

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 26/LM/Mar07

In the matter between:

**IMPALA PLATINUM HOLDINGS LIMITED**

Acquiring Firm

And

**AFRICAN PLATINUM PLC**

Target Firm

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Panel: N Manoim (Presiding Member), M Moerane (Tribunal Member) and L Reyburn (Tribunal Member)

Heard on: 28 March 2007

Order issued on: 28 March 2007

Reasons issued on: 26 April 2007

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### REASONS FOR DECISION

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#### APPROVAL

1) On 28 March 2007, the Competition Tribunal unconditionally approved the merger between Impala Platinum Holdings Limited and African Platinum Plc. The reasons for this decision follow.

#### THE TRANSACTION

2) In terms of the proposed transaction, Impala Platinum Holdings ("Implats") will acquire the entire shareholding in African Platinum Plc ("Afplats").<sup>1</sup> Implats is listed on the JSE and not controlled by any single firm. Afplats is listed on the London

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<sup>1</sup> A list of the major shareholders of both merging parties can be found on pages 2-3 of the Commission's report.

Stock Exchange and not controlled by any single shareholder.

3)The business of Afplats was the recently the subject of another transaction which was approved by the Tribunal on 8 February 2007.<sup>2</sup> In terms of that transaction, Afplats South African interests in Afplats (Pty) Ltd ('Afplats SA'), Imbasa Platinum (Pty) Ltd ('Imbasa Platinum') and Inkosi Platinum (Pty) Ltd ('Inkosi Platinum') were firstly to be transferred to a new company, Newco. Thereafter Implats would subscribe for 29.9% of the ordinary shares in Newco. Afplats would hold the rest of the shareholding in Newco.

4)Due to certain minority protections the effect of the transaction would be that Implats and Afplats would jointly control Newco. Implats would also have an effective 22.13% interest in Afplats SA, and an effective 14.65% interest in Inkosi Platinum.

5)The rationale for that transaction was that Implats perceived the transaction as part of its strategy to increase production to meet growing demand, in order to remain competitive in the market. For Afplats it would be entering into the transaction in order to commence mining operations. Afplats had been involved in the exploration of the Platinum Group Metals ('PGM') industry and sought to commence mining operations. Afplats had submitted that in order for it to commence mining operations it has partnered with Implats for the latter to provide financial backing as well as technical and management expertise.

6)In the current transaction, the merging parties have stated that Afplats' shareholders were dissatisfied with the previous structure as it would have taken longer to obtain returns on their investments – they would have to wait for a period of four to five years when production of PGMs is expected to begin. According the merging parties, the current transaction enables Afplats shareholders to realize gains from their investments in the short term.<sup>3</sup>

## **IMPACT ON COMPETITION**

<sup>2</sup> *Impala Platinum Holdings Limited and Islandsite Investments 225 (Pty) Ltd* Case No: 03/LM/Jan07

<sup>3</sup> During the hearing, the Tribunal was told that the Afplats' shareholders did not have to be consulted in the previous transaction which the management of Afplats and Implats thought were suitable for their purposes at the time.

7) In the previous transaction, the Tribunal had been of the view that Implats was in fact acquiring de facto control because of the minority protections the shareholders agreement awarded it. Therefore in its reasons issued on 22 February 2007, the Tribunal analysed that transaction as if Implats was acquiring full control of Afplats' PGM interests.

8) The current transaction essentially transfers de jure control to Implats and for this reason we do not find it necessary to reproduce the previous analysis here save to record the following:

- a. In the horizontal analysis the Tribunal found that in each of the separate markets for PGMs the market share accretions did not exceed 3%. The changes in concentration levels therefore remain relatively low;
- b. In its vertical analysis, the Tribunal raised concerns about the possibility that the joint venture would enable Implats to control the supply of Afplat's PGMs onto the international market thus influencing prices. However having heard the merging parties' submissions, the Tribunal concluded that it was unlikely that Implats would increase the refining costs for its other customers because there was no incentive to do so.

*“The affected producers may seek other alternatives including the development of their own refining capabilities. Should the refining costs be increased, that will have very little impact on the total production costs.”<sup>4</sup>*

9) For those reasons, the Tribunal found that the previous transaction was unlikely to substantially lessen or prevent competition in any of the markets which the parties are active in.

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<sup>4</sup> The minimal impact is precipitated by the fact that it is estimated that refining accounts for a very small percentage of the total operating costs. The operating costs for each stage are as follows: mining (72%), concentrating (10%), smelting (9%) and refining (9%) (RT Jones, Platinum Smelting in South Africa, 1999, [www.mintek.co.za](http://www.mintek.co.za)).

10) While we endorse our previous findings, certain information came to light during the hearing of the current transaction regarding barriers to entry in the PGM refining sector that are worth recording here. Until recently, only three entities were involved in PGM refining locally, Anglo Platinum, Implats and Lonmin. These refineries refined both their own output and had toll refining and concentrate offtake agreements with third parties.<sup>5</sup>

11) According to Mr Mahadevi from Implats, there is a fourth refiner situated in the Eastern Cape currently operating with the capabilities to provide the “complete” refining process to PGM producers. Mr Mahadevi also stated that an Australian company, independent of the existing players, had recently entered the market with new refining technology thereby implying that barriers to entry were low. Mr Mahadevi was unable to give details regarding the new entrant and the merging parties were asked to make written submissions on the available refining capacity in South Africa.

12) According to a submission filed on 4 April 2007, Heraeus has established a local subsidiary, Heraeus Refinery S.A. (Pty) Ltd, and has built a primary precious metals refinery in Port Elizabeth, in the Coega Industrial Development Zone, which began operations in February 2007. Although Mr Mahadevi appeared to be more optimistic about this refinery's capabilities, the subsequent submission indicates that the refinery is apparently only at the preliminary stage where only material from Northam Platinum is being processed. The merging parties report that the intention is to grow the refinery in stages into a fully-fledged operation securing more supply from junior miners.

13) Regarding the new entrant, “Independence Platinum” the merging parties’ confirm in their later submission that Independence Platinum has announced its intention to establish refining facilities in South Africa for the smelting and refining of the output of emerging platinum producers, using different technology to that currently utilised by other precious metal refineries in South Africa.<sup>6</sup> According to the merging parties, it

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<sup>5</sup> The high cost of establishing and running a PGM refinery makes it economically unfeasible for smaller mining entities to refine on their own behalf.

<sup>6</sup> The new technology was developed as a result of the increasing exploitation of UG2 and

appears that the intention is to refine base metals from PGM concentrate, to produce various base metals and a high-grade final PGM concentrate for precious metals refining.

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14) There is no reason to depart from the competition conclusion reached in our previous decision concerning African Platinum where we evaluated that now aborted merger from the standpoint that Implats was the effective controller. The new merger has the same economic effect albeit that Implats increases its de iure control over the firm and its ostensible economic interest. In this enquiry the evidence of the lowering of barriers to entry in the industry through the prospect of new players emerging at the refinery level, whilst encouraging is too speculative at this time to be determinative. However, even if we have a more guarded view of the prospects of new independent entrants into the refinery market the merger does not raise concerns for the reasons advanced in our previous African Platinum decision.

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**N Manoim**

Presiding Member

**M Moerane and L Reyburn concurring.**

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Platreef resources, particularly by junior miners. The UG2 reef and Platreef contain higher quantities of chromitites than the Merensky reef, which are difficult to smelt in the six-in-line furnaces used by Anglo Platinum, Implats and Lonmin. Independence Platinum has an exclusive 10-year licence to utilise Mintek's ConRoast Process, which, when used in conjunction with the technology of Atomaer Technologies, is able to refine concentrates containing higher levels of chromitites, resulting in reductions in capital and operating costs.

Tribunal Researcher: M Murugan-Modise

For the merging parties: L Morphet (Deneys Reitz)

For the Commission: M Ngobese (Mergers and Acquisitions)