

COMPETITION TRIBUNAL SOUTH AFRICA

Case No: 80/LM/Jul08

In the matter between:

Lexshell 99 General Trading (Pty) Ltd

Acquiring firm

And

Springboklaagte Mining (Pty) Ltd

Target firm

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

Heard on : 17 September 2008

Decided on : 17 September 2008

Reasons Issued : 02 October 2008

Reasons for Decision

Approval

[1] On 17 September 2008 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Lexshell 99 General Trading (Pty) Ltd and Springboklaagte (Pty) Ltd. The reasons appear below.

Parties

[2] The primary acquiring firm is Lexshell 99 General Trading (Pty) Ltd ("Lexshell 99") a company registered in terms of the laws of South Africa. Lexshell is jointly controlled by Shanduka Coal 99 (Pty) Ltd ("Shanduka Coal")¹ and Umcebo Holdings Mining (Pty) Ltd ("Umcebo Mining")².

¹ Shanduka Coal owns 100% of the issued share capital in Graspan Colliery (Pty) Ltd, which operates a coal mine near Middelburg in terms of a notorial mineral lease and 100% of the issued shares in Wakefield Investments (Pty) Ltd which operates coal mines in Middelburg and Kendal. Shanduka Coal is controlled by Glencore International AG ("Glencore"), which owns 70% of the issued shares in Shanduka Coal. Glencore controls Xstrata plc, which is a company incorporated and registered under the laws of the United Kingdom and listed on the London and Swiss Stock exchanges. Xstrata plc owns 100% of the issued share capital of Xstrata (Schweiz) AG, a company registered in Switzerland. Xstrata (Schweiz) owns a controlling stake (directly or indirectly) in three main groups of companies which have the following companies as their holding companies: Xstrata South Africa (Pty) Ltd ("Xstrata SA"), Xstrata Queensland Ltd ("Xstrata Queensland") and Falconbridge Ltd ("Falconbridge"). Lexshell does not control any firm.

² Umcebo Mining is controlled by Umcebo Holdings (Pty)Ltd ("Umcebo Holdings") which is ultimately controlled Ehlobo Group (Pty)Ltd, which is in turn controlled by the LMR Trust and Bagus Family Trust. Umcebo Mining controls Macphail Distributors, which in turn controls the following firms: Baza Coal Suppliers; Celsum 1040 (Pty) Ltd; B&B Trust; Trackstar Trading 315 (Pty) Ltd t/a Coalbrite; Golden Palace Trading (Pty) Ltd and Golden Tattoo Trading t/a e-Coalbrite.

[3] The primary target firm is Springboklaagte (Pty) Ltd (“Springboklaagte”)³ a company registered in terms of the laws of South Africa.

Transaction

[4] The merger involves Lexshell acquiring the entire issued capital of Springboklaagte.

Rationale

[5] The parties submit that the proposed transaction is a mechanism of resolving a conflict, which arose between Eyethu Coal (Pty) Ltd (“Eyethu”) and Xstrata SA in respect of certain coal prospecting rights in South Africa.⁴ In order to resolve the conflict arising, the various parties referred to above agreed that:

(a) Eyethu will transfer its prospecting right, in respect of Kromdraai South Area; Springboklaagte Area and Welteverden Area to the target firm, Springboklaagte.

(b) Lexshell 99 will acquire all the issued shares in Springboklaagte from Eyethu (which is the subject of this filing) and the following additional coal supply arrangements will be entered into:

(i) Springboklaagte will acquire from Eyethu coal mined from an area adjacent to the Kromdraai South Area.

(ii) Springboklaagte will supply to a company owned by Eyethu, AKMF and Springboklaagte coal mined from part of Kromdraai South Area; Springboklaagte Area and Welteverden Area; and

(iii) Eyethu will supply a company owned by Eyethu and Springboklaagte coal mined from the western part of the Kromdraai North Area.

Parties’ Activities

[6] Lexshell is a special purpose vehicle that and has not traded before. Umcebo Mining is the holding company of a group of companies⁵ which companies house various aspects of Umcebo Mining’s businesses of mining, beneficiation and distribution of coal. Shanduka Coal owns Graspan Colliery and Wakefield, which operates coal mines near Middelburg and

³ Springboklaagte is controlled by Eyethu Coal (Pty) Ltd (“Eyethu”) with 90% of the issued share capital and the remaining 10% is held by Anglo Khula Mining fund (Pty) Ltd (“AKMF”). Springboklaagte does not control any other firm.

⁴ The conflict arose because Xstrata SA holds an old prospecting right in respect of Kromdraai South Area referred to above, and Eyethu applied to the Department of Minerals and Energy Affairs for and was awarded a prospecting right in respect of all three properties (Kromdraai South Area; Springboklaagte Area and Welteverden Area). Xstrata SA therefore challenged the granting of those prospecting rights to Eyethu.

⁵ The companies are listed in annexure B to form CC4 (2) on page 34 of the record.

Kendal. Xstrata South Africa (Pty) Ltd (“Xstrata South Africa”), is involved in the mining , production and sale of ferrochrome, chromite ore, vanadium pent oxide, ferrovandium, anthracite and thermal (steam) coal. Xstrata Queensland is involved in mining, smelting and refining of copper, coal (thermal and coking), zinc, lead and silver. Falconbridge is an international copper and nickel company with investments in fully integrated zinc assets.

[7] Springboklaagte only asset is thermal coal prospecting rights situated in the following farms: Kromdraai South Area; Springboklaagte Area and Welteverden Area.

Market Definition

[8] According to the Commission there is a potential overlap in the activities of the merging firms as the acquiring firm is involved in coal mining and the target firm owns coal prospecting rights. We agree with the Commission's conclusion that the relevant product market is the market for thermal coal this is in line with a number of our previous decisions and was not placed in dispute by the relevant parties. The geographic market is defined as national.

Competition Analysis

[9] In its analysis the Commission found that coal mining rights of the target firm will have an effect of increasing the acquiring firm's market share in respect of thermal coal with 0.97% from 10.1% to 11.7% market share. In this market the Commission's investigation revealed that the combined firm would continue to face a number of strong, effective competitors notably from players such as BHP Billiton, which has 22.6% market share, Anglo Coal with 24.4%, Sasol Mining with 17.8%, Eyesizwe Coal with 9.3%, Exxaro Resources with 7.6% market shares for thermal coal throughout the country. Therefore we agree with the Commission's conclusion that the proposed transaction is unlikely to raise any competition concerns, as the parties combined market shares remains low. In addition there are no public interest issues.

Conclusion

[10] Based on the above, we find that the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

N Manoim
Tribunal Member

02 October 2008
Date

Y Carrim and D Lewis concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Werksmans Attorneys

For the Commission : Kwena Mahlakoana (Mergers and Acquisitions)