

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 32/LM/Jun01

In the large merger between:

**BHP Steel Southern Africa (Pty) Ltd
BHP Minerals International Exploration Inc.
BHP World Exploration Inc.**

and

Billiton SA Limited and Mine & Smelter Investments (Pty) Ltd

Reasons for the Competition Tribunal's Decision

APPROVAL

On 28 June 2001 the Competition Tribunal issued a merger clearance certificate approving the merger between BHP Steel Southern Africa (Pty) Ltd, BHP Minerals International Exploration Inc. and BHP World Exploration Inc (BHP SA) and Billiton SA Limited and Mine & Smelter Investments (Pty) Ltd (the Billiton Group) without conditions in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

BACKGROUND

Acquiring Firms

1. The acquiring firms¹ are BHP Steel Southern Africa (Pty) Ltd, BHP Minerals International Exploration Inc., BHP Worldwide Exploration Inc, ("BHP SA").² They are ultimately controlled by BHP Limited, (the Broken Hill Proprietary Company Limited ("BHP Limited")). BHP Limited is an Australian company with a primary listing on the Australian Stock Exchange. It is a global natural resource company, whose principal areas of business include **minerals** (exploration, production, processing of coal, copper, iron ore, diamonds, silver, lead and zinc), **petroleum** (exploration and production) and **steel production**. It is headquartered in Melbourne and has a presence in over 30 countries.

¹ For the purposes of the merger notification, and since no assets or shares are being transferred, no firm is technically acquiring the other, therefore the Billiton Group was arbitrarily designated by the parties as the target firm and BHP Group as the acquiring firm.

² Eloff Mining Company (Pty) Ltd and Phoenix Mining Finance Company (Pty) Ltd are also part of the BHP stable in South Africa, however are, or are about to be dormant companies.

Target Firms

2. The primary target firms are Billiton SA and Mine & Smelter Investments (Pty) Ltd. They are ultimately controlled by Billiton Plc, a global metals and mining company with a primary listing on the London Stock Exchange.³ It has operations in Australia, Brazil, Canada, Colombia, Mozambique, South Africa and Suriname. The two primary target companies have sixty subsidiary companies in South Africa. The main subsidiaries conduct Billiton's business activities in South Africa and include Ingwe Collieries Limited, Billiton Aluminium SA Ltd, Samancor Ltd and Pering Mine (Pty) Ltd. ("the Billiton Group").

The merger transaction

3. This transaction is in pursuance of a merger transaction between the parent companies of the Billiton Group in the UK and those of the BHP Group of Australia, in terms of which the two parent companies are being combined into a single economic entity. The merger will not involve the sale or transfer of any shares or assets.⁴
4. This arrangement is being effected by way of a dual listed companies structure ("DLC").⁵ On completion of the transaction both companies will continue as separate publicly listed entities, retaining their existing stock exchange listings and index participations, though having identical Boards of Directors and being managed by a uniform team of management. Shareholders in Billiton and BHP will effectively hold shares in a single company, having equivalent economic and voting rights in the combined group.

Rationale for transaction

5. The merging parties assert that the merger will "*bring together a portfolio of global resources with outstanding breadth and diversity.*"⁶ BHP and Billiton will, through the combined entity, reduce their risk exposure, both to political and commodity fluctuations within their various markets by expanding their geographic presence and commodity portfolio. They further argue that they will enjoy greater access to trading liquidity and indexation across major stock exchanges and international capital markets, significantly enhancing their international competitiveness.

³ The merger filing pertains to the South African activities of both BHP and Billiton and does not contain details of all foreign companies owned by Billiton Plc.

⁴ This merger has to date been conditionally approved by the ACCC, and unconditionally approved by the European Commission.

⁵ This the parties define as the arrangement whereby BHP and Billiton have a unified management structure and the businesses of both BHP and Billiton are managed on a unified basis in accordance with the provisions of a Structure Sharing Agreement.

⁶ Record, page 325

EVALUATING THE MERGER

The relevant markets

BHP

6. Within South Africa, BHP conducts its activities via divisions, subsidiaries, external companies and agencies.⁷

❖ Steel

BHP is active in South Africa in the sale of flat steel products via its wholly owned subsidiary, BHP Steel (Southern Africa) (Pty) Ltd. These comprise carbon and coated steel products. BHP Limited produces hot and cold rolled metallic coated and electrical steel sheet and coil, supplied to the vehicle manufacturing industries. Metallic coated and pre-painted steels are supplied to the building and construction, white goods, office and general manufacturing industries. BHP Steel SA does not produce any steel locally, instead it imports BHP's products and markets them locally.

❖ Coal

BHP Limited produces steam/thermal coal but sells no thermal coal to South Africa.⁸ High quality metallurgical or "coking" coal represents the majority of BHP Limited's production.⁹ It is used in the steel industry to reduce iron ore to molten ore in steel. (a "reductant" in the manufacture of steel.) Coking coal is a hard coal and it is purchased principally by the steel industry. BHP imports "coking" coal to Iscor Steelworks in South Africa.

❖ Exploration

BHP Minerals International Exploration Inc. is registered as an external company in South Africa while BHP World Exploration Inc is in the process of doing so. Both companies are purely exploration companies and sell no products within South Africa.

⁷ Once again, only those South African activities are alluded to here, there are in fact many more carried out across their overseas operations.

⁸ More detail about this type of coal is described under Billiton's coal activities.

⁹ The parties define coking coal as coal whose carbonization properties dictates its use in the steel-making process. Metallurgical coal is a broader term which includes all coals used in steel-making. (BHP Annual Report p 260)

Billiton

7. Billiton Plc conducts its activities through its worldwide subsidiaries. In South Africa, it directly controls two companies, Billiton SA and Mine & Smelter, which together have over 60 subsidiary companies within South Africa. It is through these subsidiaries that the principal business activities of the parent company are transacted.

The principal activities of Billiton and its subsidiaries within South Africa include:-

❖ Aluminium

Billiton SA is an upstream aluminum producer, producing a variety of aluminium products. It's subsidiary, Billiton Aluminium SA Limited, owns two smelters at Richards Bay.

❖ Base metals

Billiton SA is involved in zinc mining within RSA through its wholly owned subsidiary, Pering Mine (Pty) Ltd. This mine is also responsible for Billiton SA's lead production, retrieving lead as a by-product of zinc.

❖ Coal

Billiton SA's coal operation is centred around "steam" (or thermal) coal, a type of hard coal.¹⁰ Hard coal comprises anthracite and bituminous coals. The largest users of steam coal are electricity and heat producers since they require coal capable of raising steam.

Ingwe Collieries Limited is the operating company for Billiton SA's coal business. It operates eight mines in South Africa in the Mpumalanga and KwaZulu-Natal provinces.

❖ Steel and ferro alloys

Billiton SA's interest in this sector is held through a 60% interest in Samancor¹¹, its operating company and holding company for certain joint venture companies.¹² Samancor's three main divisions are stainless steel, manganese and chrome.

¹⁰ This has the properties of containing little volatile matter and having a high fixed carbon content.

¹¹ Samancor is the world's largest integrated producer of chrome and manganese ores and ferroalloys with mines and plants located in South Africa. Billiton's partner is Anglo-American, which holds 40%.

¹² Samancor holds 33% (joint control) in the Columbus Stainless Steel joint venture in Middleburg, giving Billiton an effective 20% interest. (Record p497) Its equal partners are Anglo American and the IDC.

- Stainless Steel

Through its joint venture partnership in Columbus Steel, Billiton produces stainless steel products.

- Manganese

Billiton SA's interest is also held via its 60% stake in Samancor. Billiton SA mines ore which it sells on the open market to alloy producers. It also converts ore into ferro or manganese alloys which it sells to the steel industry.¹³

- Chrome

Billiton produces a range of chrome products, specifically ferro-chrome. Chrome is used as a raw material in stainless steel production.

- ❖ **Ferro-silicon**

This material is used in the physical process employed to separate valuable minerals from the aggregate in which it is mined ("Dense Media Separation"). Billiton manufactures this product via Samancor.

- ❖ **Titanium**

This is an element formed in chemical combination with oxygen and iron. It is predominantly used in the pigment manufacturing industry, with marginal use for the manufacture of titanium metal, welding rod coatings and chemicals.

- Titanium Feedstock

Billiton's involvement here is limited to its interest in Mine & Smelter, which has a 50% interest in Richards Bay Minerals (RBM)¹⁴. Mine & Smelter is not active in the downstream market of pigment production. The final output produced by RBM ("slag") is sold to customers using the chloride process in pigment production.

- High purity pig iron/ductile iron

This is a by-product of the production of titania slag. It is the preferred raw material input used by foundries for the production of ductile iron castings. Ductile iron is predominantly sold to the automotive industry, since its primary use is for the production of safety-critical automotive parts, such as brake calipers and steering knuckles of vehicles.

¹³ Manganese metal is alloyed with many other metals. Manganese alloys are an input into steel.

¹⁴ This is principally a titanium facility, with high purity pig iron being produced as a by-product.

Impact on competition

8. Although both companies are involved in the steel and coal industries, there is no product overlap between the materials produced by or the activities of the affected companies within these areas. Moreover, BHP does not have any coal or steel production facilities within South Africa.
9. Within South Africa, BHP SA is involved in the sale of flat steel products for the automotive industry whilst the Billiton Group manufactures and sells stainless steel, which the parties maintain are distinctly distinguishable products.
10. With respect to coal, although both companies do produce different types of hard coal, these coal products differ according to use, customers and markets and there is accordingly no overlap in this regard.
11. The Tribunal therefore agrees with the Commission that there is no product overlap between the activities of the merging parties.
12. Accordingly, the merger would not result in a substantial lessening of competition within the relevant mining or metals sectors within South Africa.

Public Interest Considerations

13. Only NUMSA initially filed to participate in these merger proceedings. They however subsequently withdrew their opposition to the proposed transaction after being assured that no job losses in the affected industries would result.
14. The parties assured the Tribunal that there would be no effect on Billiton employees at the operational level.¹⁵ This includes unskilled, semi-skilled, skilled employees and management at various sites, mines and smelters. They stated that the only potential impact on employment could arise at Billiton's head office in Johannesburg, currently exercising central support functions on behalf of the worldwide Billiton Group. Such changes could result in pursuance of a reorganization of central support functions between the principal offices of the combined group. The exact nature of such reorganisation is as yet unknown. However the parties submitted that employment losses would be confined to highly skilled professional personnel with ample employment opportunities elsewhere.

¹⁵ BHP only have seven employees in South Africa.

Conclusion

The Tribunal therefore endorses the Commission's view that this merger will not result in the substantial lessening or prevention of competition in any market.

D.H.Lewis

4 July 2001

Date

Concurring: M. Holden, U. Bhoola