

SOUTH AFRICA / JUDGMENT

Rustenburg Platinum Mines Limited v The Mototolo Chrome Recovery Circuit (LM157Aug18) [2018] ZACT 55 (23 October 2018) [2018] ZACT 55

COURT

Competition Tribunal

BEFORE

Norman Manoim, Yasmin Carrim, Halton Cheadle

CASE / FILE NUMBER

LM157Aug18

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM157Aug18

In the matter between

Rustenburg Platinum Mines Limited

Primary Acquiring Firm

And

The Mototolo Joint Venture

and

Mototolo Chrome Recovery Circuit

Primary Target Firms

Panel

: Mr Norman Manoim (Presiding Member)

: Ms Yasmin Carrim (Tribunal Member)

: Mr Halton Cheadle (Tribunal Member)

Heard on

: 17 October 2018

Order Issued on : 17 October 2018 Reasons Issued on : 23 October 2018

REASONS

FOR DECISION

Approval

- [1] On 7 February 2018, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger in terms of which

Rustenburg Platinum Mines Limited ("RPM") acquired the Mototolo Joint Venture ("Mototolo JV") as well as all of the movable assets of the Mototolo Chrome Recovery Circuit.

- [2] The reasons for the approval follow.

Parties to the transaction and their activities

Primary acquiring firm

- [3] The primary acquiring firm is RPM, a wholly owned subsidiary of Anglo American Platinum Limited ("AAP"), which is itself an indirect subsidiary of Anglo American plc ("Anglo American"). Anglo American is a public mining company listed on the London Stock Exchange, with secondary listings in South Africa, Switzerland, Botswana and Namibia. AAP is a producer of Platinum Group Metals ("PGMs"), with extraction, smelting and refining capabilities.
- [4] RPM's activities include the operation of smelting operations and metal refining facilities. RPM also holds a 50% interest in the Mototolo JV. All the ore extracted from the Mototolo mine is processed into PGM concentrate through concentrating facilities run by RPM. RPM does not offer refining services to third parties to any meaningful extent.

Primary target firm

- [5] The primary target firm is the Mototolo JV a joint venture created to own and run the Mototolo mine, which produces PGM ore as well as a number of precious metal ores (including chrome) as a by-product.
- [6] The Mototolo JV is currently jointly controlled by RPM and the Glencore Kagiso Platinum Partnership ("GKPP") with 50% each. Of the 50% held by the GKPP, 40.24% is held by Glencore Operations South Africa (Pty) Ltd ("Glencore") while the remaining 9.76% is held by Kagiso Tiso Holdings (Pty) Ltd ("Kagiso Tiso").
- [7] Also included in the transaction is Glencore's 50% share in the chrome produced by the Mototolo JV as well as all of the movable assets of the Mototolo Chrome Recovery Circuit, which are wholly owned and operated by Glencore. The immovable assets of the Chrome Recovery Circuit are already owned by RPM.

Proposed transaction and rationale

- [8] In terms of the proposed transaction, RPM will acquire Glencore's entire interest in the Mototolo JV, Glencore's 50% interest in the chrome ore produced by the Mototolo JV as well as the movable portions of the Mototolo Chrome Recovery Circuit. Thus, post-merger RPM will own: 90.24% interest in the Mototolo JV, all of the rights to the chrome produced by the JV and the entirety of the Mototolo Chrome Recovery Circuit. RPM has submitted it plans to acquire the remaining 9.76% of the target firm from Kagiso Tiso in due course.
- [9] RPM submits that the transaction will allow it to access adjacent mining opportunities without having to wait for the Mototolo JV's activities to end. Glencore submits that the PGM activities are non-core to their South African operations and are thus disposing of the assets.

Relevant market and impact on competition

- [10] The Commission analysed the markets for the production and supply of a number of PGMs (platinum, palladium, rhodium) as well as the market for the production and supply of chrome ore.
- [11] The Commission is of the opinion that the merger is unlikely to affect the structure or incentives in any relevant market because the transaction represents a move from joint to sole control of the Mototolo mine.
- [12] Further, the pre-merger supply relationships that exist between the merging parties and Glencore will continue to exist post-merger through supply agreements. In terms of these supply agreements, RPM will continue to provide all of the chrome ore produced by the target firms to Glencore post-merger. Consequently, all of the PGM ore extracted from the Mototolo mine will remain with RPM for use at its own concentration facilities while all of the chrome ore is sold to Glencore.
- [13] Notwithstanding the above, the Commission analysed the relevant market shares and concluded that the share accretion represented by the Mototolo JV is in any case negligible and there will continue to be strong competition in the relevant markets post-merger.

Public interest

- [14] The Merging parties submit that the proposed transaction will have no negative impact on employment. The Commission contacted all relevant trade unions and no concerns were raised. The Commission is satisfied that there will be no job losses and found that the transaction will likely allow the merging parties to pursue new mining activities and thus have a positive effect on employment.
- [15] No other public interest concerns arise out of the transaction.

Conclusion

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Mr Norman Manoim

Ms Yasmin Carrim and Mr Halton Cheadle

23 October 2018

Date

Tribunal Researcher: Jonathan Thomson

For the merging parties Anton Roets of Nortons Inc.

For the Commission: Portia Bele

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