



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: LM139Aug17**

In the matter between:

**Izimbiwa Associated Companies (Pty) Ltd**

**Primary Acquiring Firm**

and

**Moxitorque Investments (Pty) Ltd**

**Primary Target Firm**

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Panel : Yasmin Carrim (Presiding Member)  
: Fiona Tregenna (Tribunal Member)  
: Enver Daniels (Tribunal Member)  
Heard on : 20 September 2017  
Order Issued on : 20 September 2017  
Reasons Issued on : 20 October 2017

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### Reasons for Decision

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#### Approval

- [1] On 06 September 2017, the Competition Tribunal ("Tribunal") unconditionally approved the transaction involving Izimbiwa Associated Companies (Pty) Ltd and Moxitorque Investments (Pty) Ltd.
- [2] The reasons for approving the proposed transaction follow.

## **Parties to the proposed transaction**

### *Primary acquiring firm*

- [3] The primary acquiring firm is Izimbiwa Associated Companies (Pty) Ltd (“Izimbiwa”) an investment holding company and a wholly-owned subsidiary of the Phembani Group (Pty) Ltd.
- [4] Izimbiwa controls a number of entities in South Africa including Phembani Energy (Pty) Ltd, Izimbiwa Coal (Pty) Ltd, Lexshell 140 (Pty) Ltd, Tutuwa Strategic Holdings 1 (Pty) Ltd and Phembani Solar Energy 1 (Pty) Ltd.

### *Primary target firm*

- [5] The primary target firm is Moxitorque Investments (Pty) Ltd (“Moxitorque”), an investment holding company incorporated in accordance with the laws of the Republic of South Africa.
- [6] Moxitorque does not control any firms, however it does hold a non-controlling shareholding of 16.46% in Lexshell Investments 827 (Pty) Ltd (“Lexshell 827”) and 17.08% in Lexshell Investments 826 (Pty) Ltd (“Lexshell 826”).<sup>1</sup>
- [7] Lexshell 827 controls Lexshell 826 which wholly owns Umcebo Mining (Pty) Ltd (“Umcebo Mining”).
- [8] Moxitorque is controlled by the Smit Family Trust which holds an 80% shareholding in the company. The remaining 20% shareholding is held by the JP Familie Trust.

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<sup>1</sup> Moxitorque is directly controlled by the Smit Trust.

## **Proposed transaction and rationale**

- [9] In terms of the proposed transaction, Moxitorque will be sold to Izimbiwa by the Smith Family Trust and the JP Smit Familie Trust.
- [10] As a result of this, Izimbiwa will acquire a non-controlling shareholding in Umcebo Mining through Moxitorque's interest in Lexshell 826.
- [11] The merging parties informed us during the hearing that the proposed transaction is phase one of a broader transaction which will ultimately result in Izimbiwa acquiring control of Umcebo Mining. The merging parties submitted further that the second phase of the transaction will be notified to the Commission as and when the parties conclude the transaction.
- [12] Izimbiwa submits that the target firm, Moxitorque presents it with a perfect opportunity to increase its exposure in the coal industry. Furthermore, Izimbiwa also submits that the proposed transaction is in line with the Phembani group of companies' growth strategy.
- [13] Moxitorque submits that the proposed transaction presents it with an opportunity to exit the investment and allow it to pursue other interests.

## **Impact on competition**

- [14] Izimbiwa is an investment holding company with an emphasis on investments in, and the operating of, businesses and interest which fall within the oil, gas, minerals, mineral resources, metals and infrastructure related industries. Moxitorque is an investment holding company and does control any firms.<sup>2</sup>
- [15] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction does not present any

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<sup>2</sup> Moxitorque does not conduct any other business other than holding non-controlling interest in Lexshell 826 (Pty) Ltd and Lexshell 827 (Pty) Ltd.

horizontal overlap in the investments activities of Izimbiwa and Moxitorque in relation to coal. Furthermore the Commission submits that there is no business relationship between the merging parties in South Africa. As a result, the Commission is of the view that the proposed transaction is unlikely to lessen or prevent competition in any market in South Africa.

### **Public interest**

[16] The merging parties confirmed that the proposed transaction will not have any negative effect on employment in South Africa.

[17] The proposed transaction further raises no other public interest concerns.

### **Conclusion**

[18] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve of the proposed transaction unconditionally.



**Ms Yasmin Carrim**

**20 October 2017**

**DATE**

**Prof Fiona Tregenna and Mr Enver Daniels concurring**

Tribunal Case Manager : Ms Busisiwe Masina  
For the merging parties : Ms Mmadika Moloji of Webber Wentzel  
For the Commission : Rethabile Ncheche