



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:107/LM/Dec11

In the matter between:

Shanduka Resources (Pty) Ltd

Acquiring Firm

And

Shanduka Coal (Pty) Ltd

Target Firm

Panel : Yasmin Carrim (Presiding Member),
Medi Mokuena (Tribunal Member)
and Taki Madima (Tribunal Member)
Heard on : 14 March 2012
Reasons issued on : 03 May 2012

Reasons for Decision

Approval

- 1] On 14 March 2012 the Competition Tribunal (“Tribunal”) approved the merger between Shanduka Resources (Pty) Ltd and Shanduka Coal (Pty) Ltd. The reasons for approval follow below.

The Transaction

- 2] The primary acquiring firm is Shanduka Resources (Pty) Ltd (“Shanduka Resources”). Shanduka Resources is a wholly owned subsidiary of Shanduka Group (Pty) Ltd (“Shanduka Group”). Shanduka Group is a public company listed on the Johannesburg Securities Exchange.

The primary target firm is Shanduka Coal (Pty) Ltd (“Shanduka Coal”), a private company incorporated in terms of the laws of the Republic of South Africa. Shanduka Coal is controlled by Glencore International AG. Glencore International AG is a subsidiary of Glencore International plc. Glencore, a company listed on the London and Hong Kong Stock Exchange. Glencore is not controlled by anyone but has three major shareholders, namely, Mr Glassenberg, Mr D Badenes and Mr T Mistakidis.

The Rationale

- 3] Shanduka Resources wishes to acquire a controlling interest in operating the coal mining assets. For Shanduka Resources, the proposed transaction gives rise to certain benefits namely; increased shareholding in Shanduka Coal to a majority interest, giving it increased exposure to Shanduka Coal’s mining activities; and access to the expansion programmes which Shanduka Coal’s majority shareholder, Glencore, plans within the coal mining industry, including an expansion programme at the Maputo Coal Terminal.
- 4] For Shanduka Coal, the proposed transaction enhances its Black Economic Empowerment credentials resulting in Shanduka Coal becoming a majority Historically Disadvantaged South African (“HDSA”) owned company and achieving the objectives of the Mineral and Petroleum Resources Development Act 28 of 2008 (“MPRDA”) and the Mining Charter.

The relevant market and the impact on competition

- 5] Shanduka Resources is an investment company with interests in a diverse

range of industries such as energy, food & beverages, resources, financial services, industrial and property, amongst others. The Shanduka Coal has interests in coal mining, specifically in thermal coal mining and anthracite coal.

The Commission found that there is a vertical relationship between the parties to this transaction as Shanduka Group provides transformation services to Shanduka Coal. These transformation services are services that Shanduka Resources offers to firms in which it has invested as a shareholder. The services broadly comprise services which seek to assist and enhance an investee firm's empowerment and transformation credentials and also other services such as public relations.

In the context of mining firms such as Shanduka these services include advising, assisting and overseeing development, implementation and mining conversion process for Shanduka Coal's empowerment activities, liaison with regulators and other interested parties and managing Local Economic Development ("LED") projects.

6] These transformation services were provided pre-merger and will continue to be provided post merger and Shanduka does not market or provide these services to any other third party except for firms in which they have invested in.

The Commission found that the nature of the vertical relationship will not lead to any foreclosure concerns as the transformation services were provided pre-merger and will continue to be provided post-merger and the services are provided only to companies where Shanduka has investments in and no other independent third parties.

The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition as the transformation services that Shanduka Resources provide to Shanduka Coal are services that Shanduka Resources offers to firms in which it has invested as a shareholder and no other third party where Shanduka Resources has no investment.

CONCLUSION

7] There are no significant public interest issues and we accordingly approve the transaction.

Y Carrim

03 May 2012
DATE

Medi Mokuena and Taki Madima concurring.

Tribunal Researcher: Thabani Ngilande

For the merging parties: Werksmans Attorneys

For the Commission: Bheki Masilela