



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM099Sep25

In the matter between:

DORSTFONTEIN COAL MINES PROPRIETARY LIMITED

Primary Acquiring Firm

And

BOCHABELA MINING PROPRIETARY LIMITED

Primary Target Firm

SBS MINING PROPRIETARY LIMITED

Primary Target Firm

Panel:	Andreas Wessels (Presiding Member) Andiswa Ndoni (Tribunal Member) Geoff Budlender (Tribunal Member)
Heard on:	12 and 15 December 2025
Date of last submissions:	27 February 2026
Decided on:	04 March 2026
Reasons issued:	10 September 2026

REASONS

INTRODUCTION

1. On 04 March 2026, the Competition Tribunal (“**Tribunal**”) conditionally approved a large merger which was notified to the Competition Commission (“**Commission**”) as Dorstfontein Coal Mines Proprietary Limited (“**DCM**”) acquiring the business of Bochabela Mining Proprietary Limited (“**Bochabela**”) and SBS Mining Proprietary Limited (“**SBS**”) (collectively the “**Target Businesses**”).

2. During the Tribunal proceedings, following concerns raised by the relevant trade unions, being the National Union of Mineworkers (“**NUM**”) and the Association of Mineworkers and Construction Union (“**AMCU**”) (collectively the “**Unions**”), about the structure of the proposed transaction, the merger parties agreed that the Target Businesses, including the assets and the employees of the Target Businesses, will cumulatively be acquired by Katlego Coal Proprietary Limited (“**Katlego Coal**”). Consequently, Katlego Coal is regarded as the Acquiring Firm in this merger. We shall deal with this aspect further below under employment effects.
3. Our reasons for conditionally approving the proposed transaction follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

The Acquiring Firm

4. As mentioned above, it was originally intended that DCM would be the acquiring firm in the proposed transaction, but due to concerns raised by the Unions, the transaction structure was amended and Katlego Coal is regarded as being the acquiring firm in this merger.
5. DCM is ultimately owned and controlled by Mr. Ontiretse Mathews Senosi (“**Mr Senosi**”), an Historically Disadvantaged Person (“**HDP**”). DCM does not control any other firms.
6. Katlego Coal is also ultimately owned and controlled by Mr Senosi. Katlego Coal directly controls DCM for the purposes of the Competition Act No 89 of 1998 as amended (“**the Act**”), as it has a shareholding of 74% in DCM.
7. Mr Senosi and all the firms he controls are referred to as the “**Acquiring Group**”.
8. The Acquiring Group owns five underground coal mines and one opencast coal mine located across the Mpumalanga province which supply coal to both the domestic and international markets. The coal mines relevant to the competition assessment of the proposed transaction are Dorstfontein East Coal Mine (“**Dorstfontein East**”), an underground mine, and Dorstfontein West Coal Mine (“**Dorstfontein West**”),¹ a combined underground and opencast mining operation.

¹ The Dorstfontein mining complex is situated just northeast of Kriel, Mpumalanga.

The Target Firms

9. The primary target firms are the Bochabela and SBS Target Businesses.
10. The Target Businesses are owned and controlled by Blue Mining Services Proprietary Limited ("**BMS**"). BMS has an HDP shareholding of 28%.
11. The Target Businesses provide contract mining services exclusively to the Acquiring Group. Particularly they provide the following:
 - a. Bochabela provides contract mining services to Dorstfontein West; and
 - b. SBS provides contract mining services to Dorstfontein East.
12. The Acquiring Firm and the Target Businesses are collectively referred to as the "**Merger Parties**".

PROPOSED TRANSACTION

13. The original agreement entered into among the Merger Parties contemplated that DCM would acquire the assets of the target firms (the SBS and Bochabela Target Businesses), but that the employees of the Target Firms would be transferred to Katlego Coal. This raised concerns from the Unions.
14. As indicated above, following the concerns from the Unions, the Merger Parties agreed that Katlego Coal will be the acquiring firm in this merger (replacing DCM, the acquiring firm at the time of notification of the merger to the Commission and referral of the large merger to the Tribunal). The proposed transaction therefore involves the acquisition of the Target Businesses by Katlego Coal as a going concern.
15. The Commission found that the acquisition of the Target Businesses comprises an indivisible transaction as –
 - a. Bochabela and SBS are ultimately owned and controlled by the same shareholder namely, BMS; and
 - b. the Target Businesses both provide contract mining services to the Acquiring Group only.

16. Although there are separate sale of business agreements for Bochabela and SBS, these agreements –
 - a. are linked by the inclusion of a suspensive condition in the agreement with respect to Dorstfontein East; and
 - b. were both prepared for achieving the ultimate purpose of the proposed transaction, which is the acquisition of the Target Businesses.
17. We concur with the Commission that the acquisition of the Target Businesses comprises an indivisible transaction.

COMPETITION ASSESSMENT

18. The Commission found that the proposed transaction does not give rise to a horizontal overlap between the activities of the Merger Parties as the Acquiring Group does not provide contract mining services.
19. The proposed transaction does give rise to a vertical overlap between the Merger Parties' activities since the Target Businesses provide contract mining services to the Acquiring Group, with –
 - a. Bochabela providing contract mining services to Dorstfontein West; and
 - b. SBS providing contract mining services to Dorstfontein East.
20. However, the Commission found that this vertical overlap will not result in vertical input or customer foreclosure concerns since -
 - a. The Target Businesses exclusively provided contract mining services to the Acquiring Group pre-merger.
 - b. BMS (the seller) will continue to participate in the market for contract mining services post-merger.
21. In line with the Commission's recommendation and having considered the activities of the merger parties and the extent of the vertical overlap, we agree that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any relevant market in South Africa.

PUBLIC INTEREST ASSESSMENT

22. The proposed transaction raises no public interest concerns other than in relation to its effect on employment, which is dealt with below.
23. In relation to the promotion of a greater spread of ownership, the Commission found that the proposed transaction results in a greater spread of ownership since the Acquiring Group is 100% owned by HDPs, whereas the Target Businesses are only 28% owned by HDPs.
24. In line with the Commission's recommendation and having considered the HDP shareholding of the Merger Parties, we agree that the proposed transaction results in a greater spread of ownership.
25. We next deal with the effects of the proposed transaction on employment.

Employment

26. The Merger Parties submitted that the proposed transaction would have a positive effect on employment. Particularly, that the Acquiring Group was, regardless of the proposed transaction, terminating its contract mining services agreements with the target group.
27. Accordingly, since the Target Businesses exclusively provide contract mining services to the Acquiring Group, all their employees would be retrenched (and the retrenchment process in this respect had already commenced). However, if the proposed transaction is implemented, these employees would instead be transferred to the Acquiring Group in terms of section 197 of the Labour Relations Act, 66 of 1995 as amended (the "**LRA**") rather than being retrenched.
28. The Merger Parties further submitted that there is no need for conditions to protect the employees' benefits following their transfer in terms of section 197 of the LRA, as this section provides the employees with sufficient legal protections.

Unions' concerns

29. As indicated above, the Unions representing the employees of the Target Businesses raised concerns with respect to the proposed transaction's effects on employment. Particularly, the Unions argued that due to the financial position of

the Acquiring Group it is likely that the transferred employees would be retrenched post-merger and that the Acquiring Group would be unable to pay their severance benefits.

30. The Unions submitted that the Acquiring Group was already unable to meet its obligations towards its employees and that this would be exacerbated post-merger if a further 559 employees are transferred from the Target Businesses to the Acquiring Group.
31. The Unions further raised concerns with the fact that the employees would (in terms of the original transaction structure as notified) be transferred to Katlego Coal, whereas the Target Businesses' assets would be transferred to DCM. They argued that this could result in section 197 of the LRA not applying, and in the transferred employees being in a worse post-merger position if retrenched since in terms of the proposed transaction the assets would transfer to DCM whereas, since the employees of the target firms would be transferred to Katlego Coal, their claim for severance benefits would lie against Katlego Coal.

Commission's recommendation

32. The Commission was of the view that the Acquiring Group has adopted a turnaround strategy which is aimed at ensuring that it becomes financially stable. It found that the proposed transaction is a key part of realising that strategy and that given the relevant counterfactual and the fact that all employees will be transferred in terms of the proposed transaction, it will likely save 559 jobs.
33. The Commission nevertheless requested the Merger Parties to consider voluntary severance packages for the employees who are not willing to transfer. The Merger Parties contented that this was not practical, citing that they will need all the employees to continue operations.
34. The Commission accepted the Merger Parties' tendered condition of a moratorium on merger-specific retrenchments for a period of three years from the implementation date of the proposed transaction. Further, it noted that the Merger Parties have tendered an undertaking that the Acquiring Group will comply with applicable labour legislation and implement a relevant labour law compliance programme.

35. Given the above tendered conditions, the Commission was of the view that no further intervention was required in respect of the Unions' concerns that the Acquiring Group had not met certain obligations towards its employees as these are not merger specific, and in any event, arrangements had been made to resolve them. Particularly, that the Acquiring Group had adopted a turnaround strategy aimed at addressing its financial and other difficulties. The Commission further found that there is no need to impose conditions to protect the transferred employees' benefits (including severance benefits), as section 197 of LRA provides them with sufficient legal protections.
36. The Commission ultimately recommended approving the proposed transaction subject to two employment-related conditions offered by the Merger Parties, (i) a moratorium on merger-specific retrenchments; and (ii) a condition aimed at ensuring compliance with labour laws.

Our assessment

37. We deal with the following employment issues raised during the Tribunal's proceedings:
- a. concerns regarding who will acquire the assets and the employees, respectively, of the SBS and Bochabela Target Businesses;
 - b. concerns regarding the post-merger financial position and viability of the Acquiring Group (as illustrated by its inability to meet certain obligations towards its employees) and the implications that may have for the employees of the Target Businesses if the proposed transaction is approved, including their retrenchment benefits should they be retrenched after the proposed transaction is implemented; and
 - c. potential post-merger retrenchments and a proposed remedy in the form of a moratorium.

Transfer of assets and employees of the Target Businesses

38. As indicated above, the proposed transaction was notified to the Commission as DCM acquiring the Target Businesses. Since the original agreement entered into among the Merger Parties contemplated that DCM would acquire the assets of the

Target Firms but that the employees of the Target Firms would be transferred to Katlego Coal, the transaction structure gave rise to a debate about the application of section 197 of the LRA.

39. Following the concerns raised by the Unions, in order to resolve the debate and ensure the transfer of the employees in accordance with section 197 of the LRA, the Merger Parties agreed that the Target Businesses (including the assets and the employees of the target firms²) will cumulatively be acquired by Katlego Coal. Consequently, Katlego Coal is regarded as being the acquiring firm in this merger.
40. We, therefore, approved the proposed transaction subject to the Merger Parties ensuring that the target firms' assets are transferred to the acquiring firm, Katlego Coal, and the employees of the target firms are transferred to Katlego Coal in terms of section 197 of the LRA.

Financial position and viability of Acquiring Group and implications for Target Businesses' employees

41. The Unions submitted that the Acquiring Group is in financial distress and that the acquiring firm would not be able to pay the severance benefits owing to the transferred employees if they, after having been transferred to the acquiring firm, are retrenched.
42. In this respect, the Unions noted that the Acquiring Group has not complied with its obligations towards its employees in that it has not –
 - a. made certain pension fund contributions;
 - b. remitted deducted taxes to the South African Revenue Service;
 - c. paid medical aid contributions on behalf of employees; and
 - d. paid salaries owing to certain workers.

² The SBS and Bochabela Target Businesses.

43. The Merger Parties submitted that arrangements have been made, or processes are underway to address the concerns with its failure to meet the relevant obligations to its employees.³
44. The Merger Parties further submitted that the Acquiring Group had adopted a turnaround strategy to strengthen its financial position. This turnaround strategy comprises:
- a. identifying cost saving measures;
 - b. adopting a recapitalisation strategy;
 - c. obtaining funding in order to acquire new equipment which will reduce maintenance issues; and
 - d. recommissioning operations that were previously placed on care and maintenance.⁴
45. During the hearing, Mr Ronald Mafoko (“**Mr Mafoko**”), the Chief Executive Officer of Katlego Coal, provided further background to the turnaround strategy.⁵ Mr Mafoko confirmed that the first step in the turnaround strategy was to [REDACTED] the business of [REDACTED] and to operate it [REDACTED] the Acquiring Group.⁶ The second step was to evaluate each of Katlego Coal’s operations to determine if they are viable, and in doing so to assess the appropriate market for the coal produced by that operation.⁷
46. Mr Mafoko further noted that the Acquiring Group had to change its strategy as previously it received better coal prices from the export market than from the domestic market (i.e., supply to Eskom). This position has however changed and it is now more viable to sell locally to Eskom given the decline in export prices.⁸ In

³ Transcript at pages 148 to 150; Merger Parties’ Letter to the Tribunal dated 5 December 2025 at pages 2 and 3 as well as Annexures 7 and 8; and Merger Parties’ Submissions dated 12 January 2026 at page 25.

⁴ Transcript at pages 133, 135, 136, 150 to 151, 155 to 156, and 158 to 159; Merger Parties’ Letter to the Tribunal dated 5 December 2025 at Annexures 1 and 2; Merger Parties’ Submissions dated 12 January 2026 at pages 24 to 25, and 30 to 31; Merger Parties’ Submissions dated 29 January 2026 at pages 5 and 6; and Merger Parties’ Submissions dated 9 February 2026 at pages 4 and 5.

⁵ Transcript at page 133.

⁶ Transcript at page 133.

⁷ Transcript at page 133.

⁸ Transcript at page 133.

order to do so, the Acquiring Group has entered into a [REDACTED] [REDACTED] whereby [REDACTED] would be used to [REDACTED] [REDACTED]⁹ He further noted that they had also applied for a [REDACTED] with respect to [REDACTED] and that these engagements [REDACTED] were at an advanced stage.¹⁰ He additionally indicated that the Acquiring Group also intended to tender for new supply agreements with Eskom.¹¹

47. Mr Mafoko, however, submitted that the prices in the Acquiring Group's supply agreements with Eskom will only be viable if "*operating costs are not inflated with a contractor margin that is the case at this current point*".¹² The Acquiring Group is accordingly undertaking a strategy of insourcing mining services that were previously outsourced to bring down the unit cost of production to below the sales price they can obtain in the market.¹³
48. Mr Mafoko indicated that as part of the turnaround strategy, the Acquiring Group would also lease the washing plant at their Forzando facility to a third party given that the grade of coal required by Eskom is lower (than that required in the export market) and therefore does not need to be beneficiated.¹⁴ Additionally, the Acquiring Group is upgrading and replacing equipment where needed.¹⁵
49. Ms Luyanda Mngadi ("**Ms Mngadi**"), the Chief Financial Officer of the Overlooked Group, provided information on the financial elements of the turnaround strategy.¹⁶ Particularly, Ms Mngadi indicated that the Acquiring Group had applied to the Temporary Employee / Employer Relief Scheme for assistance with the payment of salaries and that this application [REDACTED].¹⁷ She further indicated that they had received funding from [REDACTED], in the form of a loan partly convertible to equity¹⁸ and that they had been able to obtain a working

⁹ Transcript at page 137.

¹⁰ Transcript at pages 138 and 139.

¹¹ Transcript at page 146.

¹² Transcript at page 134.

¹³ Transcript at page 134.

¹⁴ Transcript at page 135.

¹⁵ Transcript at page 136.

¹⁶ Transcript at page 150.

¹⁷ Transcript at pages 150 and 151.

¹⁸ Transcript at pages 155 and 156.

capital facility f [REDACTED]

50. Moreover, the Merger Parties argued that it would be inappropriate for the Tribunal to prohibit a merger in order for employees to be retrenched, given the Tribunal's mandate under subsections 12A(1)(b), 12A(1A) and 12A(3) of the Act.
51. The Unions submitted that the Acquiring Group's turnaround strategy (as outlined above) is contingent on a number of uncertain events, such as: (i) obtaining a grant from the Temporary Employer / Employee Relief Scheme; (ii) obtaining a [REDACTED] and (iii) the Acquiring Group successfully bidding for additional work from Eskom. The Unions accordingly submitted that the success of the Acquiring Group's turnaround strategy is not guaranteed and that it would not be appropriate to rely on the success of this strategy as a basis on which to approve the proposed transaction.
52. The Unions noted that the Target Businesses are currently engaged in a retrenchment process in terms of section 189A of the LRA. Given this, the Unions believed that there is no reason for the section 197 transfer and indicated that this is an attempt by the Merger Parties to avoid paying the employees the benefits and retrenchment packages due to them. The Unions wanted all issues at the Target Businesses to be resolved and for the retrenchment process to be finalised, and for the Acquiring Group to then hire the Target Businesses' employees as new employees.
53. Section 2 of the Act provides that one of the purposes of the Act is to promote and maintain competition in the Republic in order to promote employment.²¹ Section 12A(3)(b) of the Act further provides that:

"When determining whether a merger can or cannot be justified on public interest grounds, the Competition Commission or the Competition Tribunal must consider the effect that the merger will have on...employment".

54. The Constitutional Court has noted that:

¹⁹ Transcript at page 158.

²⁰ Transcript at page 159.

²¹ Section 2(c) of the Act.

“South Africa faces one of the highest unemployment rates in the world, particularly amongst the younger members of society. This was no doubt taken into account by Parliament in formulating section 12A of the Competition Act (Act). The section requires that, when deciding whether a merger is in the public interest, its effect on employment must be taken into account. If it is decided to approve the merger, conditions may be imposed relevant to that impact”.²² (footnotes omitted)

55. Following further engagements involving the Commission, and submissions from the Merger Parties and the Unions, it is evident to us that the Acquiring Group is experiencing financial difficulties. Therefore, there is a risk that post-merger the transferred employees could be retrenched by the Acquiring Group, and that as a result of its financial difficulties, the Acquiring Group may be unable to pay the severance benefits owing to retrenched employees.
56. The above in our view is a merger specific concern as the proposed merger impacts the severance benefits of the employees of the Target Businesses relative to the counterfactual. i.e., likely benefits that may be paid absent the proposed transaction. On the evidence before us it appears that, absent the proposed transaction, if the Target Businesses had to retrench the transferred employees, the Target Businesses would have been in a better position to pay their severance benefits.
57. As noted above, the Acquiring Group did indicate that it had adopted a turnaround strategy to improve its financial position. However, neither the Merger Parties, Commission, nor the Unions presented any (financial or other) expert evidence regarding the likely success of the mooted turnaround strategy. We are not able on the limited evidence before us to determine the likelihood of the success of the turnaround strategy.
58. However, the proposed transaction could prevent job losses, as absent the proposed transaction, the Acquiring Group would still have terminated the contract mining services agreements with the Target Businesses, which would have resulted in the Target Businesses retrenching all their employees. The Unions

²² *Coca-Cola Beverages Africa Proprietary Limited // Competition Commission and Another 2024 (4) SA 391 (CC) (17 April 2024) at paragraph 1.*

argued that this would be a preferable outcome as it would ensure that all the transferred employees' severance benefits would be paid by the Target Businesses, which are in a better financial position than the Acquiring Group.

59. In line with the Tribunal's mandate to promote employment in South Africa and to consider the effect on employment as part of the public interest assessment in mergers, we found that, in the circumstances, it would not be appropriate to prohibit the proposed transaction which likely would lead to the Target Businesses' employees being retrenched. Recall also that the proposed transaction raises no competition concerns.
60. Nevertheless, given the Union's concerns that in our view had merit, the Tribunal considered it appropriate to impose a condition requiring a sum of money to be placed in an interest bearing account and held in escrow for a period, and for that amount (including any interest earned) to be used to pay the retrenchment benefits of the Target Businesses' transferred employees if retrenched for operational reasons or otherwise within five years of the Implementation Date.²³ The Tribunal considered that it would be appropriate for this sum of money to be equivalent to the Target Businesses' employees' minimum legally entitled severance benefit as contemplated by section 41(2) of the Basic Conditions of Employment Act (No. 75 of 1997) ("**BCEA**"), measured as at the Implementation Date ("**Escrow Amount**").
61. Prior to the order being issued, the Tribunal gave the Merger Parties, the Commission, AMCU and NUM an opportunity to comment on a pre-final version of the conditions, which was substantially similar to the conditions on which the Proposed Transaction was subsequently approved.
 - a. The Merger Parties agreed to the proposed condition (including that the money be placed in an interest-bearing account and that the interest earned also be used to pay severance benefits should that arise) but maintained their position that the condition is not necessary as—
 - i. The proposed transaction will not give rise to retrenchments; and

²³ Defined as "the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties".

- ii. Any concerns with the Acquiring Group's financial position are addressed by its turnaround strategy.
 - b. The Commission had no substantial comments.
 - c. AMCU was generally in agreement with the conditions. However, AMCU requested that the conditions also provide that the Escrow Amount be used to guarantee the benefits owing to the Target Businesses' transferred employees in the event that Kagiso Coal is liquidated or placed in business rescue. However, the Tribunal found that imposing such condition would not be appropriate given the laws governing liquidation and business rescue proceedings. AMCU further submitted that the Escrow Amount should be equivalent to twice the Target Businesses employees' minimum legally entitled severance benefit as contemplated by section 41(2) of the BCEA, as retrenched employees have the ability to negotiate higher severance benefits and to resort to industrial action in the event that such negotiations fail. However, we found that it would not be appropriate and proportionate to provide for an amount in excess of what is provided for as an entitlement in the BCEA.
 - d. NUM indicated that its position is that the proposed transaction should be prohibited and as such it declined to comment on the conditions.
62. In relation to retrenchment entitlement benefits, the Tribunal ultimately approved the proposed transaction subject to the condition that, within a certain period, the Merger Parties must transfer to an escrow agent and instruct it to hold in trust, in an interest-bearing account, for a period of five years, a sum of money equivalent to the Target Firms employees' minimum legally entitled severance benefit as contemplated by section 41(2) of the BCEA, which severance benefit will be measured as at the implementation date.
63. Should Katlego Coal retrench any of the employees of the target firms, for operational reasons or otherwise, within a period of five years from the implementation date, Katlego Coal will utilise the funds and interest held in escrow in order to pay out the employee severance benefits due to the target firms' employees who will be retrenched.

64. On the fifth anniversary of the implementation date of the proposed transaction, Katlego Coal will be relieved of its obligation to hold the target firms' employees minimum severance benefits in trust and can instruct its appointed escrow agent to refund any remaining balance held in trust to the acquiring firm, together with any interest which has accrued to Katlego Coal while the funds were held in trust.

Merger-specific retrenchments

65. Although the Merger Parties submitted that the proposed transaction would not result in retrenchments, they offered a condition placing a moratorium on merger-specific retrenchments.
66. The Unions indicated that the moratorium does not address their concerns as their concerns do not relate to merger-specific retrenchments, but rather to the fact that, due to the Acquiring Group's financial difficulties, employees would not receive the benefits owing to them (including any severance benefits in the case of retrenchments). We have already dealt with this concern.
67. The Tribunal approved the proposed transaction subject to the Merger Parties not retrenching any employees as a result of the merger for the duration of the moratorium period of three years from the implementation date of the proposed transaction.
68. Furthermore, the proposed transaction was approved subject to the Merger Parties' undertaking that Katlego Coal will comply with applicable labour legislation and implement a relevant labour law compliance programme. This undertaking is binding on the Merger Parties, and the Commission can request compliance reports from time to time to ascertain compliance with the undertaking.

CONCLUSION

69. For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the imposed conditions adequately address and are proportional to any potential public interest issues arising from the proposed transaction.
70. We, accordingly, approved the proposed transaction on the basis of the conditions in **Annexure A** attached to our order dated 04 March 2026.



Presiding Member
Mr Andreas Wessels

10 September 2026

Date

Concurring: Ms Andiswa Ndoni and Mr Geoff Budlender

Tribunal Case Manager: Andriza Liebenberg

For the Merger Parties: Adv Greta Engelbrecht SC instructed by
Werksmans Attorneys

For the Commission: Ms Betty Mkatshwa and Mr Billy Mabatamela