



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM123Nov21

Sinosteel Group Corporation Limited (Primary Acquiring Firm)

And

Deen Holdings Corporation Limited (Primary Target Firm)

Panel:	I Valodia (Presiding Member)
	E Daniels (Tribunal Panel Member)
	L Mncube (Tribunal Panel Member)
Heard on:	16 March 2021
Order Issued on:	17 March 2021
Reasons Issued on:	18 March 2021

REASONS FOR DECISION

- [1] On 16 March 2022, the Competition Tribunal conditionally approved a large merger in terms of which Sinosteel Group Corporation Limited (“Sinosteel”) intends to acquire 50% shareholding in Deen Holdings Corporation Limited (“Deen Holdings”)¹ from [REDACTED]. Post-merger, Sinosteel will solely control Deen Holding.³
- [2] Sinosteel is a company incorporated in accordance with the laws of the Peoples’ Republic of China (“PRC”) and is wholly owned by the Government of the PRC.⁴ In South Africa, Sinosteel controls four firms; including Sinosteel South Africa Proprietary Limited (“Sinosteel South Africa”).⁵ Together with Samancor Chrome Holdings Proprietary Limited (“Samancor”), an entity in which Deen Holdings has a controlling interest, Sinosteel holds a 50% interest in three South African joint ventures: Tubatse Alloy Proprietary Limited, Tubatse Chrome Proprietary Limited, and Tubatse Chrome Minerals Proprietary Limited (collectively referred to as the “JV Entities”). Sinosteel and its subsidiaries are collectively referred to as the Sinosteel Group.

¹ Deen Holdings is a company incorporated in Mauritius and it is controlled by [REDACTED]

² [REDACTED] is a company incorporated in Hong Kong, China.

³ This is the case despite [REDACTED] retention of 50% of the issued share capital (Letter from Bowmans to the Tribunal dated 11 March 2022).

⁴ Sinosteel’s ownership by the Government of the PRC is through the Central State-owned Assets Supervision and Administration Commission, an agency of the Central Chinese Government. The Central SASAC owns various firms in China but of the purposed of the current transaction, only Sinosteel is relevant.

⁵ In addition to Sinosteel South Africa: ASA Metals Proprietary Limited; Dilikong Chrome Mine Proprietary Limited; and Sinosteel International South Africa Proprietary Limited

- [3] Sinosteel has operations in iron ore, chrome ore and nickel ore base in, *inter alia*, South Africa.⁶ In South Africa through the JV Entities, the Sinosteel Group conducts activities in the respect of mining, beneficiation and supply of chrome ore and ferrochrome. Through Sinosteel South Africa, the Sinosteel Group trades chrome from South Africa. In South Africa, Sinosteel is also active in the renting of office space and the provision of business development and consulting services.
- [4] Deen Holdings is a Mauritian company controlled by a Hong Kong incorporated company. Deen Holdings operates in South Africa through several firms with activities in the mining industry.⁷ However, relevant to the proposed transaction, Deen Holdings operates in South Africa through Samancor and its affiliates, in which Samancor is active in chrome ore mining, smelting and the production of electrode paste (an essential input into the production of ferrochrome).

Competition Assessment

- [5] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction give rise to a horizontal overlap, which arises in the merging parties' activities in the trading of chrome ore. The Commission noted also, that Sinosteel and Samancor (controlled by Deen Holdings) jointly control the joint venture responsible for mining of metallurgical minerals resources and the supply of ferrochrome. The Commission did not consider this to be an overlap and did not assess the matter further.
- [6] The merging parties submitted that potential vertical relationship could arise between the merging parties in the trading of chrome ore in South Africa given that Sinosteel, through Sinosteel South Africa engages in the trading of chrome ore whereas Deen Holdings, through its Samancor affiliate, produces and supplies chrome ore.
- [7] There are also limited vertical relationships between the parties in South Africa insofar as Sinosteel supplied coke nuts and equipment spare parts to an affiliate of Deen Holdings in 2020. With regard to coke nuts, Samancor is Sinosteel's sole customer an arrangement unlikely to raise any significant foreclosure concerns in the market. Regarding equipment spare parts, the Commission noted that Sinosteel supplies [REDACTED] of its spare parts to Samancor; and in this regard Sinosteel is a small player in the market with less than 1% market share. The Commission concluded that neither of these relationships needed to be investigated further.
- [8] Thus for the competition assessment the Commission considered as relevant the national market for the mining and supply of chrome, and the global market trading of chrome ore.
- [9] Regarding the horizontal overlap identified in the global market for the trading of chrome ore, the Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for trading of chrome ore as the merging parties combined post-merger share remains low at 0-4%, with an accretion of 0-2%.

⁶ The Sinosteel Group also has set up and operates iron ore, chrome ore and nickel ore base in Australia, Cameroon, China, Indonesia, Philippines, and Zimbabwe.

⁷ Batlhako Ferrochrome Proprietary Limited; Crometals Proprietary Limited; Dikwena Chrome Proprietary Limited; Henry Gold Proprietary Limited; Middelburg Technochrome Proprietary Limited; Middelburg Steel & Alloys Proprietary Limited; NST Ferrochrome Proprietary Limited; Poschrome Proprietary Limited; Samancor Chrome Holdings Proprietary Limited; Samancor Chrome Limited; TC Smelters Proprietary Limited; Tubatse Alloys Proprietary Limited; Tubatse Chrome Proprietary Limited; Tubatse Chrome Minerals Proprietary Limited; and Waterkloof Mines Proprietary Limited.

- [10] Regarding the vertical overlap identified, the Commission found that upstream in the national market for chrome mining and supply, the merged entity will have approximately [REDACTED] market share with no accretion. Other competitors, in the production and supply of chrome ore in South Africa have [REDACTED] of the market share. The Commission assessed the ability of the merging parties to foreclose local traders of chrome and it found that the merging parties are unlikely to have the ability to significantly foreclose local chrome ore traders as Samancor is not a dominant supplier of chrome ore with [REDACTED] market share. Furthermore, Samancor only has one customer of chrome ore in South Africa, which is [REDACTED]. The Commission considered whether the proposed transaction raises any customer foreclosure concerns; and it noted the merging parties' 2% market share in the downstream for the market for chrome ore trade and based on that, it concluded that the proposed transaction does not raise any customer foreclosure concerns.
- [11] The Commission also engaged [REDACTED] - Samancor's only ferrochrome customer in South Africa. [REDACTED] is a ferrochrome trader that procures from producers and on-sells to its customers that use the input in the production of steel. [REDACTED] was confident that there is enough competition in the local market between Samancor, Glencore and Mogale Alloys and this will remain post-merger. As such it submitted that it does not oppose the proposed transaction.
- [12] Based on the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant market. We concur with this finding.

Public Interest

Effect on Employment

- [13] The merging parties submitted that the proposed transaction will not lead to any retrenchments at either of the merging parties or Samancor. The merging parties disclosed historic and contemplated retrenchments at Samancor that the merging parties claimed were based on operational requirements. The Commission investigated these allegations.
- [14] During its analysis the Commission noted the following factors about the market for the trade of chrome. This market is strongly impacted upon by global economic conditions, exchange rates, demand for stainless steel and chromite supply. China and India have historically been the leading consumer markets for chrome ore and ferrochrome due to their large markets for stainless steel. South African concerns raised regarding growing exportation of unrefined chrome ore at the expense of domestic ferrochrome manufacturing has precipitated increased export taxes and quotas on South African chrome ore. Locally the lower prices and higher electricity costs have led to a number of firms entering business rescue; and the market has experienced subsequent consolidation.⁸
- [15] Samancor commenced retrenchments on the basis of operational requirements in January 2020, which process was completed by December 2020.⁹ The Commission's review of internal documentation revealed, firstly that discussions about the proposed transaction commenced approximately a year after retrenchments were implemented.

⁸ This involved the following firms: Samancor Chrome and NST Ferrochrome (Pty) Ltd; Samancor Chrome and International Ferro Metals (SA) (Pty) and Sky Chrome Mining (Pty) Ltd; K2015356066 (South Africa) (Pty) Ltd and the Business of Hemic Ferrochrome (Pty) Ltd.

⁹ This process impacted [REDACTED] employees. No retrenchments were undertaken in 2021.

Secondly, the need to restructure the Samancor business was necessitated by market conditions at the end of Q2 2019 relating to the oversupply of chrome ore and the drop in global prices of chrome ore and ferrochrome. Furthermore, prices continued to deteriorate in the early part of 2020 due to the Covid-19 pandemic.

- [16] Samancor Chrome, pursuant to its budgeting processes, has revealed that retrenchments due to operational requirements are foreseen as part of Samancor's ongoing efforts to streamline and make its operations more efficient. The Commission sought information on this and noted that the business is still facing market challenges of worldwide commodity prices being under pressure, with the drastic decline of ferrochrome prices and continuous increase in the cost of production due to, inter alia, Eskom's electricity prices.
- [17] The Commission found neither the historic nor contemplated retrenchments to be merger related. However, in light of the current economic climate and South African unemployment rates it engaged the merging parties on two employment related conditions. The merging parties agreed to the proposal of a two year moratorium on merger-specific retrenchments and a 24-month "vacancies clause" which gives preference to the retrenched employees when vacancies are available.
- [18] During the investigation two of the notified unions raised concerns with the proposed transaction.
- a. The National Union of Mineworkers ("NUM") raised its members concerns about the Samancor pre-merger retrenchments and an alleged unwillingness of Samancor to implement the recall clause.¹⁰ NUM further requested the Commission to impose a moratorium on retrenchments.
 - b. The National Union Metalworkers South Africa ("NUMSA") said its members were concerned about employment security and possible variation of conditions of employment related to a Samancor merger in 2018. It also raised concerns that its members, through Samancor Ndizani Workers' ESOP Trust ("Ndizani Trust") are shareholders of Samancor and because of a current unresolved dispute between Ndizani Trust and Samancor, NUMSA did not support the proposed transaction. NUMSA also sought information regarding the Ndizani Trust structure and the control structure of the merging parties.
- [19] Through engagement with the merging parties, the Commission found that the periods applicable to the implementation of the recall clause, and the retrenchment moratorium related to the 2018 Samancor merger had both lapsed.¹¹ It was accepted that NUMSA's other issues were not merger-specific.
- [20] NUM elected to participate in the Tribunal proceedings, through which the condition relating to the variation clause was strengthened.
- [21] Following further submissions by the trades unions and the merging parties, the Tribunal was satisfied that the revised condition addressed any employment concerns that are merger-specific.

¹⁰ Which seeks to give employment preference to its retrenched employees, should any vacancy become available within the company.

¹¹ Letter from the merging parties to the Commission dated 15 December 2021 (Merger Record, p451-459).

Effect on the greater spread of ownership

- [22] Neither of the merging parties have Broad-Based Black Economic Empowerment (B-BBEE) shareholding or an employee share ownership program ("ESOP") pre-merger. The Commission invited the merging parties to make submissions on how the proposed transaction will promote a greater spread of ownership.
- [23] The merging parties disputed this interpretation of the Act and provided that (at worst) the proposed transaction was public interest neutral.¹² Nevertheless the merging parties submitted that Samancor has applied for a mining right¹³ and if the application to the Department of Mineral Resources and Energy ("DMRE") is successful, the DMRE will require Samancor to increase its existing levels of ownership by historically disadvantaged persons ("HDP") in respect of the Mineral Right Holding Entity ("MRHE").
- [24] As a condition to the approval of the proposed transaction, the merging parties tendered that Samancor will allocate [REDACTED] of the shareholding in the MRHE to an ESOP; a further [REDACTED] shareholding in the MRHE to the relevant community; and allocate a further minimum [REDACTED] shareholding in the MRHE to an HDP shareholder/s. This condition will only be effected if Samancor is successful in its DMRE mining right application.
- [25] The Commission and the merging parties were still in dispute about the timing for the implementation of the tendered spread of ownership condition before the Tribunal. The Panel saw it fit to align the timing to the application approval.

Conclusion

- [26] For the above reasons, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market; and the public interest conditions imposed for the approval of the merger have a positive effect on the public interest.

Signed by: Imraan Valodia
Signed at: 2022-04-11 17:26:15 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

18 March 2022

Professor Imraan I. Valodia

Date

Concurring: Mr Enver Daniels and Dr Liberty Mncube

Tribunal Case Managers:

For the Merging Parties:

For the Competition:

Sinethemba Mbeki and Mpumelelo Tshabalala

Xolani Nyali, Sivuyise Lutshiti and Kayla Abrahams of
Bowmans Attorneys

Zintle Siyo and Themba Mahlangu

¹² The merging parties provided that despite difficult market conditions, Samancor has managed to save [REDACTED] direct jobs, through a combination of reduction in retrenchments and re-hiring previously retrenched employees. Furthermore, Samancor has [REDACTED] of its shareholdings held by HDPs and an ESOP which shareholdings will remain unaffected post-merger.

¹³ Samancor holds a prospecting right relating the mining of chrome ore in the Farm Mareesburg 8 JT, situated in Mpumalanga.

IN THE LARGE MERGER BETWEEN:

SINOSTEEL GROUP CORPORATION LIMITED

AND

DEEN HOLDINGS CORPORATION LIMITED

CASE NUMBER: LM123NOV21

ANNEXURE A: CONDITIONS

1 DEFINITIONS

- 1.1 The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings, namely:
- 1.1.1 **"Acquiring Firm"** means Sinosteel Group Corporation Limited;
- 1.1.2 **"Affected Employees"** means those employees dismissed for operational reasons in terms of section 189 of the LRA by Samancor (i) before the Merger, in the period ranging from 1 January 2020 to 31 December 2020; and (ii) any that may take place after the Merger limited to those contemplated at the notification and investigation of the Merger, including dismissals for operational reasons regarding the restructuring of the Western Chrome Mines Business Unit as provided to the Commission.
- 1.1.3 **"Approval Date"** means the date referred to on the Tribunal's Merger Clearance Certificate (Notice CT10) in terms of the Competition Act;
- 1.1.4 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.1.5 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.1.6 **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;

- 1.1.7 **"Conditions"** means these conditions contained in this Annexure A;
- 1.1.8 **Conversion** means Samancor's successful application to the Department of Mineral Resources and Energy for the conversion of the Old Order Mineral Right into the Mineral Right;
- 1.1.9 **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.1.10 **"HDPs"** means historically disadvantaged persons as defined in section 3(2) of the Competition Act;
- 1.1.11 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.12 **"LRA"** means the Labour Relations Act, No. 66 of 1995, as amended;
- 1.1.13 **"Merger"** means the acquisition of sole control of the Target Firm by the Acquiring Firm, which constitutes a large merger;
- 1.1.14 **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 1.1.15 **"Mineral Right"** means the new order mineral right with reference number LP30/5/1/2/2/10219 MR relating to the Farm Mareesburg 8 JT, situated in Mpumalanga, measuring 2129,1158 hectares in extent;
- 1.1.16 **"Mineral Right Holding Entity"** means the entity that will hold the Mineral Right;
- 1.1.17 **"Old order mineral right"** means the Old Order Prospecting Right: Cession of Mineral Rights K4210/04/RM together with prospecting Permit 14/2001;
- 1.1.18 **"Samancor"** means Samancor Chrome Limited;
- 1.1.19 **"Target Firm"** means Deen Holdings Corporation Limited;
- 1.1.20 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act; and
- 1.1.21 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal.

- 3.1 The Merging Parties shall not retrench any employees in South Africa as a result of the Merger, for a period of 2 (two) years from the Implementation Date.
- 3.2 For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages, (iii) unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.
- 3.3 Further, for a period of 2 (two) years from the Implementation Date, Samancor shall maintain a database of all the Affected Employees with their last-known contact details. It shall remain the responsibility of any Affected Employee to notify the Samancor in writing of any change in their contact details.
- 3.4 Should any vacancies arise within Samancor, Samancor undertakes to inform the Affected Employees of such vacancy through such last-known contact details via SMS and/or email communication. This communication shall be sent out simultaneously with the position being advertised internally.

- 3.5 Under all circumstances the onus shall rest on the Affected Employees to apply for a vacant position.
- 3.6 Should Affected Employees meet the relevant criteria and job requirements in terms of qualification, experience, and skills required, the application shall be processed by the relevant Human Resource department of Samancor.

4 MONITORING COMPLIANCE WITH THE CONDITIONS

- 4.1 The Acquiring Firm shall inform the Commission of the Implementation Date and separately, the date of approval of the Conversion within 5 (five) Days of it becoming effective.
- 4.2 Samancor shall circulate a copy of the Conditions (excluding clause 2 in its entirety) to all its employees in South Africa and their relevant trade unions or employee representatives within 5 (five) Days of the Approval Date.
- 4.3 As proof of compliance thereof, a director of Samancor shall within 10 (ten) Days of circulating the Conditions, submit an affidavit attesting to the circulation of the Conditions to its employees in South Africa and provide a copy of the notice that was sent to the employees.
- 4.4 Samancor shall, on the first anniversary of the Implementation Date, submit a report confirming compliance with paragraph 3.
- 4.5 Each report submitted in terms of paragraph 4.4 shall be accompanied by an affidavit by a director of Samancor confirming the accuracy of the information contained in the report and attesting to compliance with the Conditions.
- 4.6 The Commission may, for the duration of the Conditions, request additional information on compliance with these Conditions.
- 4.7 The Commission may request such additional information from the Merging Parties which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

5 APPARENT BREACH

- 5.1 An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules and Rule 37 of the Tribunal Rules.

6 VARIATION OF THE CONDITION

- 6.1 The Merging Parties and/or the Commission may at any time, and on good cause shown, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted.

7 GENERAL

- 7.1 All correspondence in relation these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

ANNEXURE B: Indicative Design Principles for ESOPs

Design Principle	Applicable Criteria
Structure	■ [Redacted] ■ [Redacted] ■ [Redacted]
Cost to Workers	■ [Redacted] ■ [Redacted]
Governance	■ [Redacted] ■ [Redacted] ➤ [Redacted]
Duration	■ [Redacted]
Participants	■ [Redacted] ■ [Redacted] ■ [Redacted]
Participation Benefits	■ [Redacted] ■ [Redacted] ■ [Redacted]
Value & Funding	■ [Redacted] ■ [Redacted] ■ [Redacted] ■ [Redacted]