



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: LM144Jan20/INT124Sep20

In the intervention application of:

THE PHOLA COMMUNITY	FIRST APPLICANT
THE PHOLA MINING COMMUNITY DEVELOPMENT TRUST	SECOND APPLICANT
THE PHOLA OGIES RURAL MINING FORUM COMMUNITY CLUSTER	THIRD APPLICANT

And

THABONG COAL (PTY) LTD	FIRST RESPONDENT
SOUTH32 SA COAL HOLDINGS (PTY) LTD	SECOND RESPONDENT
THE COMPETITION COMMISSION	THIRD RESPONDENT

In re the large merger between:

THABONG COAL (PTY) LTD	PRIMARY ACQUIRING FIRM
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and

SOUTH32 SA COAL HOLDINGS (PTY) LTD	PRIMARY TARGET FIRM
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Panel	: AW Wessels (Presiding Member) E Daniels (Tribunal Member) M Mazwai (Tribunal Member)
Heard on	: 16 October 2020
Decided on	: 19 October 2020

ORDER

Having heard counsel for the parties in the abovementioned intervention application, and having considered this matter, the Tribunal orders the following:

1. The First, Second and Third Applicants (referred to as the “**Intervenors**”) are hereby granted leave to intervene in the Tribunal’s proceedings involving the large merger between Thabong Coal (Pty) Ltd and South32 SA Coal Holdings (Pty) Ltd (**Case no: LM144Jan20**) on the basis set out below.
2. The Intervenors will file written submissions in relation to the public interest considerations contemplated in sections 12A(3)(a) through to (c) of the Competition Act 89 of 1998, as amended. The Intervenors’ written submissions shall address the following:
 - 2.1 whether or not the Intervenors contend that they are excluded from the Community Trust in the proposed transaction. If they are not excluded, on what basis the Intervenors seek to distinguish themselves from the other potential beneficiaries of the Community Trust;
 - 2.2 whether or not it is contended that there has been no compliance with Social and Labour Plans (“**SLPs**”) and whether, as a result of the proposed transaction, it is argued that there will be a breach of obligations flowing from such SLPs, and if so, on what basis such contentions are advanced. The Intervenors are required to identify their concerns about the SLPs by reference to whether or not these are merger-specific, and if they are not merger-specific, the basis on which it is contended that the Tribunal should nevertheless consider them;
 - 2.3 if it is alleged that community engagement regarding the proposed transaction has been deficient and the basis for such contention. In this regard, the Intervenors should identify the basis on which it is contended that any defects in the community engagement process are merger-specific; and
 - 2.4 proposed conditions (if any) to address the Intervenors’ concerns.

3. These written submissions are to be filed with this Tribunal within ten (10) calendar days from the granting of this order.
4. The Intervenors may make oral submissions at the hearing relating to 2.1 to 2.4 above.
5. The merger parties may lead evidence on the issues raised by the Intervenors.
6. Subject to any directions by the Tribunal, the Intervenors may question the witnesses of the merger parties on the issues identified in paragraph 2.1 to 2.4 above, or any relevant matters as permitted by the Tribunal.
7. The merging parties shall provide the Intervenors with the Trust Deeds relating to the Community Trust that has been established by the acquiring firms.

Presiding Member
Mr Andreas Wessels

19 October 2020
Date

Concurring: Ms Mondo Mazwai and Mr Enver Daniels