

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 62/LM/Jun07

In the matter between:

Pamodzi Gold Limited

Acquiring Firm

And

**Orkney Business owned by
African Rainbow Minerals Gold Limited**

Target Firm

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member),
and L Reyburn (Tribunal Member)

Heard on : 1 August 2007

Order Issued on: 1 August 2007

Reasons Issued: 13 September 2007

Reasons for Decision

Approval

- 1] On 1 August 2007, the Tribunal unconditionally approved the merger between Pamodzi Gold Limited and the Orkney Business owned by African Rainbow Minerals Gold Limited. The reasons for approving the transaction follow.

The parties

- 2] The primary acquiring firm is Pamodzi Gold Limited ("Pamodzi Gold"), a company registered in terms of the laws of the Republic of South Africa. Pamodzi Gold is controlled by Pamodzi Resources (Pty) Ltd ("Pamodzi Resources") through Middevlei Gold Investments (Pty) Ltd ("Middelvlei"), Clidet

674 (Pty) Ltd and Clidet 700 (Pty) Ltd (“SPVs”).¹

3] Pamodzi Resources is controlled 50.5% by Pamodzi Investment Holdings (Pty) Ltd (“PIH”). The main shareholders of Pamodzi Resources are as follows:

- | | | |
|-------|---------------------------|-----------|
| [3.1] | Impafa Holdings (Pty) Ltd | 41.5%; |
| [3.2] | D Horak | 5%; |
| [3.3] | H Geath | 1.5%; and |
| [3.4] | AJ Murdoch Eaton | 1.5%. |

4] The parties submitted that RMB Ventures Two (Pty) Ltd (“RMB Ventures”) has joint control of PHI by virtue of certain rights conferred on it in terms of the shareholders agreement.² RMB Ventures is controlled by RMB Private Equity (Pty) Ltd, which is in turn controlled by FirstRand Bank Holdings Limited. These companies are collectively referred to as the “FirstRand Group”.

5] Pamodzi Gold controls Pamodzi Gold West Rand (Pty) Ltd (“PG West Rand”) and Pamodzi Gold East Rand (Pty) Ltd (“PG East Rand”). PG West Rand does not control any firm. PG East Rand controls various companies³ which include Consolidated Modderfontein Mines Limited.⁴

6] The primary target firm is the Orkney Business owned by African Rainbow Minerals Gold Limited (“ARM Gold”), a company incorporated in terms of the company laws of South Africa. ARM Gold is a wholly owned subsidiary of Harmony Gold Mining Company Limited (“Harmony”). Harmony has in excess of 40 subsidiaries.⁵

1 Through various arrangements involving SPVs, Pamodzi Resources owns 50.17% of Pamodzi Gold.

2 RMB Ventures has been afforded minority protections rights in terms of the shareholders agreement. (See p2 of the Commission’s Recommendations).

3 The companies include Grootvlei Proprietary Mines Limited; Consolidated Modderfontein Mines Limited; Nigel Gold Mining Company (Pty) Ltd, Pretklerk Gold Mining Company (Pty) Ltd, Pretklerk Springs Daggafontein Gold Mining Company (Pty) Ltd, and Pretklerk Marievale Gold Mining Company (Pty) Ltd.

4 Consolidated Modderfontein Mines Limited Consolidated Modderfontein Mines 1979 Limited, and Modderfontein Seventy-Four (Pty) Ltd.

5 See Annex H submitted by the parties.

- 7] ARM Gold owns 50% in ARM Gold/ Harmony Joint Venture Company (Pty) Ltd and ARM Gold/ Harmony Joint Investment Company (Pty) Ltd.

Description of the transaction

- 8] In terms of the transaction, ARM Gold will transfer its entire Orkney business as a going concern into Clidet 759 (Pty) Ltd (“Newco”).⁶ Newco is a wholly owned subsidiary of Harmony, which has been incorporated for the sole purpose of acquiring the entire business of Orkney pursuant to this transaction.
- 9] Pamodzi Gold will acquire 100% of the issued share capital of Newco from Harmony. As a result, Pamodzi will acquire ownership of the Orkney business and assets.⁷

Rationale for the transaction

- 10] Pamodzi Gold submitted that this transaction provides it with an opportunity to acquire mining assets at an attractive valuation and that the senior gold miners are incentivised, in terms of the Minerals and Petroleum Resources Development Act and the Mining Charter, to sell at least 26% of their equity to historically disadvantaged South African owned companies.
- 11] ARM Gold perceives the transaction as fitting perfectly with Harmony’s strategy of rebalancing its portfolio with the sale of shorter life and higher cost assets when compared with its other operations.

The parties’ activities

- 12] The FirstRand Group is involved in the provision of a variety of banking services that are not relevant for the purposes of these reasons.⁸

⁶ See copy of Notarial Sale of Business Agreement in the further submissions of the parties.

⁷ See copy of Notarial Sale of Shares Agreement in the further submissions of the parties.

⁸ The services provided by the FirstRand Group include retail banking, instalment credit finance, merchant banking, corporate banking, mortgage lending, private banking, short term insurance, internet banking, wealth cluster, health cluster, and vehicle finance.

- 13] Pamodzi Gold produces gold bullion bars with a purity of between 80%-85%.
- 14] ARM Gold also produces gold bullion bars with a purity of between 80% and 85%.

The relevant market

- 15] In line with the Tribunal's previous decisions,⁹ the Commission defined the relevant market as the international market for the production and supply of gold.

Competition analysis

- 16] The Commission submitted that the merging parties will have a post merger market share of 2.32%. This market share is very small and does not raise competition concerns. We therefore, agree with the Commission that this transaction is unlikely to substantially prevent or lessen competition in the implicated markets.

Public Interest

- 17] There are no public interest issues.

Conclusion

- 18] The merger is approved unconditionally.

D Lewis

Presiding Member

N Manoim and L Reyburn concur in the judgment of D Lewis

Tribunal Researcher : R Kariga

13 September 2007

DATE

⁹ Cf *Harmony Gold Mining Company Limited and African Rainbow Minerals Gold Limited* Tribunal Case 25/LM/May03; and *Anglogold Limited and Driefontein Consolidated (Pty) Ltd* Tribunal Case 66/LM/Nov03.

For the merging parties: N J Browne, Cliffe Dekker Attorneys

For the Commission : L Madihlaba and M Mohlala (Mergers and Acquisitions)