

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 87/LM/Aug07

In the matter between:

Xstrata South Africa (Pty) Ltd

Acquiring Firm

And

Eland Platinum Holdings Limited

Target Firm

Panel : U Bhoola (Presiding Member), Y Carrim (Tribunal Member), and M Holden (Tribunal Member)

Heard on : 17 October 2007

Decided on : 17 October 2007

Reasons issued on : 29 October 2007

REASONS FOR DECISION

APPROVAL

[1] On 17 October 2007, the Tribunal approved the merger between Xstrata South Africa (Proprietary) Limited (“**Xstrata SA**”) and Eland Platinum Holdings Limited (“**Eland Holdings**”).

THE TRANSACTION

[2] Xstrata SA, the primary acquiring firm, is a wholly-owned subsidiary of Xstrata

(Schweiz) AG,¹ which in turn is a wholly owned subsidiary of Xstrata PLC.² In South Africa the Xstrata Group directly or indirectly controls more than 30 subsidiaries.³

[3] Eland Holdings is the primary target firm. Eland Holdings is not controlled by any firm.⁴ It controls a number of subsidiaries in South Africa,⁵ including Eland Platinum Mines (Pty) Limited (“Eland Mines”), which is also the subject of the instant transaction.

[4] Xstrata SA intends to acquire the entire issued share capital in Eland Holdings through a scheme of arrangement under section 311 of the Companies Act. If the arrangement for whatever reason does not succeed, the transaction will be implemented by way of a general offer to the shareholders of Eland Holdings. The transaction will result in Eland Holdings becoming a wholly-owned subsidiary of Xstrata SA and being delisted from the JSE Limited.

[5] As an indivisible part of the transaction, Xstrata SA also intends purchasing 9% of the issued share capital of Eland Mines (a subsidiary of Eland Holdings), from the Eltech Trust.

RATIONALE FOR THE TRANSACTION

[6] Xstrata submitted that is interested in acquiring a Platinum Group Metals (“PGM”) producer as part of its general diversification strategy. It seeks to enter the PGM sector in its own right rather than in partnership with others.⁶

1 A company registered in Switzerland.

2 A company registered under the laws of the United Kingdom and listed on the London and Swiss stock exchanges.

3 The details appears in a document filed as annexure A to the acquiring firm’s form CC4 (2), and over which the acquiring firm has claimed confidentiality.

4 Its main shareholders are: Bright Resources Trust (13.68%); Langa Trust (9.37%); Bear Stearns (7.86%); Lionhart Investments Ltd (4.02%); and Tarian Trust (3.91%).

5 These are Eland Technical Administrative Services (Pty) Ltd; Madibeng Platinum (Pty) Ltd; Beeskraal Platinum Mines (Pty) Ltd; Golden Ribbon Trading 300; Kaalvlakte Platinum Mines (Pty) Ltd; and Platoon Trade and Invest 96 (Pty) Ltd.

6 Xstrata already has a foothold in the PGMs sector through its interest in the Mototolo Joint Venture with Rustenburg Platinum mines Ltd (“RPM”) and Kagiso Trust Investments.

THE PARTIES' ACTIVITIES

[7] Xstrata is an international diversified Group involved in the mining and sale of copper, nickel, coal, zinc, and alloys. Xstrata, through its alloy division, operates as a fully integrated ferrochrome⁷ producer. It also owns and operates five chrome ore mines which produce chrome in the form of fines, pebbles and lumps. The fines, pebbles, and lumps can be further used to produce metallurgical grade, foundry grade and chemical grade chrome. It also has three metallurgical plants used to convert chrome ore into ferrochrome.

[8] In South Africa, Xstrata SA is primarily involved either directly or through several of its subsidiaries in the mining, production and sale of ferrochrome, vanadium pentoxide, ferrovanadium and coal products. Through the Mototolo Joint Venture with Rustenburg Platinum Mines Ltd and Kagiso Trust Investments, Xstrata SA is involved in the mining and concentration of PGM which yields gold, copper and nickel concentrates as by-products. It also has a Black Economic Empowerment joint venture with African Rainbow Minerals Limited in relation to coal and a pooling arrangement with Merafe Resources Limited in relation to ferrochrome.

[9] Eland Holdings' primary asset is a 64.99% stake in Eland Mines. Eland Mines, which began its operations in January 2007, is currently engaged only in the mining of PGM products. It does not sell these products yet, as it is in the process of building a concentrator plant which is expected to start operating in October 2007. Once this plant becomes operational Eland Mines will sell the concentrates produced by the plant to Rustenburg Platinum Mines Ltd. Eland Mines will also sell other products including chromite fines, an input which Xstrata SA uses in the process of ferrochrome production.

THE RELEVANT MARKET

⁷ Ferrochrome is a metal alloy consisting of chrome, iron and carbon, with traces of sulphur and phosphorus. Ferrochrome is the critical alloying ingredient in the production of stainless steel, making up 10% or more of the final composition. It improves the hardness and resistance to corrosion and oxidation in stainless steel.

[10] The relevant product markets implicated in this transaction are the markets for the production and supply of PMG; the market for the production and supply of metallurgical grade chrome concentrates and the market for the production and supply of ferrochrome.

[11] The Commission considered the effects of the merger in the market for the production and supply of PMG in both the national and international geographic markets. The Commission defined the geographic markets for, the production and supply of metallurgical grade chrome concentrates and the market for the production and supply of ferrochrome as national and international, respectively.

COMPETITION ANALYSIS

[12] The parties submitted that due to lack of public data they were unable to provide market share information based on the production and sale of PGM concentrate. However, market share figures based on PGM reserves were provided. On the parties' estimates Xstrata controls 0.12% of the global PGM reserves and 0.16% of the South African PGM reserves. Eland Mines control about 4.2% global PGM reserves and 5.5% of the South African reserves. The post merger market share of the merged entity will remain relatively low and the merged entity will continue to face competition from large players.⁸ Accordingly the transaction is not likely to prevent or lessen competition in the market for the production and supply of PMG.

[13] In the market for the production and supply of metallurgical grade chrome concentrate, the acquiring firm's pre-merger market share is 24% and the target firm's market share is 5%. Post merger the merged entity will have a market share of 29%. However, the merged entity will still face competition from credible alternative suppliers such as Samancor, which has a 28% market share. Further, Xstrata's sale for metallurgical grade chrome is on an ad hoc basis, as this product is primarily used captively in the manufacture of ferrochrome. Accordingly the transaction is not likely to prevent or lessen competition in the market for the production and supply of

⁸ These include companies such as Anglo Platinum, Impala Platinum, Lonmin Plc and Aquarius.

metallurgical grade chrome concentrate.

[14] The Commission is of the view that the proposed transaction is unlikely to lead to customer or input foreclosure in the global market for the production and supply of ferrochrome since the proportion of supplies that Xstrata will post merger obtain from Eland is likely to constitute a relatively small proportion of the total metallurgical grade chrome market and that Eland have not been supplying this product to third parties before the merger. We agree with the Commission's analysis

CONCLUSION

[15] We find that the transaction does not raise any significant public interest issues and accordingly approve the merger without conditions.

Y Carrim

29 October 2007

Date

U Bhoola and M Holden concurring.

Tribunal Researcher : P S Munyai
For the acquiring firm : Werksmans Attorneys
For the target firm : Routledge Modise Attorneys
For the competition commission : M Ngobese
(Mergers & Acquisitions)