

NON-CONFIDENTIAL



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM215Oct17

In the large merger between:

Sasol Mining (Pty) Ltd

Primary Acquiring Firm

and

**Anglo American Inyosi Coal (Pty) Ltd in respect of the
Mining Right Over Certain Immovable Properties and
Geological Data Related Thereto**

Primary Target Firms

Panel	: Norman Manoim (Presiding Member)
	: Fiona Tregenna (Tribunal Member)
	: Medi Mokuena (Tribunal Member)
Heard on	: 06 December 2017
Order Issued on	: 06 December 2017
Reasons Issued on	: 12 December 2017

Reasons for Decision

Approval

- [1] On 6 December 2017, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Sasol Mining (Pty) Ltd ("Sasol Mining") and Anglo American Inyosi Coal (Pty) Ltd ("AAIC") in respect of the mining rights over certain immovable properties and geological data related thereto.
- [2] The reasons for approving the proposed transaction follow.

Parties to the Proposed Transaction

Primary Acquiring Firm

- [3] The primary acquiring firm is Sasol Mining, a company incorporated in accordance with the laws of South Africa and is owned by Sasol Mining Holdings (Pty) Ltd (80%) and Ixia Coal (20%). Sasol Mining Holdings is a wholly-owned subsidiary of Sasol Limited ("Sasol").
- [4] Sasol is an international integrated chemical and energy company that is active as a refiner and supplier of petroleum products. Sasol Mining is active in the mining of coal, it owns a number of coal mines which provide coal to Sasol's downstream operations.

Primary Target Firms

- [5] AAIC is a company incorporated in accordance with the laws of South Africa and is owned by Anglo American Coal South Africa (73%) and Inyosi Coal (Pty) Ltd (27%). Anglo American Coal South Africa is an indirect subsidiary of Anglo American Plc, a company incorporated in accordance with the laws of the United Kingdom.
- [6] The primary target assets are the mining rights over certain immovable property and geological data currently held by AAIC.
- [7] The immovable property, referred to as the "Alexander Block", is an inactive undeveloped coal mine located in south eastern Mpumalanga, along the northern margin of the Highveld coalfield. It is situated adjacent to Sasol Mining's existing Syferfontein mine. The geological data comprises geological information, geological modelling, reports and information relating to prospecting and mining rights.

Proposed Transaction and Rationale

- [8] Sasol Mining will acquire the target assets and will exercise sole control over the target assets upon implementation of the merger.
- [9] According to the merging parties, the proposed transaction, *inter alia*, will allow Sasol Mining to acquire more coal reserves so as to ensure sustainable coal supply.

Relevant Market and Impact on Competition

- [10] The Commission considered the activities of the merging parties and found a horizontal overlap to exist for the supply of bituminous coal in the tied domestic market since Sasol Mining is involved in coal mining activities and the Target Assets contain low grade bituminous coal.
- [11] The tied domestic market refers to the sale of bituminous coal through long-term contracts to Eskom and Sasol. The residual domestic market refers to the sale of bituminous coal to all domestic customers other than Sasol and Eskom. Sasol Mining does not supply commercially in the residual domestic market and therefore an overlap exists only in the tied domestic market.
- [12] The proposed transaction also gives rise to a vertical overlap since Sasol's downstream operations are consumers of coal.

Horizontal Overlap

- [13] The Commission has noted that the target assets relate to an inoperative mine which has not yet been utilised and therefore assessed the reserve capacity of Sasol Mining in order to determine market shares.¹
- [14] The Commission found that post-merger the merged entity would have a market share of less than 1% and that it would continue to face competition from alternative suppliers such as Tegeta Exploration and Resources (Pty) Ltd, Ichor Coal, Eyethu Coal (Pty) Ltd, Coal of Africa, Keaton⁴, Exxaro Resources Ltd and Glencore, amongst others.
- [15] As such the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market.

Vertical Overlap

- [16] The Commission did not analyse any potential vertical overlap. The merging parties, however, submit that the vertical overlap is unlikely to prevent or lessen competition since Sasol should not be considered a customer in the relevant market given that it only sources its coal requirements from its internal upstream operations housed in Sasol.² Further, the Alexander Block was initially earmarked by AAIC to supply export markets and will, post-merger, be used by Sasol for the purposes of supplying its own internal requirements.³

¹ Transcript 06 December 2017, at page 3.

² Merger Record at page 146.

³ Merger Record at page 139.

[17] The Commission was therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. Based on the above, we concurred with the Commission's finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.


Public Interest

[18] The proposed transaction is unlikely to negatively affect employment since the Alexander Block is still an undeveloped mining site which is currently not operational (and which would only have been commissioned by AAIC in [REDACTED] years') and therefore there will be no duplication of roles between the merging parties' operations.⁴

[19] The Commission was of the view that the proposed transaction is unlikely to raise concerns on any other public interest grounds.

Conclusion

[20] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approved the proposed transaction unconditionally.



Mr Norman Manoim

12 December 2017

DATE

Mrs Medi Mokuena and Prof Fiona Tregenna concurring

Tribunal Researcher: Hayley Lyle

For the merging parties: Anton Roets and Nicola Ilgner of Nortons Inc.

For the Commission: Simphiwe Gumede

⁴ Transcript 13 September 2017 at page 3.