



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 21/LM/Mar12

In the matter between:

**WILRU Investments One Hundred Thirty  
Four (Pty) Ltd**

**Acquiring firm**

And

**Exxaro Base Metals Namibia (Pty) Ltd**

**Target firm**

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| Panel             | : | Yasmin Carrim (Presiding Member)<br>Medi Mokuena (Tribunal Member)<br>Andiswa Ndoni (Tribunal Member) |
| Heard on          | : | 02 May 2012   |
| Order issued on   | : | 02 May 2012   |
| Reasons issued on | : | 14 May 2012   |

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### Reasons for Decision

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#### Approval

[1] On 02 May 2012 the Competition Tribunal ("Tribunal") approved the merger between WILRU Investments One Hundred and Thirty Four (Pty) Ltd and Exxaro Base Metals Namibia (Pty) Ltd. The reasons for approving the proposed transaction follow below.

## **Parties to the transaction**

[2] The primary acquiring firm is WILRU One Hundred and Thirty Four (Pty) Ltd ("WILRU 134"). WILRU 134 has its registered address in Windhoek, Namibia and it is wholly-owned by Glencore International AG ("GIAG"). GIAG is a wholly-owned subsidiary of Glencore plc ("Glencore"). Glencore is not controlled by any firm and is listed on both the London and Hong Kong stock exchanges.

[3] Glencore's activities include amongst others the worldwide production, refining, transporting, storing and supply of metals, minerals, energy products and agricultural products. Relevant to this transaction is that Glencore, through its subsidiaries, is involved in the zinc and lead market, as Glencore engages in the sales of zinc and lead metals which are produced from concentrates processed through their subsidiaries' facilities as well as through arrangements with other companies.

[4] The primary target firm is Exxaro Base Metals Namibia (Pty) Ltd ("Exxaro BMN"), a wholly-owned subsidiary of Exxaro Resources. Exxaro BMN holds a 99.9% shareholding in Rosh Pinah Mine Holdings (Pty) Ltd ("Rosh Pinah") which holds a 4.25% shareholding in Rosh Pinah Zinc Corporation (Pty) Ltd ("RPZC") located in Namibia. Exxaro BMN carries out zinc and lead ore mining and beneficiation through its effective 50.04% shareholding in RPZC.

## **Proposed transaction**

[5] In terms of the proposed transaction, Glencore Finance (Bermuda) Limited ("GFB") and WILRU 134 will ultimately acquire 100% of the shares in Exxaro BMN from Exxaro Base Metals and Industrial Metals Holdings.

[6] Post-transaction, WILRU 134 will own and control the entire zinc asset portfolio in Namibia, in which WILRU 134 already holds a 30.05% non-controlling interest prior to the transaction.

[7] Upon implementation of the transaction, WILRU 134 will effectively own 80.04% of the Rosh Pinah mine and related operations.

#### **Rationale for the transaction**

[8] The rationale for the proposed transaction is that RPZC will add to Glencore's existing portfolio of zinc and lead concentrates, which will provide future expansion potential and strengthen its position in Africa.

[9] Exxaro had the intention to divest its zinc asset portfolio in order to concentrate on the coal and base metals industry instead. It was unable to sell Zincor in South Africa but was able to sell its shareholding in RPZC which is the subject of this transaction.

#### **Relevant markets and impact on competition**

[10] The proposed transaction does not constitute either a horizontal or a vertical merger. Rather, it is a change to sole control over the zinc asset portfolio in Namibia.

[11] RPZC is a zinc and lead mine which until November 2011 supplied all of its zinc concentrate output to Exxaro Resources' zinc refinery, namely Zincor which was located in South Africa. It was explained at the hearing by Exarro that it had decided to dispose of its entire zinc portfolio. Pursuant to this it had put the portfolio out on tender but had not received a reasonable price for Zincor. The refinery was eventually shut it down as it was unviable.<sup>1</sup> Exxaro had engaged with the Dti about its difficulties with Zincor at that time but this had not led to any fruitful outcomes. The outcome of this is that RPZC no longer makes any sales of zinc or lead into South Africa.

[12] There is therefore no product overlap between the activities of the merging parties in South Africa.

[13] There are sufficient other global competitors in the market for zinc production, such as Xstrata AG, Hindustan Zinc and China MinMetals

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<sup>1</sup> See page 544 of the record.

Corporation. BHP Billitin, Xstrata AG and Doe Run are amongst the global competitors for lead production.

### **Public interest**

[14] The merging parties confirmed that there will be no adverse effect on employment as a result of the proposed transaction<sup>2</sup> as there are no South African employees relevant to this transaction. No other public interest issues arise as a result of this transaction.

### **CONCLUSION**

[15] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns. Accordingly, we approve the proposed merger unconditionally.



**YASMIN CARRIM**

14 May 2012  
**DATE**

### **Medi Mokuena and Andiswa Ndoni concurring.**

Tribunal Researcher: Nicola Ilgner  
For the merging parties: Werksmans  
For the Commission: Rakgole Mokolo

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<sup>2</sup> See page 552 of the record.