



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM076Jun18

In the matter between:

Hail Creek Coal Holdings (Pty) Ltd

Primary Acquiring Firm

And

Hail Creek Joint Venture

Hail Creek Marketing (Pty) Ltd

Primary Target Firms

Hail Creek Coal (Pty) Ltd

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Panel	: Mr A W Wessels (Presiding Member)
	: Mr Enver Daniels (Tribunal Member)
	: Prof Fiona Tregenna (Tribunal Member)
Heard on	: 4 July 2018
Order Issued on	: 4 July 2018
Reasons Issued on	: 24 July 2018

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### REASONS FOR DECISION

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#### Approval

- [1] On 4 July 2018, the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Hail Creek Coal Holdings (Pty) Ltd ("HCC Holdings") of Hail Creek Joint Venture ("HC Joint Venture"); Hail Creek Marketing (Pty) Ltd ("HC Marketing"); and Hail Creek Coal (Pty) Ltd ("HC Coal").
- [2] The reasons for approving the proposed transaction follow.

## **Parties to the proposed transaction and their activities**

### *Primary acquiring firm*

- [3] The primary acquiring firm is HCC Holdings, a special purpose vehicle established to facilitate the current transaction and act as a holding company for the target firms listed below. HCC Holdings is a wholly owned subsidiary of Glencore Coal (Pty) Ltd, which is a wholly owned subsidiary of Glencore Operations Australia (Pty) Ltd ("Glencore Operations"). Glencore Operations is an indirect subsidiary of Glencore plc ("Glencore"). Glencore is a public company listed on the London and Johannesburg Stock Exchanges.
- [4] Glencore operates globally as a supplier of commodities and raw materials to industrial customers. Of relevance to the competition assessment of the proposed transaction are Glencore's activities in relation to the supply of coal, which fall under its Energy Products business segment.

### *Primary target firms*

- [5] The primary target firms are (i) HC Joint Venture; (ii) HC Marketing; and (iii) HC Coal. Pre-merger these target firms are ultimately controlled by Rio Tinto Limited, a multinational mining and metals corporation.
- [6] The target firms' activities relate to coal mining arising out of the Hail Creek Mine, an open cast mine situated in Queensland, Australia. HC Coal performs the management functions of HC Joint Venture, which owns the Hail Creek Mine, while HC Marketing is responsible for the marketing and sale of the thermal and metallurgical (or coking) coal produced at this mine.

## **Proposed transaction**

- [7] In terms of the proposed transaction, HCC Holdings intends to acquire 82% of the issued share capital of HC Joint Venture, 82% of the issued share capital of HC Marketing and 100% of the issued share capital of HC Coal. HCC Holdings may however acquire an interest of up to 100% in HC Joint Venture and up to 100% of the shares in HC Marketing if the other joint venture

participants exercise their "tag-along rights" in terms of the *Asset Sale Agreement*.<sup>1</sup>

- [8] Upon implementation of the proposed transaction, HCC Holdings will exercise control over the target firms.

### **Relevant markets and impact on competition**

- [9] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction gives rise to horizontal overlaps in (i) the national market for the production and supply of thermal coal; and (ii) the international market for the production and supply of metallurgical or coking coal.

- [10] The Tribunal questioned the Commission and the merging parties regarding the geographic scope of the market for the production and supply of metallurgical coal. The merging parties confirmed that since about 2013 all metallurgical coal used in South Africa has been imported into South Africa.<sup>2</sup>

- [11] With regards to the national market for the production and supply of thermal coal, Glencore currently produces and supplies thermal coal in South Africa, but the target firms neither produce nor supply thermal coal in South Africa. The Commission therefore concluded that the proposed transaction does not raise any geographic overlap in relation to the production and supply of thermal coal in South Africa.

- [12] With regards to the production and supply of metallurgical coal, the Commission found that Glencore and the target firms do not own or operate any mine in South Africa that produces metallurgical coal. The target firms produce metallurgical coal from the mine located in Australia and supply same to various customers located throughout the world, including one customer in South Africa. Glencore also produces metallurgical coal from its mines located in other countries and supplies same to customers located worldwide including South Africa. Furthermore, the merged entity will have a market share of below 10%

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<sup>1</sup> See Merger Record, *inter alia* page 28.

<sup>2</sup> Transcript, pages 8 and 9.

in the international market for the production and supply of metallurgical (or coking) coal.

[13] Given the above, we concur with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified relevant markets.

#### **Public interest**

[14] The merging parties confirmed that the proposed transaction will have no negative effect on employment in South Africa.<sup>3</sup>

[15] The proposed transaction further raises no other public interest concerns.

#### **Conclusion**

[16] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



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**Mr A W Wessels**

**24 July 2018**

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**Date**

**Mr Enver Daniels and Prof Fiona Tregenna**

Tribunal Case Manager: Jonathan Thomson

For the merging parties: Paul Cleland of Werksmans

For the Commission: Rethabile Ncheche and Themba Mahlangu

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<sup>3</sup> Merger Record, pages 12, 89 and 90.