COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 36/LM/Mar00

In the large merger between:

De Beers Consolidated Mines Limited

and

Anglovaal Mining Limited

Reasons for the Competition Tribunal's Decision

Approval

1. The Competition Tribunal issued a Merger Clearance Certificate on 19 April 2000 approving the merger between De Beers Consolidated Mines Limited (De Beers) and Anglovaal Mining Limited without conditions. The reasons for our decision to approve the merger without conditions are set out below.

The merger transaction

2. The primary acquiring firm is De Beers and the primary target firm is the Saturn Partnership (Saturn), a partnership between Anglovaal Mining Limited which has an interest of 87.5 percent and Industrial and Commercial Holdings Limited (ICH) which holds the remaining 12.5 percent interest in the partnership.

3. De Beers is acquiring the whole of Anglovaal Mining Limited's interest in Saturn.

Evaluating the merger

<u>Background</u>

4. In 1980 South African Base Minerals Limited, which owned the mineral rights to the Venetia farm, entered into an agreement with De Beers giving De Beers an exclusive right to prospect for precious stones on the Venetia farm

and to establish a mine should a discovery be made. In return De Beers would pay a royalty to South African Base Minerals Limited. Later that year De Beers discovered diamond deposits on the farm and the Venetia mine was established. South African Base Minerals Limited ceded the mineral rights to the Saturn Mining, Prospecting and Development Company (Pty) Limited (the Saturn Company) soon thereafter. In 1996 the Saturn Company sold the mineral rights to De Beers in return for a right to 50 percent of the share of the pre-tax profits of the Venetia mine and was restructured into the present Saturn partnership.

5. Saturn presently holds the right to a 50 percent share of the pre-tax profits of the Venetia diamond mine, which is wholly owned by De Beers. Saturn is a conduit for these profits; it conducts no other business except to collect the profits on behalf of the partners.

The relevant product/services market

6. The relevant product market is the market for the production and sale of diamonds.

The relevant geographic market

7. Diamonds are produced and sold internationally by De Beers and other producers through the Central Selling Organisation controlled by De Beers.

Impact on competition

8. De Beers argued that the transaction is no more than De Beers acquiring a greater stake in the royalty stream afforded by a mine that they otherwise already own and control, independently of Saturn.

9. However, at the hearing it emerged that De Beers' pre-merger control over the Venetia mine is not as pervasive as suggested in their submission to the Commission. In terms of its agreement with Saturn, De Beers is obliged to maintain production above certain levels. This obligation continues for so long as Saturn remains in existence. De Beers has also made an offer to buy out ICH. At the time of this decision ICH had not yet decided on the offer but, if it accepts, then De Beers would have acquired a 100 percent interest in Saturn, which would accordingly dissolve, and De Beers would no longer be bound by the production constraint. This means that De Beers could unilaterally make a decision to reduce production at the largest diamond mine in South Africa.

10. In most industries the fact that a merger gives a dominant firm the power to reduce production in one of the biggest producers might have a significant impact on competition since control over production by a dominant producer is a classic manifestation of market power. In the diamond industry things are

different. Such is the power De Beers already has through its control downstream over the marketing of diamonds via the Central Selling Organisation that it does not require unfettered control over production at the Venetia mine level to influence the market. The removal of the constraining influence on production exercised by Saturn in our view has no material influence in the market for the production and sale of diamonds given the market power already enjoyed by De Beers downstream.

Public Interest Considerations

11. The Tribunal agrees with the Commission that there are no public interest concerns raised by this merger. According to the information supplied by the merging parties there will be no loss of employment resulting from this merger.

15 May 2000

N.M. Manoim **Date**

Concurring: D.H. Lewis, D.R. Terblanche