

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM052Aug21

In the matter between:

K2021544474 (South Africa) (Pty) Ltd (to be  
renamed Sandvik SRP RSA (Pty) Ltd)

**Primary Acquiring Firm**

And

Kwatani Global (Pty) Ltd

**Primary Target Firm**

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Panel: A Wessels (Presiding Member)  
E Daniels (Tribunal Member)  
T Vilakazi (Tribunal Member)

Heard on: 14 October 2021

Order Issued on: 14 October 2021

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### ORDER

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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).

Signed by: Andreas Wessel Wessels  
Signed at: 2021-10-14 17:15:50 +02:00  
Reason: Witnessing Andreas Wessel We

Andreas Wessel Wessels

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**Presiding Member**  
**Mr Andreas Wessels**

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**14 October 2021**

**Date**

**Concurring: Mr Enver Daniels and Dr Thando Vilakazi**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date** : 14 October 2021

**To** : Norton Rose Fulbright Attorneys

Case Number: LM052Aug21

K2021544474 (South Africa) (Pty) Ltd (to be renamed Sandvik SRP RSA (Pty) Ltd) And Kwatani Global (Pty) Ltd

## 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.

You applied to the Competition Commission on **21 July 2021** 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.

### Contacting the Tribunal

The Competition Tribunal  
Private Bag X24  
Sunnyside  
Pretoria 0132  
Republic of South Africa  
tel: 27 12 394 3300  
fax: 27 12 394 0169  
e-mail: [ctsa@comptrib.co.za](mailto:ctsa@comptrib.co.za)

### The Registrar, Competition Tribunal

*Tebogo Mphahlele*

**ANNEXURE A**  
**IN THE LARGE MERGER BETWEEN**  
**K2021544474 (SOUTH AFRICA) (PTY) LTD (TO BE RENAMED SANDVIK SRP RSA**  
**(PTY) LTD)**  
**AND**  
**KWATANI GLOBAL PROPRIETARY LIMITED**  
**CT CASE NUMBER: LM052AUG21**

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**CONDITIONS**

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**1. DEFINITIONS**

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

- 1.1. **“Acquiring Firm”** means K2021544474 (South Africa) (Pty) Ltd (to be renamed Sandvik SRP RSA (Pty) Ltd);
- 1.2. **“Approval Date”** means the date referred to on the Competition Tribunal’s merger Clearance Certificate (Notice CT10) in terms of the Competition Act;
- 1.3. **“B-BBEE”** means broad-based black economic empowerment as defined in the B-BBEE Act;
- 1.4. **“B-BBEE Act”** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended, and the Codes of Good Practice 2013, as amended;
- 1.5. **“Black”** means Black People as defined in the B-BBEE Act;
- 1.6. **“Commission”** means the Competition Commission of South Africa;
- 1.7. **“Competition Act”** means the Competition Act, No. 89 of 1998, as amended;
- 1.8. **“Conditions”** mean the conditions set out herein;
- 1.9. **“Days”** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

- 1.10. **“DTIC”** means the Department of Trade, Industry and Competition;
- 1.11. **“Employees”** mean all employees of the Merging Parties in South Africa;
- 1.12. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.13. **“Kwatani Global”** means Kwatani Global Proprietary Limited and all firms which it directly and indirectly controls;
- 1.14. **“Merger”** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.15. **“Merging Parties”** mean the Acquiring Firm and the Target Firm;
- 1.16. **“Sandvik Group”** means Sandvik Aktiebolag Plc and all firms which it directly and indirectly controls, including the Acquiring Firm and Sandvik Holdings SA;
- 1.17. **“Sandvik Holdings SA”** means Sandvik Holdings Southern Africa Ltd;
- 1.18. **“Sandvik SRP”** means Sandvik SRP RSA (Pty) Ltd or the Acquiring Firm;
- 1.19. **“Target Firm”** means Kwatani Global Proprietary Limited; and
- 1.20. **“Tribunal”** means the Competition Tribunal of South Africa.

## **2. CONDITIONS TO THE APPROVAL OF THE MERGER**

- 2.1. Sandvik Holdings SA shall ensure that within [REDACTED] from the Implementation Date, a shareholding of at least [REDACTED] share in Sandvik SRP will be transferred, on mutually acceptable commercial terms, to one or more B-BBEE shareholder/s.
- 2.2. If Sandvik Holdings SA is not able to comply with the terms of clause 2.1 above within [REDACTED] from the Implementation Date, then Sandvik Holdings SA shall engage with the Commission in order to extend such period for a reasonable amount of time, with the written consent of the Commission, which written consent shall not be unreasonably withheld. The extension of the period with the Commission’s consent shall not exceed [REDACTED]

## **3. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 3.1. The Acquiring Firm shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of it becoming effective.

- 3.2. Sandvik Holdings SA shall submit a report to the Commission, within 10 (ten) Days of the transfer of a shareholding of [REDACTED] share in Sandvik SRP to one or more B-BBEE shareholder/s. This report shall be accompanied by an affidavit, attested to by a senior official of Sandvik Holdings SA, confirming the accuracy of the report.

#### **4. BREACH**

- 4.1. 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 Commission and Rule 37 of the Rules for the Conduct of Proceedings at the Tribunal.

#### **5. VARIATION**

- 5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the waiver, relaxation, modification, variation and/or substitution of one or more of the Conditions.

#### **6. GENERAL**

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).