COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 05/LM/Jan02

In the large merger between:

Clidet No. 383 (Pty) Ltd (being a joint venture between Harmony Gold Mining Company Limited and African Rainbow Minerals (Pty) Ltd)

and

The Free State Operations of AngloGold Limited

REASONS FOR DECISION

APPROVAL

On 20 February 2002 the Competition Tribunal issued a Merger Clearance Certificate approving without conditions the merger between Clidet No. 383 (Pty) Ltd (being a joint venture between Harmony Gold Mining Company Limited and African Rainbow Minerals (Pty) Ltd) and the Free State Operations of AngloGold Limited in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The parties

The acquiring firm, Clidet No. 383 ("Clidet"), is a private company incorporated in the Republic of South Africa.[1] Clidet is jointly owned and controlled by Harmony Gold Mining Company Limited ("Harmony") and African Rainbow Minerals (Pty) Ltd ("ARM") in equal shares. ARM is controlled by the Kgabo Trust, whose beneficiaries comprise members of previously disadvantaged groups.

The target firms are the Free State Operations of AngloGold Limited ("AngloGold"), comprising four mines, namely Bambanani, Joel, Matjhabeng and Tshepong, as well as the business of the Ernest Oppenheimer hospital, together with the associate assets and infrastructure. These assets are being acquired as going concerns. AngloGold is the second largest producer of gold bullion in the world.

[1] In their most recent Sale of Business Agreement the parties state that the name will later be changed to Freegold (Pty) Ltd.

The merger transaction

Harmony and ARM will acquire the Free State operations directly from AngloGold as going concerns through the jointly held company, Clidet.

Rationale for the Transaction

The parties state that AngloGold focuses on long-life, low cost and high return mining. They focus on long-term ongoing operations. They advised that the Freegold operations no longer fit this profile. They would have implemented a close-down programme in respect of these Free States assets had it not found a buyer. As mines move towards the end of the economic lives, a different set of managerial and operational skills, not only technology, is required to operate them. From AngloGold's perspective, Joel and Matshabeng, in particular, were moving towards the end of their lives. Harmony and ARM have the skills to extract profit from these mines.[2] Their core activity is rock-breaking and they will use their own unique techniques to extract value from these mines. The parties refer to "unlocking synergies". Underground, for example, the shaft infrastructures that are owned by the different operators in this joint venture will be mined more economically. Furthermore, synergies arise too from shared infrastructure and savings resulting from a single management structure. In addition, Harmony and ARM will acquire access to mine fields in close proximity to their refinery operations. By acquiring access to such long-life ore bodies in close proximity to their existing operations, they are consolidating their assets in the Free State in order to make the mines more viable and ultimately, profitable.

More specifically, the transaction will result in the extended life of and continued mining on Joel and Matjhabeng mines; the re-opening of the closed shafts, Bambanai West, Nyala and Sabie/Kudu; and the increased life of Tshepong for approximately twenty years.

The Relevant Market

Both parties are engaged in the production and supply of gold bullion to the world market. According to the parties, during 2000 the South African share of world gold production was estimated to be 16.63%. The Commission found that the South African market for gold is constrained by a limited ability to produce gold for investment purposes, low production capacity to produce stocks of jewellery and a small jewellery conversion sector. Accordingly, a proportionately small amount of gold is sold within South Africa.

[2] Referred to as the "Harmony Way" emphasizing reducing costs, upgrading the ore body and empowering management teams at shaft level.

The Commission determined that almost all of the gold mined in South Africa is sold on the international market, to international bullion banks through the Rand Refinery.[3] Accordingly, the bulk of the parties' output is exported. Furthermore, the gold price is set internationally, by reference to the London Daily Price Fixings.

We accordingly agree with the Commission's definition of the relevant market in this transaction, namely as being that for the production and marketing of gold bullion to the international market.

Market Shares of South African producers

COMPANY	PRE-MERGER
AngloGold Limited	50%
Goldfields Limited	25%
Harmony	14%
Durban Roodepoort Deep Limited	7%
Western Areas Limited	1%
Other (incl. ARM)	3%
Harmony & ARM	**15%**

Source: Bloomberg's and Company records

The parties calculated that the operation being acquired would make up eight percent (8%) of South African gold production. [4]

Competitive Effect

Having regard to AngloGold's prominent position on the world market, this merger will not in any way undermine this position. In fact, the transaction will result in Harmony and ARM increasing their productive capacity, whilst that of the larger firm, Anglogold, decreases.

The parties alluded to gold's pertinent and unique characteristics, namely its undifferentiated quality; the fact that it is marketed internationally; central banks' holding of extensive gold reserves. They state that the gold price is inelastic and deemed to be near perfect competition. The main customers are international bullion dealers. Therefore it is not possible for any one producer to manipulate the price of gold, to the extent that the international gold price is influenced by the sale of reserves by financial institutions such as international central banks, the World Bank and the IMF. At the hearing, the parties stated that despite notions of

[3] Formed by gold producers and acting as agent for producers in selling gold to the international market.
[4] They reckoned that total gold production is about 400 tons, and they would produce about 30 tons.

supply and demand having a limited role to play in the setting of the gold price, gold producers are too numerous to enable them to exert any concerted influence on the gold price. [5]

Public Interest Issues

The only public interest factor relevant to this transaction is the effect on employment.[6]

Previously, AngloGold had announced a retrenchment program, which would have affected 5 000 employees, prior to the transaction being envisaged. The parties at the hearing maintained that the maximum retrenchment figure consequent upon this transaction was set to be 4 200 with a possibility, by a redeployment of employees and other possibilities, that it could be reduced to 3 200. However, they pointed out that no compulsory retrenchments had taken place to the hearing date. The only retrenchments, which have taken place, were voluntary retrenchments and they had taken place in accordance with an AngloGold plan, which was announced to employees during the course of last year.

Harmony and ARM are both retrenching fewer employees and extending the life of the mines, because they have a lower cost method of operating and they can operate on a lower grade ore body. As a result, those employees who remain will have sustainable jobs whereas under the AngloGold structure their jobs would have been for a far shorter time-span[7]. In fact, AngloGold was going to close down two of the shafts. Therefore the impact on employment would have been worse had the mines remained with AngloGold.

The parties advised that they were in the process of negotiating retrenchments with all the relevant unions. In any event, none of the trade unions made any representations to us or the Commission to indicate that they opposed the merger.

The Tribunal is satisfied that this merger would entail fewer retrenchments than otherwise and seeks to, as far as possible, consolidate the existing employee base.

[5] In the Harmony Gold Mining Company and the Randfontein Estates Limited merger, Case No: 16/LM/Feb00, the Tribunal noted that the sheer size of the market meant that South African gold producers are essentially price takers

[6] Although the parties made reference to the empowerment credentials of ARM we need not consider this factor in any depth given that they go to support approval of the merger, a conclusion we had already arrived at in the competition analysis.

[7] In other words, the man-year's (people employed over the life of the operation) worked will increase.

Conclusion

The Tribunal endorses the Commission's finding that this transaction will not substantially lessen or prevent competition in the relevant market and accordingly approves the transaction unconditionally.

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D. Lewis

26 February 2002
Date

Concurring: N. Manoim, C. Qunta