

SOUTH AFRICA / JUDGMENT

African Rainbow Minerals Limited v The Machadodorp Works ferrochrome and ferromanganese division of Assmang (Pty) Ltd (LM232Jan19) [2019] ZACT 6 (20 February 2019) [2019] ZACT 6

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Mondo Mazwai, Imraan Valodia

CASE / FILE NUMBER

LM232Jan19

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM232Jan19

In the matter between

African Rainbow Minerals Limited

Primary Acquiring Firm

And

The Machadodorp Works ferrochrome and

ferromanganese division of Assmang (Pty) Ltd Primary Target Firm

Panel

: Yasmin Carrim (Presiding Member)

: Mondo Mazwai (Tribunal Member)

: Imraan Valodia (Tribunal Member)

Heard on

: 6 February 2019

Order Issued on : 6 February 2019

Reasons

Issued on : 20 February 2019

REASONS FOR DECISION

Approval

- [1] On 6 February 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving African Rainbow Minerals Limited ("ARM") and the Machadodorp Works ferrochrome and ferromanganese division ("Target Business") of Assmang (Pty) Ltd ("Assmang"), hereinafter collectively referred to as the merging parties.
- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] ARM is a public entity listed on the Johannesburg Stock Exchange. ARM is ultimately controlled by Patrice Motsepe through various trusts. ARM directly and indirectly controls numerous firms including Assmang.
- [4] ARM is a diversified mining and minerals holding company. ARM, through its subsidiaries and joint ventures, mines and beneficiates iron ore, manganese ore, chrome ore, platinum group metals,[1] copper, nickel and coal. ARM also produces manganese and chrome alloys.

Primary Target Firm

- [5] The Target Business is a wholly-owned division of Assmang. Assmang is jointly controlled by ARM and Assore Limited.
- [6] The Target Business used to be a vertically integrated ferrochrome and ferromanganese business active in the mining of chrome and manganese ore, the smelting of ferrochrome and ferromanganese, and the production and sale of chrome and manganese alloys into the international market. The Target Business has ceased its production and smelting operations. It is now only active in the recovery of manganese from historical slag dumps. The recovered manganese is used to produce low-grade ferrochrome fines and chips which are then sold to the stainless-steel market.

Proposed transaction and rationale

- [7] ARM will acquire the Target Business through a sale of shares.[2] Post-merger, the Target Business will be housed directly under ARM and ARM will have sole control over the Target Business.

Impact on competition

- [8] The Competition Commission ("Commission") found that the proposed transaction did not give rise to a horizontal overlap as ARM and the Target Business are considered a single economic entity.
- [9] Given that the proposed transaction would not alter the pre-merger structure and that the market shares of ARM would not increase, the Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market. We concurred with this conclusion.

Public interest

- [10] The merging parties confirmed that the proposed transaction would not have any negative effects on employment in South Africa.[3] The proposed transaction raised no other public interest concerns.

Conclusion

- [11] In light of the above, we approved the proposed transaction unconditionally.

Ms Yasmin Carrim

Ms Mondo Mazwai and Prof. Imraan Valodia concurring.

20 February 2019

Date

Tribunal Researcher

: Hlumelo Vazi

For the merging parties : X Nyali of Bowman Gilfillan Inc

For the Commission

: I Mhlongo and W Gumbi

- [1] Platinum group metals are six pure metals with high melting points which consist of the following: platinum, (Pt), palladium (Pd), Rhodium (Rh), Iridium (Ir), Osmium (Os), ruthenium (Ru) as well as gold (Au) based metals such as nickel, copper and cobalt.
- [2] Transcript, page 4.
- [3] Merger Record, pages 9 and 83.

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