

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 82 /LM/Sep05

In The Large Merger Between:

Rustenburg Platinum Mines Ltd

And

Aquarius Platinum (South Africa) (Pty) Ltd

Reasons for Decision

Approval

1. On the 17 November 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Rustenburg Platinum Mines Ltd and Aquarius Platinum (South Africa) (Pty) Ltd. The reasons for this decision follow.

Background

2. In 2003 Rustenburg Platinum Mines Ltd ("Rustenburg Platinum") and Aquarius Platinum (South Africa) (Pty) Ltd ("Aquarius Platinum") entered into a pooling and sharing agreement,¹ which envisaged the pooling of the Kroondal Mine – owned by Aquarius Platinum - and an adjacent area – owned by Rustenburg Platinum – as well as the equal sharing of all the costs and proceeds from mining in both areas. That agreement will be referred to as the "Kroondal PSA".²

The current transaction

3. The current transaction involves two steps:
 - 3.1. Firstly, Rustenburg Platinum will alter its contribution to the Kroondal PSA by replacing an area which originally formed part of the agreement, with another adjacent area. This step fell below the relevant merger thresholds and was therefore not notified. We will not analyse this arrangement any further.
 - 3.2. Second, the parties will conclude the Marikana Pooling and Sharing Agreement ("Marikana Venture"). The areas included in this agreement will be:
 - 3.2.1. the area which was removed by Rustenburg Platinum from the Kroondal PSA;

¹ That transaction was approved by the Tribunal under Case Number: 35/LM/Jul03.

² Although through a management committee, Rustenburg Platinum and Aquarius Platinum jointly controlled the assets, each retained ownership over their respective assets.

- 3.2.2. the Brakspruit and Wonderkop mineral areas – owned by Rustenburg Platinum; and
 - 3.2.3. the Marikana plant³ and the Marikana old order mineral rights – owned by Aquarius Platinum.⁴
4. As in the Kroondal PSA, a Management Committee, consisting of four representatives each from Rustenburg Platinum and Aquarius Platinum, will jointly control the assets comprising the Marikana Venture.

Rationale for the transaction

5. The parties wish to pool their resources in order to carry out mining activities at or in the vicinity of the Marikana mine and in so doing optimize the cost effectiveness of their respective mining operations.

The merging parties' activities

6. Rustenburg Platinum is controlled by Anglo Platinum,⁵ which is reported to be the world's leading platinum producer, listed on the JSE Securities Exchange South Africa and the London Stock Exchange. Anglo Platinum's primary operations comprise various mines, two smelting complexes, a base metals refinery and a precious metals refinery, situated in Limpopo, Northwest and Mpumalanga.
7. Rustenburg Platinum holds a number of mineral rights in the Bushveld Complex in the Limpopo, North West and Mpumalanga Provinces and is engaged in mining, smelting, base metal refining and precious metal refining. Refining services of all of Anglo Platinum's mines and joint ventures are conducted by Precious Metals Refiners ("PMR"), a division of Rustenburg Platinum. PMR does not refine for any third party.
8. Aquarius Platinum is the South African subsidiary of the Australian-based Aquarius Platinum Ltd and has the following mining operations in South Africa: the Kroondal mine located in the Bushveld Complex in the North West Province, the Marikana mine located 8 km west of Kroondal and the Everest Mine located in the Bushveld Complex in Mpumalanga.

Competition Analysis

9. The transaction has both a horizontal and vertical effect.

A: Horizontal Effect

10. According to the Commission, both parties are involved in the mining and concentrating of palladium, platinum, iridium, rhodium and ruthenium. Along with osmium these metals are known as the Platinum Group Metals (PGMs). The Commission defines the relevant market as the international market for the mining and concentrating of PGMs. For these purposes, we agree with the Commission's definition of the relevant market. Even though

³ This will include the Marikana concentrator, movable assets and other mining infrastructure.

⁴ Full details on the exact outlay of the areas included in both the Kroondal PSA and the Marikana PSA can be found on page 906 of the Record.

⁵ Ultimately owned by Anglo American Plc.

the parties are not involved in the production of osmium, for ease of reference we will refer to the relevant products as PGMs. The horizontal effect will be analysed further below.

Market Shares and Concentration

11. In order to assess the impact of the transaction on the relevant market, the Commission looked at the effect of combining the merging parties' market shares in the separate categories of PGMs. The following tables for platinum and rhodium were sourced from the Johnson Matthey Report, "Platinum 2005", while the merging parties provided the data for palladium, iridium, osmium and ruthenium.⁶

Platinum	2004 Supply (million ounces)	Implied Worldwide market share (%)
Anglo Platinum	2.45	37.69
Impala Platinum	1.09	16.77
Lonmin Platinum	0.94	14.46
Northam Platinum	0.20	3.08
Aquarius Platinum	0.21	3.23
Southern Platinum	0.09	1.38
Others - South Africa	0.05	0.77
Others - Worldwide	1.47	22.62
Total	6.50	100

12. Post merger market share for platinum will be 40,92%.

Rhodium	Refined Production (ounces)	Estimated Market share (%)
Anglo Platinum	253 300	35
Impala Platinum	148 800	20
Lonmin Platinum	131 000	18
Aquarius Platinum	19 817 ⁷	3
Others	36 183	5
Total (South Africa)	589 100	81
Russia	105 000	15
North America	17 000	2
Others	15 000	2
Total (Global)	726 100	100

13. Post merger the merged entity will enjoy a 38% share of the rhodium market.

⁶ Page 1476 of the Record, Correspondence between Deneys Reitz and the Commission dated 30 September 2005.

⁷ From page 1477 of the Record. The Johnson Matthey report did not contain production figures for Aquarius Platinum. The figures contained in this table was sourced from the correspondence referred to in footnote 7 above.

Palladium

	Production (ounces)	Market share(%)
Rustenburg Platinum	1 281 000	16.8
Aquarius Platinum	59 261	0.8
Others	6 279 739	82.4
Worldwide Total	7 620 000	100

Ruthenium

	Production (ounces)	Market share(%)
Rustenburg Platinum	330 300	38.2
Aquarius Platinum	33 343	3.9
Others	501 357	57.9
Worldwide Total	865 000	100

Iridium

	Production (ounces)	Market share(%)
Rustenburg Platinum	78 600	47.9
Aquarius Platinum	7 925	4.8
Others	77 475	47.3
Worldwide Total	164 000	100

14. The post merger market shares for palladium, ruthenium and iridium will be 17.6%, 42,1% and 52,7% respectively.
15. We have previously noted in relation to similar transactions i.e. Pooling and sharing ventures in the PGM industry, that these transactions enable parties to such agreements to exploit their respective PGM rights, but does not result in any change of control over the parties themselves except over a small portion of production. We find no reason to depart from the approach adopted in our previous decisions⁸ involving this sector and accordingly find that despite the seemingly high combined market shares, the transaction does not have the effect of significantly altering the competitive landscape.

B: Vertical Effect

16. In addition to being a PGM producer, Rustenburg Platinum is also involved in refining through PMR. The transaction will therefore result in a downstream refiner acquiring control over an upstream supplier's output of concentrate. In South Africa, there are three companies which are involved in PGM refining, viz. Anglo Platinum through PMR, Impala Platinum through Impala Refining Services ("IRS") and Lonmin Platinum through its

⁸Aquarius platinum (SA) (Pty) Ltd / Rustenburg Platinum Mines Limited Case No.: 35/LM/Jul03; Lonmin Plc and Southern Platinum Corp, Southern Platinum (Cayman Islands) Ltd, Messina Ltd and Messina Platinum Mines Ltd 41/LM/May05; Rustenburg Platinum Mines and Eastern Platinum Mines Ltd "Pandora Joint Venture" and Rustenburg Platinum Mines Ltd Case No: 55/LM/Aug02; Two Rivers Platinum Limited And Assmang Limited Case No: 54/LM/Sep01; Rustenburg Platinum Mines Ltd & The royal Bafokeng Nation in their capacity as the Participants in the "Bafokeng Rasimone Joint Venture" and Rustenburg Platinum Mines Ltd and the Royal Bafokeng Nation Case No: 78/LM/Oct02.

subsidiary WPL. Global smelters and refiners to whom concentrate can be sent include Falconbridge, Heraeus, Hoboken, Implats, INCO, Johnson Matthey and UMICORE.⁹

17. As stated above PMR currently does not conduct refining services for any third party. Aquarius Platinum does not have refining capabilities and has concluded an off-take agreement with IRS in respect of the PGM concentrate it produces. The current transaction will not effect this arrangement and according to the parties, practically all concentrate derived from the existing Marikana plant will continue to be delivered to IRS, until the contractual obligation has been satisfied. Only thereafter will the concentrate produced by the Marikana Venture from the existing Aquarius Platinum plant and a new Rustenburg Platinum plant (to be constructed) will be delivered to PMR. According to the parties, this additional production will relate mainly to the Rustenburg Platinum rights in any event and in no way binds Aquarius Platinum to sell to any party the concentrate from its operations that do not form part of the Marikana Venture. The parties further submit that the vertical effect of the transaction is minimal as Marikana accounted for 1,29% of worldwide production in 2004 and 1,67% of South African production in the same year.¹⁰
18. We are satisfied that the transaction will not significantly alter the existing vertical relationships.

Conclusion

19. The transaction is estimated to extend the life of the Marikana mine and the parties estimate that the increase in PGM production would lead to the creation of approximately 900 job opportunities at the Marikana mine.
20. In light of the above, we find that the transaction is unlikely to substantially prevent or lessen competition in the PGM industry. We accordingly approve the transaction for the above reasons.

Y Carrim

13 February 2006
Date

Concurring: N Manoim and M Holden

For the merging parties: V Kooejee (Deneys Reitz)

For the Commission: G Mudzanani (Mergers and Acquisitions)

⁹ From page 928 of the Record.

¹⁰ With regard to the Brakspruit and Wonderkop areas which Rustenburg Platinum is contributing to the Marikana Venture, these have not previously been mined and therefore have not pre-merger been committed to any third party for refining.