

**Competition Tribunal prohibits merger between Imerys South Africa (Pty) Limited and Andalusite Resources (Pty) Limited**

The Competition Tribunal (“Tribunal”) has today prohibited the proposed acquisition by Imerys South Africa (Pty) Limited (“Imerys”) of Andalusite Resources (Pty) Limited (“AR”).

In terms of the proposed transaction, Imerys intended acquiring the entire issued share capital of AR. Imerys is controlled by a French company, Imerys Refractory Minerals Glomel SA (formerly known as Damrec SAS).

Imerys and AR are involved in the mining, processing and sale of andalusite. These two parties are the only miners and suppliers of andalusite in South Africa. Andalusite forms part of the alumina-silicate group of compounds. Alumina-silicates possess heat-resistant properties and are widely used in the production of refractories for high-temperature industrial processes. In the metallurgical industry, refractories are used in applications where a supporting furnace structure must be protected from the temperature required for the metallurgical process, or where heat loss must be limited. Refractories are important to the local steel production industry.

There are currently two main andalusite deposits mined in South Africa, one near Burgersfort in eastern Limpopo and the other at Thabazimbi in western Limpopo. Imerys has mines and plants at both ore deposits (Annesley at Burgersfort and Rhino at Thabazimbi); AR has a mine and plant at the Thabazimbi deposit.

Both Imerys and AR, more specifically, mine and supply fine and medium grade (0-3mm) andalusite, which they supply to producers of refractories both in South Africa and abroad.

The proposed acquisition represents a so-called “two to one” merger, i.e. it would lead to a monopoly in the mining, processing and sale of andalusite in South Africa, and also a near-monopoly in the global sale of andalusite. Barriers to entry in the mining, processing and sale of andalusite in South Africa are high and there is no realistic prospect of new entry in the foreseeable future in this area.

The proposed transaction therefore involves a permanent structural shift in the andalusite market reducing the number of participants in South Africa from two to one, resulting in a substantial prevention or lessening of competition. Moreover, the proposed transaction raises significant public interest concerns, specifically from a small business and an industrial sector perspective.

The matter, which is an intermediate merger, was notified to the Competition Commission (“Commission”) in January 2015. During its investigation the Commission received numerous concerns from both producers and end-users of andalusite-based refractories regarding the effects of the proposed merger. In particular, producers and users were concerned that, as a result of the proposed merger, they would be deprived of a competitive choice between Imerys and AR, and that the merged entity would increase the price of andalusite and/ or divert andalusite sales from South Africa to export markets.

The Commission, after investigating the proposed merger, prohibited its implementation on 16 April 2015.

The merging parties then on 04 May 2015 referred the matter to the Tribunal requesting the consideration of the prohibited merger. The hearing took place over several months in 2015 and 2016 and the last submissions from the merging parties were filed on 24 August 2016.

The Tribunal has now prohibited the transaction. Although the merging parties proposed certain behavioural conditions in an attempt to address the concerns, these proposed conditions in our view are inadequate and do not address the structural market change resulting from the proposed transaction. Furthermore, the proposed behavioural conditions are impractical from a monitoring and compliance perspective and would be unduly onerous on the Commission to effectively monitor.

The Tribunal will issue its full reasons for prohibiting the proposed transaction in due course.

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