

**IN THE COMPETITION TRIBUNAL  
THE REPUBLIC OF SOUTH AFRICA**

**CASE NO: 33/LM/Mar12**

In the matter between:

<b>GLENCORE INTERNATIONAL PLC</b>	<b>First Applicant</b>
<b>And</b>	
<b>XSTRATA PLC</b>	<b>Second Applicant</b>
<b>COMPETITION COMMISSION</b>	<b>First Respondent</b>
<b>ESKOM HOLDINGS SOC LIMITED</b>	<b>Second Respondent</b>
<b>NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA</b>	<b>Third Respondent</b>
<b>NATIONAL UNION OF MINEWORKERS</b>	<b>Fourth Respondent</b>

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Panel	:	Norman Manoim (Presiding Member) Andreas Wessels (Tribunal Member) Merle Holden (Tribunal Member)
Heard on	:	10 December 2012
Order issued	:	11 December 2012

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**ORDER**

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After having heard the parties in this application, the Competition Tribunal ("Tribunal") orders as follows:

**1. The ruling on Eskom's scope of intervention**

1.1 The Eskom factual witness will be confined to the factual issues underpinning the Econex report filed by Eskom on 30 November 2012.

## **2. Hearing dates**

2.1 The hearing of the merger between Glencore International plc and Xstrata plc is postponed. It will run on 18, 21, 22, 23 and 28 January 2013.

2.2 The final day of the hearings will be utilised for oral argument.

## **3. Procedural dates, conduct of the hearing and time allocation**

3.1 The Tribunal directions relating to the procedural dates, further conduct of the hearing and time allocation are attached as "**Annexure A**".



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**Norman Manoim**  
**Presiding Member**

**Concurring:** Andreas Wessels and Merle Holden



Annexure A

Case Number: 33/LM/Mar12 (014795)

10 December 2012

**The Competition Commission**

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Dear all

**RE: LARGE MERGER BETWEEN GLENCORE PLC / XSTRATA PLC  
(CT: 33/LM/MAR12 – 014795)**

Following the hearing held on 10 December 2012, at which the Commission, the merging parties, Eskom, NUM and NUMSA were present, the Tribunal issues the following directions for the further conduct of proceedings:

**The Tribunal's ruling on Eskom's scope of intervention was as follows:**

1. The Eskom factual witness will be confined to the factual issues underpinning the Econex report dates 30 November 2012.



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### **Further procedural dates**

1. The merging parties are to file any requests for further and better discovery from Eskom by 12 December 2012.
2. Eskom is to respond, on affidavit, to the merging parties' request for further and better discovery by 21 December 2012.
3. The merging parties are to file any factual or supplementary expert reports dealing with the allegations made by Eskom in its factual witness statement by 10 January 2012.

### **Hearing dates**

1. The merger hearing will run on 18, 21, 22, 23 and 28 January 2013.
2. The final day of the hearings will be utilised for oral argument.

### **Conduct of the hearing and time allocation**

1. The time schedule as set out in the Tribunal's prehearing directions of 06 December 2012 will be followed. The hearing will likewise continue over four days and the only consequential change is the reference to the days of the week.
2. If the Tribunal receives confirmation that the NUM issues are settled by means of amended conditions, as suggested at the hearing of 10 December 2012; the following will apply:
  - 2.1 Eskom and the merging parties will have an extra hour each which they may use at their discretion for the leading and/or cross examination of the remaining factual and expert witnesses.
  - 2.2 There will be no reallocation of the Num time allocation for final argument. The timetable for final argument remains, save that argument by NUMSA will commence on 28 January 2012 at 10h00.