



## **COMPETITION TRIBUNAL OF SOUTH AFRICA**

**Case No:52/LM/JUL11**

In the matter between:

**ACQUARIUS PLATINUM SA (PTY) LTD**

Acquiring Firm

And

**THE SOUTHERN BOOYSENDAL MINING RIGHT**

Target Firm

Panel : Norman Manoim (Presiding Member)  
Yasmin Carrim (Tribunal Member)  
Andreas Wessels (Tribunal Member)  
Heard on : 24 August 2011  
Order issued on : 24 August 2011  
Reasons issued on : 31 August 2011

### **Reasons for Decision**

#### **Approval**

- 1] On 24 August 2011, the Competition Tribunal ("Tribunal") approved the large merger between Aquarius Platinum SA (Pty) Ltd and the Southern Booysendal Mining Right. We explain below our reasons for this conclusion.

#### **The Parties to the transaction**

- 2] The primary acquiring firm is Aquarius Platinum SA (Pty) Ltd ("AQPSA"), a private company incorporated in terms of the laws of the Republic of South Africa. AQPSA is controlled by Aquarius Platinum Ltd ("AQP"), a company

incorporated in terms of the laws of Bermuda. AQPSA controls a number of subsidiaries around South Africa; however AQP is not controlled by any entity. For the sake of convenience, AQP and all its companies controlled by it will be referred to as the “AQP Group”.

- 3] The primary target firm is a mining right applicable to an area commonly known as “Southern Booyseendal”, a portion of the Eastern limb of the Bushveld Complex in Mpumalanga (“the mining right”). The mining right is currently controlled by Micawber, a company indirectly wholly owned by Northam Platinum Ltd.
- 4] In terms of the transaction, AQPSA proposes to acquire the mining right which is currently controlled by Micawber 278 (Pty) Ltd, in terms of which AQPSA will be entitled to mine Platinum Group Metals (“PGMs”) at Southern Booyseendal.

### **The Rationale**

- 5] The merging parties submitted that the Southern Booyseendal is adjacent to AQPSA Everest mine and that, as opposed to Micawber; due to its location, AQPSA is uniquely placed to develop the area within a short space of time. This, according to the parties will lead to an earlier investment and exploitation of the mine.

### **The parties’ activities**

- 6] The AQP Group is involved in PGM mineral exploration, mine development and concentrate production. The group mines and produces PGM concentrate in various provinces around South Africa<sup>1</sup> as well as in Zimbabwe.
- 7] No mining operations have commenced in the Southern Booyseendal, however, the minerals to be mined from the area are PGMs.

### **The relevant market and the impact on competition**

- 8] The Commission found that the relevant product market is that for PGMs,

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<sup>1</sup> For a list of areas where AGP Group mines, see Commission Report p.7

minerals which are primarily used in the automotive industry to produce autocatalysts and are also used in the production of jewellery. PGM is made up of six elements, being platinum, palladium, rhodium, ruthenium, iridium and osmium. With reference to previous Tribunal decisions relating to the PGM market<sup>2</sup>, both the Commission and the merging parties submitted that as the Tribunal has previously recognised the relevant geographic market for PGMs as international, it is unnecessary to deviate from that decision.

9] It was submitted that although there is currently no overlap in respect of the parties' activities as no production of PGM in the area has commenced, there will in future be an overlap as soon as mining commences. The merging parties submitted that even if the merger were to be analysed on the future overlap, it would not adversely affect competition in the PGM market as the possible estimated market share of the merged entity in that market does not exceed 15%. Further that there are also a number of significant competitors in the PGM markets, which include companies such as Impala Platinum, MMC Norilsk Nickel, Anglo-American plc, Northam Lonmin plc, and Xstrata.

10] The Commission concluded that the merger is unlikely to result in any substantial prevention or lessening of competition in the PGM market.

## **CONCLUSION**

11] The parties submitted that the proposed transaction will not result in employment losses. The proposed transaction does not raise any other public interest issues.

12] We agree with the Commission's conclusion above and find that the merger is unlikely to lead to any substantial prevention or lessening of competition in the relevant market. Accordingly, we approve the above merger unconditionally.

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**NORMAN MANOIM**

31 August 2011  
**DATE**

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<sup>2</sup> Two Rivers Platinum Limited and Assmang Limited, case no: 54/LM/Sep01

**Andreas Wessels and Yasmin Carrim**

Tribunal Researcher:      Tebogo Hlafane

For the merging parties:      Werksmans Attorneys

For the Commission:      Bheki Masilela