competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM116Oct19

In the matter between

ARCELORMITTAL SOUTH AFRICA LTD	Primary Acquiring Firm
And	
THE MANUFACTURING AND PRODUCTION OF STRUCTURAL STEEL AND RAIL BUSINESS OF HIGHVELD STRUCTURAL MILL (PTY) LTD	Primary Target Firm

Panel	: Mr E Daniels (Presiding Member)
	: Ms Y Carrim (Tribunal Member)
	: Prof. F Tregenna (Tribunal Member)
Heard on	: 12 February 2020
Order Issued on	: 12 February 2020
Reasons Issued on	: 11 March 2020

REASONS FOR DECISION

APPROVAL

[1] On 12 February 2020, the Competition Tribunal ("Tribunal") unconditionally approved a large merger between ArcelorMittal South Africa Ltd and "the manufacturing and production of structural steel and rail business" of Highveld Structural Mill (Pty) Ltd.

[2] The reasons for the approval of the proposed transaction follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary acquiring firm

[3] The primary acquiring firm is ArcelorMittal South Africa Ltd ("AMSA"), a public company listed on the Johannesburg Stock Exchange.[1] AMSA is ultimately controlled by ArcelorMittal S.A, a company incorporated in Luxembourg.

[4] AMSA is a producer of long and flat steel which it produces from its plant in KwaZulu-Natal. Long steel products, for the purposes of this proposed transaction, can broadly be classified as heavy sections ("HS"), light and medium steel sections ("LMS") and other long products ("OLP"). AMSA produces a wide range of LMS and OLP products, but it does not have the capacity to produce HS products. Of relevance to the proposed transaction is AMSA's production of LMS.

Primary target firm

[5] The primary target firm is the manufacturing and production of structural steel and rail business (the "structural mill business") of Highveld Structural Mill (Pty) Ltd ("HSM"). The structural mill business comprises various assets that HSM owns and uses to conduct its business.[2]

[6] HSM is a wholly owned subsidiary of EVRAZ Highveld Steel & Vanadium Ltd ("Highveld"). Highveld has been under business rescue since April 2015 and is controlled by its business rescue practitioner ("BRP"), Piers Marsden. Before Highveld entered business rescue, the structural mill business produced both LMS and HS products from its location in Mpumalanga. Following business rescue, all steel production at the structural mill business ceased in July 2015. In December 2016, the BRP reached an agreement with AMSA that enabled the structural mill business to restart a limited production of HS products on

[1] The merging parties had cited AMSA as the primary acquiring firm, but subsequently informed the Commission that they intended to change it to ArcelorMittal Rail and Structures (Pty) Ltd ("AMRAS"), a wholly owned subsidiary of AMSA. The Commission was of the view that the change in the structure of the merger post notification did not have a bearing on the merger's assessment.
[2] These include mill rolls; designated vehicles; property, plant and equipment; furniture and fittings; office equipment; computers; and sundry assets.

behalf of AMSA. The structural mill business is currently the only producer of HS in South Africa.

PROPOSED TRANSACTION AND RATIONALE

[7] AMSA intends to purchase the structural mill business of HSM as a going concern. Post-merger, AMSA will own the structural mill business.

[8] The merging parties' rationale for the proposed transaction is motivated by Highveld's business rescue plan which mandates the wind-down sale of Highveld's assets. The sale of the structural mill business as a going concern will maximise its sale value to the benefit of Highveld's creditors. The proposed transaction would also ensure the continued local supply of HS. It is anticipated that post-merger, further development of the structural mill business by the merged entity could potentially result in South Africa being able to source its main line rail domestically, instead of importing it as it has been the custom to do.

BACKGROUND TO THE PROPOSED TRANSACTION

[9] The Competition Commission ("Commission") found that prior to Highveld entering business rescue, it produced its own steel inputs to produce HS and limited LMS products. It found that Highveld's business rescue was caused, *inter alia*, by continued loss-making since 2010, weakened global steel markets and a reduction in domestic steel demand. As a result of these factors, the structural mill business shut down all production in July 2015 resulting in substantial retrenchments.

[10] Highveld's adopted business rescue plan initially prioritised a bidding process to find a buyer that could purchase Highveld as a whole, failing which, the BRP would then conduct a wind-down sale of Highveld's assets. After failing to agree on the terms of Highveld's sale with the only viable bidder, the BRP was mandated to proceed with the wind-down sale.

[11] To effect the wind-down sale, the BRP sought buyers for Highveld's various assets. In December 2016, the BRP concluded an agreement between AMSA and HSM[3] relating to the structural mill business. The agreement sought to maximise the structural mill business's value by restarting production in order to sell it as a going concern. The agreement also contained an option for AMSA to purchase the structural mill business.

[12] This agreement stipulated that AMSA would supply HSM with the necessary steel inputs to produce HS.[4] HSM would then manufacture HS products only on behalf of AMSA, which AMSA would then sell to its customers. AMSA would then pay a tolling fee to HSM for these HS products. Production of HS under this agreement began in April 2017 resulting in the reinstatement of 176 jobs at HSM. HSM has since then only produced HS products for AMSA, and HSM does not take ownership of the manufactured products as per the agreement.

RELEVANT MARKET AND IMPACT ON COMPETITION

[13] The Commission considered the activities of the merging parties and identified overlaps in three LMS products (certain rails, taper flange channels and round bars) that AMSA and HSM are each capable of producing.[5] The Commission concluded that the relevant market is the market for the production and supply of these three LMS products in South Africa.

[14] When analysing the unilateral effects of the proposed transaction, the Commission assessed the market shares of the merging parties based on HSM's production capacity for the overlapping LMS products. The Commission found that there would be no structural change to the market and was satisfied that the proposed transaction was unlikely to result in unilateral effects. This was also due to HSM's inability to produce steel independently as well as the competitive constraints from LMS imports.

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[3] HSM is a special purpose vehicle created for the purpose of executing this agreement with AMSA and performing the obligations thereunder.

[4] AMSA was the only domestic firm capable of producing the necessary inputs for HS.

[5] 22kg/m and 30.2kg/m Rails; 152mm x 76mm Taper flange channels; 80mm-160mm Round bars.

[15] When analysing the conglomerate effects of the proposed transaction, the Commission assessed whether AMSA's expansion into the HS market is likely to result in anticompetitive effects through AMSA bundling HS products with other steel products that it produces and supplies domestically. After consulting with AMSA's customers and other LMS suppliers, the Commission found that imports would place a significant constraint on the merged entity were it to attempt to bundle its steel products. As a result of the above, the Commission was satisfied that the proposed transaction is unlikely to result in conglomerate effects.

[16] When assessing the relevant counterfactual, the Commission considered scenarios in which the merger did not occur. The Commission found that each counterfactual scenario would most likely result in the shutting down and wind-down sale of the structural mill business. This is because the BRP's mandate, as approved by creditors, would be to wind-down the business should the transaction not take place. The wind-down mandate cannot be reversed and the agreement between AMSA and HSM does not change this fact.

[17] Due to the above, the Commission concluded that the proposed transaction is unlikely to substantially lessen or prevent competition in any market. We found no reason to disagree.

PUBLIC INTEREST

[18] The Commission found that the proposed transaction could potentially benefit South Africa's steel industry by creating capacity to domestically produce main line rails. The (erstwhile) Economic Development Department also informed the Commission of its support for the merger.

[19] The Commission also engaged Transnet and found that the merging parties had brief consultations with Transnet regarding localising the production of main line rails. During the hearing, the Tribunal questioned the probability for capacity creation in the market for the production of main line rails post-merger.

The merging parties confirmed that creation of this kind of capacity was not a certainty.[6]

[20] The Commission found that the proposed transaction would have a positive impact on employment as 176 employees of HSM would be retained by AMSA. Additionally, the unions and employee representatives of the merging parties all confirmed that they had no objections to the proposed transaction.

CONCLUSION

[21] 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, we believe that all public interest concerns were addressed satisfactorily.

[22] Accordingly, the Tribunal approved the transaction without conditions.

Mr E Daniels	**11 March 2020**
	Date

Ms Y Carrim and Prof. F Tregenna concurring

Tribunal Researchers:	P Kumbirai
Tribunal Economist:	K Moothoo Padayachie
For the Merging Parties:	V Cadman and C Thomas of CDH for AMSA J Katz of ENSafrica for Highveld
For the Commission:	R Darji and G Mutizwa

[6] Transcript page 7, line 12.