

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 12/LM/Feb06

In the large merger between:

Ponahalo Investments (Pty) Ltd

and

De Beers Consolidated Mines Holdings (Pty) Ltd

Reasons for Decision

Introduction

1. On 8 March 2006 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Ponahalo Investments (Pty) Ltd and De Beers Consolidated Mines Holdings (Pty) Ltd. The reasons appear below.

The transaction

2. Ponahalo Investments (Pty) Ltd ("Ponahalo Investments"), a Black Economic Empowerment entity, will indirectly acquire 26% of the ordinary share capital in De Beers Consolidated Mines Ltd ("DBCM") from De Beers Société Anonyme ("DBsa"). In addition to the 26% equity interest certain minority protections will be afforded to Ponahalo Investments such as veto rights regarding the budget and business plans and the appointment of directors.
3. On completion of the transaction DBsa will hold 74% of the issued ordinary share capital in DBCM Holdings and the balance of 26% will be held by Ponahalo Investments. Ponahalo will appoint 3 directors to the DBCM Board which currently consist of 13 directors.
4. The primary acquiring firm is Ponahalo Investments, a special purpose vehicle constituted for the purposes of facilitating the conclusion of the merger transaction.
5. Ponahalo Investments is controlled by Ponahalo Holdings (Pty) Ltd ("Ponahalo Holdings"). Ponahalo Holdings' shareholders are:

- 1) Ponahalo Capital (Pty) Ltd (“Ponahalo”) holding 50% of the shares,¹
 - 2) The Equal Allocation Trust, a trust to be established by DBCM for the benefit of current employees and identified pensioners of the De Beers Group, holding 35%, and
 - 3) The Key Employee Trust, a trust to be established by DBCM for the benefit of key employees of the De Beers Group, holding 15%.
6. The primary target firm is DBCM, which is a 100% subsidiary of DBCM Holdings (Pty) Ltd (“DBCM Holdings”), is ultimately jointly controlled by Central Holdings Ltd and Anglo American plc.

Rationale for the Transaction

7. The transaction will result in DBCM achieving 26% ownership by historically disadvantaged South Africans as stipulated by the BEE Charter for the South African Mining Industry.

The relevant market

8. Ponahalo is a dormant company, which has never engaged in any commercial activities. DBCM is active in the mining and exploration of rough diamonds.
9. Since there is no overlap in the activities of the merging parties the merger will not lead to a substantial lessening or prevention of competition.

Public Interest

10. There are no public interest concerns.

D. Lewis

28 March 2006
Date

Concurring: U. Bhoola and M. Mokuena

| | |
|--------------------------|---|
| For the merging parties: | Webber Wentzel Bowens |
| For the Commission: | Thamsanqa TM Kekana, Mergers and Acquisitions |

¹ The shareholders of Ponahalo are: EM Dipico (18%), Peotona Capital (16%), B Petersen (13%), M Mashishi (8%), The Women’s Trust (17.5%), The Disabled Persons Trust (10%) and The Community Trust (17.5%).