**MEDIA RELEASE**

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# Commission approves Glencore / Xstrata merger subject to conditions

The Commission has recommended that the Competition Tribunal approve the acquisition of Xstrata Plc. ("Xstrata") by Glencore International Plc. ("Glencore") subject to conditions regarding employment.

Glencore is a leading global trader in a number of key commodities including coal. It also has interests in mining. In South Africa, Glencore is active in anthracite and thermal coal mining through its shareholding interests in Xstrata, Shanduka, Umcebo and Optimum. Glencore is a publicly listed company whose shares are widely held by a number of shareholders. Xstrata is one of the world's largest exporters of thermal coal used to generate electricity and one of the largest producers of coal used to make steel. Xstrata is a public company listed on the London and Swiss security exchanges.

Glencore and Xstrata have a pre-existing relationship in that Glencore is the largest shareholder in Xstrata with an interest of 33.65% and Glencore acts as a trader of Xstrata coal. Through this transaction, Glencore will acquire the remaining issued shares which it does not currently own in Xstrata. Glencore and Xstrata are both miners of thermal coal in South Africa (horizontal overlap). There is also a relationship in the activities of the merging parties, as coal mining firms source the services of coal traders for the purpose of exporting their coal (vertical overlap).

In its analysis of the merger, the Commission focused on the domestic market for thermal coal and on arrangements for the export of coal through Richard's Bay Coal Terminal. The analysis examined how the transaction would affect the biggest users of thermal coal, in particular Eskom and other industrial customers. The Commission also consulted various stakeholders who may be affected by the merger including Eskom, Sappi, the Department of Public Enterprises and the National Union of Mineworkers ("NUM").

The Commission established that sales to Eskom are governed by long term supply contracts that are typically tied to the life of a coal mine. Further, Eskom has countervailing power that constrains the pricing behaviour of coal producers. The Commission also conducted an assessment of Eskom's source of coal at power station level, and found that there is no instance where a power station serviced by one merging party has, as its next best alternative supplier, a mine of the other party to the merger.

In its analysis of pricing trends, the Commission found that increases over recent years have been due to various factors including the increased attractiveness of exports given increased export logistics capacity and increased demand for coal by India, and an increase in short term purchases by Eskom. While the pricing trends have been cause for concern, the factors underlying them are not related to the merger.

The Commission concluded that the transaction is not likely to lead to a substantial prevention or lessening of competition. Whilst there were concerns raised by some of the users of coal, it was found that they do not arise as a result of the merger. The Commission also highlighted various existing and proposed measures that could address these concerns. These include regulatory instruments in the mining rights regime that allow government to impose conditions relating to the pricing and supply of mineral resources, if necessary, and protect local buyers from being discriminated against or subject to uncompetitive pricing.

Furthermore, legislation enables the Minister of Mineral Resources to initiate or prescribe measures to incentivise the beneficiation of minerals in South Africa subject to terms and conditions that the Minister may determine.*

The National Development Plan recommends that more formal structures could foster collaboration between government, Eskom, Transnet, Sasol, independent power producers and the coal industry to optimise domestic coal use while maximising coal exports. To strike this balance, it is suggested that detailed planning is done and that measures such as conditions in mining licences and export permits for particular grades of coal are introduced.

The Commission’s investigation found that, although the proposed transaction is unlikely to substantially prevent or lessen competition in South Africa, it raises public interest concerns in that the merging parties intend to retrench 180 employees. Of these employees, 80 occupy managerial and specialist positions, whereas 100 occupy low level specialist; clerical and unskilled positions. The Commission has recommended that retrenchments should be limited to the 80 highly skilled employees with a two year moratorium on the remaining 100 jobs.

In order to alleviate the public interest concerns raised, the Commission and Glencore have agreed to the following conditions:

- the number of retrenchments arising from the merger shall be limited to a maximum of 80 employees (managers and specialists);
- there shall be no retrenchments of any of the 100 lower level employees, as a result of the merger, for a period of two years from the date of approval of this merger; and
- upon expiry of the two year period, and should the merged entity proceed to retrench any of the 100 employees, the merged entity will make available a training fund amounting to R10 000 per affected employee for re-skilling purposes. The training fund will be administered in accordance with the set terms and conditions.

The merger was also notified in other jurisdictions where it received unconditional approval from several countries. Apart from South Africa, the remaining jurisdictions where approval has not yet been obtained are the European Union and China.

* section 26 of the Mineral and Petroleum Resources Development Act 28 of 2002.

**ENDS**

**Further Information:**

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