



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM179Jan15/020503

In the matter between:

ISIZINDA ALUMINIUM (PTY) LTD

Acquiring Firm

And

**THE BAYSIDE CASTHOUSE
OPERATION OF BILLITON ALUMINIUM SA (PTY) LTD**

Target Firm

Panel : Medi Mokuena (Presiding Member)
: Fiona Tregenna (Tribunal Member)
: Andiswa Ndoni (Tribunal Member)
Heard on : 6 May 2015
Order Issued on : 6 May 2015
Reasons Issued on : 3 June 2015

Reasons for Decision

Approval

- [1] On 6 May 2015, the Competition Tribunal ("Tribunal") unconditionally approved the merger between IsiZinda Aluminium (Pty) Ltd ("IsiZinda") and The Bayside Casthouse Operation of Billiton Aluminium SA (Pty) Ltd ("Bayside Casthouse").
- [2] The reasons for approving the proposed transaction follow.

Parties to transaction and their Activities

Primary acquiring firm

[3] The primary acquiring firm is IsiZinda, a company incorporated in accordance with the laws of the Republic of South Africa. IsiZinda is jointly controlled by Bingelela Capital (Pty) Ltd ("Bingelela") (60%) and Hulamin Ltd ("Hulamin") (40%). IsiZinda does not control any firm. Bingelela is controlled by the following four shareholders: Bingelela Investments (Pty) Ltd, Inhlansi Business Enterprises (Pty) Ltd, Alusha Natural Resource (Pty) Ltd and Emnotweni Investments (Pty) Ltd. Neither Bingelela nor its shareholders control any firm. Hulamin is a public company listed on the Johannesburg Securities Exchange ("JSE") and is not controlled by any firm.¹ In addition to IsiZinda, Hulamin controls Hulamin Operations (Pty) Ltd ("Hulamin Operations") which controls Hulamin Extrusions (Pty) Ltd ("Hulamin Extrusions").²

[4] IsiZinda is a newly formed company, incorporated specifically for the proposed transaction. It does not conduct any operations. Bingelela is a consortium of four companies with complementary skills ranging from industrial operations to project funding. However, neither Bingelela nor its shareholders conduct any operations. Hulamin produces a range of aluminium flat rolled products and aluminium extrusions from its plant located in Pietermaritzburg, Kwa-Zulu Natal and Midrand, Gauteng and supported by sales offices across the globe.

Primary target firm

[5] The primary target firm is the Bayside Casthouse which is controlled by Bayside, a wholly-owned subsidiary of BHP Billiton SA Holdings Limited ("BHP Billiton SA").³ BHP Billiton SA is controlled by BHP Billiton Plc ("BHP Billiton"), a company incorporated in accordance with the laws of the United Kingdom.

[6] The Bayside Casthouse is the sole producer of aluminium rolling slab in South Africa and supplies it exclusively to Hulamin.

¹ Hulamin's major shareholders as at 31 December 2013 include: Industrial Development Corporation (29.63%), Coronation Fund Managers (10.04%), Old Mutual Group Limited (7.43%) and Investec Group Limited (5.33%).

² Hulamin Operations is divided into Hulamin Rolled Products and Hulamin Containers.

³ For the purposes of the proposed transaction, the Bayside Casthouse includes the slab casthouse, a warehouse, a number of ancillary buildings and laydown area which is incorporated into the Bayside footprint of 17.2 hectares located in Richards Bay and KwaZulu-Natal.

Proposed transaction and rationale:

- [7] The proposed transaction comprises of two steps which will ultimately result in IsiZinda acquiring the Bayside Casthouse from BHP Billiton as a going concern.
- [8] IsiZinda's submitted rationale is that acquiring the Bayside Casthouse will ensure a continued supply of rolling slab to Hulamin and will assist it in integrating a BBBEE company in the transaction. BHP Billiton submits that the Bayside Casthouse is no longer commercially viable and is at risk of closure. However, the proposed transaction presents an opportunity to ensure that the Bayside Casthouse continues to operate as a stand-alone supplier of rolling slab in South Africa.

Impact on Competition:

- [9] The Competition Commission ("Commission") considered the activities of the merging parties to determine whether there were any horizontal and/or vertical overlaps. As stated above, IsiZinda is a newly formed entity incorporated for the proposed transaction and as such does not conduct any business operations. Bingelela is currently non-operational whilst Hulamin produces a range of aluminium flat rolled products and aluminium extrusions. In terms of the target firm, the Bayside Casthouse procures liquid aluminium from Hillside in order to produce aluminium rolling slab which it supplies exclusively to Hulamin. The Commission found that the merging parties' products and/or services are not substitutable and thus there is no horizontal overlap between them.
- [10] However, the Commission found that a vertical relationship exists between the merging parties as the Bayside Casthouse supplies its aluminium rolling slab exclusively to Hulamin. In assessing the potential foreclosure concerns, the Commission found that pre-merger Hulamin is Bayside Casthouse's only customer. This position will remain unchanged post-merger. Further, there is no other producer of aluminium rolling slab in South Africa. The Commission accordingly concluded that this vertical relationship does not give rise to any vertical foreclosure concerns.
- [11] On this basis, the Commission concluded that the proposed transaction is unlikely to substantially lessen or prevent competition in any market.

Public interest:

- [12] The Commission considered public interest concerns that Richards Bay Industrial Development Zone Co. SOC Limited ("RBIDZ") raised. RBIDZ informed the Commission that, it intends to establish a downstream metals hub in the Richards Bay area, which will focus on aluminium and titanium. RBIDZ was concerned that the proposed transaction would affect the availability of a sustainable supply of competitively priced liquid aluminium to small and medium enterprises, which wish to enter the market. Given these concerns, the Commission contacted the National Union of Metal Workers of South Africa ("NUMSA") and the Department of Trade and Industry ("DTI") to obtain their views. Although a meeting took place between the Commission, NUMSA and the DTI, neither NUMSA nor the DTI made any further submissions.⁴
- [13] The Commission ultimately found that none of the issues raised by RBIDZ, NUMSA or the DTI were merger-specific and that the proposed transaction will not affect the manner in which the industry currently operates. Prior and post-transaction, Hulamin remains the only customer of the Bayside Casthouse for rolling slab. The Commission found no evidence of any new entrant, which would require rolling slab from IsiZinda. Further, the acquisition of the Bayside Casthouse will ensure that there is a continued supply of rolling slab to Hulamin so as to ensure that it remains viable in the downstream aluminium industry.⁵
- [14] In relation to employment, the Commission found that the proposed transaction would have a positive effect because it would result in 78 jobs being saved. Without the merger, these employees would be retrenched as the Bayside Casthouse would be forced to close down.
- [15] The Commission accordingly concluded that the proposed merger is unlikely to raise any substantial public interest grounds and should be approved unconditionally.

Conclusion:

- [16] In light of the above, we agree with the Commission's analysis and conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. In addition, no public interest issues arise from the proposed transaction.

⁴ Transcript page 18.

⁵ Transcript page 5-6.

Medi Mokuena
Medi Mokuena

03 June 2015
DATE

Fiona Tregenna and Andiswa Ndoni

Tribunal Researcher: Ammara Cachalia

For the merging parties: Ryan Goodman, ENS Africa and Paul Cleland
Werksmans Attorneys

For the Commission: Zanele Hadebe