

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 83 & 84/LM/Oct06

In the matter between:

Gold Fields Limited

Primary Acquiring Firm

and

Barrick Gold South Africa (Pty) Ltd

1st Primary Target Firm

and

Western Areas Limited

2nd Primary Target Firm

Panel : Y Carrim (Presiding Member), MTK Moerane
(Tribunal Member), and N Manoim (Tribunal Member)

Heard on : 22 November 2006

Decided on : 22 November 2006

Reasons Issued: 6 December 2006

Reasons for Decision

Approval

[1] On 22 November 2006, the Competition Tribunal issued merger clearance certificates unconditionally approving the mergers between Gold Fields Limited and Barrick Gold South Africa (Pty) Ltd and Gold Fields Limited and Western Areas Limited. The reasons follow. The Commission was requested by the parties to consider and analyse the possible effects of the transactions on competition on the assumption that there was just one transaction aimed at the acquisition of South Deep. Although the parties notified the two mergers separately, in these reasons, the Tribunal has treated them as one transaction,

as both contribute to the same end result - Gold Fields' acquisition of control over South Deep Mines.¹

The parties

[2] The acquiring firm is Gold Fields Limited ("Gold Fields"), a public company listed on the JSE Securities Exchange.² Gold Fields is not directly or indirectly controlled by any one company. The largest shareholdings in Gold Fields are as follows:

[2.1] Old Mutual Asset Managers (10%);

[2.2] Capital Research and Management Company (9.79%);

[2.3] Merrill Lynch Investment Managers (7.53%);

[2.4] RMB Asset Managers (4.58%); and

[2.5] Sanlam Investment Management (3.73%).

[3] All other Gold Field shareholders hold less than 3.7% of its issued share capital.

[4] The first target firm is Barrick South Africa (Pty) Ltd ("Barrick South Africa"). PDG Aureate Limited ("Aureate") is a special purpose vehicle existing under the laws of Mauritius and holds the entire issued share capital in Barrick South Africa. Aureate is a wholly owned subsidiary of Placer Dome Africa Holdings Limited of Mauritius ("Placer Dome Africa"). Barrick Gold Corporation, a Canadian registered entity, controls Placer Dome Africa. Barrick's shares are listed on the Toronto Stock Exchange, the New York Stock Exchange, the London Stock Exchange, and the Swiss Stock Exchange. There is no single entity that directly or indirectly control Barrick.

¹ The merger between Gold Fields Limited and Barrick South Africa (Pty) Ltd was considered under case no. 83/LM/06 and the merger between Gold Fields Limited and Western Areas Limited was considered under case no. 84/LM/06.

² Gold Fields' shares are also traded on the New York Stock Exchange in the United States of America, and are registered with the United States Securities and Exchange Commission. Gold Fields is also listed in the London Stock Exchange, Euronex in Paris and Brussels and the SWX Swiss Exchange. (Record p10).

- [5] Barrick South Africa holds a 50% interest in the Barrick Gold Western Areas Joint Venture (“the Joint Venture”). The Joint Venture owns and operates the South Deep Underground Gold Mine (“South Deep”). The other 50% is held by WAL.
- [6] The second primary target firm is Western Areas Limited (“WAL”). WAL is a public company registered on the JSE Securities Exchange. WAL is not directly or indirectly controlled by any one company. WAL’s register of members reflect the following largest individual shareholdings:
- [6.1] Harmony Gold Mining Company Limited (holding approximately 29.2% of WAL’s issued shares);
- [6.2] JCI Investment Finance (Pty) Ltd (“JCI Investments”) together with various of its subsidiaries (holding approximately 21.6% of WAL’s issued shares);
- [6.3] Gold Fields (holding approximately 18% of WAL’s issued share capital);
- [6.4] Randgold and Exploration Company Limited (“Randgold”) (holding approximately 3.8% of WAL’s issued share capital); and
- [6.5] JCI Gold Limited (“JCI Gold”) (holding approximately 3% of WAL’s issued share capital).
- [7] WAL holds 50% in the Joint Venture that owns and operates South Deep. Accordingly Barrick South Africa and WAL enjoy direct joint control over South Deep.
- [8] WAL has other firms that it directly or indirectly controls.³

The transaction

- [9] This transaction concerns Gold Fields bid to acquire control over South Deep Gold mine. WAL and Barrick presently own the mine in equal shares through the Joint Venture. Gold Fields’ strategy is to acquire control in two stages, each aimed at the respective joint venture partners. The first stage, referred to as the “Barrick transaction”, will result in Gold Fields acquiring all the issued

³ These include Western Areas Prospecting, Ware Limited (Liberia), JCI Ethiopia Limited, Garrick Investment Holdings, JCI Tanzania Limited and JCI Madagascar SARL.

shares in Barrick South Africa. The second stage will take place simultaneously or almost simultaneously, and Gold Fields will acquire all the issued shares in WAL. This is referred to as the “WAL transaction”. The end result is that Goldfields will have sole control of South Deep. At the time of our hearing it is not clear whether Gold Fields will be able to acquire more than 50% of WAL, but it appears that it will acquire a sufficient stake to be able to control the majority of votes at a general meeting of the company and hence for the purpose of section 12(2)(b) of the Act can be considered to control WAL.⁴ If it controls both WAL and Barrick it is able to effect sole control over the only relevant business implicated in these transactions, South Deep Mine.

The Barrick transaction

- [10] In terms of the first leg of the transaction, Gold Fields intends to acquire 50% of Barrick’s interest in South Deep. This interest is held directly by Barrick South Africa, a wholly owned subsidiary of the Barrick group of companies. Thus, Gold Fields will acquire the entire issued share capital of Barrick South Africa.
- [11] Subsequent to the Barrick transaction, Gold Fields will acquire sole control over Barrick South Africa, and joint control over the Joint Venture (and South Deep), together with WAL.

WAL transaction

- [12] The WAL transaction entails Gold Fields acquiring control over WAL which controls the remaining 50% in South Deep. This will be achieved by the acquisition of the entire issued share capital of WAL by Gold Fields. Gold Fields shall gain control over WAL through the following mechanisms:
- [12.1] Gold Fields intends to make an offer to WAL’s shareholders to acquire all the issued shares in WAL (except those already owned by Gold Fields and JCI Limited and its subsidiaries).⁵ A successful implementation of this offer will effectively result in Gold Fields acquiring control over WAL.

⁴ This is because an offer has been made to shareholders of WAL and at the time of the hearing, Gold Fields could only be certain that they had got control of 41 % of the voting shares. (Transcript p5).

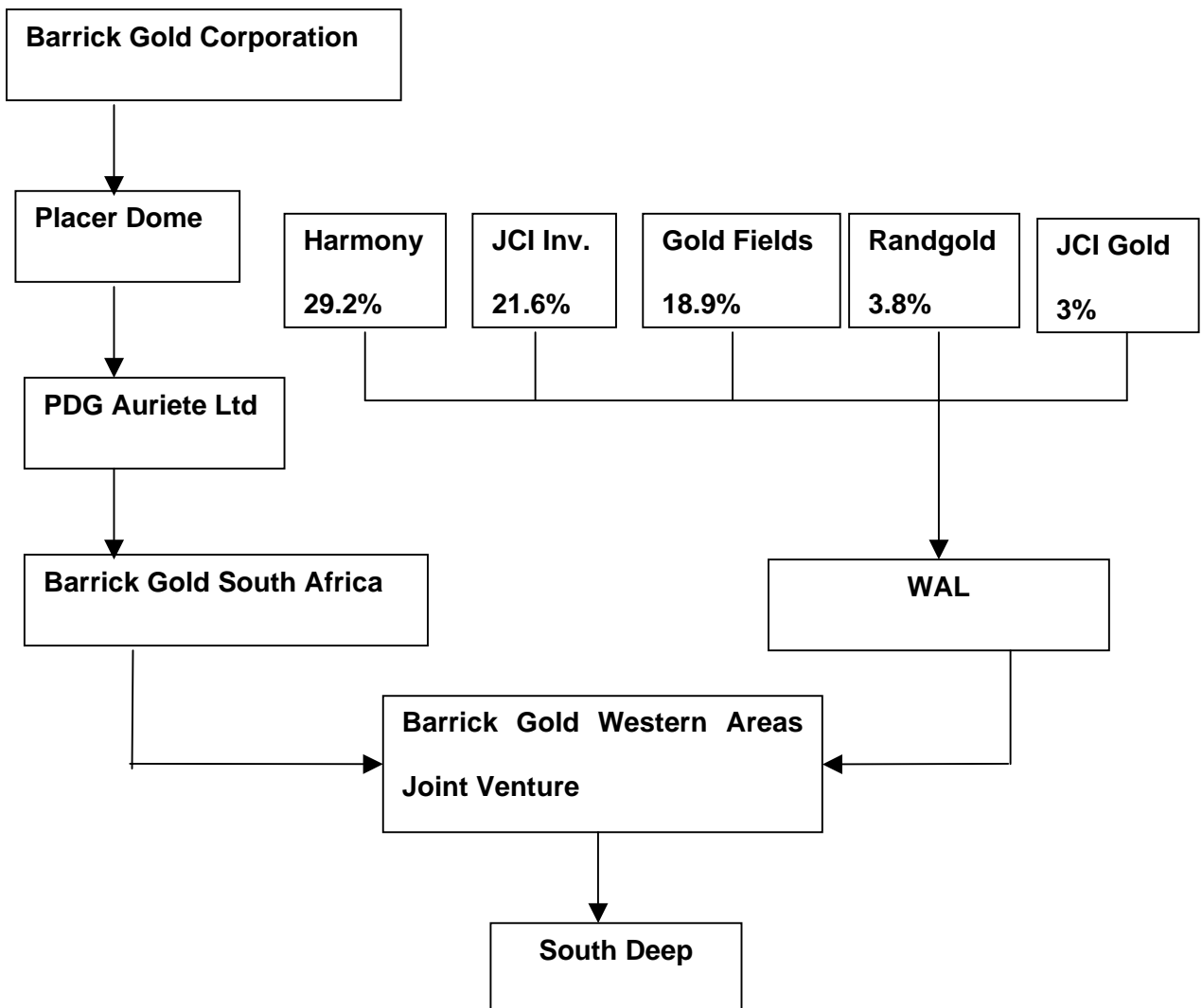
⁵ The offer will be implemented by way of a general offer in terms of section 440 of the Companies Act, No. 61 of 1973 (as amended) to which there will be no condition as to a minimum level of acceptances. (Record p41).

[12.2] Gold Fields will acquire from JCI and its subsidiaries (collectively “JCI”) 27 million WAL shares owned by JCI. The implementation of this transaction will result in Gold Fields owning approximately 34.7% of the entire issued share capital of WAL. Further, JCI has granted Gold Fields a call option and JCI has been granted a put option in respect of shares representing approximately 6.16% of the total issued shares of WAL. Gold Fields’ interest in WAL will increase to approximately 41% of the issued shares of WAL.

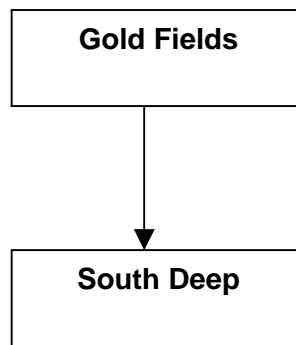
[13] The successful implementation of the legs referred to above will result in the acquisition by Gold Fields of sole control over the Joint Venture, and thus, South Deep.

[14] The following diagrams show the pre and post merger structures of this transaction:

Pre-merger



Post-merger



Rationale for the transaction

[15] Gold Fields submitted the following points as its rationale for the transaction:

[15.1] Both transactions will increase Gold Fields' exposure to South Deep;

[15.2] South Deep is close to Gold Fields' Kloof Gold Mine ("Kloof"). By acquiring access to an ore body which is contiguous to Kloof, Gold Fields will be able to mine more efficiently and effectively at both Kloof and South Deep as a result of associated synergies which are likely to decrease marginal costs per ton of gold mined by utilising the same infrastructure across both mines; and that-

[15.3] South Deep complements Kloof and fits with Gold Fields' portfolio of high quality, long life assets, providing Gold Fields with a solid base from which to pursue growth in the gold mining sector.

Barrick

[16] Barrick intends to dispose of its South Deep interest as it does not have much expertise in deep level underground mining, expertise that Gold Fields has.

JCI

[17] By disposing of its shares in WAL, JCI perceives that it will be enabled to exchange its shareholding in WAL at a premium for a holding in more diversified gold mining company, Gold Fields.

Parties' Activities

Gold Fields

- [18] Gold Fields is involved in the production of Gold. It is also a major holder of gold reserves in South Africa, Ghana, Venezuela, Peru and Australia. Gold Fields is primarily involved in underground and surface gold mining, including exploration, extraction, processing and smelting of the product. Further Gold Fields holds strategic interests in platinum group metals exploration. Gold Fields is currently the second largest gold producer in South Africa and one of the largest gold producers in the world, on the basis of annual production.
- [19] Gold Fields' South African operations, comprising the Driefontein, Kloof and Beatrix mines are held through and are owned and operated by GFI Mining South Africa (Pty) Ltd ("GFIMSA"), a wholly owned subsidiary of Gold Fields. The primary activity of each of Driefontein, Kloof and Beatrix mines respectively is the mining and processing of gold. GFIMSA has an agreement with Rand Refinery Limited providing for the refining of substantially all of Gold Fields' South African gold production by Rand Refinery. The gold is delivered to Rand Refinery which assumes responsibility for and refines the gold. With effect from 1 October 2004, Gold Fields has sold all of its own South African gold production on the international gold bullion.

Barrick South Africa

- [20] Barrick South Africa is also involved in the production and supply of Gold through its 50% in the Joint Venture, which owns and manages South Deep.

WAL

- [21] WAL is also involved in the production and supply of Gold through its 50% interest in the Joint Venture, which owns and manages South Deep. To a lesser extent, WAL is involved in the production and supply of silver as well.

RELEVANT MARKETS

Relevant product market

[22] The parties and the Commission defined the product market as the market for the production and supply of gold. This was based on the Tribunal's previous decisions in large merger cases involving gold producers where the Tribunal stated that the product market is the market for the production and supply of gold.⁶

Relevant Geographic market

[23] The Commission and the parties defined the relevant geographic market as international. The two reasons which influenced the parties and the Commission to define the market as international market are that firstly, most of the gold produced in South Africa by the merging parties and their competitors is converted into bullion and sold on the international bullion market. Secondly, the Tribunal has previously defined the market as international.⁷

[24] The Tribunal has no reason to deviate from the Commission's and the parties' definition of the relevant geographic and product markets.

Competition Analysis

[25] The table below shows the market share of Gold Fields and its largest competitors in the international market for the production and supply of Gold.⁸

⁶ *Harmony Gold Mining Company Limited and Randfontein Estates*, Case No. 16/LM/Feb00; *Franco-Nevada Mining Corporation Limited and Gold Fields Limited*, Case No. 77/LM/Jul00; *Randfontein Estates Limited and AngloGold* Case No. 03/LM/Jan01; *Cidet No. 383 (Pty) Ltd and the Free state Operations of AngloGold Ltd* Case No. 05/LM/Jan02; *Crown Gold Recoveries (Pty) Ltd and IDC of South Africa Limited and Khumo Bathong Holdings (Pty) Ltd* Case No. 31/LM/May02; *ArmGold/Harmony Freegold Joint Venture Company (Pty) Ltd and St Helena Gold Mines Limited* Case No. 54/LM/Aug02; *AngloGold Ltd and Driefontein Consolidated (Pty) Ltd* Case No. 66/LM/Nov03; *Harmony Gold Mining Company Limited and African Rainbow Minerals Gold Ltd* Case No. 25/LM/May03; *Ubuntu-Ubuntu Commercial Enterprises (Pty) Ltd and Anglovaal Mining Ltd/Avgold Ltd/Harmony Gold Mining Company Ltd* Case No. 06/LM/Feb04; *Harmony Gold Mining Company Limited/ Gold Fields Limited* Case No. 93/LM/Nov04; and *Barrick Gold Corporation and Placer Dome Incorporated* Case No. 118/LM/Dec 05.

⁷ *Ibid.* See also *Harmony Gold Mining Company limited and Gold Fields Limited* Case No. 93/LM/Nov04 and *Harmony Gold Mining Company Limited and African Rainbow Minerals Gold Limited* Case No. 25/LM/May03.

⁸ The market shares are based on total global mine production in 2005, published in the *Annual Gold Survey*, 2006 as published by GFMS Limited of London.

Competitor (International Producers)	Gold	Output in tonnes (2005)	Estimated market share %
Newmont Corporation	Mining	199,7	7,92
Anglogold Ashanti Limited		191,8	7,61
Barrick Gold Corporation		169,8	6,74
Gold Fields Limited		130,6	5,18
Placer Dome Inc.		113,4	4,5
Freeport-McMoran Copper Gold Company Limited		86,8	3,44
Harmony Gold Mining Company Limited		80,5	3,2
Rio Tinto		53,7	2,13
Kinross Gold Company		48,4	1,92`
China National Gold		45,7	1,81
Newcrest Mining Limited		44,4	1,76
Goldcorp Inc		35,3	1,4
Polyus		33,5	1,32
Other		1152	46,9
Total world production 2005		2519	100

[26] The parties submitted that total gold production for South Deep for 2005 was 14,34 tonnes, translating to 0,56% of total world gold production during 2005. It is thus expected that the proposed transactions will increase Gold Fields' estimated market share in the world by 0,56% from 5,18% to 5,74%. Barrick's market share will drop to 10.96%.⁹

[27] The Commission and the parties relied on the Tribunal's decision in the case of *Harmony Gold Mining Company Limited and Gold Fields*¹⁰ where the Tribunal remarked that a combined market share of 9,5% would be insufficient to give rise to an anti-competitive effect in the relevant market.

⁹ In the above table, Barrick and Placer Dome are reflected separately. Barrick acquired Placer Dome in 2006 and had a market share of 11,24 after that acquisition.

¹⁰ Case No. 93/LM/Nov04.

[28] In the large merger between *Barrick Gold Corporation and Placer Dome Incorporated*¹¹ the Tribunal stated that, although the transaction would lead to the creation of the largest gold producer in the world, the international character of the gold market made it unlikely that there would be a substantial prevention or lessening of competition.

[29] In our view, Gold Fields' increase in market share by 0.56% to 5.74% does not raise competition concerns since it is small.

Public Interest

[30] There are no public interest issues.

Conclusion

[31] This transaction does not lead to a substantial prevention or lessening of competition and is accordingly approved without any conditions. There are no public interest issues to affect this conclusion.

6 December 2006

N Manoim
Tribunal Member

Date

Concurring : MTK Moerane and Y Carrim

Tribunal Researcher : R Kariga

For the merging parties : D Unterhalter (SC) and A Cockrell
instructed by Edward Nathan
Sonnenbergs

For the Competition

¹¹ Case No. 118/LM/Dec05.

Commission : S Maphumulo and M Ngobese
(Mergers and Acquisitions)