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# COMPETITION TRIBUNAL OF SOUTH AFRICA

## Case No: 016741

## In the matter between:

RUSTENBURG PLATINUM MINES LIMITED Primary Acquiring Firm

### And

Certain mining rights and assets of

**CERTAIN RIGHTS AND ASSETS OF GA-PHASHA**

**PLATINUM MINE (PTY) LTD**

**AND**

**BOIKGANTSHO PLATINUM MINE (PTY) LTD** Primary Target Firms

Panel : Anton Roskam (Presiding Member) : Mondo Mazwai (Tribunal Member)

: Imraan Valodia (Tribunal Member)

Heard on : 28 August 2013

Order Issued on : 28 August 2013

Reasons Issued on : 6 November 2013

## Reasons for Decision

**Approval**

1. On 28 August 2013, The Competition Tribunal (“Tribunal”) unconditionally approved the acquisition by Rustenburg Platinum Mine Ltd of Certain Rights and Assets of GA-PHASHA Platinum Mine (Pty) Ltd and Boikgantsho Platinum Mine (Pty) Ltd.

2. The reasons for approving the proposed transaction follow.

**Parties to transaction**

3. The primary acquiring firm is Rustenburg Platinum Mines Limited (“RPM”). A public company incorporated in terms of the laws of South Africa. RPM is a wholly owned subsidiary of Anglo American Platinum Limited (”AAP”), a public company listed on the Johannesburg Stock Exchange. AAP is 78.9% owned by Anglo American South Africa Limited (“Anglo”). The top 3 shareholders in Anglo are: Investec Asset Management (4.57%), Regarding Capital Management (0.94%) and the Public Investment Corporation (3.51%).

4. The primary target firm constitutes certain assets (rights) which are being acquired from Ga-Phasha Platinum Mine (Pty) Ltd (“**Ga-Phasha**”) and Boikgantsho Platinum Mine (Pty) Ltd. The assets and mining rights are:

* A portion of the Ga-Phasha mining right relating to the farms De Kamp 507 KS (situated within the Sekhukhune magisterial district) and to portion 1 and the remaining extent of the farm Paschaskraal 466KS (situated within the Sekhukhune Magisterial District) including all rights and obligations related thereto (**“Ga-Phasha Mining Right”**); and
* Assets constituting prospecting rights, a portion of the converted mining right under DMR reference LP 50/ML with application number GO5120202 over, *inter alia* the farm Overysel 815 L.R. and the information in relation to the Overysel project (“**Boikgantsho Right**”).

5. Ga-Phasha mining right is owned by Ga-Phasha Platinum Mine (Pty) Ltd (“**Ga-Phasha**”) and the Boikgantsho Rights are owned by Boikgantsho Platinum Mine (Pty) Ltd (“**Boikgantsho**”).

6. Both Ga-Phasha and Boikgantsho are wholly owned subsidiaries of Bokoni Platinum Holdings (Pty) Ltd (“**Bokoni**”). Bokoni is controlled by Plateau Resources (Pty) Ltd (with a 51% shareholding) while RPM has a 49% shareholding in Bokoni.

7. Plateau Resources is 100% controlled by Atlatsa Resources Corporation (“Atlatsa”), a public company incorporated in terms of the laws of British Columbia, Canada with primary listing on the TSX, JSE and NYSE. Atlatsa is controlled by Pelawan Trust (nominee for Atlatsa Holdings (Pty) Ltd and Pelawan SPV (as nominee for RPM) together with community and Trusts.

8. The top 3 shareholders of Atlatsa Holdings (Pty) Ltd are Figure Eight Investments (Pty) Ltd (24%), Leswika Women’s Investments (Pty) Ltd (10%) and African Minerals Professionals (Pty) Ltd (17%).

9. Bokoni owns 100% of the shares in the following entities:

* Boikgantsho;
* Kwana Platinum Mine (Pty) Ltd (“Kwanda”);
* Ga-Phasha;
* Bokoni;
* Lebowa Platinum Mines (Pty) Ltd (“Lebowa”).

**Proposed Transaction**

10. The proposed transaction involves a 7 step process:

* 1. Step 1

10.1.1 Involves the overall restructuring and refinancing of Bokoni Holdings. In this step, RPM and Plateau will capitalize Bokoni by subscribing for equity shares in Bokoni. These shares are allocated in proportion to RPM and Plateau’s respective current shareholdings and as such, the ownership structure in respect of Bokoni will remain unchanged.

10.1.2 Bokoni will capitalize Bokoni Platinum Mine (Pty) Ltd with the proceeds of the first share subscription. Bokoni Platinum Mines will use the proceeds of this second subscription to settle the outstanding shareholder loan held by Bokoni. Bokoni will apply the proceeds from Bokoni Platinum Mine to settle the outstanding shareholder loans owing to RPM and Plateau.

10.2 Step 2

Ga-Phasha Plastinum Mine will sell the mining right in respect of the Paschaskraal Farm and the De Kamp Farm to RPM. The mining rights in respect of Avoca and Klipfontein, also held through Ga-Phasha have been sold to Bokoni Platinum Mine pursuant to a separate sale agreement.

10.3 Step 3

Boikgantsho will sell the Boikantsho Right and all of its assets including the mining right in respect of the Overysel Farm to RPM.

10.4 Step 4

Plateau will use the proceeds of the sales referred to above to settle an equivalent amount of the loan funding which is owed to RPM.

* 1. Step 5
     1. RPM will sell the Atlatsa common shares it receives through a conversion process to Atlatsa. RPM will then issue the Conversion Notice to Pelawan SPV (nominee for Atlatsa Holdco) in respect of the B1 preference shares held by RPM to convert into ordinary shares of Pelawan SPV. This Conversion Notice will automatically trigger the conversion of the B2 preference shares and the B3 preference shares held by Pelawan in Plateau into Plateau ordinary shares.
     2. As a result of the conversion of the B preference shares, Pelawan SPV will sell the ordinary shares that Pelawan SPV holds in Plateau pursuant to the conversion of the B2 preference shares and the B3 preference shares to Atlatsa. In exchange, Atlatsa will issue the following:

1. 115.8 million common shares in respect of the converted B2 preference shares; and
2. 111.6 million common shares in respect of the converted B3 preference shares (“Pelawan SPV Forward Sale Agreement”).
   * 1. Pelawan SPV will repurchase the ordinary shares held (as security) by RPM in Pelawan SPV pursuant to the conversion acquired by Pelawan SPV under the Pelawan SPV Forward Sale Agreement.
   1. Step 6

RPM will sell its 115.8 million common shares acquired under the Plateau Forward Sale Agreement to Atlatsa Holdings. These shares will be sold on loan account to Atlatsa Holdings. Pelawan Trust, RPM and Atlatsa will enter into a pledge and cession agreement in terms of which Atlatsa and Pelawan Trust pledge and cede all their shares in Atlatsa to RPM as security for the obligations of Atlatsa under the Sale and Purchase agreement.

* 1. Step 7

RPM will subscribe for 125 million Atlatsa common shares, which equates to 22.55% of the issued share capital of Atlatsa on a fully diluted basis, for a subscription price of R750 000.00 of the debt due to RPM. Atlatsa will use this to advance an inter-company loan to Plateau for the same amount, which Plateau will use to pay back more of the debt to RPM, reducing it to R1 billion. Upon completion of all of the above transaction steps, Atlatsa will owe RPM approximately R1 billion, a reduction of the debt from R3.45 billion to R1 R1billion. RPM will acquire sole control of the Ga-Phasha mining rights and Boikgantsho assets and mining rights

**Rationale**

11. RPM wishes to provide assistance to its empowerment partner (Plateau) by reducing the current debt owed by Plateau to RPM through the proposed transaction and ultimately Atlatsa, by acquiring mining rights that Atlatsa is unable to mine (for a cash consideration which will be used to repay Atlatsa’s debt) and by capitalizing a large portion of Atlatsa’s remaining debt.

12. Bokoni submits that: *“Atlatsa has experienced challenges in relation to the ramp up of certain key projects in the Atlatsa Group, mining flexibility and infrastructure constraints which have resulted in Atlatsa requiring financial assistance in order to service its acquisition debts.*

13*. Plateau (which is wholly owned by Atlatsa Resource Corporation) is indebted to RPM, which debt Plateau is to repay in full in the foreseeable future.*

14. *In terms of the proposed transaction, RPM will financially assist Plateau, and ultimately Atlatsa, by acquiring mineral rights that Atlatsa is unable to mine in return for a cash consideration and capitalizing a large part of Atlatsa’s remaining debt.”*

**Relevant Market and Impact on Competition**

15. The proposed transaction raises horizontal and vertical overlaps.

16. RPM and AAP are involved in the mining, production and refining of PGM’s. The target rights and assets consist of PGM resources yet to be mined. Therefore there is no current overlap with respect to the mining, production and refining of PGM’s. The horizontal overlap with respect to the mining of PGM’s will only arise once the target assets commence mining operations. It is therefore unnecessary to consider this level of the market any further as there is no overlap.

17. There is however a horizontal overlap between the activities of the merging parties in that RPM currently holds reserves and resources of PGMs. The target assets constitute PGM resources. The geographic market for PGM’s is international and prices are set (and quoted on Securities Exchanges) by the market.

18. According to the merging parties the overlap in PGM resources will result in RPM increasing its market share by 1.5%. Given the minimal accretion in market shares for PGM resources, the Commission and the parties submitted that the proposed transaction would not result in a significant change in the market structure. In addition, prices for PGMs are set internationally by the market, which will constrain the ability of RPM to raise prices. Accordingly, no competition concerns arise at a horizontal level.

19. Turning to the vertical aspect of the proposed transaction, RPM is involved in the upstream market for the mining of PGM’s and in the downstream market for the refining and sale of PGM’s. The target assets are resources that could be mined and refined in future and thereby creating a vertical overlap.

20. The parties submitted that even absent the merger, the PGM concentrate from the target assets would have been refined by RPM in terms of an existing agreement between the parties. The Commission concluded that there was unlikely to be any foreclosure concerns arising from the proposed acquisition and the transaction will have little effect on the downstream market for the refining of PGM’s, as the target assets would have been refined by RPM even absent the merger. Moreover, the customers and competitors contacted by the Commission during its investigation had no concerns regarding the transaction.

21. The proposed transaction does not involve the acquisition of mining operations, but mineral rights with the potential to conduct future operations. Thus the proposed transaction does not have any adverse effect on employment or any other public interest issue.

**Conclusion**

22. In light of the above we agree with the Commission's conclusion that the proposed transactions are unlikely to substantially prevent or lessen competition in the market for PGM’s. In addition, no public interest issues arise from the proposed transaction. Accordingly we approve the proposed transactions unconditionally.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 06 November 2013

**Mondo Mazwai** **DATE**

**Anton Roskam and Imraan Valodia concurring**

#### Tribunal Researcher: Derrick Bowles

For the merging parties: Webber Wentzel

(on behalf of the acquiring firm)

Cliffe Dekker Hofmeyr Inc.

(on behalf of the target firms)

For the Commission: Takalani Ramavhoya