

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 29/LM/Mar07

In the matter between:

Royal Bafokeng Capital (Pty) Ltd

Acquiring Firm

And

Yomhlaba Resources Limited

Target Firm

Panel : Y Carrim (Presiding Member), M Mokuena (Tribunal Member),
and M Holden (Tribunal Member)

Heard on : 30 May 2007

Decided on : 30 May 2007

Reasons Issued: 7 June 2007

Reasons for Decision

Approval

- 1] On 30 May 2007, the Tribunal unconditionally approved the merger between Royal Bafokeng Capital (Pty) Ltd and Yomhlaba Resources Limited. The reasons for approving the transaction follow.

The parties

- 2] The primary acquiring firm is Royal Bafokeng Capital (Pty) Ltd ('Royal Bafokeng Capital'), a company incorporated under the laws of the Republic of South Africa.
- 3] Royal Bafokeng Capital is controlled Royal Bafokeng Ventures (Pty) Ltd ('Royal Bafokeng Ventures') which holds 51.20% of the issued shares and the balance

of 48.8% shareholding is owned by Strider Holdings (Pty) Ltd.

4] Royal Bafokeng Ventures is a wholly owned subsidiary of RBH Financial Holdings (Pty) Ltd ('RBH Finhold'). RBH Finhold is controlled by Royal Bafokeng Holdings (Pty) Ltd. RBH is in turn a wholly owned subsidiary of Royal Bafokeng Nation ('RBN').¹

5] Royal Bafokeng Capital controls Hardrock Engineering (Pty) Ltd and Zaptronix Limited.² RBH Finhold controls the following firms:

[5.1] Salestalk 268 (Pty) Ltd, a dormant company;

[5.2] Royal Bafokeng Financial Services Group which has a non-controlling interest of 10% in SA Eagle;

6] RBH controls the following firms:

[6.1] Royal Bafokeng Industrial Holdings (Pty) Ltd;

[6.2] Royal Bafokeng Management Services (Pty) Ltd;

[6.3] RBH Resources Holdings (Pty) Ltd;

[6.4] RBH Telecom Holdings (Pty) Ltd.

7] The primary target firm is Yomhlaba Resources Limited ('Yomhlaba Resources'), a company incorporated under the laws of the Republic of South Africa. Yomhlaba Resources is controlled by the New Africa Mining Fund Nominees (Pty) Ltd ('NAMF').

8] NAMF is a fund established in conjunction with the Department of Minerals and Energy and players in the mining industry to facilitate BEE investment in the mining industry in South Africa.

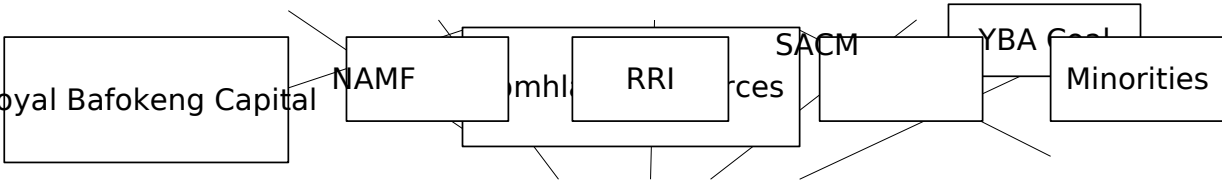
1 The Royal Bafokeng Nation is a community of approximately 300 000 people resident in the Rustenburg valley region of the North West Province. (Record p419). See p 423 of record for a list of RBN's interests.

2 Hardrock Engineering (Pty) Ltd supplies roof support products for use in the hard and soft rock mining industry, at present, exclusively in Zambia. Zaptronix Limited is listed on the JSE Securities Exchange and is involved in risk management by virtue of the information and technology solutions that it sells, in areas of energy risk management and mobile logistics risk management. (Record p419).

- 9] Yomhlaba Resources controls Yomhlaba Coal (Pty) Ltd ('YBA Coal'). The other target firms, which Yomhlaba Resources will own post-merger, are Ilanga Coal Mine (Pty) Ltd ('Ilanga') and Umlabu Colliery (Pty) Ltd ('Umlabu'). These companies are currently owned subsidiaries of Risk Reduction International Limited ('RRI'), a company incorporated under the laws of Mauritius.

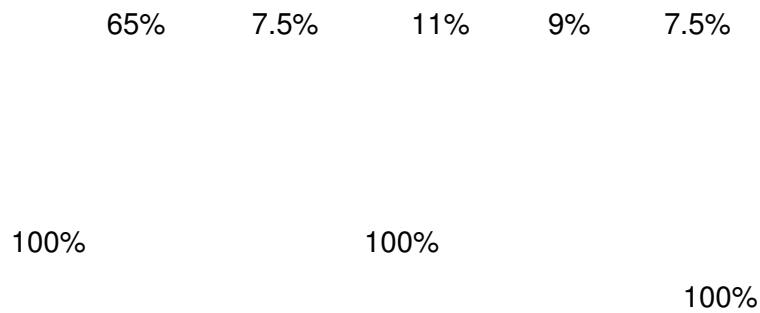
Description of the transaction

- 10] The parties submit that the transaction will be effected through a number of interlinked agreements, which are conditional upon each other. In terms of the structure of the transaction, Risk Reduction International Limited ('RRI'), a Mauritius corporation, will sell its 100% shareholding in Umlambu Colliery to Yomhlaba Resources or its nominee which shall be a wholly owned subsidiary.
- 11] In addition RRI will sell 76.475% of its shareholding in Ilanga Coal Mine (Pty) Ltd ('Ilanga Coal') to the acquiring firm (Royal Bafokeng Capital), and will sell its 10.5882% shareholding in Ilanga Coal to South African Coal Mining Holdings (Pty) Ltd ('SACM').
- 12] Further, the primary acquiring firm, RRI and SACM will sell their Ilanga Coal's 100% shareholding to Yomhlaba.
- 13] The consideration payable by Yomhlaba Resources to Royal Bafokeng Capital, RRI and SACM in respect of Ilanga Coal's shares will be as follows:
- [13.1] Yomhlaba Resources will issue 65% of its share to Royal Bafokeng Capital;
- [13.2] Yomhlaba Resources will issue 11% of its share to RRI; and
- [13.3] Yomhlaba Resources will issue 9% of its share to SACM.
- 14] The balance of the shares in Yomhlaba Resources will be owned as follows:
- [14.1] NAMF will own 7.5%; and
- [14.2] Minorities will own 7.5%.



15] On completion of the transaction, Yomhlaba Resources will control Umlabu Colliery and Ilanga Coal from RRI. Royal Bafokeng Capital will control Yomhlaba Resources with 65% shareholding

16] The diagram below shows the net effect of the transaction:³



Rationale for the transaction

17] For the primary acquiring firm, the merger represents the first step towards its goal of establishing a BEE coal mining platform focused on the acquisition, management and further development of coal mining businesses and related activities in the coal mining industry.

18] The transaction will enable the primary target firm to achieve favourable BEE status in accordance with the Codes of Good Practice published under the Broad-Based Black Economic Empowerment Act, 2003. The merger will also enable the primary target firm to establish a coal mining business and to lift the suspension of its shares on the JSE Securities Exchange.

The parties' activities

Primary acquiring firm

³ Record p427.

19] The acquiring group is involved in the following activities:

[19.1] Rendering risk management and business intelligence consulting services;

[19.2] supplying of roof support products;

[19.3] manufacturing and distributing of plastic packaging;

[19.4] providing freight forwarding, courier and delivery services;

[19.5] distribution of IT equipment;

[19.6] manufacturing of automatic components;

[19.7] platinum and chrome mining;

[19.8] ferrochrome-smelting;

[19.9] manufacturing of concrete blocks, ricks and tiles;

[19.10] manufacturing, distribution and marketing of household and laundry detergent products;

[19.11] waste management services; and

[19.12] Manufacturing of wet and dry food products.

The primary target firm

20] Through its subsidiary YBA coal, the primary target firm was involved in the business of coal dump discard material recovery mining operations at Ingwe Colliery, a subsidiary of Billiton plc ('Billiton') under contract. YBA Coal has since ceased to carry on that business and is now engaged in a dispute with Billiton regarding the summary termination of its contract in relation to Ingwe Colliery. The JSE Securities Exchange responded by the listing of the shares of the primary target firm on the AltX board.

21] Ilanga and Umlabu are coal mining companies operating in Mpumalanga.

Competition analysis

22] There is no overlap in the activities of the merging parties. The transaction is therefore unlikely to substantially prevent or lessen competition in any market.

Public Interest

23] There are no public interest issues.

Conclusion

24] The merger is approved unconditionally.

Y Carrim

Tribunal Member

M Mokuena and M Holden concur in the judgment of Y Carrim

Tribunal Researcher : R Kariga

For the merging parties: M Ball Metier Advisory (Pty) Ltd

For the Commission : I Selaledi, and M Mohlala (Mergers and Acquisitions)

7 June 2007

DATE