



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM254Dec17

In the matter between

DRDGOLD Limited

Primary Acquiring Firm

And

Sibanye Gold Limited, trading as Sibanye-Stillwater

Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 7 February 2018
Order Issued on	: 7 February 2018
Reasons Issued on	: 26 February 2018

REASONS FOR DECISION

Approval

- [1] On 7 February 2018, the Competition Tribunal ("the Tribunal") conditionally approved the proposed transaction between DRDGOLD Limited ("DRDGOLD") and Sibanye Gold Limited, trading as Sibanye-Stillwater ("Sibanye-Stillwater"). The reasons for the approval follow.

Parties to the transaction and their activities

- [2] DRDGOLD is not controlled by any firm however, it controls a number of entities in South Africa. DRDGOLD is a mid-tier, unhedged gold producer and is involved in the recovery of gold through the retreatment of surface tailings. Essentially, DRDGOLD deploys its resources to extract as much gold as possible from its surface resource. It also produces silver as a by-product of its gold operations.
- [3] Sibanye- Stillwater controls a number of entities in South Africa. The entities relevant to the proposed transaction are certain assets of the tailings retreatment business under the West Rand Tailings Retreatment Project, hereinafter referred to as 'Selected Assets'. Sibanye-Stillwater is a precious metals mining company which owns and operates gold and platinum group metals. Of relevance to the proposed transaction is its gold operations. In addition, Sibanye-Stillwater produces silver as a by-product.

Proposed transaction

- [4] In terms of the proposed transaction, DRDGOLD intends to acquire the Selected Assets from Sibanye-Stillwater. In exchange for the acquisition, DRDGOLD will offer 38% of its issued share capital; and grant Sibanye-Stillwater a call option to acquire additional shares, which could result in Sibanye-Stillwater having a shareholding of 50.1% in DRDGOLD.
- [5] The acquisition of an approximate 38% shareholding grants Sibanye-Stillwater *de facto* control over DRDGOLD. However, Sibanye-Stillwater would cross the bright line and assume *de jure* control over DRDGOLD in the event that it exercised the call option.

Relevant markets and impact on competition

- [6] The Competition Commission ("the Commission") considered the activities of the merging parties and identified a horizontal overlap in the following markets: (i) the international market for the production and supply of gold; (ii) the international market for the production and supply of silver. The Commission found that the merging parties will have a combined post- merger market share of less than 5% in the respective markets. The Commission submitted that there are other firms in the relevant markets that are able to exercise competitive restraints against the merged entity. The Commission thus concluded that the proposed transaction is unlikely to substantially prevent or lessen competition within the relevant markets.
- [7] At the hearing the merging parties confirmed that they were seeking approval for both the acquisition of the 38% as well as for the call option, provided it is exercised within a stipulated period. The merging parties submitted that the call option would be exercised within 24 months after date of implementation of the transaction. The Commission considered the time frame and was of the view that 24 months was reasonable as the market conditions are unlikely to have changed significantly and the exercise of the call option would not require notification. Prior cases with similar call options have imposed an 18 month period but in this instance, an additional 6 months will unlikely influence material changes in the market conditions, considering the merging parties are not large players in the relevant markets. The Commission however, thought it necessary for certainty that we approve the proposed transaction subject to the condition that in the event that the merging parties exercised the call option after 24 months from the approval date, they should notify same to the Commission. The merging parties were in agreement with this stance.

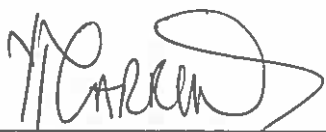
Public interest

- [8] The merging parties submitted that the proposed transaction will not result in any adverse effect on employment. Furthermore, the merging parties confirmed that the employees' share ownership agreement will not be negatively affected

as a result of the proposed transaction.¹ The Commission concluded that the proposed transaction is unlikely to raise any employment or other public interest concerns.

Conclusion

- [9] 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 public interest issues arise. Accordingly, we approve the proposed transaction with the conditions attached to our order as Annexure "A".



Ms Yasmin Carrim

26 February 2018

Mrs Medi Mokuena and Ms Andiswa Ndoni concurring.

Tribunal Researcher: Hlumelo Vazi
For the merging parties: A Burger-Smidt of Werksmans
For the Commission: B Mabatamela

¹ See page 539 of the merger record.