 2.3. Should the need to retrench Employees arise after the Moratorium Period, the Merging Parties shall for a further period of 24 (twenty-four) months give preference to any Affected Employees in relation to any available vacancies that may arise within any wholly owned subsidiaries and/or divisions that are operationally under the control of the Merging Parties provided they have the requisite qualifications, skills, know-how and experience.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of it becoming effective.
- 3.2. The Merging Parties shall each circulate a copy of the Conditions to their Employees in South Africa, the relevant trade unions, if applicable, and employee representatives within 5 (five) Days of the Approval Date.
- 3.3. As proof of compliance thereof, a Senior Official of the Acquiring Firm, on behalf of the merged entity, shall within 10 (ten) Days of circulating the Conditions, submit an affidavit to the Commission attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees, the relevant trade unions, if applicable and employee representatives.
- 3.4. Any Employee, relevant trade union or employee representative of either of the Merging Parties who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.
- 3.5. The Merging Parties shall, on each anniversary of the Implementation Date, during the Moratorium Period submit an affidavit to the Commission confirming compliance with the conditions for the duration of the Moratorium Period.

- 3.6. The Merging Parties shall, on each anniversary of the Implementation Date, during the 24-month period following the Moratorium Period submit an affidavit to the Commission confirming compliance with clause 2.3 of the Conditions.

4. BREACH

- 4.1. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of any of the above Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

5. VARIATION

- 5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised, or amended.

6. GENERAL

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.