COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 41/LM/May05

In the large merger between:

Lonmin Plc **Acquiring Firm**

And

Southern Platinum Corp **Target Firm**

Reasons for Decision

Approval

On 8 June 2005 the Competition Tribunal conditionally approved the transaction between Lonmin Plc and Southern Platinum Corp. The reasons for this decision follow.

The Transaction

The Parties to the transaction

1. The primary acquiring firm is Lonmin Plc ("Lonmin"). Lonmin is listed on the London Stock Exchange and has no controlling shareholder. Lonmin has the following subsidiaries [1]
   i. 100% shareholding in Lonmin Investments Canada Inc ("Lonmin Investments");
   ii. 82% of the issued share capital of Western Platinum Ltd and Eastern Platinum Ltd (collectively known as "Lonplats"). [2]

2. The primary target firm is Southern Platinum Corp ("South Plats"). South Plats owns 100% of the issued shares in Southern Platinum (Cayman Islands) Ltd and has a joint venture with Mvelaphanda Resources Ltd known as the Messina Platinum JV. South Plats has interests in the following firms:
   i. Messina Ltd ("Messina");
   ii. Messina Platinum Mines Ltd ("MPML");
   iii. SouthernEra Mining and Exploration SA (Pty) Ltd ("SEMEX");
   iv. Societe Gabonaise de Development Minier;
   v. Gabon Mining Corporation. [3]

The structure of the transaction

3. Lonmin will acquire the entire issued share capital of South Plats, South Plats (Cayman Islands), Messina and MPML by way of a take-over bid.

Transaction Rationale

4. According to the parties, the Messina Platinum Project, which is located in the Bushveld Igneous Complex in South Africa, is an "ailing mining operation in dire financial straits". The

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[1] A full list of Lonmin's subsidiaries can be found on page 145 of the record.
[2] The remaining 18% of Lonplats is owned by Incwala Resources (Pty) Ltd.
[3] See page 3 of the Commission's Report for the structure of South Plats.

lenders to MPML have requested it to find a suitable technical partner with financial capacity to assist Messina.

The Parties' activities

5. All the parties are involved in the Platinum Group Metals (PGMs) sector. Six metals make up the PGMs viz. palladium, platinum, iridium, osmium, rhodium and ruthenium. Lonmin is the third largest primary producer of PGMs in the world and has mining interests in South Africa through its interest in Lonplats. Lonmin is also involved in the refining and smelting of PGMs.

6. Southplats is also a primary producer of PGMs. Messina is involved in the development of platinum mineral rights held by MPML. MPML operates the Messina Platinum Project, which covers mineral leases in Voorspoed, Doornvlei and Zebediela. Theses mines are situated in the Bushveld Igneous Complex in the Limpopo Province. According to the parties, the Bushveld Igneous Complex is the largest PGM depository in the world.

7. According to the Commission's Report, the transaction has both horizontal and vertical effects. Horizontally, the parties overlap in the market for the production of PGMs, while the vertical dimension of the transaction involves a refiner and smelter of PGMs acquiring a producer of PGMs.

8. As we've noted in our previous decisions[4] in this sector, there is a degree of substitutability within the PGM range of metals.

> "However the 1996 European Commission report on the proposed merger of the platinum interests of Gencor (viz. Implats) and Lonrho (viz. LPD) (henceforth 'the Gencor-Lonrho report') found that PGMs do not constitute a single relevant market but rather six relevant markets, each comprising the various members of the platinum group of metals… Although subsequent developments may indicate a greater degree of substitutability between platinum and palladium in the manufacture of auto-catalysts than that suggested in the EC report, we are confident that the relevant markets identified by the European Commission remain valid…[5]

9. The Commission similarly defined separate markets for platinum, palladium, rhodium, iridium, ruthenium and osmium, and was of the view that the relevant geographic market was international in all the above product markets.

Impact on competition

Horizontal impact

10. The global market shares provided by the parties were based on 2003/2004 supply figures and while we are concerned that more current figures were not provided, especially considering the nature of merger activity in the PGM sector, we nevertheless accept the Commission's submission that the increment in market share in all the relevant markets is

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[4] *Rustenburg Platinum Mines and Eastern Platinum Mines Ltd "Pandora Joint Venture" and Rustenburg Platinum Mines Ltd* Case No: 55/LM/Aug02; *Two Rivers Platinum Limited And Assmang Limited* Case No: 54/LM/Sep01; *Rustenburg Platinum Mines Ltd & The royal Bafokeng Nation in their capacity as the Participants in the "Bafokeng Rasimone Joint Venture" and Rustenburg Platinum Mines Ltd and the Royal Bafokeng Nation* Case No: 78/LM/Oct02

[5] At paragraph 9 of *"Bafokeng Rasimone Joint Venture"* decision referred to in the previous footnote.

relatively low.[6] Furthermore, the merged entity faces competition from larger players such as Anglo American Platinum, Impala Platinum, Norilsk Nickel (Russia) and Aquarius Platinum.[7]

Vertical impact

11. As stated above, Lonmin is involved in the refining and smelting of PGMs. Messina does not have its own smelting and refining operations and pre-merger, it's smelting and refining was contracted to Impala Refining Services in terms of an off-take agreement. According to the parties, this agreement will terminate in June 2006, and the concentrate produced at Messina will be refined and smelted at Lonmin's facilities.

12. According to the Commission, the volume of concentrates that Impala refines and smelts for Messina is insignificant. Furthermore, Impala has consented to the termination of the agreement. In the Commission's view, the transaction does not raise any vertical foreclosure concerns. We agree with the Commission in this regard.

Public Interest

13. According to the parties, the financial state of the Messina mining operations made it unsustainable and absent the merger, approximately 1532 jobs would be at risk. Post merger, however, with Lonmin's intervention, the number of retrenchments would be substantially reduced and approximately 284 semi-skilled workers and 116 workers at management, artisan, supervisor and administrator levels might be retrenched (worse-case scenario). The parties submitted that the planned retrenchments could be attributed to the transition to a safer productive mining method, changed working timetables and the reduction of high operating costs (labour costs constitute more than 60% of the pre-merger total cost of Messina).[8]

14. The Commission was of the view that the retrenchments planned were still substantial and together with the parties agreed on a set of conditions. However, it appeared from the record that the unions representing the employees at Messina Mine had not been consulted during the drafting of the condition. Accordingly the Tribunal asked the parties to send copies of the Commission's recommendation to the various unions for them to consider the proposed conditions and make submissions in relation to these. The parties subsequently furnished us with letters from the unions which all stated that they had accepted the conditions. Furthermore, we requested that the various union representatives be present at the hearing on 8 June 2005. At the hearing, the union representatives confirmed their acceptance of the conditions.

15. The transaction was approved subject to the following conditions:

    (i) *The maximum number of employees to be retrenched as a result of the proposed merger shall be approximately 284 semi-skilled employees and approximately 116 employees at the management, artisan, supervisor and administrator levels, provided that in total there shall not be more than 400 retrenchments.*

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[6] Messina's market share in the platinum, rhodium and palladium markets is below 1%. Messina accounts for 1% of the ruthenium and iridium markets.
[7] See page 29 of the record.
[8] See page 10-12 of the record and page 9-11 of the Commission's Report.

(ii) *At least a quarter of the retrenched employees shall be short listed for appropriate positions that become available within the Lonmin Group or elsewhere.*

(iii) *The merged entity shall offer alternative skills training, as agreed with the relevant trade unions, to employees who are retrenched as a result of the proposed merger. Such skills training will be available for a period of six months from the date on which notice of the retrenchments is given to the relevant trade unions. The merged entity must ensure that the training commences prior to the effective date of the retrenchments.*

(iv) *The merged entity shall pay the costs of the alternative skills training offered by the merged entity, including accommodation and two meals a day.*

The conditions will endure for a period of 24 months from the date of the issue of the clearance certificate by the Competition Tribunal.[9]

16. We also requested the parties to provide us with more detail on the nature of the skills training they would offer. According to the parties,[10] the courses it would offer were bricklaying, electrical house wiring, welding and electronic appliance maintenance.

17. We are satisfied that the conditions deal with any concerns arising out of this merger.

Y Carrim **22 July 2005**
Date

Concurring: M Holden and M Madlanga

For the merging parties:	N Brown and J Meijer (Cliffe Dekker)
For the Commission:	H Ratshisusu (Mergers and Acquisitions)
For the Trade Unions:	M Leshilo (BMEAWU, Mpumalanga) J Showale (BMEAWU, Messina) G Mphela (NUM, South Plats) T Mokgophi (NUM, Messina Plats) J Scheepers (UASA, Mpumalanga)

[9] Contained in the merger order issued on 8 June 2005
[10] In a correspondence dated 8 June 2005.