COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 54/LM/Sep01

In the large merger between:

TWO RIVERS PLATINUM LIMITED

and

ASSMANG LIMITED

Reasons for decision

APPROVAL

1. On 15 November 2001 the Competition Tribunal issued a Merger Clearance Certificate approving the large merger between Two Rivers Platinum Limited (Two Rivers) and Assmang Limited (Assmang) without conditions. We set out the reasons for our approval of the merger below.

BACKGROUND

The Parties

2. The acquiring firm in this transaction is Two Rivers, a joint venture company between Impala Platinum (Implats) and Anglovaal Mining Limited (Avmin). Two Rivers was formed to bid for the rights (then owned by Assmang) to the Platinum Group Metals (PGMs) and certain other surface rights in the farm Dwars Rivier in the Province of Mpumalanga.[1] Two Rivers won the bid for these mineral rights.

3. Implats is an investment holding public company listed in the platinum sector on the JSE. Through its various subsidiaries Implats is primarily involved in the mining, refining and marketing of PGMs, nickel and copper. The mining, refining and marketing of PGMs forms by far the largest part of Implats business. Implats is the only company providing PGM refinery services to independent PGM mining companies that are

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[1] In terms of the sale agreement Two Rivers is granted rights to mine platinum, palladium, rhodium, ruthenium, iridium and osmium – the so-called PGMs – as well as silver and gold and the ores thereof.

not part of its stable – the refining capacity of other large players in the PGM market is dedicated to refining the output of their own mines.

4. Avmin is a JSE-listed public company whose business is to explore, develop, operate and hold interests in the mining and minerals industry. Through a number of subsidiaries it develops and operates mineral-related assets and projects in the precious, base and ferrous metals industries in Southern Africa. Avmin has a controlling interest in the target firm, Assmang, through its 50,35% shareholding therein.[2]

5. In terms of the Two Rivers' Shareholders Agreement Avmin holds 55% of the shares and Implats, the other 45%. The shareholders' contribution to the financing of the Two Rivers joint venture is pro rata to their respective shareholdings. Avmin and Implats have also entered into management and marketing agreements whereby Avmin was appointed manager and sole marketing agent of Two Rivers. Two Rivers has also signed a Purchase, Sale and Tolling of Metals Agreement with Impala Refining Services Limited (IRS), a wholly owned subsidiary of Implats. In terms of this agreement, which shall endure for the life of the mine at Dwars Rivier, Two Rivers is obliged to sell and supply its PGMs and base minerals for toll refining to IRS.

6. The target firm, Assmang, is part of the Avmin group - Avmin has a direct shareholding of 50,35% in Assmang. Assmang mines chrome, iron and manganese in South Africa directly and through various subsidiaries. In 1998 Assmang bought the Dwars Rivier property, which is the subject of this merger, with the intention of mining chrome ore, but incidentally also acquired PGM rights in the property. Assmang does not mine PGMs and does not wish to do so.

Rationale for transaction

7. This transaction will enable Assmang to realize the value contained in the rights it holds over the mining of PGMs on the Dwars Rivier property. It appears that Assmang's decision to dispose of these rights was, in part, prompted by the "use it or lose it" principle introduced by the Minerals Development Bill which provides that old order rights will lapse if no prospecting or mining rights are granted within a year of the Bill being enacted. The capital expenditure to mine and refine PGMs is very high. Avmin, for its part, does not possess the requisite infrastructure, skills or expertise to mine and refine PGMs and so has elected to undertake this activity in a joint venture with an experienced partner. Avmin will however assume management responsibility for the mining operation although the highly capital and skill intensive refining stage will be handled by an Implats' subsidiary. Note however that Avmin has made conflicting claims regarding its overall strategy with respect to the platinum market. On the one hand it insists that it views

[2] Avmin also has 90% interest in a Zambian company Chambishi Metals and a 75% interest in the Nkomati Joint Venture.

this transaction as a means of entering the PGM market. On the other hand, it presents this transaction as a commercially viable opportunity incidental to its subsidiary's, Assmang, acquisition of the right to mine chrome on the property in question and thus not expressive of a broader interest in competing in this segment of the mining industry.

8. As noted above, Two Rivers won the bid to purchase Assmang's PGM mineral rights. We have been presented with evidence demonstrating that Avmin's controlling stake in Assmang notwithstanding, the bidding process was at arms length – in particular Avmin's nominees on the Assmang board recused themselves from the process to avoid a conflict of interest.

9. Implats' interest in this transaction is partly inspired by its desire to make more efficient use of its considerable processing and refining infrastructure. Implats has, it appears, focused its competitive strategy on enhancing the productivity of its refining operation, a strategy that, it avers, has borne considerable fruit. It claims that its refining operation is the most efficient in the industry. However, over the medium to long term this strategy is, it claims, threatened by its weak reserves of PGMs particularly relative to Angloplats, the other major South African participant in this market. It has accordingly embarked on a deliberate strategy of either acquiring additional rights to mine and refine PGMs or it has entered into arrangements – so-called 'toll refining' agreements – with those holders of PGM rights who do not possess their own refining capacity. Indeed it appears that Implats is not much engaged in prospecting but rather maintains a careful watch over prospecting activity across the world with a view to furthering its ability to acquire the mineral rights originally staked by others or to toll refine PGMs mined by others.

THE RELEVANT MARKET

10. Platinum group metals – PGMs – comprise platinum, palladium, rhodium, ruthenium, iridium and osmium. The properties of this group of metals are such that substitution of PGMs with metals outside of this group is not commercially or technically viable over an important range of uses. There is a certain degree of substitutability *between* the members of the PGM. 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 market each comprising the various members of the platinum group of metals.[3] Although subsequent developments may indicate a greater degree of substitutability between platinum and

[3] Commission Decision of the 24 April 1996 declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case No IV/M.619 – Gencor/Lonrho). Note that we shall refer to this report at other points in this decision. The EC report is particularly apposite because both analyses deal with the same geographical market populated by the same participants.

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.

11. Although the range of PGMs is implicated in this transaction we will, by and large, restrict our comments to platinum itself. It is here that Implats is most active - indeed South African PGM ores are particularly richly endowed in platinum. Hence while Russian producers have a strong presence in the mining of PGMs generally they appear, because of the character of their ore bodies, to hold a particularly strong position in palladium. Stillwater, the US PGM mining and refining company active in the US, also mines ores richly endowed in palladium.[4] Hence, of the six relevant markets identified above, it is the platinum market that is particularly implicated by this transaction.

12. As noted above there is a degree of substitutability within the PGM range of metals. For example, both platinum and palladium are extensively used in the manufacture of autocatalysts, an important market for PGMs, although this substitutability does not extend to other important markets, for example jewellery. We repeat then the six relevant product markets correspond to the members of the PGM and our analysis will focus on one of these – the market for platinum.[5]

13. The Gencor-Lonrho report includes a careful analysis of the platinum market. It's conclusions are worth citing at length and speak for themselves:

> *'The portion of platinum demand accounted for by industrial processes and autocatalysts is price-inelastic, probably with a very low price elasticity, since there are basically no substitutes for platinum for these purposes, apart from limited substitution possibilities between platinum and palladium for certain types of autocatalysts. The price elasticity for jewellery demand on the Japanese market was found to be price-inelastic with an*

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[4] See Gencor-Lonrho Para 80: 'The individual PGM metals are produced in fixed ratios, determined by nature, which depends on the particular ore body. Indications from official sources are that the ratio of platinum/palladium/rhodium is about 100:42:21 at the Merensky reef and 100:83:54 at the UG2 reef. In other countries palladium occurs in higher concentrations relative to platinum. In the main Russian mine, in Noril'sk, the ration is about 100:284:16, at the American mine in Stillwater 100:350:73 and at the Canadian mine in Sudbury 100:110:73. This production structure often results in some stocking or over-supply of the minor metals. It also means that palladium makes up a larger part of Russian production than platinum. However, in the South Africa mines platinum is by far the most important metal which accounts for more than 80% of the sales revenue.'

[5] Note an August 2001 Schroder Salomon Smith Barney report on precious metals: 'On the question of substitution potential *within* the PGM group, in simplistic terms, autocatalysts address three different emissions – carbon monoxide (platinum best for that); hydro-carbons (palladium best for that); and nox (rhodium best for that). Future autocatalysts are therefore likely to need all three in different combinations. Mix will be affected *to some degree by current prices* (ie if PD becomes very competitive) but automakers are also concerned about longer-term supply issues and price volatility. The reality is that for technical reasons, platinum is the only possible choice for diesel catalysts. So a number of industry players are now suggesting demand within five years could more closely replicate the production profile of the SA mines (ie 60%Pt; 30% PD; 10% Rhodium).'

elasticity of –0,6. Since autocatalysts and industrial processes account for about 51% of the market, and the Japanese jewellery market for about 34%, this means that the price-elasticity of 85% of the global platinum market is highly inelastic. The remaining 15% of demand is for jewellery outside Japan (5%) and investment (10%). The jewellery market outside Japan is likely to have an inelastic demand, since platinum jewellery is a special, up-market product. Furthermore, the effect of investment demand, on overall price elasticity, is limited. All in all, it can therefore be concluded that the price elasticity for the total market is inelastic (numerically smaller than 1).'[6]

14. We recognise that these conclusions are based on research concluded some 8 years ago. However, little has changed since then - certainly, the overall composition of demand is unchanged. As noted the degree of substitutability of palladium for platinum in certain autocatalysts appears somewhat greater than predicted in the Gencor-Lonrho report but even in this limited area the tide – driven largely, it appears, by technical considerations – seems to be turning platinum's way once again. The Gencor-Lonrho report appropriately qualifies its conclusions with the observation that the demand for platinum is only price-inelastic over its current price range. Against that, though, it is clear that, even in response to significant price swings, the possibilities for substitution are highly limited even over the medium term and particularly for platinum's industrial applications. Nevertheless this may seem an important qualifier in the case of a volatile commodity market – as we shall show the present transaction may be seen as part of a strategic approach that is precisely intended to check price volatility through control of supply.

15. South Africa, as already noted, is particularly richly endowed in PGMs and South Africa ore bodies are particularly richly endowed in platinum. This has enabled South African based companies – notably, although not exclusively, Implats and Angloplats – to assume a dominant position in the mining and refining of platinum. Lonmin, a British owned participant in the PGM market also controls a significant share of the mining and refining of PGMs in South Africa. Russia is the other area in which PGMs are extensively mined. PGMs are also actively mined in the US and Canada.

16. PGMs are homogenous products with no apparent barriers to international trade.[7] While it appears that mining activities are generally served by refineries located in the countries in which the PGMs are mined (this accounting for the strong position of South

[6] Gencor-Lonrho Para 56.

[7] 'PGMs are fungible assets, are easily transported, are refined to the same purity standards throughout the world and readily traded without tariff barriers. PGMs are sold on a worldwide basis either under long-term contracts or on the metal market' (Gencor-Lonrho - para 68).

African companies in the refining of PGMs) we are not aware of any insurmountable barriers to exporting the raw material resource from countries where no refining capacity is located to those countries in which established refining capacity is located. Indeed, according to Schroder Salamon Smith Barney, Implats – the only PGM company engaged in refining mining output belonging to independent PGM mining companies – refines, at its South African refinery, the metals of twenty groups from five continents.

17. Accordingly the geographic market for the mining and refining of PGMs is international. This view is supported, although not necessarily determined, by the existence of internationally quoted prices for PGMs.

18. World shares of the platinum market are calculated by measuring shares of the refined product. Data submitted by the parties gives Angloplats a 32% share of refined platinum in 2000, projected to increase to 39% in 2006. Implats share in 2000 is 18%, 17% of which is attributable to ore extracted from mines which it owns – the remaining 1% is refined from the independently owned Kroondal resource. Implats's share is projected to increase to 23% in 2006. However by this later date only 15% of Implats' share is expected to derive from Implats' mines with the remainder attributable to toll refining agreements. This includes output from Two Rivers which is expected to account for approximately 6% of Implats' refined output or slightly over 1% of world output. Note however that Implats may have significantly understated its share because of its stake in Lonmin – henceforth referred to as LPD - a UK registered company accounts whose South African-based mining and refining activities accounts for 11% of world output. Implats owns a 27% share in LPD and is party to a shareholders agreement which appears to give it significant influence over this company. For the purposes of this transaction, LPD's output is counted as part of Implat's output which increases its 2000 share from 18% to 29% and its projected share in 2006 from 23% to slightly under 32%. Note that LPD refines it own mined output and does not, it appears, engage in any toll refining. Implats' stake in LPD not only increases the former's effective market share but, as we shall elaborate below, also evidences widespread co-operation amongst the participants in the market for mining and refining PGMs.

THE IMPACT ON COMPETITION

19. This transaction has both a horizontal and a vertical dimension. Implats, an established miner and refiner of PGMs is acquiring, jointly with Avmin, the right to mine the PGM resources previously owned by Assmang. This gives the transaction its horizontal dimension. The transaction may also be viewed as an act of backward integration by a refiner acquiring additional sources of input. This provides a vertical dimension to the contract.

20. The market in question is highly concentrated. The two largest South African producers stand astride the world market, the more so if, as for the purpose of evaluating this transaction, the Implats and LPD market shares are consolidated. Moreover the two largest companies – Angloplats and Implats - are clearly taking steps to consolidate their powerful position in the world market. Angloplats has a massive ore reserve and is in the process of establishing a second refinery in South Africa. Implats, on the other hand, is clearly intent upon improving the efficiency of its refining operations and on building relations with independent miners who will constitute an increasing source of input into its refinery.

21. Implats avers that there is no price competition in the market for PGMs – price, they argue, is determined by 'supply and demand' conditions on the world market in which all the participants are mere price takers. Although it appears that the lion's share of world trade is conducted through the medium of long term contracts it appears that the principal objective of these contracts is to provide the purchasers with security of supply. Price, in the long term contracts, is effectively derived from the world price prevailing at the delivery dates stipulated in the contracts.

22. The parties nevertheless insist that the market is characterised by intense competition. In the absence of price competition the efficiency of the operations of the participants in the market constitutes the basis for this competition – 'the profitability of PGM mining' claim the parties, 'depends on the margin achieved between the cost of production and the current market price from time to time'.

23. We are urged to view this transaction as pro-competitive. First, it is pointed out that Avmin, through its participation in the Two Rivers joint venture, is a new entrant into the market. We do not accept this argument. Firstly, there is no evidence that Avmin intends participating actively in this market – certainly there is no evidence that Avmin intends to expand in this market. Its entry into the platinum market is manifestly incidental to its other mining activities. Moreover, while Avmin clearly participates in the joint venture, from a competition perspective the most salient aspect of the JV is not the fact that one of the partners has not hitherto been active in the relevant market, but rather that the other member of the JV is the second largest producer of PGMs in the world and that it will assume ownership of the output of the JV from the point at which the output of the mine is sold to the Implats owned refinery.

24. Secondly, the parties aver that, in the absence of transactions of this nature – whereby Implats acquires access to a platinum resource – Angloplats, with its huge reserves, will occupy an increasingly large share of the market. This argument is more credible although, as we shall demonstrate below, it is somewhat undermined by evidence suggesting that co-operation, rather than competition, characterises the relationship between Angloplats and Implats.

25. We are enjoined by the Act to determine whether or not the transaction substantially lessens competition. The transaction is clearly part of a pattern of acquisitions of PGM mineral rights by Implats. Indeed the acquisition of assets like Two Rivers is, together with efforts to enhance the efficiency of the refining operations, a pillar of Implats' growth strategy. Each of the targets is, relative to the size of the international market for PGMs, usually small, adding, at most, one or two percentage points to Implats share of the current and projected future market. Viewed collectively, however, these small transactions are the mechanism that, together with Angloplats' bountiful reserves, account for steadily increasing concentration levels in the market for PGMs.

26. Is this ground for concern? As already indicated we have considered Implats' argument that holds that these acquisitions are necessary if it is to continue to offer competition to Angloplats. However, although on the face of it not without merit, this argument is weakened by the exclusionary impact of these successive transactions and by evidence that suggests that co-operation rather than competition best describes the relationship between the major participants in this market.

27. This pattern of transactions is exclusionary to the extent that it discourages independent producers from establishing additional refining capacity. New refining capacity is costly to establish and must be established at minimum efficient scale. It must also have an assured supply of ore. Given that the mined raw material resource is committed to in-house refineries (as in the case of Angloplats and LPD as well as a large proportion of the mined output of Implats) and the independents are locked into toll refining agreements with Implats and, once the new Angloplats refinery comes into operation, possibly Angloplats as well, there is little prospect of the establishment of new refining capacity emerging from outside the ranks of the dominant players in the market. Additional PGM ore bodies will be identified and new entrants like Avmin may participate in the mining thereof. But it is unlikely that these new entrants would enter the refining stage. They could only achieve the required critical mass for refining by entering into tolling arrangements with other owners of PGM mining rights, a strategy, the potential for which is increasingly limited by Implats pattern of acquisitions of which this transaction is part. The refineries are the gateway to the consumers of platinum, a gateway manned by two increasingly dominant players, Implats and Angloplats. The following lengthy quote from the Schroder Salomon Smith Barney report neatly summarises the distinctive exclusionary strategies of both Implats and Angloplats and essentially concludes that they will be successful:

> *'On the medium-term supply outlook, we believe that the underlining of the aggressive expansion plans by Anglo Platinum's MD at its interim figures last week (ie two million*

ounces to 3.5 million ounces by 2006) virtually regardless of the state of global demand, was a message not so much to the financial markets (which it unsettled heavily); it was aimed more at the developers of small, much more marginal operations which individually account for relatively small amounts of incremental capacity, <u>but which cumulatively could cause excess new capacity.</u>[8] Johnson Matthey considers that despite our estimate of some 80 new PGM projects on the drawing board as a result of high prices in the industry, it is unlikely that any major new forces will emerge, given to (sic) the major capital cost of new PGM capacity expansions, and the complexity of the metallurgy (witness the failures of BHP and Northam's ventures in the previous bull markets).

In addition, while Impala has encouraged the growth of new entrants like Kroondal (now Aquarius Platinum), this umbrella for smaller players without their own smelting capacity could also be nearing an end as Impala's excess capacity is now effectively spoken for in its own and Kroondal's expansion plans. It is likely that in a tougher economic environment many of the current small projects will be by the majors, as purchasing of new rights is becoming more expensive in southern Africa, and they will be able to review them in the context of broader portfolios. This implies that if prices are weaker than forecast due to a dramatic deterioration in demand, then not all of these will be brought on stream over the coming few years'

28. Nor, it appears, do the major PGM producers actually compete with each other. The extent of cross ownership and joint projects involving the major players is startling. As already pointed out, Implats owns a large stake in LPD and has entered into a shareholders agreement that effectively gives it joint control of this company. Implats and Angloplats have been involved in asset swaps[9]. Angloplats has a significant stake in Northam, a medium scale PGM mining company. On the face of it, this co-operation, read together with Angloplats' and Implats' increasing domination of refining, appears to point in one direction: it reflects the persistent desire on the part of participants in international commodity markets to control the supply, and hence influence the price, of their product. This suspicion is heightened by an extraordinary statement in Implats' annual report:

'Overall demand is expected to increase at around four per cent per annum for the medium term. In line with this forecast

[8] Our emphasis. Note this assessment of Angloplat's strategy is reinforced later in the report: 'However, we believe that (Angloplats') management was talking more strongly to potential marginal players in the industry when it stressed this message – we do not believe that the group would pursue these expansions if it perceived a structural change in the end markets.'

[9] In its 2000 Annual Report Implats reports an arrangement between itself, Angloplats and the Lebowa Mineral Trust relating to mineral rights swaps which will enable Implats to mine the Driekop property in the Bushveld Complex.

> *growth, South African producers have announced expansion plans that will meet this demand without causing an oversupply situation.'*

29. At the hearing of this matter the parties denied that this statement suggested collusion effectively contending that an intelligent reading of market conditions would ensure that the major players would be sensitive to changes in demand conditions and that they would take decisions regarding supply in response to these changes. While we accept that familiarity with market conditions would permit reasonably accurate demand forecasting, the obvious difficulty that remains is for the several 'producers' to ensure that their independently constructed supply responses or, in this case, 'expansion plans', do not cause an 'oversupply situation'. The Gencor-Lonrho report provides a pithy rejoinder to the parties' argument:

> *'Similar negative effects which arise from a dominant position held by one firm arise from a dominant position held by an oligopoly. Such a situation can occur where a mere adaptation by members of the oligopoly to market conditions causes anti-competitive parallel behaviour whereby the oligopoly becomes dominant. Active collusion would therefore not be required for the members of the oligopoly to become dominant and to behave to an appreciable extent independently of their remaining competitors, their customers and, ultimately, the consumers' (para 140)*

30. Suffice to add that, should it prove necessary, several significant JVs and common shareholdings (as in the case of Implats's stake in LPD) would unquestionably facilitate intelligent forecasting of one's competitors supply responses. Certainly, in this case Impala states its own estimation of the expansions plans of 'South African *producers*' with considerable confidence.

31. Nor, we should add, is this the only suggestion of co-ordinated determination of supply. The Schroder Salomon Smith Barney precious metals report predicts that 'going into 4Q, we thus believe prices should be stabilising as the swing supplier, Russia, has *promised to withhold spot palladium supplies..'*

32. We are then understandably reluctant to accept the notion that the platinum producers are pure price takers. Our reading of the competitive circumstances of the international platinum market is that the largest participants in this oligopolistically structured market are well placed to influence supply and hence price. And transactions like the one under investigation are the modest building blocks that collectively secure dominance over an important global market. Why, after all, set a stated price when co-ordinated 'expansion plans' that do not give rise to 'an oversupply situation' will suffice, if not to establish the actual price then, at least, to place a floor beneath it.

33. Our conclusions essentially square with those reached by the European Commission in the Gencor-Lonrho matter. The following passages from that report are germane:

> *'In economic terms the suppliers do not view themselves simply as price takers (para 138(a))……(hence)' an economic analysis of competition and dominance in the platinum industry has to start with the premises that the four main suppliers are aware that prices are influenced by their output decisions…'(para 139)*

34. The fact, then, of an internationally quoted price for platinum should not be interpreted as indicating that the participants in the oligopoly are price takers. The market is not akin to, say, the gold market inasmuch as the international price is not determined by speculative or investment demand. It is determined by the intersection of the industrial demand for platinum and its supply which in turn is determined by the output decisions of the major players. Indeed the quoted international price is undoubtedly a key factor in providing the degree of transparency that is highly facilitative of co-operation in output decision-making without resort to explicit, formal agreement between producers.

35. Is this ground for prohibiting or imposing conditions on this transaction? We conclude that it is not. We are enjoined by the Act to determine whether the transaction in question 'substantially lessens of prevents competition'. We have, in previous matters, been prepared to take an expansive view of this assessment, certainly to include the impact on potential competition and we confirm our view that this is a valid approach to merger analysis.[10] Moreover we are specifically enjoined to consider both the 'the level and trends of concentration, and history of collusion in the market' and 'the nature and extent of vertical integration in the market'. In this instance the trend is clearly one of increasing concentration, there are strong suggestions of anti-competitive co-operation between the parties, and each of the majors is vertically integrated.

36. However, in this instance, we have nevertheless concluded that the transaction does not *on its own* substantially lessen or prevent competition either currently or potentially and that, conversely, prohibiting it or imposing conditions upon it will not promote competition. Earlier mergers and acquisitions, including Implats' pattern of acquisitions, have consolidated an oligopolistically structured market for PGMs as well as vertical integration between the mining and refining stages of the production process. However, neither of these competition-limiting factors – that is, neither the oligopolistic structure of the market nor the integration between mining and refining – can be

[10] See our decision in The Tongaat Hulett Group and Transvaal Suiker Beperk (case number 83/LM/Jul00).

reversed through prohibiting or imposing conditions upon the transaction. Had the competition problem in the PGM market resided in the degree of horizontal concentration alone, we may well have decided to draw a line under Implat's incremental accretion of market power by prohibiting this transaction. However, the market power enjoyed by the participants in the PGMs market achieved through high levels of concentration in combination with the vertical integration of mining and refining sounds, in our view, the death knell on achieving a competitive structure in the PGM market. Those wishing to enter the PGM market at the mining end will do so with the agreement of the majors or find the gates to the refineries barred. And, of course, lest this be an insufficient deterrent, a new entrant would also have to bear in mind Angloplats' apparently predatory threat to dump product on the market. On the other hand, a would-be entrant at the refining stage would have to be assured of a large supply of ore. This is precluded by the majors' control of PGM ore resources, including, through Implats, control of most independent sources of ore. The only alternative is to enter the PGM market at both the mining and refining ends, a strategy precluded by the massive capital and know-how requirements and, in all probability, a paucity of ore reserves. In short, the structure of the PGM market is comprehensively anti-competitive. Competition can only be promoted through vigilant monitoring of the conduct of the participants in the market.[11]

37. It is now for the competition authorities in South Africa as well as other jurisdictions to ensure that this anti-competitive market structure is not abused, in particular to ensure that the oligopolistic structure of this market does not permit its small number of major participants to manipulate the supply, and hence effectively set the price, of these important products.

CONCLUSION

38. The merger between Two Rivers Platinum Limited and Assmang Limited is approved without conditions.

DH Lewis — **15 November 2001**
DATE

Concurring: NM Manoim, D Terblanche

[11] This is not to suggest, of course, that the structure of the market could not worsen. All else being equal, a merger between any of the large players in the market may worsen the structure inasmuch as it further eased the ability of those remaining to control supply.