

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 66/LM/Jun07

In the matter between:

Element Six Abrasives S.A.

Acquiring Firm

And

Barat Carbide Holding Gmbh

Target Firm

Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member) and Y Carrim (Tribunal Member)

Heard on : 26 September 2007

Order Issued : 26 September 2007

Reasons Issued: 24 October 2007

Reasons for Decision

APPROVAL

- 1] On 26 September 2007, the Tribunal unconditionally approved the merger between Element Six Abrasives S.A. and Barat Carbide Holding Gmbh. The reasons for approving the transaction follow.

THE PARTIES

- 2] The primary acquiring firm is Element Six Abrasives S.A. ("Element Six"), a company incorporated under the laws of Grand-Duchy of Luxembourg. Element Six has in excess of twenty subsidiaries worldwide. In South Africa Element Six controls Element Six (Production) (Pty) Ltd ("Element Six Production"), and

Element Six (Pty) Ltd (“Element 6”).

- 3] Element Six is jointly controlled by Element Six SA (“Element Six SA”) and Umicore Abrasives S.A. (“Umicore”). Element Six SA is controlled by De Beers Investments (Lux), a company incorporated under the laws of the Grand-Duchy of Luxembourg (“De Beers”). The issued shares in De Beers are held by the Anglo American Group (with a 45% shareholding), the Central Holdings Group (with a 40% shareholding), and the Government of Botswana (with a 15% shareholding).
- 4] Umicore is controlled by Umicore Finance Luxembourg S.A. (“Umicore Finance”), which is in turn, controlled by a subsidiary of Umicore Belgium (“Umicore Belgium”), a company incorporated under the laws of Belgium.
- 5] The primary target firm is Barat Carbide Holding GmbH (“Barat Holdings”), a German limited liability company. Barat Holdings is controlled by Equita GmbH & Co Fonds 3 KaA (“Equita”). Barat Holdings controls three firms namely Barat Carbide GmbH, Barat Hard Alloy (Wuxi) Co Limited and Barat Carbide (Pty) Ltd (“Barat SA”).¹

DESCRIPTION OF THE TRANSACTION

- 6] This is an international transaction in terms of which Element Six intends to acquire the entire issued share capital of Barat Holdings from Equita and minority shareholders.²

RATIONALE FOR THE TRANSACTION

- 7] The primary acquiring firm perceives this transaction as an opportunity to expand beyond its diamond-based products range into the broader “hard material” market.
- 8] From the primary target firm’s perspective, the merger allows Equita, which is a private equity company, to realise its return on investment and exit from the

¹ The impact of the proposed transaction in South Africa arises in relation to the acquisition of control by Element Six over Barat Holdings’ local subsidiary, Barat Carbide (Pty) Ltd

² 73.35% of the issued shares in Barat Holdings will to be acquired from Equita and the remaining 26.65% of the issued shares in Barat Holdings will be acquired from minority shareholders.

market.

THE PARTIES' ACTIVITIES

Primary acquiring firm

- 9] Element Six is a global manufacturer and supplier of high quality superabrasives and industrial diamond materials including synthetic and natural diamond and the complementary superabrasives cubic carbon nitride. Diamond and cubic carbon nitride products are mainly used in the manufacture of tools for applications including drilling, sawing, cutting, grinding and polishing of different materials such as ferrous and non-ferrous metals, natural stone and concrete, wood based materials, plastics, glass and ceramics.
- 10] In South Africa, Element Six is involved in the manufacturing of superabrasives and industrial diamond materials including carbide tooling, ceramic components, metal components, carbide substrate, synthesis products and acid recovery of diamond products.

Primary target firm

- 11] Barat Holdings is a global manufacturer and distributor of carbide. It manufactures hard metal products ranging from powder processing to complete tools. The tools are used in instances where wear is problematic and common materials such as steel area of limited application.
- 12] Barat Holdings also produces soft rock tools, which are components of tooling systems for the extraction and removal of minerals, asphalt and concrete. These tools can also be used in the construction (foundation/pile drilling), mining and tunnelling industries, crushing and of wood, compost and soil preparation, as well as trenching and soil stabilisation.
- 13] Barat SA³ manufactures and supplies tungsten carbide powders, tools for the mining industry as well as wear parts for the steel processes and industrial wear parts applications. It supplies soft rock tools to the coal mining industry, wear parts are sold to various industries and tungsten carbide inserts are supplied to original equipment manufacturers ("OEMs"). Carbide powders are

³ Barat SA is located in Springs, Johannesburg. See record page 96.

not sold to third parties, but are largely consumed in-house.

THE RELEVANT MARKET

Relevant product market

14] The merging firms are both active in the market for manufacturing of hard materials. The acquiring firm is involved in the manufacturing of superabrasive products and the target firm manufactures carbide products. The merging firms submitted that there is no overlap in their activities and that ⁴ the differences between the hard materials manufactured by them supported a narrow market definition. They defined two separate product markets namely the market for carbide products and the market for superabrasive products on the basis that there were significant differences between the properties of the products and their use as well as significant difference in their prices.⁵ The Commission, on the other hand, defined the relevant product market as the broad market for hard material products. While the Commission agrees with the merging parties that there is no overlap in the activities of the parties in the narrow market, as defined by them, it still contends that the market should be defined as the market for hard material products since there is substitution between carbide products and superabrasives in certain industries.⁶ In our view, it is not necessary to make a finding on the most appropriate definition of the relevant product market since the global market shares of the merged entity remain low irrespective of whether the market is defined narrowly or broadly.

15] The Commission identified three vertical markets that are affected by this transaction and these are:

[15.1] The market for the manufacturing of substrate tungsten carbide disks where Barat Holdings is active. Element Six purchases substrate tungsten carbide disks from Barat Holdings which serve as backing disks to its polycrystalline diamond products range;

[15.2] The market for the manufacturing of carbide powders where Barat Holdings is active. Element Six utilises carbide powders in its manufacturing process and

4 See record page 97.

5 See record page 97-101.

6 See Commission's Recommendations pages 6-7.

Barat Holdings is involved in the manufacturing of carbide powders; and

[15.3] The market for mining and tunnelling tools where Barat Holdings is active. De Beers, the controlling firm of the primary acquiring firm and Anglo American Group are involved in mining and Barat manufacture mining and tunnelling tools and it is anticipated that Barat Holdings will be sourcing polycrystalline diamond (“PCD”) inserts from Element Six

Relevant geographic market

16] The relevant geographic market for both the horizontal and vertical product markets is international. This is because the merging parties compete with global players and their customers are located throughout the world. In addition there are no tariffs or import duties on carbide products and superabrasives are low bulk high volume products which can be transported easily around the world via airfreight.⁷

COMPETITION ANALYSIS

Horizontal analysis

17] The combined global market shares of the merging parties in the broader market for the manufacturing of hard material products is estimated to be about 6%. They face competition from global players such as Diamond Innovations, Megadiamond, ABC Superabrasives and Xertech. The Commission conceded that in the narrowly defined market there is no overlap in the activities of the merging parties and, as a result, there are no competition concerns.⁸

Vertical analysis

Substrate tungsten

18] The South African plant of Barat Holdings does not manufacture substrate tungsten carbide disks and the Barat group of companies does not sell substrate tungsten carbide disks to any other South African company. Element Six sources its substrate tungsten carbide disks from Barat Carbide Germany.

⁷ The competitors of the merging firms also confirmed that they are global players and that the supplies of hard material products compete worldwide.

⁸ See Commission’s Recommendations page 9.

19] Barat Holdings has less than 1% global market share for the market for the manufacturing of tungsten carbide wear parts. All of Barat Holdings' tungsten carbide wear parts are used by Element Six. Barat Holdings supplies only 12.5% of Element Six's tungsten carbide wear parts requirements. From this, it is evident that no input foreclosure concerns arise as there are alternative global suppliers of carbide disks and these include Sandvik (with a 25% market share), Ceratizit (with a 20% market share), Kennametal (with a market share of 15%), and Zhou Zhou (with a 5% market share), among others. No customer foreclosure concerns arise as there are alternative customers of substrate tungsten carbide disks such as Boart Longyear, Sasol Synfuels and Corus.

Carbide Powders

20] With regards to carbide powders, the merging parties' state that approximately 82% of carbide powders manufactured by Barat Holdings are consumed internally and only 18% is sold to external parties. Of the sales to external parties, approximately 82% is sold to Element Six.

21] No input foreclosure concerns arise in this market as a result of this transaction since there are alternative global manufacturers of carbide powders such as Sandvick, Allegheny, Zhou Zhou, Kennametal, Starck, Metaltech and Tribaccher. Likewise, no customer foreclosure arises as there are alternative customers of carbide powders such as Atlas Copco, PMP and Boart Longyear. In addition, Element Six's total requirements for carbide powders constitute approximately 1% of the total supply of carbide powders. As a result, more than 90% of carbide powders are available in the market for other customers.

PCD cutting inserts

22] Barat Holdings does not source any of its PCD cutting inserts from Element Six. Barat Holdings' requirements of PCD cutting inserts constitutes less than 1% of the total PCD cutting inserts available in the market. Element Six has a global market share of 49% in the market for the manufacturing of PCD cutting inserts. Element Six is not in a position to refuse to supply PCD cutting inserts to other customers as Barat Holdings can only consume 1% of its output. There are many customers in the market and these include LTL Abrasives, W

Diamant, Durasynthetic, Ehlers Tooling, Atlas, Copco, JDA Diamond, Huddy, Boart Longyear.

- 23] In addition there are alternative suppliers of PCD such as Diamond Innovation (with 22% market share), Ljin (with 9% market share) Sumitomo (with 5% market share) and Megadiamond (with 4% market share). The proposed transaction does not raise customer or input foreclosure concerns in the market for PCD cutting inserts.

Mining and Tunneling tools

- 24] Barat Holdings has a market share of approximately 16% in the national market for the manufacturing of mining and tunnelling tools. Barat Holdings' global market share is estimated to be less than 1%. No input foreclosure concerns arise from this transaction as there are alternative suppliers of mining and tunnelling tools such as Kennametal SA with 40% market share, Seco Rock with 19% market share, and Sandvik with 9% market share. No customer foreclosure concerns arise as there are alternative customers for mining and tunnelling tools such as Sasol Mines, EXXARO, and BHP Billiton.⁹

PUBLIC INTEREST

- 25] There are no public interest issues.

CONCLUSION

- 26] The transaction is unlikely to result in the substantial lessening of competition in the relevant markets. There are no public interest issues. Accordingly, the transaction is approved unconditionally.

Y Carrim

Tribunal Member

24 October 2007

DATE

⁹ Anglo Coal currently purchases approximately 20% of its total mining and tunnelling tool requirements and 6% of Barat Holdings' total production of mining and tunnelling tools in South Africa.

D Lewis and N Manoim concur in the judgment of Y Carrim

Tribunal Researcher : R Kariga

For the merging parties: Webber Wentzel Bowens Attorneys

For the Commission : E Ramohlola (Mergers and
Acquisitions)