#

# COMPETITION TRIBUNAL OF SOUTH AFRICA

##  Case No: LM054May17

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In the large merger between:

**Main Street 1494 (Pty) Ltd** Primary Acquiring Firm

 and

**Masa Chrome Company (Pty) Ltd;**

**Lexshell 688 Investments (Pty) Ltd; and**

**The unincorporated Union Section Joint Venture** Primary Target Firms

Panel : Yasmin Carrim (Presiding Member)

: Anton Roskam (Tribunal Member)

: Andiswa Ndoni (Tribunal Member

Heard on : 13 September 2017

Order Issued on : 13 September 2017

Reasons Issued on : 13 October 2017

**Reasons for Decision**

**Approval**

1. On 13 September 2017, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction between Main Street 1494 (Pty) Ltd (“Main Street”) and Masa Chrome Company (Pty) Ltd (“Masa Chrome”), Lexshell 688 Investments (Pty) Ltd (“Lexshell 688”) and the unincorporated Union Section Joint Venture.
2. The reasons for approving the proposed transaction follow.

**Parties to the Proposed Transaction**

*Primary Acquiring Firm*

1. The primary acquiring firm is Main Street, a private company incorporated in accordance with the laws of the Republic of South Africa and is controlled by Siyanda Resources (Pty) Ltd (“Siyanda Resources”). Siyanda Resources is 70% owned by Siyanda Investments (Pty) Ltd (“Siyanda Investments”) and 30% owned by the Government Employees Pension Fund (“GEPF”). Siyanda Resources has interests in a number of firms, including Siyanda Chrome Investment (Pty) Ltd (“Siyanda Chrome”).
2. Siyanda Resources and its subsidiaries (including Main Street) are collectively referred to as “the Siyanda Group”.
3. Siyanda Resources is an investment holding company that has interests in a number of mining and mining related companies.[[1]](#footnote-1) Its investments are focused in, *inter alia*, coal production, milled and atomised dense media ferrosilicon powders, precious and base metals (manganese), energy (coal, uranium, oil and gas), industrial minerals and chrome. The GEPF also holds several mining interests.

*Primary Target Firms*

1. The primary target firms are Masa Chrome, Lexshell 688 and the unincorporated Union Section Joint Venture. Masa Chrome and Lexshell 688 are both private companies incorporated in accordance with the laws of the Republic of South Africa. Lexshell 688 and the unincorporated Union Section Joint Venture are referred to as the “Union Mine”. Masa Chrome and the Union Mine are collectively referred to as the “Target Firms”.
2. Masa Chrome is 50.1% owned by Rustenburg Platinum Mines Limited (“RPM”) and 49.9% owned by Siyanda Chrome. Union Mine is 85% owned by RPM and 15% owned by the Bakgatla Ba Kgafela Traditional Community through the Bakgatla special purpose vehicle, Lexshell 36 (Pty) Ltd (“the Bakgatla SPV”). RPM is a wholly owned subsidiary of Anglo American Platinum Limited.
3. Masa Chrome owns and operates a chrome recovery plant which is used for the production of chrome concentrate. Union Mine produces Platinum Group Metal (“PGM”) bearing concentrate (including platinum and palladium).

**Proposed Transaction and Rationale**

1. Main Street will acquire a 50.1% interest in Masa Chrome from RPM; an interest of [>75%] in the unincorporated Union Section Joint Venture from RPM; and an interest of [>75%] in Lexshell 688 from RPM.
2. Post-merger Siyanda Resources will exercise sole control over Masa Chrome.[[2]](#footnote-2)
3. With regards to Union Mine, upon implementation of the proposed transaction Main Street intends to transfer the Union Mine assets to Union Mine Subco, a subsidiary in which Main Street will hold 90% of the issued shares. Simultaneously, Siyanda Resources will establish an employee share ownership scheme, Union Mine ESOP, which will hold 7.3% of the issued shares in Union Mine Subco. The remaining 2.7% will be held by the Bakgatla Ba Kgafela Traditional Community through the Bakgatla SPV.
4. Furthermore, Siyanda Resources intends to acquire the [>10%] participation interest in the Union Mine Joint Venture from the Bakgatla SPV. Siyanda Resources will then transfer a majority of the issued shares in Main Street to the Siyanda Consortium[[3]](#footnote-3) and the remaining shares will be transferred to the the Bakgatla Ba Kgafela Traditional Community.
5. According to the merging parties, the proposed transaction will, *inter alia*, enable the acquiring group to acquire a high grade resource that has good quality stand-alone infrastructure and which requires low capital investment, and will allow Anglo American to focus its investment on capital options which are growing in value.

**Relevant Market and Impact on Competition**

1. The Commission considered the activities of the merging parties and found a horizontal relationship to exist as the Siyanda Group has a minority interest in and negative control over Anglo American Platinum’s Amandelbult Chrome Recovery Plant (“Amandelbult Plant”) which produces chrome ore in competition with Masa Chrome. The Siyanda Group also has minority shareholdings in Sibanye Platinum Mines and GEPF has minority interests in Dikgosi Tailings. Both Sibanye Platinum and Dikgosi Tailings are involved in the production and supply of platinum and palladium in competition with Union Mine. As such the Commission found a horizontal overlap in three relevant markets, namely (i) the international market for the production and supply of platinum; (ii) the international market for the production and supply of palladium; and (iii) the national market for the production and supply of chrome ore.
2. The Commission also found that the proposed transaction gives rise to a vertical overlap since the Siyanda Group markets all of the chrome produced by Masa Chrome.

*Horizontal Overlap*

1. In the international markets for the production and supply of platinum and palladium the Commission found that all of the firms account for less than 13% in the relevant markets and therefore concluded that the proposed transaction is unlikely to substantially prevent or lessen competition.
2. In the national market for the production and supply of chrome ore the Commission found that, based on market share estimates, both Masa Chrome and the Amandelbult Plant account for [<2%] of the market and thus the Commission is of the view that, given the small market shares of these firms, the proposed transaction is unlikely to substantially prevent or lessen competition.

*Vertical Overlap*

1. The Commission found that the proposed transaction is unlikely to result in any input foreclosure concerns since Masa Chrome accounts for less than 10% of the market. Further, customer foreclosure is unlikely to occur since current customers of Siyanda informed the Commission that they would not struggle to find alternative suppliers as the market for Chrome Ore is extremely diverse.
2. The Commission was therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets.
3. Based on the above, we concurred with the Commission’s finding that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.

**Information Exchange Concerns**

1. With regard to the minority shareholdings held by the Siyanda Group in Sibanye Platinum Mines and by GEPF in Dikgosi Tailings, and the ability of the Siyanda Group and GEPF to appoint directors to these firms, the Commission considered whether the merger could facilitate the sharing of competitively sensitive information since these firms operate in competition with Union Mine. The Commission, however, was not concerned about potential information exchange for the following two reasons:
	1. Union Mine has signed an agreement with RPM, as part of the merger agreement, in terms of which Union Mine will supply all of its PGMs to RPM post-merger for a 7 year period. As a result Union Mine will not compete with Sibanye Platinum Mines and Dikgosi Tailings.
	2. The information that will be at the disposal of the Siyanda Group and the GEPF is already available in the public domain given the nature of the PGM markets i.e. PGMs are commodity products which are traded in the open market.

**Public Interest**

1. The merging parties submit that there will be no duplication of positions arising as a result of the proposed transaction and therefore the merger will not have an adverse effect on employment. The merging parties also emphasised the positive effect the transaction will have in that it will result in a black economically empowered entity exerting sole control over Masa Chrome and the Union Mine, with an employee share scheme acquiring an interest.[[4]](#footnote-4) The merging parties also intend that the transaction will lead to an increase in participation of the Bakgatla Ba Kgafela Traditional Community in the Union Mine and in Masa Chrome.[[5]](#footnote-5)
2. The Commission received concerns from the Association of Mineworkers and Construction Union (“AMCU”), a union representing some of the employees of the Target Firms, suggesting that the proposed transaction may result in possible retrenchments. AMCU also submitted that previous retrenchments that occurred at Union Mine were linked to this merger.
3. The Commission, however, is of the view that the retrenchments at Union Mine occurred as a result of financial difficulties and were not merger-specific. With regards to concerns of future retrenchments the Commission found that, since the merger essentially does not present a direct horizontal overlap, it is unlikely to result in job duplications and therefore job losses.
4. At the hearing the Tribunal raised a number of questions relating to past and potential retrenchments. The Commission confirmed its finding that the merger is unlikely to negatively affect employment and that there have been a number of engagements between the merging parties and AMCU to address potential concerns. Further, AMCU was present at the hearing and did not raise any objections

**Conclusion**

1. In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market or raise any adverse public interest issues. Accordingly, we approved the proposed transaction unconditionally.

 13 October 2017

**Ms Yasmin Carrim DATE**

**Ms Andiswa Ndoni and Mr Anton Roskam concurring**

Tribunal Researcher: Hayley Lyle

For the merging parties: Paul Coetser of Werksmans Attorneys for the Acquiring Firm and Anton Roets of Nortons Inc for the Selling Firm.

For the Commission: Simphiwe Gumede

1. Transcript 13 September 2017 at page 3. [↑](#footnote-ref-1)
2. 50.1% through Main Street and 49.9% through Siyanda Chrome. [↑](#footnote-ref-2)
3. The Siyanda Consortium is still to be established in terms of a director’s resolution. [↑](#footnote-ref-3)
4. Merger Record, page 89. [↑](#footnote-ref-4)
5. Transcript 13 September 2017 at page 3. [↑](#footnote-ref-5)