IN THE COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 77/LM/Jul00

In the large merger between:

Franco-Nevada Mining Corporation Ltd
and

Gold Fields Ltd

Reasons for Competition Tribunal's Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 21 August 2000 approving the merger between Franco-Nevada Mining Corporation Ltd and Gold Fields Ltd without conditions. The reasons for our decision are set out below.

The Merger Transaction

Franco-Nevada and Gold Fields have agreed to merge by way of a scheme in which Gold Fields will become a subsidiary of Franco-Nevada and the holders of outstanding Gold Fields Shares will have the right to receive 0,35 shares in Franco-Nevada for every Gold Fields share held. Although each company's shareholders will own 50% of the new combined entity Gold Fields will gain Board control, holding seven of the twelve seats, as well as management control.

Evaluating the merger

Background

Franco-Nevada Mining Corporation Limited is a precious metals royalty company and is listed on the Toronto Stock Exchange. It is the 6th largest gold company in the world with a market capitalisation of approximately US$1.8 billion. Neither Franco-Nevada nor any of its subsidiaries have any gold mining business activities in South Africa. At present it only receives certain licence/royalty fees for platinum operation in South Africa.

During September 1999 Franco-Nevada merged with its sister company Euro-Nevada. According to the parties both companies have become leading players in the high margin gold royalty business with Franco-Nevada focussing on North American gold royalties and other commodities and Euro-Nevada focussing on International gold royalties. These two combined forms the leading precious metals royalty company in the world with a portfolio of over 60 royalties spanning five million acres in six countries.

Gold Fields is an investment holding company listed on the Johannesburg Stock Exchange. It is the 7th largest gold company in the world in terms of market capitalisation of approximately US$1.8 billion and operates deep level gold mines primarily in South Africa. It accounts for approximately 6% of global gold production and is ranked third in the world following Anglogold and Newmont in terms of total output. Gold fields employs 57000 people. The primary business activities of its subsidiaries are the mining and processing of gold in South Africa. The gold is sold to Rand Refinery, which is the sole agent of each of the subsidiaries of Gold Fields. The gold price is fixed internationally.

According to the parties South African exchange control restrictions limits Gold Fields' ability to use domestically generated cash to develop new mines elsewhere in the world and the merger will liberate Gold Field's cash flows from South Africa to develop projects under investigation.

Impact on competition

The Competition Commission concluded that there is no product overlap between the merging firms because Franco-Nevada is primarily a royalty company whereas Gold Fields is involved in deep level gold mining. The Tribunal does not necessarily agree with this view because Franco-Nevada, as a royalty company, would have some influence on the management of its mines and could, therefore, have an effect on competition.
However for purposes of this analysis we need not decide on what the relevant product market is because the parties will not have market power. The international gold price is influenced by factors such as the sale of new production by producers worldwide and the sale of reserves by financial institutions such as international central banks, the World Bank and the IMF. A single producer of gold can, therefore, not influence prices in the international market. In the Harmony Gold Mining Company and the

Randfontein Estates Limited merger, Case No: 16/LM/Feb00, the Tribunal noted that the sheer size of the market meant that South African gold producers are essentially price takers.

Public interest considerations

The parties informed the Commission that jobs would not be lost as a result of the merger, nor, in our opinion, does it raise any other public interest concerns listed in section 16(3).

28 September 2000

D.H. Lewis **Date**

Concurring: N.M. Manoim and P.E. Maponya