

hydraulic mining, sand mining, mining and supply of platinum, and coal mining.

- [3] The transaction involves the acquisition of 100% of the shares of Elbroc and Stope Tech by Mogs. Elbroc and Stope Tech are held by common shareholders¹, and Mogs is jointly controlled by Royal Bafokeng Mogs (Pty) Ltd and CV5 Limited.

Rationale for the transaction

- [4] For Mogs this transaction is an investment strategy and opportunity to grow and have a successful track record in supplying products and services in the mining industry, particularly the gold mining industry. It was submitted that Mogs' decision to acquire both Elbroc and Stope Tech together is based on the fact that the two firms have a longstanding supplier/manufacturer relationship.
- [5] The shareholders of Elbroc and Stope Tech regard this transaction as a means to facilitate the transfer of equity to a reputable black owned entity in order to comply with BEE objectives.

Effect on Competition

- [6] The first issue that the Tribunal had to deal with relates to the fact conceded by the merging parties that this merger has been implemented by the parties since 15 December 2007. The Commission averred that it is currently investigating and engaging with the parties on the pre-implementation matter. For the purpose of this transaction, the Tribunal had to focus on the issue whether or not the merger is likely to substantially prevent or lessen competition in the relevant markets.
- [7] There is no horizontal overlap between the activities of the merging parties. However the Commission found that there is potential vertical overlap in that Elbroc sells hydraulic and friction prop supports directly to both coal and

¹ Guinea Fowl Investments (Pty) Ltd has 62.11%, Magaru Investments Holdings (Pty) Ltd has 32.63%, and Mr Grant Roach has 5.26% shareholding in the target firms.

platinum mines in addition to Stope Tech, and also that Stope Tech could in future sell its services to any firm within the Mogs' group.

[8] However, the Commission found that the potential vertical overlap does not lead to any foreclosure concerns. In the market for hydraulic and friction prop supports, Elbroc has a small market share of 10% and faces competition from other larger players. The Commission also found that Elbroc has not secured any contract or sold any of its products to any firm within Mogs' group.

[9] The Tribunal was concerned about Stope Tech's high market share of 92% in relation to the services it provides. The Commission found that this market share almost exclusively relates to the provision of stope propping support services to gold mines; a tender market in which firms compete by bidding for tenders for the provision of such services. In addition the merging parties submitted that most mining companies provide these services in-house, and that there are few companies who source these services externally. The Commission also found that to date Stope Tech has not secured any contract or sold any of its services to any firm within Mogs' group, notwithstanding that the transaction has been in place for more than one year.

[10] The Commission conducted interviews with the customers of the merging parties, and no concerns were raised regarding this transaction.

Conclusion

[11] The pre-implementation of this transaction, is a subject matter still to be heard and decided another day and hence we need not address it now. In respect to the relevant issue in this transaction, the Tribunal finds that the transaction does not pose any competition problems because the post implementation track record indicates that foreclosure concerns have not been realised to date despite the merger having been implemented for a period of nearly 18 months. On this ground, the Tribunal concludes that the transaction is unlikely to substantially lessen or prevent competition in the relevant markets.

Public Interest

[12] There are no public interest concerns.

N Manoim

10 June 2009
Date

D Lewis and M Mokuena concurring.

Tribunal Researcher: L Xaba

For the merging parties: Adv. Engelbrecht instructed by Strauss Scher Attorneys

For the Commission: L Khumalo