**COMPETITION TRIBUNAL**
**REPUBLIC OF SOUTH AFRICA**

**Case No.: 66/LM/Nov03**

**In the larger merger between:**

**Anglogold Limited**

**and**

**Driefontein Consolidated (Proprietary) Limited**

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## Reasons for decision

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## Approval

1. The Competition Tribunal issued a Merger Clearance Certificate on 21 January 2004 approving unconditionally the merger between Anglogold Limited **("Anglogold")** and Driefontein Consolidated (Pty) Limited **("Driefontein")**. The reasons for our decision are set out below.

## The parties

2. The primary acquiring firm is **Anglogold**, whose ultimate holding companies are Anglo South Africa Capital (Pty) Ltd and Anglo American plc.

3. The primary target firm is **Driefontein**[1], specifically its mineral rights. Driefontein is a wholly owned subsidiary of Gold Fields Limited ("Gold Fields"), a listed public company not directly or indirectly controlled by any other company.[2]

## The merger transaction

*Outline of the transaction*

4. The merger transaction essentially entails the sale of certain mineral rights (which constitutes only 2% of Driefontein's total reserves) currently held by Driefontein to Anglogold.

5. On completion of the transaction, Anglo Gold will own and control the mineral rights concerned and will be entitled to use and exploit the mineral block to extract gold therefrom.

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[1] The Driefontein Mineral Rights do not directly or indirectly control any other firm.
[2] Gold Fields shareholders holding in excess of 3% of the issued share capital are Anglo American plc (20,9%); Old Mutual plc (6,1%); The Public Investment Commissioner (4,9%); Sanlam Group (3,2%); and Fidelity Management and Research Company Limited (3,2%).

*Rationale*

6. The parties stated that as Anglogold is currently mining adjacent to the Driefontein block via its TauTona mine it will have access to the acquired minerals towards the end of 2004 whereas Driefontein, due to a lack of necessary infrastructure, would only access the area sometime beyond 2014 via its No. 1 Tertiary Shaft System.

7. Gold Fields, through the target firm, would be able to obtain fair value for the minerals now, bring its value forward and use the funds in its existing operations whilst Anglogold can use the mineral rights for the extraction of its mineral content in the near future in line with its value-adding growth strategy.

**Activities of the merging parties**

8. ***Anglogold*** is primarily involved in the manufacturing, marketing and selling of gold, more specifically bullion bars. Anglogold then delivers the gold to Rand Refineries, which refines and sells the gold on the international market as gold bullion.

Anglogold currently operates seven South African mining operations located at Great Noligwa, Kopanong, Moab Kotsong, Mponeng, Savuka, Tau Lekoa and TauTona. Apart from these, it also has gold mining interests in Argentina, Australia, Brazil, Mali, Tanzania, Namibia and the United Sates.[3]

9. **Driefontein** forms part of Gold Fields' three wholly owned South African gold mining operations, whose primary activity is the mining and processing of gold. Similarly, the gold mined by Driefontein is delivered to Rand Refineries, which refines the gold and sells it on the international market as gold bullion.[4]

**The relevant market**

10. In their analysis, both the Commission and the merging parties distinguished between the different levels in the production and supply chain for gold. They identified three key stages with regard to gold manufacturing:

*Firstly*, *"production of gold"* – this stage entails the exploration, mining/extraction, smelting and primary refining of gold[5]. These processes (referred to by the parties as *'upstream market'*) are typically conducted in their entirety by gold mines.

*Secondly*, *"secondary refining of gold"* – this follows the primary refining whereof gold which is 95% pure (known as *dore)* is delivered to refineries for further (secondary) refining. As indicated earlier, two secondary refineries

[3] According to the parties, Anglogold also has major capital projects in development, i.e. three in South Africa, one in Australia and one in the United States.
[4] It should be noted that there are two refineries in South Africa, viz, Rand Refinery in Germiston and Harmony Refinery situated in Virginia.
[5] For detailed information on what these processes entail, see the Commission's merger recommendations on pages 5-6.

exist in South Africa, *viz*, *Rand Refinery*[6] in Germiston and the *Harmony Refinery* in Virginia. The latter is primarily concerned with in-house refining whilst the former refines the balance of Harmony's, and other local and international firms.

<u>Thirdly</u>, *"distribution to wholesalers and end users by bullion banks"* – with the exception of Harmony, which markets and sells the gold that it refines to the international bullion banks, Rand Refinery acts as the agent for the rest of the gold producers and sells the gold to the international markets, including banks and jewellers (referred to by the parties as the *<u>'downstream market'</u>*)

*<u>Product overlap</u>*

11. It appears from the above that both the primary and target firms are active in the production and supply of gold. Neither party is involved in downstream supply to users/wholesalers.

*<u>The relevant geographic market</u>*.

12. For purposes of this transaction, we therefore conclude that the relevant geographic market is the production and supply of gold in the international market.[7]

*<u>Market shares</u>*

13. According to the parties and the Commission, the market shares structure of both the merging parties and their competitors, based on estimated output for 2003, is as follows:

| **Competitor** | **Estimated output in ounces for 2003 (000's)** | **Estimated market share (%)** |
|---|---|---|
| Newmont | 6,941 | 8,4 |
| **Anglogold** | **5,938** | **7,1** |
| Barrick | 5,384 | 6,5 |
| **Gold Fields** | **4,33** | **5,6** |
| **Driefontein Mineral Rights** | | **0,0004**[8] |
| Harmony/ARMGold | 3,692 | 5,1 |
| Placer Dome | 3,500 | 4,2 |
| Freeport-McMoran | 3,385 | 4,1 |
| Harmony | 3,163 | 3,8 |
| Rio Tinto | 2,755 | 3,3 |

[6] According to the parties, Anglogold has a 52% majority stake in the Rand Refinery with the balance being owned by South African producers such as Gold Fields, Durban Roodepoort Deep, Harmony, Avgold and Western Areas.
[7] See *Harmony Gold Mining Company Ltd and African Rainbow Minerals Gold Ltd* 25/LM/May03, *Randfontein Estates Ltd and Anglogold Ltd* 03/LM/Jan01, and *Franco-Nevada Mining Corporation Ltd and Gold Fields Ltd* 77/LM/Jul00.
[8] The Commission says this figure is biased upwards as it represents aggregated, and not annual, market share.

| | | |
|---|---|---|
| Kinross | 1,873 | 2,3 |
| Ashanti | 1,550 | 1,9 |
| Beunaventuras | 1,402 | 1,7 |
| Durban Roodepoort Deep | 927 | 1,1 |

*Source: Gold Field Mineral Services, Deutsche Bank, Driefontein*

14. The parties indicated that Driefontein's production entails 26% of Gold Fields' production. The Driefontein's mineral rights make up only 2% of the total reserves at Driefontein and 0.007% of Gold Fields' total reserves. Anglogold's post-merger market share accretion is very insignificant (0.007%).

15. The parties contended further that this transaction will result in the acquisition of the Driefontein Mineral Rights and will not alter the competitive position of either party to this merger. As a result, the Commission submitted that the merged entity's post-merger market share would be below 15%, which is very unlikely to raise competition concerns.

**Competitive effect of this transaction**

16. The parties contend that there are a number of constraining factors in the market that will prohibit any anti-competitive harm as a result of either unilateral or co-ordinated effects. When considering the structure of the supply chain, it appears that neither Anglogold nor Goldfields is active at the level of downstream distribution.

17. Both the Commission and the parties contend that although both Anglogold and Gold Fields have stakes in Rand Refinery, this transaction involves the sale of the Driefontein Mineral Rights and therefore no direct competitive impact on the (secondary) refining stage is envisaged. Hence Rand Refineries' ownership structure will not be affected by the acquisition

18. The Commission further contends that this transaction will not induce foreclosure as Rand Refineries is currently refining for both Driefontein and Anglogold whilst Rand also refines *dore* for other local and international mines. As a result, the parties contend that should gold producers in a particular geographic region seek to raise prices to refiners in South Africa, the latter might be able to procure gold *dore* elsewhere. In addition, the parties' post-merger market shares will be below 15%.

19. In our previous decisions, we held that no single gold producer has the ability to influence the gold price, and that gold producers are essentially "price takers" with the price being determined by reference to the daily price fixings of the London Bullion Association.[9]

20. From the above, it appears that this transaction will not impact on the level of concentration in the relevant market, and given the peculiarities of the gold international market, the transaction viewed in its entirety is unlikely to substantially prevent or lessen competition.

[9] Supra Footnote 7.

**Public interest considerations**

21. No impact on employment is envisaged.

**Conclusion**

22. In light of the above findings, we conclude that this merger is unlikely to substantially lessen or prevent competition in any of the relevant markets. We accordingly approve this transaction without any conditions.

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| _______________ | 04 February 2004 |
| D. Lewis | **DATE** |

Concurring: N. Manoim, P. Maponya

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| For the merging parties: | Mr Anton Norton, Webber Wentzel Bowens. |
| For the Commission: | Ms Odie Strydom assisted by Mr. Asogren Chetty, Competition Commission |