

**COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

Case No: 10/AM/Jan12

In the matter between:

SUBLIME TECHNOLOGIES (PTY) LTD

Applicant

and

THABA CHUEU MINING (PTY) LTD

First Respondent

SAMQUARZ (PTY) LTD

Second Respondent

THE COMPETITION COMMISSION

Third Respondent

In re: the intermediate merger between:

THABA CHUEU MINING (PTY) LTD

Primary Acquiring Firm

and

SAMQUARZ (PTY) LTD

Primary Target Firm

Panel : Y Carrim (Presiding Member);
A Wessels (Tribunal Member); and
M Mokuena (Tribunal Member)

Heard on : 02 April 2012

Decided on : 02 April 2012

INTERVENTION ORDER

1. Further to the Applicant's submissions to intervene, the Tribunal hereby orders that the Applicant is granted leave to intervene, in terms of section 53(1)(c)(v) of the Competition Act (No. 89 of 1998), as amended, in the merger proceedings before the Tribunal in relation to the acquisition by Thaba Chueu Mining (Pty) Ltd of SamQuarz (Pty) Ltd under Case No: 10/AM/Jan12, on the following aspects:

- 1.1 The nature of the business of the Applicant and its utilisation of silica in the manufacture of Silicon Carbide;
- 1.2 The reliance of the Applicant's entire business on a supply of high quality silica due to the requirements of a customer base within the metallurgical, abrasive and refractory industry;
- 1.3 The positive financial impact that the Applicant's business has in respect of the job and export market;
- 1.4 The substitutability of Silicon Carbide with Ferrosilicon, a product manufactured by Rand Carbide, a division of the First Respondent;
- 1.5 The extent to which the Second Respondent is a dominant firm within the market for the supply of silica;
- 1.6 The risk of foreclosure that the Applicant faces and the resultant job losses which would ensue;
- 1.7 The devastating effect that excessive pricing would have on the Applicant's business; and
- 1.8 Any other matter ancillary to the fundamental representations as set out 1.1 to 1.7 above.

2. The Applicant's participation in the hearing shall include, without limitation, the right:

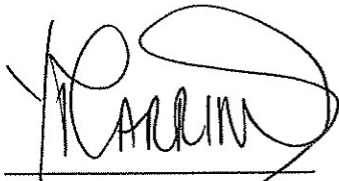
- 2.1 To attend pre-hearing conferences;
- 2.2 To adduce oral and documentary evidence;
- 2.3 To present argument;
- 2.4 To request the Tribunal to direct, summon and/or order any person to appear at the hearing;
- 2.5 To cross-examine the merging parties' witnesses;
- 2.6 To inspect any books, documents and other items filed by any of the other participants in the merger proceedings, including inspection by the Applicants' legal representatives and economic experts, subject to

appropriate confidentiality undertakings, of any information filed by any participants subject to a claim of confidentiality; and

2.7 To have access to the Commission's record that has been referred to the Tribunal in this matter, including access by the Applicants' legal representatives and economic experts, subject to appropriate confidentiality undertakings, to any information contained in the record which is subject to a claim of confidentiality.

3. Notwithstanding the orders in clause 1 and 2, the Applicant's actual participation in the main matter may, at the discretion of the Tribunal, be truncated for the sake of expedition and to avoid duplication or repetition of evidence.

4. There is no order as to costs.

A handwritten signature in black ink, appearing to read 'Yasmin Carrim', written over a horizontal line.

Yasmin Carrim
Presiding member

Concurring: Andreas Wessels and Medi Mokuena