



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
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Merger Clearance Certificate

Date: 21 November 2018

To: ENSafrica

Case Number: LM315Mar18

Sibanye Gold Limited (T/A) Sibanye Stillwater and Lonmin PLC

You applied to the Competition Commission on **13 March 2018** 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.: LM315Mar18

In the matter between:

Sibanye Gold Limited (T/A) Sibanye -Stillwater

Primary Acquiring Firm

And

Lonmin PLC

Primary Target Firm

Panel : E Daniels (Presiding Member)
Y Carrim (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on : 12-14 November 2018

Decided on : 21 November 2018

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 marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



Presiding Member
Mr E Daniels

21 November 2018
Date

Concurring: Ms Yasmin Carrim and Ms M Mazwai

ANNEXURE A

Sibanye Gold Limited (t/a Sibanye-Stillwater)

and

Lonmin Plc

CC Case Number: 2018MAR0022

CT Case Number: LM315Mar18

CONDITIONS

1. DEFINITIONS

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

- 1.1 **"2.7 Announcement"** means the Rule 2.7 Announcement dated 14 December 2017 (entitled 'Recommended All-Share Offer for Lonmin made by Sibanye-Stillwater to be effected by means of a scheme of arrangement under Part 26 of the UK Companies Act 2006') in respect of the Merger;
- 1.2 **"Acquiring Firm"** means Sibanye Gold Limited (t/a Sibanye-Stillwater);
- 1.3 **"Agri-Industrial Community Development Programme"** means the multi-stakeholder agricultural initiative that is aimed at the promotion of sustainable economic activity through facilitating the establishment of an agri-processing industrial cluster as the basis for social development in areas on the greater West Rand district where local economies are currently predominantly dependent on mining;
- 1.4 **"Annexure A1"** means a table of variables and pre-requisites for short-term and long-term projects;
- 1.5 **"Approval Date"** means the date referred to in the Competition Tribunal Order in respect of Commission case number 2018MAR0022;
- 1.6 **"Bapo Mining Supplies"** means Royal Bapo Mining Supplies Proprietary Limited, a community company established with BBMI as its holding company;

- 1.7 **“Bapo Traditional Community”** means the association of persons in the North-West Province forming an indigenous tribe under Kgosi Bob Edward Mogale and deemed to be a Traditional Community in terms of section 2 of the Traditional Leadership and Governance Framework Act, 41 of 2003;
- 1.8 **“Bapo Trans”** means Bapo Trans Proprietary Limited, a community company established with BBMI as its holding company;
- 1.9 **“Bapo Trust”** means the Bapo Community Local Economic Development Trust;
- 1.10 **“BBBEE”** means Broad-Based Black Economic Empowerment;
- 1.11 **“BBMI”** means Bapo Ba Mogale Investments NPC, the investment arm / vehicle of the Bapo Traditional Community, which is also the Target Firm’s BBBEE partner;
- 1.12 **“BBMI Contracts”** means the contracts described in 2.8 below that involve, *inter alia*, the Target Firm, BBMI and BBMI’s subsidiaries Bapo Mining Supplies and Bapo Trans;
- 1.13 **“BVI 1836”** means the subsidiary of BBMI through which the Bapo Traditional Community holds shares in the Target Firm;
- 1.14 **“Commission”** means the Competition Commission of South Africa;
- 1.15 **“Competition Act”** means the Competition Act 89 of 1998, as amended;
- 1.16 **“Conditions”** mean the conditions set out in this Annexure A (only);
- 1.17 **“Contracted HDP Suppliers”** means Existing HDP Suppliers of the Target Firm which have concluded a formal contract with the Target Firm as at the Approval Date as reflected in Annexure A2 attached hereto;
- 1.18 **“Days”** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa (i.e. business days);
- 1.19 **“DMR”** means the Department of Mineral Resources;
- 1.20 **“Existing HDP Suppliers”** means the Contracted HDP Suppliers;
- 1.21 **“HDP”** means Historically Disadvantaged Persons as contemplated in section 3(2) of the Competition Act;
- 1.22 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.23 **“Long Term Projects”** means the Newman Merensky, the E4 Shaft, K4 Shaft, Boschfontein and Siphumelele Shaft Projects as set out in Annexure A1;
- 1.24 **“LRA”** means Labour Relations Act 66 of 1995, as amended;

- 1.25 **"Mining Charter"** means the broad-based socio-economic empowerment Charter for the South African Mining and Minerals Industry (dated 2010);
- 1.26 **"Merged Entity"** means the entity that will exist upon the implementation of the Merger;
- 1.27 **"Merger"** means the acquisition of the entire issued and to be issued ordinary share capital of the Target Firm by the Acquiring Firm;
- 1.28 **"Merger Announcement Date"** means 14 December 2017;
- 1.29 **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 1.30 **"MPRDA"** means Mineral and Petroleum Resources Development Act 28 of 2002, as amended;
- 1.31 **"Non-Contracted Suppliers"** means Existing HDP Suppliers registered as vendors of the Target Firm which have not concluded a formal contract with the Target Firm as at the Approval Date as reflected in Annexure A3 attached hereto;
- 1.32 **"PGM"** means the platinum group metals, including iridium, osmium, palladium, platinum, rhodium and ruthenium;
- 1.33 **"PIC"** means The Public Investment Corporation SOC Limited;
- 1.34 **"Short Term Projects"** means the K3 Shaft, 4B Shaft and MK2 Projects identified in Annexure A1;
- 1.35 **"SLP"** means a social and labour plan document that mining companies are required to submit to the Department of Mineral Resources as part of their applications for mining rights;
- 1.36 **"SMME"** means small, medium and micro-sized entities / firms as defined in the National Small Business Act 102 of 1996;
- 1.37 **"Target Firm"** means Lonmin Plc;
- 1.38 **"Target Firm's 'standalone business plan'"** means the business plan produced by Lonmin in terms of which it determined that its long-term sustainability would be achieved by significantly scaling back mining operations and by placing a number of depleting shafts on care and maintenance, resulting in the retrenchment of employees (including contractors) in 2018 through 2020;
- 1.39 **"Trade Unions"** means (consolidated from the perspective of both the Acquiring Firm and Target Firm) the National Union of Mineworkers, United Association of South Africa, Solidarity (the Trade Union), the Association of Mineworkers and Construction Union, and the Chemical, Energy, Paper, Printing, Wood and Allied Workers Union;
- 1.40 **"Tribunal"** means Competition Tribunal of South Africa; and

- 1.41 “**West Rand Programme Steering Committee**” means an independent multi-stakeholder steering committee responsible for the appointment of the programme manager, whose role will be the overall structuring, development and implementation of the Agri-Industrial Community Development Programme in the West Rand.

2. RECORDAL

- 2.1. On 13 March 2018 the Merging Parties filed a large merger notification with the Commission in respect of the Merger.

Employment

- 2.2. The Merging Parties submitted that:
- 2.2.1. The Target Firm has been under severe financial pressure for a number of years due to, *inter alia*, weak platinum group metal (PGM) prices and cost increases, and that the Target Firm continued to be hamstrung by its capital structure and liquidity constraints. In light of this, the Merging Parties submitted that the Target Firm faces the real prospect of being unable to continue as a going concern. The Merging Parties submitted that the Merger provides the Target Firm with a comprehensive and sustainable solution to the adverse challenges it faces, and it is expected that the synergies arising from a combination of the Merging Parties would create a more resilient company that is better able to withstand short-term commodity price and foreign exchange volatility.
- 2.2.2. Despite action taken by the Target Firm, none of the measures it had implemented yielded the desired outcome of ensuring the long-term sustainability of its business as a standalone entity. As a result, in terms of the Target Firm’s ‘standalone business plan’, mining operations at the Target Firm were marked to be significantly scaled back and a number of its depleting shafts would be placed on care and maintenance, resulting in the retrenchment of employees (including contractors) in 2018 through 2020.
- 2.2.3. The Acquiring Firm, in its own independent analysis of the Target Firm’s business, considered the number of employees it believed the Target Firm’s operations could sustain (having regard to its view and assumptions on the potential efficiency of the Target Firm’s operations, if optimised and restructured in accordance with the Acquiring Firm’s operating model), as well as the impact that the various synergies arising from the Merger (only some of which could be quantified at the time – see the 2.7 Announcement for further information in relation to synergies relating to the Merger) could have on ensuring the economic sustainability of the Target Firm should the Merger proceed. As per the 2.7 Announcement, based on the Acquiring Firm’s analysis a further 885 positions to what is already contemplated in the Target Firm’s standalone business plan, relating to merger-specific retrenchments, would need to be retrenched across

the integrated business over a period from 2018 to 2020 in order to ensure the long-term sustainability of the Target Firm business.

- 2.2.4. In order to undertake the Merger and save the business of the Target Firm, the Acquiring Firm will therefore need to restructure the business of the Target Firm in such a way that it can realise the various Merger-synergies alluded to above.
- 2.3. The total number of retrenchments that the Acquiring Firm has independently determined may need to be undertaken as a result of the restructuring is therefore 13 344 (which includes both 885 merger specific and 12 459 non-merger specific retrenchments) over the next 3 years.
- 2.4. The Commission carried out its own investigation on the impact of the proposed merger on employment. From its own investigation, the Commission found that there were 10 156 non-merger specific retrenchments and 3 189 merger specific retrenchments arising as a result of this merger. Specifically, the Commission classified an additional 2 303 (to the 885 as submitted by the merging parties) retrenchments as merger-specific. There have been concerns raised by other third party stakeholders relating to the need for the Acquiring Firm to adhere to all applicable laws, including the LRA and the MPRDA, whenever retrenchments will be carried out. As such, any such retrenchments to be pursued by the Acquiring Firm shall be carried out in terms of applicable laws including the LRA and MPRDA.
- 2.5. The Merging Parties are conscious of the impact job losses will have and have therefore made commitments to implement Short Term Projects in order to save jobs totalling 3 714 over the corresponding three year period spanning 2018 to 2020, in accordance with the prerequisites, variables and timelines stipulated in Annexure A1. Such job savings are anticipated to be brought about through a combination of avoiding or delaying the closure of shafts / mines the Target Firm has earmarked for closure in terms of its Standalone Business Plan, and / or the development of new projects at the operations of the Target Firm. The job savings contemplated will arise from the implementation of the Short Term Projects in the event that the PGM prices reach a certain threshold and the mining costs for the Short Term Projects are at or below a certain level as contained in Annexure A1.
- 2.6. In the event that PGM prices and mining costs for the 4B shaft and MK2 project do not reach the prescribed thresholds as contained in Annexure A1, the Merged Entity may not be in a position to save the jobs contemplated to be saved by the year 2020, as set out in Annexure A1.
- 2.7. In an endeavour to mitigate the negative impact of potential retrenchments on employees, the Acquiring Firm has undertaken to, once the implementation schedule and roll out plan for the greater West Rand district is finalised, investigate the possibility of developing and implementing a programme similar to the Agri-Industrial Community Development Programme in the Rustenburg area. The Acquiring Firm has finalised a Memorandum of Understanding with certain stakeholders forming part of the West Rand

Programme Steering Committee, for the Agri-Industrial Community Development Programme in the greater West Rand district. The long term-objective of this project is to build and support a portfolio of large, medium and small-scale, transformed and financially sustainable agricultural enterprises, capable of operating effectively across the entire agricultural value chain. This initiative is intended to develop alternative sources of economic activity in parallel with mining and mitigate prospects that mining communities on the greater West Rand district may become distressed mining communities as mining activities inevitably wind down. This initiative involves a variety of stakeholders (e.g. banks, the Public Investment Corporation and relevant municipalities) each of which has a different role to play in respect of the initiative and, critically, the decision on whether or not to proceed with the initiative does not lie with the Acquiring Firm alone. Moreover, this initiative is at a conceptual stage and the nature of and precise manner in which the initiative will be implemented is indeterminable (as this depends on the outcome of a feasibility study that will need to be done by the Acquiring Firm in collaboration with the West Rand Steering Committee and various other stakeholders involved in the initiative).

Other public interest issues

- 2.8. The Target Firm has leased certain land from the Bapo Traditional Community in order to conduct its business. In consideration for the aforementioned lease, BBMI, through BVI 1836, holds shares in the Target Firm on behalf of the Bapo Traditional Community and the Bapo Traditional Community has been afforded an opportunity to participate in the Target Firm's procurement and business value chain. To this end, the Target Firm has concluded the BBMI Contracts in respect of the following:
- 2.8.1. A 'Relationship Agreement' between, *inter alia*, the Target Firm and the Bapo Traditional Community, BBMI, BVI 1836 and the Bapo Trust in respect of the lease of land;
 - 2.8.2. A contract with BBMI in respect of stockpile and waste-rock management services (contract number 4600001572) which terminates on 28 February 2020;
 - 2.8.3. A contract with BBMI for the loading, transporting and off-loading of ore and various waste-products (contract number 4600001605) which terminates on 30 November 2020;
 - 2.8.4. A contract with Bapo Trans in respect of bus operations / transportation services (Contract number TEN/COM/15/015) which terminates on 31 July 2024; and
 - 2.8.5. A contract with Bapo Mining Supplies in respect of the supply of personal protective equipment (contract number CRT.003.SUR.03.2011) which terminates on 30 June 2021.
- 2.9. The Target Firm has an extensive list of suppliers supplying a variety of goods and services; some of which are HDP entities. The Commission seeks to protect HDP entities by ensuring that the proposed merger will not have an adverse impact on these entities. The Merging Parties submit that the Acquiring Firm has a preferential procurement policy supporting the procurement of goods and services from HDP entities and has developed an enterprise development strategy focusing on the transformation of the supply chain and the development of such entities to participate in its procurement processes. Moreover,

the Acquiring Firm has always strongly supported, at a minimum, complying with the various procurement spend levels contained in the Mining Charter and endeavours to ensure that, at a minimum, its procurement practices achieve or exceed the same levels.

- 2.10. In order to promote the sustainability of HDP suppliers in the Rustenburg area, the Merged Entity has made commitments to honour existing HDP suppliers' contracts and ensure contracts concluded in the future are concluded in a manner that is consistent with the Acquiring Firm's existing HDP procurement policy.
- 2.11. In its SLP, due to expire in September 2018, the Target Firm committed to various plans and initiatives aimed at promoting employment and advancing social and economic welfare objectives in respect of its own employees and in relation to the broader communities in which its mines are located. A new SLP ("SLP 3") will be agreed with DMR for the following period. The Acquiring Firm will continue to honour the SLP, expiring in September 2018 and the upcoming SLP 3.
- 2.12. The Merging Parties and Commission have agreed on Conditions, which serve to address the Commission's concerns relating to the other public interest issues. The Tribunal after hearing the parties approves the merger on the conditions below.

3. CONDITIONS TO THE APPROVAL OF THE MERGER

Employment (the "Employment Condition")

- 3.1 The target and acquiring firm will not retrench any employees for a period of 6 months from the Implementation Date.
- 3.2 For the sake of clarity, retrenchments do 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) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance, (vii) any decision not to renew or extend a contract of a contract worker; and (viii) the initiation of proceedings in terms of s189 of the LRA as long as such proceedings are not finalised before the expiry of the period in 3.1 above.
- 3.3 The Acquiring Firm commits that it shall, provided that the variables and pre-requisites set out in item 1 of Annexure A1 are satisfied, save (through avoiding retrenchments and/or creating new jobs) 3 714 jobs in the period 2018 to 2020. Annexure A1 herewith provides a breakdown of variables and pre-requisites such as the timeline and economic variables (including minimum price and reduction in cost base or operational

costs) that would need to be satisfied, as well as technical and economic assessments required to be undertaken, per Short Term Project in order for such job savings to be realised.

- 3.4 The Acquiring Firm will also complete 'confirmatory technical and economic assessments' in respect of the Long-Term Projects identified in table 3 of Annexure A1 within 12 (twelve) months of the Implementation Date in order to consider the economic viability thereof and potential ability to undertake / operationalise same.
- 3.5 For avoidance of doubt, these Conditions shall not absolve the Acquiring Firm or the Target Firm from any obligations contemplated in any applicable statute relating to retrenchments, including the LRA and the MPRDA to the extent required, in the event that any retrenchments are effected post-merger.

The Agri-Industrial Community Development Programme (“the Development Programme Condition”)

- 3.6 The Acquiring Firm shall ensure a feasibility study on an Agri-Industrial Community Development Programme is conducted through the appropriate members of the West Rand Programme Steering Committee to understand the potential of rolling out a similar initiative at its Rustenburg platinum operations (including the Target Firm’s operations) and the potential impact on job creation, within 1 (one) year from the finalisation of the Agri-Industrial Community Development Programme project structure and roll-out plan. For the sake of clarity, the West Rand Programme Steering Committee shall be an independent committee.
- 3.7 Prior to the commencement of the feasibility study the merging parties shall, enter into consultations with the Bapo Traditional Community, representatives of the Greater Lonmin Community (GLC), Sikhala Sonke, the Mining Forum of South Africa, Trade Unions, and any other affected communities to discuss the envisaged Development Programme and feasibility study to be undertaken and to solicit their views.
- 3.8 In the event the feasibility study supports the rolling out of a similar initiative in Rustenburg, the Acquiring Firm shall contribute land measuring approximately 500ha in extent at its Rustenburg operations to the initiative.
- 3.9 If the feasibility study contemplated in clause 3.6 above does not support the rolling out of a similar initiative, the Acquiring Firm will, for a period of two years following receipt of the feasibility study, explore other options, in consultation with the stakeholders mentioned in paragraph 3.7 above, to achieve the objectives described in the Recordal above.
- 3.10 For the avoidance of doubt, in the event the feasibility study does not support the rolling out of a similar initiative, the other stakeholders in the initiative decide that the initiative should not proceed, or on expiry of the period described in clause 3.9 above, the Acquiring Firm shall not be required to contribute the aforesaid land.

Other public interest conditions (collectively, the “Other Public Interest Conditions”):

Existing Target Firm Contracts (the “Existing Contracts Condition”)

- 3.11 The Acquiring Firm accepts that the BBMI Contracts are legally binding and shall continue to honour the BBMI Contracts on their terms as they existed on the Merger Announcement Date. For the avoidance of doubt the Acquiring Firm shall not, pursuant to these Conditions and following the Merger, be:
- 3.11.1 Required to renegotiate the terms of any such contracts or obligations;

- 3.11.2 Obligated to renew or extend any such contracts or obligations upon the expiration of their stated terms; or
- 3.11.3 Precluded from cancelling or terminating any such contracts or obligations on good cause shown or in accordance with the terms of said contracts.

Procurement (the "Procurement Condition")

- 3.12 In line with the Acquiring Firm's commitment to procurement from HDP entities, the Acquiring Firm shall:
 - 3.12.1 Continue to honour the existing Contracted HDP Suppliers' contracts with the Target Firm on their terms as they existed on the Merger Announcement Date;
 - 3.12.2 In respect of Non-Contracted HDP Suppliers, endeavour to continue to procure from such suppliers on reasonable commercial terms; and
 - 3.12.3 Endeavour that any contracts pertaining to the Target Firm's operations that may be concluded in the future are concluded in a manner that is consistent with the Acquiring Firm's existing HDP procurement policy and, *at a minimum*, comply with applicable requirements set out in the Mining Charter, as may be determined from time to time.
- 3.13 For the avoidance of doubt, in respect of the contracts and obligations referred to in clause 3.12.1 above the Acquiring Firm shall not, pursuant to these Conditions and following the Merger, be:
 - 3.13.1 Required to renegotiate the existing terms of any such contracts or obligations with Contracted HDP Suppliers;
 - 3.13.2 Obligated to renew or extend any such existing contracts or obligations upon the expiration of their stated terms with Contracted HDP Suppliers; or
 - 3.13.3 Precluded from cancelling or terminating any such existing contracts on good cause shown or in accordance with the terms of said contracts.

Target Firm SLP (the "Target Firm SLP Condition")

- 3.14 The Acquiring Firm will honour existing commitments made by the Target Firm in terms of its SLP as at the Merger Announcement Date (colloquially known as "SLP2"), as well as any commitments being made by the Target Firm for 2019 in terms of the SLP that it is currently in the process of being finalised for submission to the DMR ("SLP3"), which commitments shall at all times confirm with and be subject to then-current legislation and regulations.
- 3.15 The Acquiring Firm will establish a Community Engagement Forum ("**Forum**"), within a period of six months from the Implementation Date for the affected communities and stakeholders of the Target Firm, including but not limited to the Bapo Traditional Community, representatives of the Greater Lonmin Community (GLC), Sikhala Sonke, the Mining Forum of South Africa and Trade Unions . The purpose of

the Forum will be to provide information and to solicit the views of the affected community and stakeholders of the Target Firm on the Acquiring Firm's commitments under SLP 2 and/or SLP3, as applicable, and apprise the Forum of the Acquiring Firm's performance under the commitments.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1. The Merging Parties shall circulate a copy of the Conditions (i.e. this Annexure A only) to all its employees and their relevant Trade Unions within 10 (ten) Days of the Approval Date.
- 4.2. The Merging Parties shall circulate a copy of the Conditions (i.e. this Annexure A only) to the Existing HDP Suppliers within 30 (thirty) Days of the Implementation Date.
- 4.3. As proof of compliance with clause 4.1 above, the Chief Executive Officer of the Acquiring Firm and the Target Firm shall, within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to employees and their relevant Trade Unions.
- 4.4. As proof of compliance with clause 4.2 above, the Chief Executive Officer of the Acquiring Firm and the Target Firm shall, within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the Existing HDP Suppliers.
- 4.5. The Acquiring Firm shall inform the Commission in writing of the Implementation Date within 5 (five) Days of its occurrence.
- 4.6. The Acquiring Firm shall submit an affidavit (deposed to by the Chief Executive Officer of the Acquiring Firm) and accompanying report within 10 days after the expiry of the moratorium period contemplated in 3.1 above and thereafter every 6 (six) months following the Implementation Date (i.e. bi-annually) to update the Commission and / or confirm its compliance with the Employment Condition for the duration of the Employment Condition (determined with reference to clause 5.1 below). For the sake of clarity, the last affidavit and accompany report must be submitted 6 (six) months after 31 December 2021. For the avoidance of doubt, such reports shall include, *inter alia*, the following information and shall be broken down by each shaft / Short Term / Long Term Project as indicated in Annexure A1 herewith as and where applicable:
 - 4.6.1. Detail regarding PGM prices over the reporting period, including in respect of the 'three month consecutive period' contemplated in table 2 of Annexure A1 herewith;

- 4.6.2. Detail regarding the cost base of the relevant shafts / Short Term Projects contemplated in table 2 of Annexure A1 and how the efforts of the Acquiring Firm are progressing in such respect;
- 4.6.3. The findings of any technical and / or economic assessments done in respect of the relevant shafts / Short Term / Long Term Project outlined in tables 2 and 3 of Annexure A1 herewith;
- 4.6.4. Actual numbers and profile (i.e. Paterson Grade) of jobs saved as contemplated in tables 1 and 2 of Annexure A1 herewith;
- 4.6.5. The status of the relevant shafts / Short Term Projects contemplated in tables 1 and 2 of Annexure A1 and anticipated next steps and shaft / project start dates (as and where applicable);
- 4.6.6. Detail regarding any other shafts / Short Term Projects which may have been identified that have not been indicated in Annexure A1 herewith; and
- 4.6.7. Detail regarding its endeavours to save and / or create jobs related to the shafts / Long Term Projects indicated in table 3 of Annexure A1 herewith.

- 4.7. The Merged Entity shall submit a report on the anniversary of the Implementation Date, for 3 years, detailing, amongst others, the Contracted HDP Suppliers and the Non-contracted HDP Suppliers utilised, contracts terminated or expired and contracts renewed.

- 4.8. The Acquiring Firm shall furthermore submit an affidavit (deposed to by the Chief Executive Officer of the Acquiring Firm) and accompanying report on or before each anniversary of the Implementation Date confirming its compliance with the remaining conditions set out in section 3 above (i.e. the Other Public Interest Conditions) for the duration of such conditions (determined with reference to clause 5.1 below) to the extent that they continue to be outstanding. For the avoidance of doubt, the aforementioned affidavit and accompanying report may be consolidated with the affidavit and report due in respect of the Employment Condition as contemplated in clause 4.6 above as / where applicable.

- 4.9. In relation to the Agri-Industrial Community Development Programme Condition in Rustenburg contemplated in clauses 3.6 to 3.10 above:
 - 4.9.1. The Acquiring Firm shall submit an affidavit (deposed to by the Chief Executive Officer of the Acquiring Firm) within 10 days of the project structure and roll out plan at the Agri-Industrial Community Development Programme being finalised, noting that this has occurred, and advising the Commission of the identity of the programme manager appointed by the Steering Committee.
 - 4.9.2. Six months thereafter the Acquiring Firm shall submit a report confirming that the feasibility study contemplated in clause 3.6 above is underway and provide a progress report.
 - 4.9.3. On completion of the feasibility study, the Acquiring Firm will provide a report on the outcome of the feasibility study contemplated in clause 3.6 above.
 - 4.9.4. In the event that a similar initiative to the Agri-Industrial Community Development Programme proceeds in Rustenburg, the Acquiring Firm shall ensure that the West Rand Project Steering Committee submits a report on the anniversary of the date on which the feasibility study was completed, for a period of 5 years,

detailing amongst others, the status of the donation of the land, the stakeholders involved, agricultural activities being investigated or conducted and the number of employees employed by the initiative in Rustenburg.

- 4.9.5. In the event that a similar initiative to the Agri-Industrial Community Development Programme does not proceed, the Acquiring Firm shall provide a report on the anniversary of the date on which the feasibility study was completed until the expiry of the period contemplated in clause 3.9 above describing its efforts at exploring other options.
- 4.9.6. In the event that the Acquiring Firm identifies an alternative option to be pursued as contemplated in clause 3.6 above, the Acquiring Firm shall:
 - 4.9.6.1. within 10 days from expiry of the two year period contemplated in clause 3.6 above, or within 10 days from the decision to proceed with an alternative option, inform the Commission in writing of the alternative option;
 - 4.9.6.2. provide a report to the Commission on the anniversary of the date contemplated in 4.9.6.1 (i.e. on the anniversary of the date on which the Acquiring firm informed the Commission about the alternative option being pursued), for a period of 3 years, detailing amongst others, the status of the donation of the land, the stakeholders involved, activities being investigated or conducted and the number of employees employed by the initiative in Rustenburg.
- 4.9.7. In the event that the feasibility study, as contemplated in clause 3.4, does not favour a similar initiative to the Agri-Industrial Community Development Programme, the Commission shall have the option to consider the outcomes of the feasibility study, and to engage with the Merging Parties and relevant stakeholders.
- 4.9.8. In the event that the feasibility study on alternative options does not identify other options to pursue, as contemplated in clause 3.6, the Commission shall have the option to consider the outcomes of the feasibility study, and to engage with the Merging Parties and relevant stakeholders.
- 4.9.9. For the avoidance of doubt, whether a similar initiative to the Agri-Industrial Community Development Programme proceeds or does not proceed, the Commission may engage with the Steering Committee on the mechanisms required to implement the conditions set out in clauses 3.4 to 3.7 above.
- 4.10. The Merging Parties shall submit a copy of the SLP3 to the Commission within one month of its approval by the DMR.
- 4.11. The Commission may reasonably request any additional information from the Merging Parties which the Commission from time to time deems necessary from the monitoring of compliance with these Conditions.
- 4.12. 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 Competition Commission, as read in conjunction with Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal.

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

5. DURATION

- 5.1. These Conditions will terminate as follows:

- 5.1.1. In respect of the Employment Condition relating to the Short- Term Projects, on 30 June 2021;
- 5.1.2. In respect of the Existing Contract Condition, upon the date that the contract that is last in time expires, is terminated or is renewed;
- 5.1.3. In respect of the Procurement Condition, upon the date that the contract that is last in time expires is terminated or is renewed, or 31 December 2021, whichever is the earlier;
- 5.1.4. In respect of the Target Firm SLP Condition, on 31 December 2021 or the expiration date of SLP3 (or any SLP after SLP2 which pertains to the operations currently undertaken by the Target Firm which may be accepted by the DMR), whichever is the earlier; and
- 5.1.5. In respect of the Agri-Industrial Community Development Programme Condition, on the fifth anniversary of the date on which the feasibility study was completed or the expiry of the period contemplated in clause 3.9 above.

6. VARIATION

- 6.1. The Merging Parties and Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and / or substituted. The Commission or merging parties will not be precluded from opposing such application.