COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 44/LM/May05

In the large merger between:

Anglo South Africa Capital (Pty) Ltd
Eyesizwe Coal (Pty) Ltd
Mafube Coal Mining (Pty) Ltd

and

Arnot North Mining Business and Additional Reserves

Reasons for Decision

APPROVAL

On 29 June 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Anglo South Africa Capital (Pty) Ltd, Eyesizwe Coal (Pty) Ltd, Mafube Coal Mining (Pty) Ltd and Arnot North Mining Business and Additional Reserves, in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

The Parties

1. The acquiring firm is Anglo South Africa Capital ("ASAC"). It is an investment holding company, controlled by Anglo South Africa (Pty) Ltd, ultimately controlled by Anglo American plc. ASAC has interests in gold, platinum, diamonds, coal, base metals, industrial minerals, ferrous metals and industry and forest products. ASAC has a 66% interest in Kumba and an 11% interest in Eyesizwe Holdings (Pty) Ltd.

2. Eyesizwe Holdings (Pty) Ltd directly holds 37.5% in Eyesizwe Mining (Pty) Ltd, which holds 66% of Eyesizwe Coal (Pty) Ltd. The latter is a BEE coal company, established in 1998, which carries on business in coal-mining and produces thermal coal.

3. Mafube Coal Mining has been created specifically as a special purpose vehicle for this transaction.

4. The primary target firm is Arnot North Mining Business. It is the mining business of Anglo Operations Limited ("AOL").[1] AOL is engaged in coal mining and the production of thermal coal, pulverized coal injection and metallurgical and coking coals to domestic and export customers. AOL's South African coal operations are conducted by 10 collieries located in Mpumalanga province. The collieries supply the export, domestic industrial and Eskom market segments, as well as Sasol.

5. The Anglo Group's interest in the Arnot North mining business is held through AOL. It includes Springboklaagte coal reserves and those located in Arnot North. The Arnot colliery provides coal to Eskom's Arnot power station through a technique known as "open-cast" mining.

6. Additional reserves refer to the expansion of the operation to a multi-product level. The parties advised that this would entail expansion of the mine to provide between 4-6 mtpa of coal for processing, in order to generate 3 million tons of export sales per annum.

The Merger Transaction

7. Initially, Mafube Coal will be established which will acquire assets from AOL. Post-merger Mafube will be jointly controlled by ASAC and Eyesizwe Coal.

8. Therefore post-merger, Anglo' s interest in Arnot North Mining will be held through ASAC's shareholding in Mafube.

9. In the second phase of the transaction, Mafube Coal will acquire AOL's additional mineral reserves to allow the expansion of its open-cast mining operation at the Arnot North coal mine, to facilitate its entry into the export market.

Rationale for the Transaction

10. AOL seeks to continue the process of the introduction of black economic empowerment into its coal mining business. Furthermore AOL's rights to supply Eskom's Arnot North power station with thermal coal at a fixed price is to be assigned to Mafube Coal. Presently, it supplies Eskom's Arnot North power station for 1.18mtpa.

11. AOL has identified the coal export opportunities from the Arnot North reserves. The joint venture therefore enables them, along with Eyesizwe to jointly explore the feasibility of expanding the mine to export coal by creating a "multi-product" operations. It is envisaged that long-term, this

[1] AOL is a wholly owned subsidiary of Anglo South Africa (Pty) Ltd, in turn controlled by Anglo American Corporation of SA.

mine will only cater to the export market and to Eskom's needs under its existing supply contract.[2]

12. At the hearing, the parties advised that this transaction affords ASAC an opportunity for more efficient sourcing of the coal whilst it provides Eyesizwe with the means to be a larger player in the export market.

The relevant product market

13. Bituminous and Anthracite are the only coal types mined in South Africa.

14. Of the broad market for bituminous coal, it can be divided into thermal (also known as "steam" coal) and metallurgical (also know as "coking" coal). Eyesizwe Coal and AOL produce thermal coal, which is used to create steam for power generation.

15. We agree with the Commission that the relevant product market is that for the production of thermal coal.

The relevant geographical market

16. Seventy percent of South Africa's coal production is used domestically, while thirty percent is exported. Most is mined in the Free State and Mpumalanga. Imports of thermal coal do not constrain the price of locally produced thermal coal.

17. The Commission therefore correctly concludes that the relevant geographic market for thermal coal is confined to South Africa.

Competition Analysis

18. Post-merger, Mafube Coal will account for only approximately 1% of the market.

19. Both parties, AOL and Eyesizwe Coal, will continue to provide their thermal coal productions to the "closed market". The Arnot colliery only supplies the Eskom Arnot power station in terms of a long-term supply agreement. Hence Eskom would be the only affected customer. Therefore the structure of the thermal coal market as a whole remains unaffected.

20. The impact of the merger on the thermal coal market is minimal as both Eyesizwe Coal and ASAC will continue to operate independently and supply coal from their other collieries to the domestic market. Furthermore, prices in respect of the supply contract with Eskom are fixed in accordance with a formula which provides for an annual increase. This transaction does not affect prices in the market at all.

[2] See Parties' Competitiveness Report, page 662 of Record.

21. We were slightly concerned about the impact of this transaction on the other coal suppliers, insofar as this transaction might entrench an exclusive relationship and potentially foreclose other suppliers from having access to customers. The parties state that Eskom and Sasol are the two major local customers, accounting for nearly 90% of the coal uptake in South Africa. However, the Commission assured us that they had contacted some of the other coal producers who indicated that they did not have concerns with this transaction. It seems that, in cases where there is a shortfall of supply, Eskom boks to obtain supplies from the spot market, and sources from smaller coal producers on a tender and offer basis. Therefore whichever supplier can supply at the best price wins the contract. Usually this is a function of the supplier's geographic proximity to the power station. Also, the smaller coal producers have other outlets for their coal, in the form of Eskom's other power stations.

Public Interest Aspects

22. The transaction will facilitate a BEE player entering into this market. It is further envisaged by the parties that 500 new jobs will be created.

Conclusion

We conclude that the merger will not lead to a substantial lessening or prevention of competition.

The Tribunal therefore approves the transaction unconditionally. There are no public interest concerns which would alter this conclusion, in fact the transaction is positive in this regard.

_______________ 6 July 2005

Y. Carrim Date

Concurring: M. Mokoena, U. Bhoola

For the merging parties:	Webber Wentzel Bowens Attorneys
For the Commission:	L. Khumalo ,Competition Commission