

SOUTH AFRICA / JUDGMENT

Sibanye Rustenburg Platinum Mines Proprietary Limited v The 50% participation interested in the PGM Mining operations constituted by the Kroondal and Marikana 'Pooling and Sharing Arrangements' held by Rustenburg Platinum Mines Limited (LM039May22) [2022] ZACT 30 (25 July 2022)
[2022] ZACT 30

COURT

Competition Tribunal

BEFORE

Imraan I. Valodia, Andiswa Ndoni, Fiona Tregenna

CASE / FILE NUMBER

LM039May22

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM039May22

In the matter between:

Sibanye Rustenburg Platinum

Mines Proprietary Limited Acquiring Firm

and

The 50% participation interest in the PGM Mining operations

constituted by the Kroondal and Marikana 'Pooling and Sharing Arrangements'

held by Rustenburg Platinum Mines Limited Target Firm

Panel: Imraan I. Valodia (Presiding Member)

Andiswa Ndoni (Tribunal Panel Member)

Fiona Tregenna (Tribunal Panel Member)

Heard on

: 15 July 2022

Order issued on

: 15 July 2022

Reasons

issued on : 25 July 2022

REASONS

FOR DECISION

Approval

[1] On 15 July 2022, the Competition Tribunal (“Tribunal”) unconditionally approved the large merger wherein Sibanye Rustenburg Platinum Mine (Pty) Ltd (“Sibanye Rustenburg”) intends to increase its shareholding in a platinum group metals (“PGM”) Pooling and Sharing Arrangements business (“PSA Businesses”))

from 50% to 100% by acquiring Rustenburg Platinum Mines Ltd (“Rustenburg Platinum”)’s 50% participation interest in the PSA Business. Post-merger, Sibanye Rustenburg will solely control the PSA Businesses.

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Sibanye Rustenburg, a wholly owned subsidiary of Sibanye Platinum (Pty) Ltd (“SPPL”)
- [3] SPPL is in turn a wholly owned subsidiary of Sibanye-Stillwater Ltd[1] (“Sibanye- Stillwater”)
- [4] Sibanye-Stillwater controls many mining related firms, including Sibanye Platinum Bermuda (Pty) Ltd[2] (“Sibanye Platinum Bermuda”)
- [5] Sibanye-Stillwater and its subsidiaries will henceforth be referred to as the “Acquiring Group”.
- [6] The Acquiring Group is primarily engaged in deep level underground and surface mining activities (and related activities) relating to the production of PGM and gold.

Primary target firm

- [7] The primary target firm is the 50% participation interest in the platinum group metals (“PGM”) operations constituted by the Kroondal ‘Pooling and Sharing Arrangement’ (“Kroondal PSA”) and Marikana ‘Pooling and Sharing Arrangement’ (“Marikana PSA”) collectively referred to as (“PSA Businesses[3]”) held by Rustenburg Platinum.
- [8] Rustenburg Platinum is a wholly owned subsidiary of Anglo-American Platinum Ltd[4] (“Anglo Plat”)

[9] The PSA Businesses are jointly (50/50) owned by the Acquiring Group and Rustenburg Platinum.

[10] Anglo American, Anglo Plat and Rustenburg Platinum will henceforth collectively be referred to as the “Seller”.

Proposed transaction and rationale

Transaction

[11] In terms of the proposed transaction, Sibanye-Stillwater, through Sibanye Rustenburg, intends to acquire the 50% participation interest that the Seller holds in the PSA Businesses.

Rationale

[12] The acquiring firm submits that on a standalone basis, the Kroondal Operations will reach the end of their economically useful life and cease production in around 2024 and the individuals employed at such operations will lose their jobs.

[13] Extending the life of the Kroondal Operations will allow the operations to continue beyond around 2024 and thereby sustain much needed employment opportunities for more than 2 500 people until around 2030.

[14] The target firm submits that the proposed transaction provides an elegant exit mechanism which allows it to extract its attributable share of the Kroondal Operations more efficiently and effectively and provides for the extension of the life of mine of the Kroondal Operations creating ongoing sustainable employment opportunities.

Relevant market and impact on competition

[15] The Competition Commission (“the Commission”) assessed the following relevant markets:

- The global market for the production and supply of platinum[5] The global market for the production and supply of palladium[6] The global market for the production and supply of rhodium[7] A global market for the production and supply of gold[8]
- A global market for the production and supply of copper A global market for the production and supply of nickel A global market for the production and supply of cobalt
- A global and national market for the production of chrome ore

[16] The Commission considered the activities of the merging parties and found a horizontal overlap in the production and supply of PGMs, including platinum, palladium, and rhodium (collectively the 3E PGMs) and also ruthenium, iridium, and osmium.

[17] In all the relevant markets, the Commission found that the merging parties will continue to face competition from local and global market players such as Nor Nickel, Anglo American, Royal Bafokeng and Northam Platinum.

- [18] When assessing the proposed transaction, the Tribunal did not find any evidence suggesting that that the relevant market should be broader than the one defined above.

Relevant counterfactual

- [19] The Tribunal assessed the prospects for competition with the proposed transaction against the competitive status quo without the proposed transaction. Based on the above evidence, it concluded that there are no competitive concerns raised.
- [20] No third parties raised concerns regarding the effects of the proposed transaction on competition.
- [21] The Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

Effect on employment

- [22] The merging parties submitted that the proposed transaction will not give rise to any retrenchments in South Africa.
- [23] The merging parties further submitted that the proposed transaction would result in a positive impact on employment, insofar as it will allow for the continued operation of the Kroondal Operations and thereby save more than 2 500 jobs which would otherwise be lost absent the proposed transaction.
- [24] In line with the above, the Tribunal is of the view that the proposed transaction is unlikely to have a negative impact on employment in South Africa.

Effect on the spread of ownership

- [25] Given that the proposed transaction constitutes the sale of certain assets held by the sellers of the Target Group, the Commission found that the proposed transaction will therefore not result in a change in shareholding within the sellers.
- [26] The merging parties submitted that 26% of the Acquiring firm's issued share capital is owned by a B-BBEE consortium and will remain unchanged post the
- [27] The target firm itself does not have any HDP shareholders as there are no HDP persons/firms that hold a shareholding interest in respect of Rustenburg Platinum's 50% of the shares of the PSA Businesses.

Conclusion

- [28] Considering the above, The Tribunal conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Accordingly, we approve the proposed transaction unconditionally.

Date :25 July 2022

Prof. Imraan I. Valodia

Concurring: Ms Fiona Tregenna and Ms Andiswa Ndoni

Tribunal case manager: Baneng Naape

For the merging parties: Jocelyn Katz and HB Senekal of Edward

Nathan Sonnenbergs Attorneys

For the Commission: Rakgole

Mokolo and Grashum Mutizwa

- [1] Sibanye-Stillwater is not directly or indirectly controlled by any firm or individual.
- [2] Sibanye Platinum Bermuda in turn controls Sibanye Kroondal Operations (Pty) Ltd (“Sibanye Kroondal Ops”).
- [3] The PSA Businesses comprises various mining rights, liabilities, and interests, etc. that have been contributed by each of Rustenburg
Platinum and Sibanye-Stillwater to be mined on a consolidated/joint basis.
- [4] Anglo Plat is in turn ultimately controlled by Anglo American Plc (“Anglo American”)
- [5] The Acquiring Group will account for an accretion of [....].of the global market for the production of platinum, with an accretion of [....].
- [6] The merged entity will account for [....].with of the global market for the production of palladium, with an accretion of [....].
- [7] The merged entity will account for accretion of [....] market for the production of rhodium, with an accretion of [....].
- [8] The Commission notes that because base metals make a miniscule portion of the PGMs, the merged entity will have the market

accretion of less than 1% in all the base metals affected by the proposed merger

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