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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM231Mar17

In the matter between

ArcelorMittal South Africa Limited — Primary Acquiring Firm

And

Thabazimbi Mine — Primary Target Firm

Panel	: Mr Norman Manoim (Presiding Member)
	: Mr Enver Daniels (Tribunal Member)
	: Prof. Imraan Valodia (Tribunal Member)
Heard on	: 31 May 2017
Order Issued on	: 31 May 2017
Reasons Issued on	: 22 June 2017

REASONS FOR DECISION

Approval

[1] On 31 May 2017, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger between ArcelorMittal South Africa Limited ("AMSA") and Thabazimbi Mine, herein referred to as the merging parties.

[2] The reasons are as follows.

Parties to the transaction

Primary Acquiring Firm

[3] AMSA is a public company incorporated in accordance with the laws of the Republic of South Africa ("RSA") and is listed on the Johannesburg Stock Exchange ("JSE"). AMSA is controlled by ArcelorMittal S.A ("ArcelorMittal"), which in turn is controlled by two individuals, Mr Lakshmi Mittal and Mrs Usha Mittal.

[4] AMSA engages in the business of manufacturing and supplying long and flat steel products in its operating facilities located in Newcastle and Vanderbijlpark. In addition to steel products, AMSA also produces coke and chemical products at its production facilities located in Newcastle, Pretoria and Vanderbijlpark.

[5] Of relevance to the proposed transaction is AMSA's interest in two iron ore producers: Coza Mining (Pty) Ltd ("Coza Mining") and Polokwane Iron Ore Company (Pty) Ltd ("PIOC"). Coza Mining is a producer of hematite iron ore whereas PIOC is producer of magnetite iron ore. Both mines, however, are not producing any iron ore as they are awaiting the Department of Mineral Resources' approval of mining rights and prospecting rights respectively.

Primary Target Firm

[6] Thabazimbi Mine is owned by Sishen Iron Ore Company (Pty) Ltd ("SIOC") which in turn is controlled by Kumba Iron Ore Limited ("Kumba"). Thabazimbi Mine does not control any firm.

[7] Thabazimbi Mine is an iron ore mine and its mining operations are located near Thabazimbi in the Limpopo Province. The total output of the mine is supplied to AMSA's steelwork plants since the creation of Kumba Resources Limited in 2001.

Background to the proposed transaction

[8] Historically, Thabazimbi Mine has always supplied its iron ore to AMSA's various steel operation plants in and outside South Africa in terms of a long-term supply agreement ("the supply agreement") concluded between AMSA and SIOC. The supply agreement further stipulates that AMSA is obligated to fund the majority of the rehabilitation costs in respect of the Thabazimbi Mine when necessary.

[9] In July 2015, Thabazimbi Mine experienced a catastrophic slope failure which resulted in the sterilisation of its remaining ore reserves. The only possible future mining operations lay within lower grade ore which have not been previously excavated. Given the geological risks and technical complexities associated with mining such ore, SIOC viewed this option as non-viable and resolved to have the mine closed. All mining activities were then terminated in September 2016. Currently, Thabazimbi mine is in the process of being prepared for closure subject to the finalisation of a closure plan and its approval by the Department of Mineral Resources.[1]

Proposed transaction and rationale

[10] In terms of the Sale of Assets Agreement, AMSA shall acquire all the assets of Thabazimbi Mine from SIOC. Post-merger, AMSA shall control Thabazimbi Mine.

[11] The merging parties confirmed that the proposed transaction is motivated by managing the loss incurred as a result of closing Thabazimbi mine. Further, AMSA faces certain rehabilitation liability in relation to the Thabazimbi Mine which it is obligated to manage. By doing so, it shall also investigate feasible options for the resumption of mining activity in future.

[1] Once the closure plan has been approved, rehabilitation of the mine can commence.

Relevant market and impact on competition

[12] The Commission considered the activities of the merging parties and found that the proposed transaction presents a horizontal overlap as the merging parties are active in the market for the production and supply of hematite iron ore ("relevant market"). The Commission also found the existence of a vertical relationship as Thabazimbi Mine supplies all its iron ore to AMSA.

[13] When assessing the horizontal overlap, the Commission found that post-merger, the merged entity shall only possess a market share of less than 10% in the relevant market. In addition, the merged entity will continue to face competition from its larger counterparts such as Assmang Limited and Kumba Resources. Accordingly, the Commission concluded that the proposed transaction is unlikely to raise any competition concerns in this regard.

[14] When analysing the vertical relationship, the Commission found that while Thabazimbi Mine only supplies the total of its iron ore to AMSA by virtue of an exclusive supply agreement, Thabazimbi Mine is a very small player in the relevant market as its market share only accounts for less than 1%. The merged entity will continue to face competition from Assmang Limited and Kumba Resources which produce significant volumes of hematite iron ore. It follows that should the merged entity elect to implement a foreclosure strategy, other domestic producers of steel could obtain hematite iron ore from Assmang Limited or Kumba Resources. As such, the Commission concluded that the proposed transaction shall not raise any foreclosure concerns.

[15] In view of the minor post-merger market share of the merged entity, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition ("SLC") in the relevant market.

Tribunal analysis

[16] We agree with the Commission that the transaction does not lead to an SLC. However we would place more emphasis on the notion that the merger involves

a cost management strategy to ameliorate the accruing rehabilitation costs payable by AMSA.[2] It would be in AMSA's best interest to purchase the mine from SIOC with the hopes of re-opening it, should doing so prove feasible in future.

[17] The market share accretion is minor in this case as Thabazimbi Mine is currently not operating. As such, the post-merger market share does not raise any competition concerns largely because the pre-merger market conditions will remain relatively similar post-merger.

Public interest

[18] The merging parties submitted that the proposed transaction does not raise any employment concerns as all 61 permanent employees currently employed at the Thabazimbi Mine shall be transferred to AMSA.

[19] Based on the above submission, the Commission is of the view that the proposed transaction is unlikely to have a negative effect on employment and does not raise any other public interest concerns.

Conclusion

[20] 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 adverse public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

[2] Page 7 of Transcript.

22 June 2017
Date

Mr Norman Manoim

Mr Enver Daniels and Prof. Imraan Valodia concurring

Tribunal Researcher	: Mr Ndumiso Ndlovu
For the merging parties	: Mr Anton Roets of Nortons Inc. and Mr Graeme Wickins of Werksmans
For the Commission	: Zintle Siyo