competition commission
south africa

Press Release

For Immediate Release

06 September 2020

COMMISSION RECOMMENDS TO THE TRIBUNAL TO CONDITIONALLY APPROVE THABONG COAL AND SOUTH32 SA COAL HOLDINGS TRANSACTION

The Commission has recommended that the Competition Tribunal (Tribunal) approve the proposed transaction whereby Thabong Coal (Pty) Ltd (Thabong Coal) intends to acquire South32 SA Coal Holdings (Pty) Ltd (SAEC) with conditions.

Thabong Coal is a wholly owned subsidiary of Seriti Resources Holdings (Pty) Ltd (Seriti). Both Seriti and SAEC have long-term supply contracts with Eskom. Seriti supplies thermal coal to Eskom through 3 mines namely, New Vaal, New Denmark and Kriel. Seriti supplies the Tutuka, Lethabo and Kriel power stations. SAEC owns and operates 4 thermal coal mines namely, Khuthala, Ifalethu, Klipspruit and Wolvekrans. SAEC supplies the Duvha and the Kendal power stations through the Khuthala and Ifalethu mines. The Klipspruit and Wolvekrans mines primarily produce export coal. SAEC also sells thermal coal to other domestic customers.

Seriti has an upcoming mining project, namely the New Largo Coal Mine, which is intended to supply coal to the Eskom Kusile power station and a long-term agreement is currently under negotiation. SAEC also has a number of projects in development including Pegasus, Leandra and Naudesbank, amongst others.

The Commission found that post-merger, Seriti will be the largest coal supplier to Eskom with a market share upwards of 30%.

The Commission found that although the proposed transaction will lead to an increase in concentration in coal supply to Eskom, the merger is unlikely to impact on Eskom's existing bargaining and buyer power position given the individualised nature of negotiations of the long-term contracts. In spite of the structural change from the merger, Seriti's newfound position is unlikely to directly dovetail into greater leverage power for the merged entity during contract renegotiations and is therefore unlikely to have a significant effect on the price of coal to Eskom. The Commission finds that due to the symbiotic relationship between Eskom and cost-plus contract holders, and the limited outside options of the merged parties' mines, both parties are equally reliant on establishing mutual agreement with respect to the continuation of cost-plus contracts going forward.

The Commission is concerned that the proposed transaction may facilitate the exchange of commercially sensitive information between SAEC and the coal mining companies in which the shareholders of Seriti hold interests. The Commission also identified some public interest concerns that relate to job losses, impact on junior miners and the Community Trust to be established for the benefit of the communities that are adjacent to the operational mines of SAEC and/or any of its subsidiaries.

In order to remedy the various issues arising, the merging parties have agreed to the following conditions:

That the merged entity:

(i) will put measures in place to ensure that there is no flow of commercially sensitive information between the Seriti shareholders' affiliated coal mining companies and SAEC.

(ii) commits to a cap (in relation to merger specific retrenchments) of a maximum of 25 skilled employees for a period of 2 years,

(iii) commits to a timeline of 9 months for the identification and selection of the beneficiaries of the Community Trust which will own a stake in SAEC; and

(iv) assists junior miners to participate in the coal production sector by divesting a SAEC coal mining project that has not yet been developed.

[ENDS]

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