



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM157Dec21

SERITI NEW LARGO (PTY) LTD

Primary Acquiring Firm

and

NEW LARGO COAL (PTY) LTD

Primary Target Firm

Panel:	Y Carrim (Presiding Member) E Daniels (Tribunal Member) T Vilakazi (Tribunal Member)
Heard on:	24 May 2022
Order issued on:	24 May 2022
Reasons issued on:	26 May 2022

REASONS FOR DECISION

[1] On 24 May 2022, the Tribunal unconditionally approved a large merger in terms of which Seriti New Largo (Pty) Ltd (“Seriti New Largo”), intends to acquire the entire shareholding which the Industrial Development Corporation of South Africa Limited (“IDC”) holds in Seriti New Largo’s subsidiary, New Largo Coal (Pty) Limited (“New Largo Coal”).

[2] As a result of the proposed transaction, Seriti New Largo will increase its existing majority shareholding in New Largo Coal and acquire sole control over New Largo Coal.

Primary acquiring firm

[3] The primary acquiring firm, Seriti New Largo, is a company duly incorporated in accordance with the laws of the Republic of South Africa.

- [4] Seriti New Largo is a wholly owned subsidiary of Seriti Resources Holdings (Pty) Limited (“Seriti Resources”), a broad-based black owned and controlled South African mining company.
- [5] Seriti New Largo, its controller Seriti Resources and all its subsidiaries will be referred to in these reasons as the “Acquiring Group”.
- [6] The Acquiring Group is active in thermal coal mining for use by Eskom to generate electric power, with some of the coal being beneficiated for the export market.

Primary target firm

- [7] The primary target firm is New Largo Coal (Pty) Ltd (“New Largo Coal”) which is duly incorporated in accordance with the laws of the Republic of South Africa.
- [8] New Largo Coal is jointly controlled by Seriti New Largo and the IDC. New Largo Coal does not directly or indirectly control any firm and will be referred to in these reasons as the “Target Firm”.
- [9] The Target Firm is comprised of a large-scale mining project earmarked to supply the base load coal to fulfil the requirements of Kusile power station (“Kusile”) once it becomes fully operational.

█ Kusile power station was constructed close to the Target Firm, with coal to be produced from the Target Firm earmarked for use at Kusile. █
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Competition assessment

- [11] The Competition Commission (“Commission”) considered the activities of the merging parties and found that although they raise a horizontal overlap insofar as the mining of thermal coal is concerned, the horizontal overlap in the proposed transaction is notional and does not result in market share accretion nor changes

to market structure since it merely changes the shareholding without any alterations to the underlying market structure.

[12] The Commission also analysed whether Seriti New Largo would have different incentives in New Largo other than those which existed pre-merger as there is a change in the nature of control from joint to sole control and noted that the IDC is not a conventional, active player in the market for the mining and sale of thermal coal. The IDC's involvement in New Largo Coal appears to be solely for safeguarding its financial interest as a funder and to ensure that its funding mandate is successfully implemented.

[13] To the extent that there could be changes in incentives for Seriti New Largo by virtue of the removal of any role the IDC could have been playing in influencing Seriti New Largo's conduct pre-merger, the Commission took the view that any such changes are unlikely to negatively impact on Eskom, the only customer impacted by the merger, such that no one side is likely to exercise market power over the other in the bargaining dynamics for the conclusion of CSAs. It is also equally unlikely, in this instance, that Seriti New Largo could exercise market power over Eskom at Kusile.

[14] We concur with these findings and are of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Third Party Views

[15] When considering that the Target Firm is currently earmarked to conclude a CSA with Eskom for the supply of thermal coal to Kusile as the base load anchor supplier, the Commission found that there are junior miners who are currently supplying coal to Kusile, some of whom are contracted for up to different but limited terms of agreement periods. Therefore, the Commission assessed whether these junior miners could be foreclosed as a result of the proposed transaction, when the Acquiring Group concludes a CSA with Eskom for the supply of coal to Kusile.

- [16] As some junior miners already supply thermal coal to Kusile through short to medium term CSAs, replacing such junior miners with the target firm would also raise concerns as it may impede the ability of small and medium businesses, or firms controlled or owned by historically disadvantaged persons (“HDPs”) to effectively enter into or participate within the market.
- [17] The Commission received submissions from some of the junior miners, including those currently supplying thermal coal to Kusile through CSAs. Most junior miners submitted that they favour a dual sourcing strategy whereby Kusile will be supplied by both an anchor supplier and several junior miners. Only two submissions favour a single sourcing strategy by either juniors or an anchor.
- [18] Although two of the miners noted that there is potential for the displacement of some junior miners once New Largo Coal is contracted, it was also noted that Kusile has such a large coal capacity intake that New Largo alone will be unable to fully satisfy the demand at Kusile. Therefore, there will still remain opportunities for the junior miners to supply coal at Kusile.
- [19] Eskom itself submitted that it does not have concerns with the proposed transaction, principally because of the ample alternatives available to it at Kusile and made it clear that various junior miners will supply the rest of the thermal coal requirements.
- [20] The Commission is of the view that Eskom will likely have New Largo Coal as its base load supplier alongside some of the junior miners, as it pursues its dual sourcing strategy and found that there does not appear to be any significant effect raised by the proposed merger which could result in a significant exclusion of other miners, even in the worst-case scenario where Seriti’s incentives are changed as a result of the proposed merger.
- [21] We concur with the Commission’s finding and are of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any of the affected coal markets.

Public interest

Employment

[22] The merging parties in their merger filing stated that the proposed transaction is not envisaged to have any impact on employment as there is no merger specific duplication of employment positions which arises from the merger.¹ This is because New Largo Coal does not employ any employees and any labour that is required is seconded from Seriti New Largo.²

[23] Based on the above submissions of the merging parties, we conclude that the proposed transaction is unlikely to raise any employment concerns.

Impact of merger on ability of small and medium businesses (SMME), or firms controlled or owned by HDPs to effectively enter into, participate in or expand within the market

[24] As stated above, the Commission considered whether the proposed transaction could result in the possible crowding out of junior miners currently supplying thermal coal at Kusile power station because the Acquiring Group and Eskom are currently negotiating for New Largo Coal to become the preferred anchor supplier of base load thermal coal requirements at Kusile.

[25] Eskom was engaged and submitted that it is currently utilising six junior miners with whom it has concluded short to medium term CSAs. Eskom indicated that 50% of the Kusile thermal coal requirements will be satisfied by junior miners as New Largo Coal can only supply up to 50% of the Kusile burn plan requirements. Therefore, it will continue to enter into short to medium term contracts with junior miners for Kusile into the future.

[26] Eskom also submitted that its coal procurement strategy is to maintain and extend the existing long-term fixed price contracts for those designated power stations as well as to extend the option for these existing long-term contracts to

¹ Pg. 17 of Merger Record.

² Para 93 on pg. 71 of Merger Record.

also supply other power stations, given the relatively lower cost compared to other types of contracts.

[27] The Commission took the view that the junior miners are unlikely to be crowded out by the [REDACTED] long-term contract between Eskom and New Largo such that junior miners are foreclosed from effectively competing in the market since Eskom has plans to continue utilising junior miners in future, especially as its total coal requirements at Kusile cannot all be met by New Largo.

[28] We concur with the Commission's finding and the Commission has addressed these concerns adequately.

Greater spread of ownership

[29] The merging parties submitted that the proposed transaction will result in a greater spread of ownership by HDPs and workers in South Africa as it will result in a black owned firm (Seriti New Largo) acquiring the IDC's shareholding in New Largo Coal.³

[30] The Commission found that all the four main shareholders in the Acquiring Group, namely, Masimong, CIH, Kamanda and Thebe are broad-based black economic empowerment ("B-BBEE") owned and controlled entities.

[31] The B-BBEE shareholders will increase their shareholding in the Target Firm as a result of the proposed transaction and the shares of the employee and community trusts remain unaffected by the proposed transaction.

Other public interest issues

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

³ Para 94 on pg. 71 of Merger Record.

Conclusion

[33] For the above reasons, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction does not have a negative impact on the public interest.

Signed by: Enver Daniels
Signed at: 2022-05-26 09:15:01 +02:00
Reason: I approve this document

Enver Daniels

26 May 2022

Mr Enver Daniels

Date

Ms Yasmin Carrim and Dr. Thando Vilakazi concurring

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For the Merging Parties:

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For the Competition Commission:

Rakgole Mokolo and Grashum Mutizwa