

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 38/LM/Apr07

In the matter between:

Xstrata Canada Acquisition Corp Acquiring Firm

And

LionOre Mining International Limited Target Firm

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

Heard on : 6 June 2007

Order issued on : 6 June 2007

Reasons issued on : 17 July 2007

Reasons for Decision

Approval

- 1) On 6 June 2007, the Tribunal approved the merger between Xstrata Canada Acquisition Corp ("Xstrata Corp") and LionOre Mining International Limited ("LionOre"). The reasons follow below.

The Transaction and parties

- 2) In terms of the sale of shares agreement entered into between Xstrata plc, Xstrata Corp and LionOre, Xstrata Corp intends to acquire all the issued and

outstanding common shares in LionOre together with any associated rights issued and outstanding under the shareholder rights plan of LionOre save for those already owned by Xstrata plc.

- 3) Xstrata Corp is a wholly owned indirect subsidiary of Xstrata plc. Xstrata plc, which is ultimately controlled by Glencore International AG (“Glencore”), owns all the issued shares in Xstrata AG which is a company registered in Switzerland. Xstrata AG, inter alia, owns Xstrata South Africa (Pty) Ltd (“Xstrata SA”). Xstrata SA is involved in the following joint ventures:
 - A pooling and sharing joint venture with Merafe Resources Ltd in relation to ferrochrome
 - The Motolo Joint Venture with Rustenburg Platinum Mines Ltd in relation to PGMs
 - A BEE joint venture with African Rainbow Minerals Ltd in relation to part of Xstrata SA’s coal mining business
- 4) The primary target firm is LionOre, a company listed on the Toronto stock exchange, with secondary listings on the Australian and Botswana stock exchanges. It does not have a controlling shareholder. LionOre owns Global Mining Resources Inc (Bahamas) (“GMR”) which owns in turn owns LionOre South Africa (Pty) Ltd (“LionOre SA”). Its only business in South Africa is the Nkomati Joint Venture in which LionOre SA holds 50% and African Rainbow Minerals Ltd (“ARM”) the remaining 50%.
- 5) The acquisition brings together two complementary businesses and unleashes opportunities to create value through additional production, strong synergy potential, access to new markets and optimization of processing technology to increase opportunities for growth.

The relevant market

- 6) The transaction will lead to a horizontal integration between the activities of the parties in the following markets:

- The production and supply of Nickel concentrate
 - The market for the production and supply of Gold
 - The mining of Chrome ore
- 7) It would also give rise to vertical integration issues in the following markets:
- Both LionOre and Xstrata is involved in the upstream production and supply of nickel concentrate, while Xstrata and Glencore are involved in the downstream processing of nickel concentrate and the sale of finished nickel products. In addition, LionOre supplied Xstrata with the by-products of nickel concentrate, namely copper, gold, platinum, palladium, rhodium and cobalt.
 - LionOre and Xstrata is involved in the upstream mining of chrome ore and Xstrata in the downstream production of ferrochrome.

The horizontal effect

The production and supply of Nickel concentrate

- 8) The geographic market for the production and supply of Nickel concentrate is global.
- 9) The Commission calculated the merged entity's global market share for the production and sale of nickel concentrate as approximately 27% and those of its closest rivals Jubilee Mines N.L. (Cosmos) with 8%, Sally Malay Mining Ltd with 5%, Rio Narcea Gold Mines Ltd (Aguablanca) with 5% and BHP Billiton with 4%.
- 10) According to the parties a number of nickel concentrate producers are vertically integrated with refined nickel producers and therefore consume the concentrate internally. Xstrata estimates that in 2006 a total of 817,000 mt of nickel concentrate were produced worldwide of which only 157,000 mt were not used internally. The acquiring firm Xstrata Canada uses all of its own production of nickel concentrate internally and Glencore sells a small amount of nickel concentrate, 7,268 mt, to third parties. The target firm sells all its

nickel concentrate, 30,600 mt, to third parties.

11) Although the combined market share post the transaction is high the effect of the transaction in South Africa would be minimal for the following reasons:

- 1) The price of nickel is benchmarked to the London Metal Exchange and nickel producers are generally price takers.
- 2) The only customer of nickel concentrate in South Africa, Impala Refining Services, has indicated that it could source nickel concentrate from Botswana, Zimbabwe, Australia and Canada.
- 3) The incidental overlaps that arise from the by-products of nickel concentrate such as those related to the platinum group metals, cobalt, copper and gold will result in a negligible increase in the market share accretion in the global markets of the merged entity.

12) Based on the above the Tribunal is of the view that the transaction will not substantially prevent or lessen competition in the production and supply of nickel concentrate.

The production and supply of gold

13) The parties estimate that their combined global market share for the supply and production of gold will be less than 2% post the transaction. Other much larger players in the market are Newmont, AngloGold Ashanti, Barrick Gold and Placer Dome

14) In light of the low market share the Tribunal is of the view that the proposed transaction would not substantially prevent or lessen competition in the relevant gold market.

The production and supply of chrome ore

15) Xstrata's Alloys business produces ferrochrome from chrome ore. It uses almost all the chrome ore it produces in its own vertically integrated ferrochrome production operations and sells approximately 15% of its

production in the merchant market.

- 16) LionOre, through the Nkomati Joint Venture, has produced 244 000 tonnes of chrome ore since 2006 when it started and intends to produce up to 60 000 mt of chrome ore per month for the next 5 years.
- 17) Based on 2006 production figures the combined national market share for the parties in the production of chrome ore is approximately 37%.
- 18) However, although the market share is high post the transaction, the transaction would not substantially prevent or lessen competition since the merging parties produce different grades of chrome ore which are, based on the different purities and sizes involved, used in different applications.¹ Xstrata produces all three grades of chrome ore, namely chemical grade, foundry sand and metallurgical grade, while the Nkomati Joint Venture only produces metallurgical grade ore.
- 19) At present Xstrata supplies chrome ore to ferrochrome producers who are backwardly integrated into chrome mining as well as traders. Nkomati Joint Venture supplies chrome ore to Xstrata and Asmang Chrome, who is also backwardly integrated into chrome ore mining, as well as traders who sell on the export market. There are alternative suppliers of chrome ore such as Samancor (market share 27%), Heric Ferrochrome (market share 13%), ASA Metals (market share 4%) all who have the potential to counteract any anti-competitive behaviour. More importantly most of these firms have their own chrome ore mines from which they can source ore.
- 20) In addition the Commission found that South African producers of chrome ore have reserves that could endure for the next 50 years. South Africa accounts

¹ According to the parties the chemical grade concentrate is produced to a specific higher chrome oxide and lower silica content specification compared to metallurgical grade ore which renders it suitable for use in chromium chemical manufacture. Foundry sand, which has a comparably high chrome oxide and low silica content to chemical grade concentrate, is used by foundries to line moulds and tap holes in the casting process because of its superior temperature resistance qualities. Metallurgical grade concentrate is produced is a finer particle and is lower in chrome oxide content and higher in silica content. It is used by ferrochrome producers in the production of ferrochrome along with chrome ore lumps and pebbles.

for approximately 70% of the world's chrome ore reserves. Xstrata has the lowest reserves and is a net purchaser of chrome ore while Samancor, for instance, has a large body of reserves and produces well in excess of its own requirements and therefore exports to China. There is also a minimal incentive for the merged entity to restrict output of chrome ore as high throughput is required to lower unit costs.

The vertical effect

The supply of nickel concentrate to finished nickel producers

- 21) The merged entity has a global market share of 27% in the upstream market for the production and supply of nickel concentrate. Other prominent suppliers include Rio Narcea Gold Mines Ltd, Sally Malay Mining Ltd, Jubilee Mines N.L. and BHP Billiton.
- 22) In the downstream market for the production and supply of refined nickel Xstrata and Glenore has a market share of approximately 10%. However, there exist a significant number of refined nickel producers of which most are vertically integrated into the upstream production of nickel concentrate.²
- 23) The only South African refiner of nickel concentrate which is not backwardly integrated has indicated that alternative sources of nickel concentrate can be located in countries such as Zimbabwe, Botswana, Canada and Australia.
- 24) In light of the above it is unlikely that the proposed transaction would lead to customer foreclosure.

The supply of chrome ore to ferrochrome producers

² Of the 817 000 tons of nickel concentrate production in 2006 only 157 000 tons were processed by third parties whereas the residual was consumed by vertically integrated intermediate and refined nickel producers.

25) Most producers of ferrochrome are vertically integrated and acquire only very small additional percentages of chrome ore. Xstrata is vertically integrated pre merger and sourced some of its chrome ore from Nkomati Joint Venture. Excess capacity does exist in the South African market with Samancor exporting to China. We are therefore of the view that the transaction will not raise any vertical foreclosure concerns.

The public interest issues

26) The proposed transaction is unlikely to give rise to any significant public interest concerns. There will be no job retrenchments and the terms and conditions of employment will remain unchanged.

D Lewis

Date **17 July 2007**

Y Carrim and M Mokuena concurring.

Tribunal Researcher: R Badenhorst

For the merging parties: Mondo Ntlha of Cliffe Dekker for LionOre and Desmond Rudman form Werksmans on behalf of Xstrata.

For the Commission: Hardin Ratshisusu (Mergers & Acquisitions)