COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 04/LM/Jan07

In the matter between

Evraz Group SA	**Acquiring Firm**
And	
Highveld Steel and Vanadium Corporation Ltd	**Target Firm**

Panel	: N Manoim (Presiding Member), Y Carrim (Tribunal Member) and M Mokuena (Tribunal Member)
Heard on	: 25 April 2007
Decided on	: 26 April 2007
Reasons Issued	: 06 July 2007

REASONS FOR DECISION

Approval.

[1]. On 25 April 2007 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Evraz Group SA ("Evraz") and Highveld Steel and Vanadium Corporation Ltd ("Highveld") conditionally. The reasons appear below.

Parties.

[2]. The acquiring firm is Evraz Group S.A. ("Evraz") a company incorporated in Luxembourg. Evraz is a subsidiary of Lanebrook Ltd ("Lanebrook").[1]

[3]. The target firm is Highveld Steel and Vanadium Corporation Ltd ("Highveld"). Highveld is controlled by Anglo South Africa Capital (Pty) Ltd ("Anglo") a subsidiary of Anglo American South Africa Ltd ("AASA").[2]

Transaction.

1 Lanebrook is jointly controlled by Crosland Global Ltd ("Crosland") and Greanleas International Holdings Ltd ("Greanleas")

2 AASA is ultimately controlled by Anglo American plc ("Anglo American")

[4]. Evraz presently owns 24.9% of Highveld's share capital which it purchased from Anglo on July 13 2006.[3] This purchase was not notifiable as it did not give Evraz control over Highveld.In terms of the proposed transaction Evraz is acquiring a further 54.1% of the share capital of Highveld from Anglo (29.2%) and Credit Suisse International ("Credit Suisse") ("24.9 %") thereby increasing its shareholding in Highveld to 79%.

Rationale for the Transaction.

[5]. The merging parties have submitted in their filing that the proposed transaction will allow Evraz to diversify geographically in steel. It has also been submitted by the merging parties that the acquisition of Highveld gives Evraz access to the booming construction sector in Southern Africa. From the target firm's perspective, AASA is disposing of its interest in Highveld as part of a strategy to focus on controlled mining businesses that constitute its core activities

Activities of the Parties.

[6]. Evraz is involved in the mining of iron ore and coking coal and the production of steel in the Russian Federation.[4] Evraz also produces vanadium bearing steel slag as a by-product of its Russian steelmaking activities. Evraz does not own any assets in South Africa directly, other than its existing 24,9% stake in Highveld. However, in 2006, it acquired a stake in Strategic Minerals Corporation USA ("Strategic Minerals ") together with Japanese company Sojitz Corporation ("Sojitz"). Strategic Minerals owns Vametco Minerals Corporation a Delaware registered corporation. Vametco has a subsidiary in South Africa of the same name, which sells vanadium products to customers in South Africa. Highveld mines ore for its steelworks and its vanadium operations at its wholly-owned Mapochs mine and it also produces steel, vanadium and other ferroalloys and carbonaceous products. Highveld too, sells some vanadium products to third parties in South Africa. There is thus an overlap between the activities of Evraz (via Vametco) and Highveld in relation to some vanadium products in South Africa. It is not necessary for us to go into these overlaps in any

3 See the parties' Competitive Report footnote 2 on page 58 of the record.
4 Evraz is incorporated in Luxembourg.

detail, because of conditions imposed upon this merger by regulators in Europe, which eliminate any overlap in South Africa.

European Commission Decision.

[7]. This transaction was notified both to the European Commission ("EC")[5] under the European Union Merger Regulations and to the Competition Commission in South Africa ("the Commission"). At the time of our approval, the EC had already approved this transaction subject to certain conditions. According to the decision of the EC the merging parties offered these undertakings in response to concerns raised about the merger.

[8]. Both merging firms are involved in the production of steel and vanadium. The EC's investigation revealed that the proposed transaction would not significantly change the structure of steel markets in the European Economic Area ("EEA"), due to Highveld's limited presence in the EEA. It was however concerned with the impact of the merger on the vanadium markets.

[9]. The vanadium value chain can be divided into three different segments namely: vanadium feedstock, vanadium oxides and finished vanadium products. In its analysis of the transaction the EC found that the proposed transaction would result in the new entity controlling nearly half of the global vanadium value chain. The EC's investigation also revealed that the new entity would in particular gain a very strong position in the production and supply of vanadium feedstock, in particular in the supply of vanadium steel slag, where Evraz and Highveld are the two major suppliers'.[6] The EC found that both competitors and customers were concerned that the new entity would have the ability and incentive to restrict access to vanadium feedstock resources to its downstream competitors, so as to increase the prices of finished vanadium products.

[10]. In order to address the concerns, Evraz offered to divest its vertically integrated vanadium interests in Highveld's iron and vanadium mine in Mapochs

5 Case Comp/M.4494 Evraz Highveld.

6 According to the EC at the vanadium oxides and finished products levels, the main competitors of the new entity would be Xstrata, Chinese vanadium producers, whose competitive presence in the EEA is limited, and Vanady Tula, Chusovskoy and Treibacher which are dependent on the new entity for their feedstock supply.

together with Highveld's vanadium oxides and vanadium finished products activities ("Vanchem Plants") in South Africa. Evraz also committed itself to maintain the existing vanadium steel slag supply relationship between Highveld and Treibacher Industrie AG[7] ("Treibacher") and not to modify or discontinue the relationship. Evraz also committed itself to enter into a long term supply agreements (between three to five years) with Vanady Tula[8] and Chusovskoy[9] to provide them with at least as much vanadium-containing steel slag as Evraz currently supplies to them on terms and conditions similar to those currently in force, unless otherwise agreed with Vanady Tula or Chusovskoy. These undertakings were accepted by the EC.

[11]. In its analysis of the transaction the EC found that in terms of share of global vanadium feedstock production, the new entity, however after the partial divestment of the Mapochs mine, the new entity feedstock production will decrease from 42% to 31%.[10] In the vanadium oxides and finished vanadium products market the EC ordered the sale of the entire vanadium oxides and ferrovanadium business of Highveld. [11] (This takes care of the possible competition effects of the merger in South Africa as we discuss below.)

[12]. The EC indicated that the partial divestment of the Mapochs mine and the divestment of Highveld's vanadium businesses will remove the new entity's ability to reduce global vanadium feedstock production, since the new entity would most likely have reduced its vanadium ore production in Mapochs mine and redirected vanadium steel slag for internal consumption.[12] In its decision the EC left open the definition of the relevant product market as the proposed transaction raises competition concerns under any alternative product market definition for vanadium feedstock, vanadium oxides and finished vanadium products.

[13]. At the hearing the parties agreed to us imposing the same terms for the

7 Treibacher is an Austrian company which converts vanadium feedstock into vanadium oxides, and it then sells these products to third parties mainly in Europe in its own name

8 Vanady Tula is a Russian ferrovanadium producer.

9 Chusovskoy is a Russian company which produces high-quality metallurgical products.

10 See the EC's decision on page 713 of the record paragraph 167.

11 In the world wide vanadium oxides market according to the EU, the new entity would have 13% market shares; however its market shares after the divestment would be 7%. In the finished vanadium products market the new entity would have 14% market shares; however after the divestment the new entity would have 9% market share. See the EC's decision on page 712 of the record paragraph 166.

12 See the EC's decision on page 713 of the record paragraph 177.

approval of the merger as those imposed by the EC. Initially the South African Competition Commission and the merging parties had developed a condition to be imposed on the merging parties. Although the condition was materially similar to that of the EC, there were differences as to the divestment periods and the descriptions of the divested businesses. At the hearing we however indicated that there might be a conflict between the two remedies and that it was undesirable for the merging parties to comply with two conflicting remedies. Both the merging parties and the Commission agreed that we could make compliance with the EC order, the order of the Tribunal. The merging parties and the Commission also agreed that we should impose a condition that the merging parties file any notice, report or application that they are required to file in terms of their Commitments to the European Commission, with the Competition Commission at the same time as they file with the European Commission. This is important because the EC conditions provide for the conditions to be varied upon application by the merging parties and will enable the South African Commission to contribute to any decision around variance insofar as they may impact upon our market. [13]

Impact of the divestiture on the South African Market

[14] According to the merging parties the impact of the merger on third parties in South Africa is limited. Neither of the merging parties sells vanadium feedstock to any third party.[14] Highveld sells a certain quantity of feedstock to Vametco on an annual basis. Neither party sells any vanadium oxide to third parties in South Africa.[15] The overlap occurs in the production of so-called finished vanadium products which are used in steel applications in South Africa. Strategic Minerals sells a product called Nitrovan to Mittal Steel, Cisco and Cape Gate. It also sells ferrovanadium to customers in South Africa as does Highveld. Both ferrovanadium and Nitrovan are classified as finished vanadium products,however, as observed earlier, because the EC condition requires the sale of the Highveld vanadium oxide and vanadium fixed products business, the conditions remove this overlap created

13 See clause G of the Commitments record page 732.
14 See Competitiveness Report paragraph 4.2.1.1 page 71-2 of the record.
15 See Competitiveness Report paragraph 4.2.1.2 page 72 of the record.

by the merger in their entirely. According to the EC report: "*As regards downstream markets, vanadium oxides and finished vanadium products, the proposed remedies will comprise all of Highveld's vanadium oxide and finished vanadium products capacities and Highveld will thus not be active any more on these markets after the divestment of the divested business.*"[16]

[15]. We share the view that if the merger without divestiture were to lead to substantial lessening of competition, the extent of the divestiture would remedy any such problem in South Africa as it removes any overlap in respect of those activities in which they competed in South Africa for third party business. We are therefore satisfied that the EC's condition would remedy any competition concerns.

Public Interest.

[16]. There are no public interest issues.

Conclusion.

[17]. Based on the above the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved on condition of divestiture of an interest in Mapochs mine and Vanchem plants as confirmed by the European Commission. The condition is attached to the decision as Annexure "A".

____________________	**<u>06 July 2007</u>**
N.Manoim.	**Date.**
Tribunal Member.	

Y Carrim and M Mokuena concurring.

Tribunal Researcher : J Ngobeni.

For the merging parties : Gareth Driver (Werksmans).

For the Commission : Mfundo Ngobese (Mergers and Acquisitions).

16 See paragraph 169 of the EC's decision.