

In The Large Merger Between:

**Merafe Ferrochrome and Mining (Pty) Ltd
Xstrata South Africa (Pty) Ltd**

and

**The Xstrata – Samancor Production Joint Venture
Samancor Ltd**

Reasons for Decision

Approval

1. On 8 September 2005, the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Merafe Ferrochrome and Mining (Pty) Ltd, Xstrata South Africa (Pty) Ltd, the Xstrata – Samancor Production Joint Venture and Samancor Ltd Ltd. The reasons for this decision follow.

The Transaction

2. The parties to the transaction are Merafe Ferrochrome & Mining (Pty) Ltd (“Merafe Ferrochrome”), Xstrata South Africa (Pty) Ltd (“Xstrata”), Samancor Ltd (“Samancor”) and the Xstrata-Samancor Production joint venture also known as “Gemini”¹.
3. Merafe Ferrochrome is a wholly owned subsidiary of Merafe Chrome and Alloys (Pty) Ltd, which in turn is controlled by Merafe Resources Ltd. Merafe Resources’ majority shareholders are the Royal Bafokeng Resources (Pty) Ltd, a wholly owned subsidiary of the Royal Bafokeng Nation, holds 32,09%, the Industrial Development Corporation (“IDC”) holds 24,36% and various institutions, stakeholders and individuals hold the remaining 56,45%.
4. Xstrata is a wholly owned subsidiary of Xstrata (Schweiz) AG. Xstrata Plc holds the entire issued share capital of Xstrata (Schweiz) AG.² Samancor is a wholly owned subsidiary of Samancor Holdings (Pty) Ltd which is controlled by BHP Billiton Plc (60%) and Anglo American Plc (40%).
5. The proposed transaction involves a number of composite parts:³
 - 5.1. Merafe Ferrochrome will acquire the 50% participation interest held by Samancor in Gemini;

¹ Gemini is an unincorporated joint venture between Xstrata and Samancor for the purposes of producing ferrochrome using chrome ore mined from various chrome mines belonging to Xstrata and Samancor.

² A list of Xstrata’s subsidiaries can be found on page 2 of the Commission’s Report.

³ From page 19 of the record

- 5.2. Thereafter the assets and business of Gemini will effectively be placed under the control of an existing pooling and sharing venture ("PSV") between Xstrata, Merafe Ferrochrome and Merafe Resources.⁴
 - 5.3. In addition, Xstrata and Merafe Ferrochrome are acquiring certain chrome mineral rights known as the "Kroondal Resources" and the "Marikana Resources" from Samancor. Xstrata has also entered into a letter of intent with Samancor relating to certain chrome mineral resources held by each of Xstrata and Samancor on the Kroondal and Waterval Farms. The resources held by Samancor, which form the subject of the letter of intent ("exchange resources"), as well as the Kroondal and Marikana Resources will be placed under the control of the PSV.
6. In short, Merafe and Xstrata will contribute to the existing PSV their respective interests in:
 - 6.1. The Gemini joint venture;
 - 6.2. The Kroondal resources (of which Xstrata holds 50% and is acquiring the remaining 50% from Samancor); and
 - 6.3. The Marikana resources (of which Xstrata holds 26% and is acquiring the remaining 74% from Samancor);
 7. According to the parties, the additional resources will *inter alia* provide the PSV with an increased reserve base, increased quality chrome ore production and will reduce operating costs.

The merging parties' activities

8. The **Royal Bafokeng Nation** is an indigenous community that owns approximately 2000 square kilometres of land and certain mineral reserves on the land in the greater Rustenburg area. The **IDC**, a quasi-public corporation, is a self-financing state-owned development finance institution, which provides finance to entrepreneurs in competitive industries through loans and other financial instruments including equity.
9. **Merafe** owns a ferrochrome smelter in Boshhoek (North West Province), chromite mineral rights in the immediate vicinity of the smelter, a UG2 gravity concentrator plant some 12 km from the smelter and Horizon chrome mine situated 40km northwest of the smelter. The feedstock for the Boshhoek facility is provided by the Horizon mine and the concentrator plant. All these assets have been contributed to, and fall under the control of the joint board of the PSV. According to the parties the Merafe group currently has no business other than that which it has contributed to the PSV.
10. **Xstrata** operates as a vertically integrated ferrochrome producer, involved in the mining and sale of coal, zinc, copper, ferrochrome and vanadium. Xstrata has various subsidiaries which are relevant for purposes of evaluating the transaction, viz:
 - 10.1. **CharTech** produces char/gas coke,⁵ electrode paste as well as tar, char fines and coke fines (by-products of char/gas coke);
 - 10.2. **Kwa-Ndebele Coal** is a dormant company, which owns mineral rights in respect of coal deposits;
 - 10.3. **Complex Chrome** is a dormant mineral rights holding company;

⁴ See pages 758-760 of the record. Also *Xstrata SA and South African Chrome and Alloys* Case Number: 32/LM/Apr04 where this pooling and sharing venture was the subject of the transaction.

⁵ "Char" is virtually identical to "gas coke", the difference being only in the production process used to produce each of them.

- 10.4. **The Duiker group** mines and sells steam coal, as well as supplies small amounts of low phosphorus and low sulphur bituminous coal to the metallurgical industry;
- 10.5. **Egalite and ICH**⁶ are holding companies of subsidiaries involved in the production of char/gas coke as well as their by-products, tar, coke fines and coal fines.
11. The pooled assets of the existing **PSV between Xstrata and Merafe Ferrochrome** comprised the ferrochrome and chrome mining assets, infrastructure, contracts, arrangements, operations chrome businesses of the parties as well as the parties' chrome mining rights and land and certain ferrochrome assets and mining authorisations and rights belonging to the Royal Bafokeng Nation.⁷
12. The pre-merger **Gemini joint venture** made use of *inter alia* the Kroondal resources to produce ferrochrome at a ferrochrome facility situated near Wonderkop in the North West province.
13. **Samancor** is the common law holder of the mineral rights at Kroondal and the resources were mined as part of Gemini's activities. Samancor is vertically integrated into the mining of chrome ore and the production of ferrochrome.
14. The parties aver that the Gemini JV neither markets, sells nor distributes ferrochrome as Xstrata and Samancor carry out these activities separately and independently of the joint venture.

Competition analysis

15. The transaction has both horizontal and vertical effects. The horizontal effects arise from the overlapping activities of the merging parties for the production of ferrochrome as well as the mining and production of chrome ore. The vertical effects result from the parties' involvement in the production of various inputs in the production process of ferrochrome. To produce ferrochrome, chrome ore is used together with various reductants (char, gas coke, coke, metallurgical grade coal and anthracite) and other materials, such as quartz and dolomite in furnaces. According to the parties, the Gemini JV purchases certain of its inputs from firms in the Xstrata group viz. electrode casings, char, electrode paste, coal, chrome ore and quartz).⁸ The Xstrata group also sells these inputs (with the exception of coal) to firms outside of the Xstrata group.

A: Horizontal Effects

16. The Commission identified the following relevant markets:
 - 16.1. National market for the mining and production of chrome ore; and
 - 16.2. Global market for the production of ferrochrome.
17. An examination of the market share accretions in the above markets reveals the following:⁹
 - 17.1. The Gemini JV constitutes approximately 5% of the national production market of chrome ore of which Xstrata and Samancor have 50% ownership each. Therefore

⁶ See Case Number: 54/LM/Jul04 where this transaction was approved by the Tribunal subject to certain supply conditions.

⁷ Page 758 of the Merger record.

⁸ At page 776 of the Merger record.

⁹ See pages 15 –18 of the Commission's report.

- 2,5% (i.e. Samancor's 50% share of 5%) of the national chrome ore market is being transferred to the PSV between Xstrata and Merafe.¹⁰
- 17.2. The combined market share for the merging parties in the market for the production and supply of ferrochrome is approximately 24%. The market share accretion is approximately 1% which is relatively insignificant.

B: Vertical Effects

18. The Commission identified the following relevant product markets:
- 18.1. the supply of chrome ore to ferrochrome producers;
 - 18.2. the mining of coal, char/gas coke, anthracite and coke;
 - 18.3. the production of electrode paste;
 - 18.4. the production of electrode casings; and
 - 18.5. the production of quartz/silica.
19. The relevant geographic markets for all the markets identified above are defined as national.
20. An examination of the market share accretions in the above markets, as well as the Commission's and parties' submissions reveal the following:¹¹
- 20.1. In the market for the supply of chrome ore to ferrochrome producers, the transaction will lead to an increase in market share of approximately 1%. According to the parties, the PSV consumes approximately 98% of its chrome ore in-house. The Commission found that there are alternate suppliers of chrome ore, which can supply ferrochrome producers with their chrome ore requirements. Furthermore chrome ore is one of the by-products of platinum production, ferrochrome producers may look to PGM producers for supply of chrome ore rather than having to acquire and mine chrome mineral resources.
 - 20.2. Xstrata is the dominant supplier of char/gas coke. However, in a previous transaction,¹² the Tribunal imposed certain supply conditions on Xstrata, requiring it *inter alia* to comply with the provisions of its char/gas coke supply agreements with ferrochrome producers up until 20 December 2007.¹³ The Commission's investigations revealed that there is an imminent credible entrant into this market.
 - 20.3. The market for the production of electrode paste is highly concentrated. Xstrata, through its subsidiary CharTech has the second highest market share out of three players. According to the parties,¹⁴ CharTech supplied the Gemini JV with a relatively insignificant amount of its total production of electrode paste in 2004. Furthermore, electrode paste constitutes a small percentage of the total cost in the production of ferrochrome - approximately 1,5%. According to the Commission, the proposed transaction will merely consolidate a pre-existing vertical relationship.
 - 20.4. The dominant supplier of electrode casings is Rustenburg Steel Construction, which accounts for approximately 95% of the market. According to the parties, Xstrata accounts for less than the remaining 5%. Of the electrode casings that it does produce, Xstrata primarily consumes it in-house, although it has in the past supplied

¹⁰ If the chrome ore produced by PGM (Platinum Group Metals) producers is taken into account, the market share of Gemini decreases to approximately 3%. This means that 1,5% is transferred to the PSV.

¹¹ See pages 19 –20 of the Commission's report.

¹² Xstrata South Africa (Pty) Ltd and Egalite (Pty) Ltd and International Carbon Holdings (Pty) Ltd Case number: 54/LM/Jul04.

¹³ Three years from the date that the merger was approved.

¹⁴ Page 998 of the Merger Record.

a small number of units to a competing ferrochrome producer. However, the parties state that Xstrata is in the process of phasing out the supply of electrode casings to members of the Xstrata group and to third parties, as electrode casings are more competitively available from Rustenburg Steel Construction.

20.5. In the market for the production of quartz/silica, Eggosand and Delmas Silica account for 30% and 60% respectively of the market. Xstrata and others account for less than 10% of the market.

21. Based on information provided to us by the Commission and parties, we are of the view that the transaction is unlikely to substantially prevent or lessen competition in any of the markets identified.

Public Interest

22. There are no public interest issues, which would alter our view.

Conclusion

23. We accordingly approve the transaction for the above reasons.

Y Carrim

13 February 2006
Date

Concurring: N Manoim, L Reyburn

For the merging parties: H Hillestad (BHP Biliton) D Rudman and C Baird (Werkmans).

For the Commission: R Labuschagne and H Ratshisusu (Mergers and Acquisitions).