

# COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019851

In the matter between:

**Exxaro Resources Limited**

Primary Acquiring Firm

And

**Total Coal South Africa (Pty) Ltd**

Primary Target Firm

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Panel	:	Yasmin Carrim (Presiding Member), Anton Roskam (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	14 January 2014
Order issued on	:	14 January 2015
Reasons issued on	:	09 February 2015

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## Reasons for Decision

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### Approval

- [1] On 14 January 2015 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Exxaro Resources Limited ("Exxaro") and Total Coal South Africa (Pty) Ltd ("Total Coal"). The reasons for approving the proposed transaction follow.

### Parties to transaction

- [2] The primary acquiring firm is Exxaro, a South African resources company listed on the Johannesburg Stock Exchange Limited ("JSE") where it is a constituent of the JSE top 40 group companies and Socially Responsible Investment ("SRI") indices. Exxaro has interests in cola, base metals, titanium dioxide,

ferrous and the energy markets. Exxaro's current business interests are in South Africa, Botswana, Republic of Congo, Inner Mongolia, the United States, the Netherlands and Australia. Exxaro has eight self-managed collieries in South Africa with current production of almost forty million tonnes per annum (Mtpa) of thermal and metallurgical coal. The power station coal is supplied to the national power utility, Eskom and municipal power stations.

- [3] The primary target firm is Total Coal, a wholly-owned subsidiary of Total South Africa (Pty) Ltd ("Total S.A"). Total S.A is a public company listed on the Paris, London, Brussels and New York Stock Exchanges. As such it is not controlled by any individual or entity. Total Coal is active in the production of thermal coal from three mines in which Total Coal is a joint venture and operator. The majority of the coal produced by Total Coal is exported, while a minimal amount of coal is sold domestically. Total Coal's export sales are done via the Richards Bay Coal Terminal ("RBCT").

#### **Proposed transaction and rationale**

- [4] In terms of the proposed transaction Exxaro wishes to acquire 100% of the share in Total Coal from Total S.A. This will be done through a Sale and Purchase Agreement entered into between Total S.A and Exxaro. Exxaro will be purchasing the coal assets of Total Coal, which consist of the Tumelo Coal Mines (Pty) Ltd, Forzando Coal Mines (Pty) Ltd and the Dorstfontein Coal Mine (Pty) Ltd. All three of these mines produce thermal coal.
- [5] Exxaro submits that the acquisition is closely aligned with its long term growth strategy and will complement its existing coal portfolio. The benefits aligned to the proposed transaction for Exxaro include large scale operating assets, strong investment

thesis for the acquisition, access to primary RBCT entitlement and optimisation of Exxaro's existing portfolio.

- [6] Total S.A. on the other hand submits that the proposed transaction is part of its asset sale and is in line with its objectives to focus on its core activities and to actively manage its portfolio.

### **Competition assessment**

- [7] The proposed transaction results in a horizontal overlap.
- [8] The Commission defined the relevant product market to be the residual domestic market for coal and the export market for coal. This is because both merging parties are active in the production and sale of coal. In the residual domestic market the Commission submitted that the post-merger market shares will be less than 27%, with an accretion of 4%. The Commission thus came to the conclusion that given the low market share accretion the proposed transaction raises no competition concerns.
- [9] In relation to the export market the Commission submitted that Exxaro's export capacity at the RBCT will almost double post-merger, which will result in an increase in export capacity. The Commission submitted that although the increase was significant, it was however satisfied that post-merger other coal producers such as Glencore/Extrata, Anglo Coal and BHP Billiton that also hold capacity at the RBCT will continue to constrain the merged entity.

### **Eskom's Concern**

- [10] During its investigation the Commission was of the view that there appears to be a strong incentive for Exxaro to export more coal post-merger, to the detriment of local users such as Eskom. The Commission thus contacted Eskom to ascertain what its views

were on the proposed transaction. Eskom submitted that it had concerns with respect to the Leeuwpan Colliery that supplies Eskom's Majuba power station. Eskom submitted that it had a supply contract with Exxaro which was set to expire soon. After numerous engagements between Eskom and Exxaro the Commission was satisfied that the transaction was unlikely to result in an increased incentive on the part of Exxaro to export more at the detriment of local customers. The Commission thus decided to approve the proposed transaction without attaching any supply condition on Exxaro in relation to Eskom.

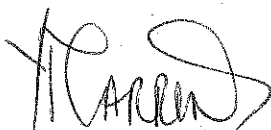
- [11] Mr Johan Bester, the General Manager of Eskom addressed us on the issue during the hearing and testified that Eskom was satisfied with the Commission not making the Leeuwpan contract a condition to the proposed transaction as Eskom had alternative suppliers.

#### **Public Interest**

- [12] The proposed transaction raises no public interest concerns.

#### **CONCLUSION**

- [13] The proposed transaction is unlikely to substantially prevent or lessen competition and we thus approve the transaction without conditions.



**Ms Yasmin Carrim**

09 February 2015

DATE

**Mr Anton Roskam and Ms Medi Mokuena concurring.**

Tribunal Researcher:

**Caroline Sserufusa**

For the merging parties:

Adv J Wilson SC instructed by Norton Rose

Fulbright and Mark Garden from Edward

Nathan Sonnenbergs

For the Commission:

Grace Mohammed