

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 98/LM/Sep07

In the matter between:

**Mvelaphanda Resources Ltd**

Acquiring Firm

And

**Northam Platinum Ltd**

Target Firm

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Panel : D Lewis (Presiding Member), Y Carrim (Tribunal Member) and M Mokuena (Tribunal Member)

Heard On : 12 December 2007

Decided on : 12 December 2007

Reasons Issued on : 11 February 2008

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### Reasons for decision

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#### Approval

[1] On 12 December 2007 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Mvelaphanda Resources Ltd and Northam Platinum Ltd unconditionally. The reasons appear below.

#### Parties

[2] The acquiring firm is Mvelaphanda Resources Ltd ("Mvela Resources") a company incorporated under the laws of South Africa whose shares are listed on the Johannesburg Stock Exchange Limited. Mvela Resources is not directly or indirectly controlled by any one person or a firm.<sup>1</sup>

[3] The target firm is Northam Platinum Ltd ("Northam"), a company incorporated under the laws of South Africa whose shares are listed on the Johannesburg Stock Exchange Limited. No single firm or person controls Northam.<sup>2</sup>

#### Transaction

[4] In terms of the proposed transaction Mvela Resources will, through Mvela Equity and Mvela Platinum acquire control over Northam and the latter will in turn acquire control over Khumama and Micawber 278 (Pty) Ltd ("Micawber").<sup>3</sup> Mvela Resources through Mvela Debt and Mvela Equity currently holds approximately 21.8% and Anglo Platinum Limited ("APL"), through Rustenburg Platinum Mines Limited ("RPML") currently holds 22.4%

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<sup>1</sup> For a list of the largest shareholders in Mvela Resources see pages 42-43 of the record.

<sup>2</sup> For a list of the largest shareholders in Northam see pages 45-46 of the record

<sup>3</sup> Khumama is a wholly owned subsidiary of Mvelaphanda and Micawber is jointly controlled by Anglo Platinum Limited and Plimline Investments (Pty)Ltd ("Plimline")

of Northam. Post merger Mvela Resources will hold approximately 63.4% of the entire issued share capital in Northam and Northam will in turn hold 100% of the issued shares in Khumama and through Khumama, 100% of the issued shares of Micawber and therefore Booyendal Mining Rights.

### **Rationale**

[5] The parties have submitted that the rationale for the proposed transaction is to give effect to the parties' commitment to the transformation of South Africa and to allow APL to comply with the equity ownership requirements of the broad-based socio economic empowerment charter for the South African mining industry. It was further submitted that the parties wish to introduce historically disadvantaged women into the platinum mining industry.

### **Parties' Activities**

[6] Mvela Resources is a broad-based, empowerment mining and minerals investment company. The group has significant investments in high quality South African precious metal and mineral companies with operating investments in assets in the gold, platinum and diamond sectors.<sup>4</sup> In addition Mvela Resources has a number of exploration and development projects and joint ventures in sub-Saharan Africa.<sup>5</sup>

[7] Northam currently operates a platinum group metals mine at upper end of the western limb of South African Bushveld Complex. The target firm also conducts mining operations, exploiting two reefs (the Merensky and UG2 Reefs) via a twin shaft system.

### **Competition Analysis**

[8] According to the Commission there is currently no overlap in the activities of the merging parties as the acquiring firm is not involved in platinum mining save to their minority share in Northam. The Commission however examined the effects on competition that the proposed merger would have on the platinum market as a result of the amalgamation of the platinum mining rights of the acquiring firm and the platinum mining activities of the target firm. The Commission also considered the effect that the acquiring firm's joint ventures would have on competition in the platinum market. In both instances the Commission's investigation found that the amalgamation of the platinum rights of the acquiring firm as well as joint ventures in the platinum mining would have an effect of increasing the parties' market share by 2%, from 3% to 5% once they are mined. We therefore agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in the platinum mining market as the increase in the market shares is insignificant.

[9] The Commission also considered the activities of the target firm in the platinum refinery market (metallurgical processing). In its analysis the Commission found that metallurgical processing comprises of four phases, namely: concentration, smelting, base metal removal and refining. An examination of this market by the Commission found that the

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<sup>4</sup> Their interests are as follows: a deferred 15% stake in South African assets of Gold Fields; a 21.8% stake in Northam, a platinum group metal producer and a 20.7% in Trans Hex, an integrated diamond exploration, mining and marketing company.

<sup>5</sup> For more details on these projects and joint ventures, see pages 4-5 of the Commission's Recommendations.

target firm's competitors are Anglo Platinum, Impala Platinum and Lonmin in respect of the first three phases.<sup>6</sup> The Commission's investigation revealed that in the platinum refinery market the market shares ranges between 32% to 51% for Anglo Platinum, 15 to 19% for Impala Platinum and 11 to 17% for Lonmin and the remaining players including Northam have less than 10%. We therefore agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in the refinery market as there are significant players that refine platinum in terms of different stages.

### **Public Interest Issues**

[10]. There are no public interest issues.

### **Conclusion**

[11]. Based on the above, we find that the transaction will not result in a substantial lessening or prevention of competition in the identified markets and is accordingly approved unconditionally.

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Y Carrim  
Tribunal Member

**11 February 2008**  
**Date**

D Lewis and M Mokuena concurring.

Tribunal Researcher : J Ngobeni  
For the merging parties : Bowman Gilfillan and Brink Cohen le Roux  
For the Commission : Mthunzi Mashaba

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<sup>6</sup> These three stages are concentration, smelting and base metal removal. According to the Commission Anglo Platinum, Impala Platinum and Lonmin are also involved, in addition to the above mentioned processes, in the final stage of processing which is refinery.