



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 017608**

In the matter between:

**Terris Mining Limited**

Primary Acquiring Firm

And

**International Mineral Resources BV**

Primary Target Firm

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Panel	:	Andreas Wessels (Presiding Member) Anton Roskam (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	11 September 2013
Order issued on	:	11 September 2013
Reasons issued on	:	23 September 2013

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### Non-confidential Reasons for Decision

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#### Approval

[1] On 11 September 2013, the Competition Tribunal ("Tribunal") unconditionally approved the merger between Terris Mining Limited (hereafter "Terris Mining") and International Mineral Resources BV (hereafter "IMR").

[2] The reasons for approval, with confidential information redacted, follow below.

### **Merging parties**

#### *Acquiring firm*

[3] The primary acquiring firm is Terris Mining. Terris Mining (incorporated in the Cayman Islands) is a newly-formed private equity investment fund established for the purposes of the proposed transaction. It currently holds no operating assets and conducts no business activities. Terris Mining is a wholly-owned subsidiary of Terris Fund SPC ("Terris Fund") (incorporated in the Cayman Islands). Terris Capital Management Limited ("Terris Capital") is 100% directly controlled by Terris Fund.

[4] Terris Fund is controlled by a financial investor, resident in London, [...]. [...] Terris Asset Management Limited ("Terris Asset") (also incorporated in the Cayman Islands) and [...] certain of the target firm's subsidiaries, but does not [...]. These subsidiaries are (i) Batho Barena Investments Holdings (Pty) Ltd ("Batho Barena"), an investment holding firm which holds a minority interest in Samancor Chrome Holdings (Pty) Ltd ("Samancor Holdings"); (ii) Samancor Holdings, an investment firm which holds a controlling interest in Samancor Chrome Limited ("Samancor Chrome"); and (iii) Samchrome FZE (Dubai), a firm involved in the distribution of ferrochrome.

#### *Target firm*

[5] The primary target firm is IMR, a firm incorporated in terms of the laws of the Netherlands. IMR is controlled by Summerside Investments Sarl ("Summerside"), a firm incorporated in terms of the laws of Luxembourg.

[6] IMR is a holding company for various mining assets, predominantly comprising chrome, and some nickel, mining operations and related marketing and distribution activities. In respect of South Africa, IMR

holds a controlling shareholding (70% directly<sup>1</sup> and 7% indirectly<sup>2</sup>) in Samancor Holdings. Samancor Holdings is a holding company which, save for its shareholding in Samancor Chrome, does not conduct any business activities. Samancor Chrome is active in the mining, beneficiation and distribution of chromium ore, ferrochrome and electrode paste (the latter through the Ferroveld Partnership)<sup>3</sup>.

### **Proposed transaction**

[7] In terms of the *Share Purchase Agreement*, Terris Mining will acquire 100% of the issued share capital of IMR from Summerside. On implementation of the proposed transaction Terris Mining will have sole control of IMR.

[8] Terris Fund believes that IMR is an attractive investment in the mining sector.

[9] The shareholders of Summerside wish to dispose of their indirect shareholding in the chrome mining assets of Samancor Holdings.

### **Competition analysis**

#### *Horizontal and vertical assessment*

[10] The Competition Commission ("Commission") found that there is no horizontal overlap between the activities of the merging parties or any vertical relationship between them. Therefore no substantial prevention or lessening of competition is likely to result from the proposed transaction either from a horizontal or a vertical perspective.

#### *Pre-merger [...]*

[11] In relation to the fact that the [...] the Terris Group<sup>4</sup> is [...] of certain of the target firm's subsidiaries, the Commission concluded that these [...]

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<sup>1</sup> Currently held by a wholly-owned subsidiary of IMR, IMR Chrome Limited (Mauritius).

<sup>2</sup> Through Batho Barena.

<sup>3</sup> A 50/50 partnership with Elkem Carbon AS of Norway.

<sup>4</sup> The Commission referred to the Terris Group in its Report as consisting of Terris Mining, Terris Fund, Terris Capital and Terris Asset.

Non-confidential version

do not raise any substantial competition concerns in the context of the proposed transaction. None of the [...] in the three relevant firms (see paragraph 3 above) hold any interests in the Terris Group. The Commission further noted that Samchrome FZE, which is involved in the distribution of ferrochrome, does not distribute ferrochrome in South Africa.

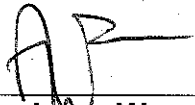
[12] We have no reason to doubt the Commission's above conclusion and do not discuss the issue in any further detail.

**Public interest**

[13] The merging parties confirmed that the proposed transaction will not have any adverse effect on employment.<sup>5</sup> Furthermore, the proposed transaction raises no other public interest concerns.

**CONCLUSION**

[14] For the reasons above, we approved the merger without conditions.



**Andreas Wessels**

23 September 2013

**DATE**

**Anton Roskam and Imraan Valodia concurring**

Tribunal Researcher: Andrew Sylvester

For the merging parties: Paul Cleland of Werksmans Attorneys

For the Commission: Themba Mahlangu

<sup>5</sup> See merger record, pages 12 and 51.