

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no.: 32/LM/Apr04

In the large merger between:

Xstrata SA (Pty) Ltd

and

South African Chrome & Alloys Ltd

Reasons

Introduction

The Competition Tribunal approved the merger between Xstrata SA (Pty) Ltd ("Xstrata SA") and South African Chrome & Alloys Ltd ("SA Chrome") on 22 June 2004. The reasons are set out below.

The transaction

In terms of a pooling and sharing agreement Xstrata SA and SA Chrome have agreed to pool the assets that constitute their respective chrome businesses by placing them under the control of a joint Board, which will be controlled by Xstrata SA.

The assets comprise the ferrochrome and chrome mining assets, infrastructure, contracts, arrangements, operations and chrome businesses of both of the merging parties. Included in this arrangement are the merging parties' chrome mining rights, land, certain ferrochrome assets and mining authorisations and rights belonging to the Royal Bafokeng Nation, one of the shareholders in SA Chrome.

Neither Xstrata SA nor SA Chrome will pay any monetary consideration for their respective participation interests. Instead, the proportion of their respective interests reflects the value each of them will be contributing to the venture. Each

party will retain ownership of its assets for the duration, as well as after the termination, of the joint venture. Each party will have an equal number of representatives on the joint Board.

The parties

The primary target firm is SA Chrome, which was established in South Africa in 1987 and is listed on the JSE Securities Exchange. The major shareholders are:

The Royal Bafokeng Nation (33.2%)
Industrial Development Corporation of South Africa (25.2%)
Bateman Project Holdings Limited (4.6%)
ThyssenKrupp Metallurgie GHBM (1.9%)

SA Chrome's principal asset is a ferrochrome smelter in the North West Province. It also owns Horizon Chrome Mine and a UG2 concentrator plant.

The primary acquiring firm, Xstrata SA, is an indirectly wholly owned subsidiary of Xstrata plc, a company incorporated and registered under the laws of the United Kingdom, by virtue of the fact that Xstrata plc owns all the issued shares in Xstrata (Sweiz) AG, a company registered in Switzerland, which owns all the issued shares in Xstrata SA.

Xstrata SA is a vertically integrated ferrochrome producer, which owns five chrome ore mines as well as three metallurgical plants used to convert chrome ore into ferrochrome. Xstrata SA also has an unincorporated joint venture with Samancor Limited relating to the production only of ferrochrome at a production facility that was set up at Xstrata SA's Wonderkop site to manufacture ferrochrome using chrome ore from Samancor and Xstrata SA mines.

Reasons for the transaction

According to the parties the transaction will lead to the optimal utilization of resources, synergies and production flexibility. Moreover, both parties will gain from the cross-pollination of technology and expertise, which should lead to substantial improvements in production throughout the combined Xstrata SA and SA Chrome businesses.

For Xstrata SA, a very important aspect of the transaction is the shareholding in SA Chrome by the Royal Bafokeng Nation, which will give Xstrata SA the opportunity to conclude a partnership with a BEE partner already involved in the same business as it.

Effect on competition

Xstrata SA and SA Chrome are both vertically integrated into the mining of chrome ore and the production of ferrochrome.

Chrome ore is mined in both opencast and underground mines in the Rustenburg area. The chrome ore then undergoes a beneficiation process, which yields three basic products, namely lumps, pebbles and fines. The fines are further processed and concentrated into metallurgical grade sand, chemical grade sand or various grades of foundry sand. The metallurgical grade sand is mainly used in the production of ferrochrome.¹ Approximately 90% of the world's ferrochrome production is used in the production of stainless steel and South Africa is responsible for about 60% of total world production of ferrochrome.

Ferrochrome is not traded on a metals exchange, as is the case with other metals, mainly because of the different grades and qualities available. Ferrochrome is priced on a quarterly basis with approximately 85% of production being sold in terms of long-term supply agreements. The rest is supplied on a spot basis.²

Xstrata SA exports ferrochrome globally via its marketing agent Glencore and also sells ferrochrome locally. SA Chrome's ferrochrome is currently sold internationally through an exclusive five-year off-take agreement with TK Met.³ SA Chrome does not sell ferrochrome locally although it did once sell ferrochrome to Columbus.

The Competition Commission defined the relevant market as the production and supply of ferrochrome and the distribution of ferrochrome in a global market.⁴ The merging parties do not agree with this definition claiming that the merging parties are not distributors, but use distribution agents to sell their ferrochrome. However, we do not have to decide which definition is correct since it does not affect the outcome of our decision in any way.

¹ The Competition Commission is currently investigating a restrictive practices complaint by Nuco Chrome against Xstrata SA, who also complained against the proposed merger by alleging that there are only three suppliers of chrome sand in South Africa, namely Xstrata SA, Samancor and SA Chrome. The Commission found that there are more suppliers than these three and that since there is currently a high demand for steel most of the chrome sand is used for the production of ferrochrome, thus leaving a shortage in supply of chrome sand. However all the suppliers said that they would supply Nuco Chrome should they have excess stock available. SA Chrome uses all its chrome sand in-house. Nuco Chrome was invited by the Tribunal to make submissions in respect of the merger, but did not respond.

² As one of the major suppliers in the industry Xstrata, and for that matter Samancor, would play an important role in influencing the base prices for ferrochrome.

³ TK Met is part of the ThyssenKrupp group. TK Met has agreed to relinquish, with effect from the commencement date of this transaction its exclusive rights under the off-take agreement with SA Chrome.

⁴ The Tribunal defined the market as such in the vertical merger between HFSA Investment BV and Herculit Ferrochrome (Pty) Ltd, see Tribunal Case No: 30/LM/May02.

The international market shares of the merging parties and their largest competitors in Ferrochrome, based on estimated output for 2003, are:

Competitor by Country	% Market Share
South Africa :	
Xstrata SA	22.10
Samancor	20.06
Hernic	4.81
Ore and Metal	4.41
SA Chrome	3.81
Kazakhstan	13.03
Finland	5.29
Zimbabwe - Zimasco	4.01
China	4.01

Post the merger Xstrata's market share for the global market would increase to 25.91%. In South Africa Samancor is the largest supplier and supplies approximately 70% of the ferrochrome market with its main customer being Columbus Steel with whom it has a long-term contract. Xstrata supplies approximately 30% of the South African ferrochrome market and its local customers are, inter alia, Columbus to whom it sells on an ad hoc basis, Scaw Metals and Iscor with whom it has a long-term supply contract.⁵ SA Chrome does not sell to the local market.

South Africa's total production of ferrochrome is approximately 300 million tonnes and the local demand only approximately 300 000 tonnes. We are satisfied that local ferrochrome users will be able to furnish ferrochrome locally post the merger. There are alternative suppliers of ferrochrome in the market who told the Commission that they would rather supply local buyers as there are less hassle from a logistics perspective and no currency risk. We were also informed by the Commission that a new entrant from India is currently undertaking a due

⁵ Most of the supply contracts in the ferrochrome industry, close to 85%, are long-term contracts.

diligence investigation in the Richards Bay area. Heric Ferrochrome and ASA Metals, two local producers of ferrochrome are also currently increasing their ferrochrome production.

The proposed transaction will also result in vertical integration because SA Chrome is a customer of Chartech, Xstrata SA's subsidiary that supplies electrode paste.⁶ Chartech also sells to Xstrata's competitors such as Heric Ferrochrome, ASA Metals and Zimasco in Zimbabwe. However, Xstrata's competitors can source their electrode paste locally from Ferroveld and Rand Carbide, as well as import from various countries.

We therefore agree with the Competition Commission's recommendation that the merger would not substantially prevent or lessen competition.

Public interest

The transaction will not have an adverse impact on any public interest issues.

N Manoim

13 August 2004
Date

Concurring: P Maponya, T Orleyn

⁶ Electrode paste is used as an electrode in energy intensive furnaces in the Aluminium industry, the Ferro-alloy industry and the Calcium Carbide industry.