
SOUTH AFRICA / JUDGMENT

Barrick Gold Corporation v Randgold Resources Ltd (LM1930ct18) [2018]

ZACT 48 (16 November 2018)

[2018] ZACT 48

COURT

Competition Tribunal

BEFORE

Enver Daniels, Imraan Valodia

CASE / FILE NUMBER

LM1930ct18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM1930ct18

In the matter between

Barrick Gold Corporation

Primary Acquiring Firm

And

Randgold Resources Ltd

Primary Target Firm

Panel

: Enver Daniels (Presiding Member)

: Imraan Valodia (Tribunal Member)

Heard on : 31 October 2018

Order Issued on : 31 October 2018

Reasons

Issued on : 16 November 2018

REASONS

FOR DECISION

Approval

- [1] On 31 October 2018, the Tribunal unconditionally approved the large merger transaction between Barrick Gold Corporation (Barrick Gold) and Randgold Resources Ltd (Randgold Resources), hereinafter collectively referred to as the 'merging parties'.
- [2] Prior to the commencement of the hearing, Ms Andiswa Ndoni (Ms Ndoni), the third Tribunal Member who was supposed to sit on the panel was advised that a family member had passed away and thus was not in a position to participate in the hearing. In terms of section 31(3)(a) of the Competition Act 89 of 1998 ("the Act") I, Enver Daniels as the Deputy Chairperson of this Tribunal, in the absence of the Chairperson as he was traveling abroad, assumed the position of Chairperson and excused Ms Ndoni. I decided to proceed with the hearing with only two Tribunal Members sitting on the panel. No objections were raised by the Commission or the merging parties.
- [3] Our reasons for unconditional approval follow.

Parties to the transaction

Primary Acquiring Firm

- [4] Barrick Gold is a gold and copper mining company with gold mining operations worldwide and also produces silver as a by-product.
- [5] Barrack Gold is listed on the New York and Toronto stock exchange.
- [6] Barrick Gold is not controlled by a single shareholder but controls a number of firms worldwide. In Africa it controls Acacia Mining Plc (Acacia) which in turn controls two subsidiaries in South Africa: Acacia Mining SA (Acacia SA) and Barrick Africa (Pty) Ltd (Barrick Africa).
- [7] Barrick Gold does not have any mining activities in South Africa.
- [8] Acacia SA and Barrick Africa provide various internal administrative services such as payroll, contract administration and financial

consolidation only to Acacia.

Primary Target Firm

- [9] Randgold has gold mines and various exploration programmes in Central and West Africa where it mainly produces gold. Randgold also produces silver as a by-product.
- [10] Randgold is listed on the London Stock Exchange and its American Depositary Receipts trade on NASDAQ.

- [11] In SA, Rand Refinery controls Seven Bridges - a firm that provides various internal administrative services such as payroll, contract administration and financial consolidation only to Randgold.
- [12] All the gold produced by Randgold is transported and sold on its behalf by Rand Refinery (Pty) Ltd which is based in Germiston. Rand Refinery then sells the gold to the international market.
- [13] The merging parties submit that post-merger this relationship shall continue as is.

Proposed transaction and rationale

- [14] Barrick Gold intends to acquire the entire share capital of Randgold. Upon implementation, Barrick Gold shareholders will own approx. 66.6% of Barrick Gold shares and the remainder will be held by Randgold on a diluted basis.
- [15] Even though the merging parties do not have any mining activities in South Africa, the Act's merger notification is triggered only because of Randgold's use of Rand Refinery as its agent for the sale of gold.
- [16] The merging parties submitted that the merger will create an industry leading gold company that holds a diversified asset portfolio for growth in many of the world's most prolific gold districts. Further, the merger will generate and deliver sector leading returns for shareholders.

Relevant market and impact on competition

- [17] The Commission considered the activities of the merging parties and found a horizontal overlap in the production and supply of gold and silver. The Commission's investigation was confined to two markets: the international market for the production and supply of gold and the international market for the production and supply of silver.
- [18] In the international market for the production and supply of gold, the Commission found that the merging parties will have an estimated combined post-merger market share of less than 8%.
- [19] In the international market for the production and supply of silver, the Commission found that the merging parties will have an estimated combined post-merger market share of less than 3%.
- [20] In light of the low post-merger market share figures, the Commission concluded that the proposed transaction is unlikely to result in any substantial lessening or prevention of competition as the merging parties will continue to face competition from their mining counterparts such as Glencore, AngloGold Ashanti, Navoi MMC and others.

Public interest

- [21] The merging parties submitted that the proposed transaction will not have any adverse effects on employment as no retrenchments are anticipated at Randgold either on the operational level or the management level. The employee representatives of Acacia and Seven Bridges confirmed to have received notice of the merger. At first, the employees of Acacia raised questions about the implication of the merger on Acacia. It was confirmed by the merging parties that Acacia will continue to operate as is post-merger. No concerns were raised by Seven Bridges' employees.
- [22] From the above, the Commission was satisfied that the proposed transaction is unlikely to result in any negative effects on employment and no other public interest issues were seen to raise a cause for concern.

Conclusion

- [23] In light of the above, we concluded that the proposed transaction is unlikely to result in a substantial lessening or prevention of competition in any market. In addition, no other public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.

Mr Enver Daniels

Prof. Imraan Valodia concurring.

16 November 2018

Date

Tribunal Case Manager : Ndumiso Ndlovu

For Barrick Gold Corporation : R Legh of Bowmans

For Randgold Resources Ltd : M Griffiths of Norton Rose Fulbright

For the Commission

: B Mabatamela and T Mahlangu

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