COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:27/LM/MAR12
(014712)

In the matter between:

Rio Tinto International Holdings Ltd	Acquiring Firm
And	
Richards Bay Titanium Holdings (Pty) Ltd and Richards Bay Mining Holdings (Pty) Ltd	Target Firm

---

Panel	:	Norman Manoim (Presiding Member), Andreas Wessels (Tribunal Member) Yasmin Carrim (Tribunal Member)
Heard on	:	19 June 2012
Order issued on	:	19 June 2012
Reasons issued on	:	19 July 2012

Reasons for Decision

Approval

[1] On 19 June 2012 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Rio Tinto International Holdings Ltd, and Richards Bay Titanium Holdings (Pty) Ltd and Richards Bay Mining Holdings (Pty) Ltd. The reasons for approving the proposed transaction follow below.

Parties to transaction

[2] The primary acquiring firm is Rio Tinto International Holdings Ltd ("RTIH"). RTIH is a wholly owned subsidiary of Rio Tinto Group ("Rio Tinto"). Rio Tinto combines Rio Tinto plc, listed on the London Stock Exchange, and Rio Tinto Limited, listed on the Australian Stock Exchange, in a dual listed companies structure to form a single economic entity. Rio Tinto is not directly or indirectly owned or controlled by another entity.

[3] The primary target firms are Richards Bay Titanium Holdings (Pty) Ltd ("RB Titanium Holdings") and Richards Bay Mining Holdings (Pty) Ltd ("RB Mining Holdings"), both private companies incorporated in terms of the company laws of the Republic of South Africa. RB Titanium Holdings and RB Mining Holdings are jointly owned by Rio Tinto and BHP Billiton in a shareholding ratio of 51:49 and 49:51 respectively. These two holding companies jointly control Richard Bay Minerals ("RBM").

[4] RBM is a joint venture between Rio Tinto and BHP Billiton, and is comprised of two operating companies: Richards Bay Mining ("RB Mining") and Richards Bay Titanium ("RB Titanium"). RB Mining Holdings and RB Titanium Holdings hold 74% in RB Mining and RB Titanium respectively. The remaining 26% in both RB Mining and RB Titanium is owned by Blue Horizon Investments (24%) and RBM Employees Share Participation Trust (2%).

Activities of merging parties

[5] Rio Tinto is a global mining group and comprises of five principal product groups, namely Aluminium, Copper, Diamonds and Minerals, Energy and Iron Ore. For the purposes of this transaction, its relevant activity is as a global producer of titanium dioxide (TiO_2) feedstocks, zircon and high purity pig iron (HPPI) from mined mineral sands. This activity falls under its Iron and Titanium division which is within the Diamond and Minerals product group. Rio Tinto has three mineral sands operations:

a. Rio Tinto, Fer et Titane ("RTFT") owns and operates an open pit mine located in Canada. RTFT produces TiO_2 feedstocks, HPPI, steel and metal powders.
b. QIT Madagascar Minerals SA ("QMM") owns and operates a mineral sands mining and separation operation which produces ilmenite (contains TiO_2 and iron) and zirsill (a zircon-rich mineral).
c. RBM, the target firm.

[6] Rio Tinto does not sell TiO_2 feedstocks, zircon or HPPI from RTFT or QMM in South Africa.

[7] RBM is a mineral sands producer situated north of Richards Bay in South Africa. RBM mines, separates, beneficiates and smelts mineral sands products including ilmenite, rutile (contains TiO_2) and zircon. RBM's two operating companies function as a single business managed by Rio Tinto under a single management agreement concluded in 2008.In that 2008 transaction, Rio Tinto was also engaged as the exclusive worldwide sales and marketing agent for all RBM products. The agreement was notified and unconditionally approved by the Tribunal in 2009.[1]

Proposed transaction and rationale for transaction

[8] The proposed transaction entails Rio Tinto acquiring sole control of RBM through the acquisition of all of BHP Billiton's interests in RBM. This will give Rio Tinto 100% ownership of both RB Mining Holdings and RB Titanium Holdings, and indirectly increase its interest in both RB Mining and RB Titanium from 37% to 74%.

[9] According to Rio Tinto the transaction will enable it to increase its economic exposure to titanium dioxide feedstock and zircon. Rio Tinto believes these products have strong long term growth potential with China[2] and the Asia-Pacific driving global demand, and have the capacity to

[1] Rio Tinto Plc/Rio Tinto Ltd/BHP Billiton South Africa Holdings BV and Richards Bay Mining (Pty) Ltd and Richards Bay Titanium (Pty) Ltd, case number: 05/LM/Jan09
[2] See pages 322 and 691 of the Record

generate a positive return on a risk-adjusted basis, especially given the global supply deficit which is forecast to continue and the relatively inelastic demand.

[10] From BHP Billiton's perspective, it wishes to exit the titanium minerals industry.

Relevant markets and impact on competition

Horizontal Analysis

[11] The Commission found that there is no overlap in the activities of the merging parties within South Africa because RBM is Rio Tinto's sole mineral sands interest in South Africa, and Rio Tinto does not sell mineral sands products from its Canadian or Madagascan operations in South Africa. There is, however, a horizontal overlap in the activities of the merging parties with regard to the mining and production of TiO_2 feedstocks, zircon and HPPI at a global level. The Commission thus determined that the relevant product markets were the markets for TiO_2 feedstocks, zircon and HPPI, but did not define the exact parameters of the three markets.

[12] The Commission adopted a similar approach to that of the European Commission and the Tribunal in the *Anglo American/Kumba Resources* merger,[3] and that of the Tribunal in the 2008 *Rio Tinto/BHP Billiton and RBM* restructuring[4] where the product and geographic market definitions were left open because there were no competition concerns. In this case, the merger does not change the structure of the market, either at the national or global level, because it is a move from joint to sole control in circumstances where the acquiring firm already exercises managerial control over RBM's operations and markets RBM's products with its own. There is thus no loss of an independent sales channel, and no market

[3]COMP/M.3276, *Anglo American/Kumba Resources; Anglo American/Kumba Resources,* case number 46/LM/Jun02
[4]*Rio Tinto Plc/Rio Tinto Ltd/BHP Billiton South Africa Holdings BV and Richards Bay Mining (Pty) Ltd and Richards Bay Titanium (Pty) Ltd*, case number: 05/LM/Jan09

power accrues to Rio Tinto that it does not already enjoy by virtue of the 2008 management and marketing agreements. Moreover, in the post-merger world, although the merged entity will hold a substantial global market share of [...] in the TiO_2 market, it will continue to face competition from other large global suppliers such as Iluka and Exxaro, with respective market shares of 15-20% and 5-10%. In the global Zircon market where the merged entity will have a global market share of [...], it will likewise face competition from Iluka (30-35%) and Exxaro (10-15%). Equally, although the merged entity is the single largest producer in the global HPPI market [... market share], it will face competition from a large number of other producers, notably the Commonwealth of Independent States (CIS) producers (15-20%) and Other (Chinese) producers (45-50%). The Commission thus concluded that the merger was unlikely to lead to a substantial lessening or prevention of competition in the three markets. Accordingly, the Commission decided that it was not necessary to take a definitive view on whether different grades of zircon, and TiO_2 and HPPI produced using different processing methods constituted narrower, distinct markets within the broader markets for zircon, TiO_2 and HPPI.

[13] In the course of its investigation, the Commission contacted RBM's local customers regarding the merger. With the exception of Foskor Zirconia (Pty) Ltd ("Foskor"), they all indicated that they had no concerns with the merger. In their view Rio Tinto will not change RBM's supply and pricing structure as it already controls RBM's marketing activities, and its incentives will thus not change post-merger.

[14] Foskor, however, opposed the merger on the grounds that it would exacerbate the recent significant price escalations and supply restrictions. Foskor indicated an intention to intervene in the matter, and a pre-hearing was held on 12 June 2012. No representatives from Foskor attended the pre-hearing and they communicated at 9 a.m. on the day of the pre-hearing that they no longer wished to formally intervene in the matter. Foskor was accordingly given notice of the hearing, and advised to submit any further representations that they wished to make in writing by 15 June

2012, and also to indicate whether they would be attending the hearing. Foskor indicated to the Commission that they would not be participating in the hearing.

[15] The Commission assessed Foskor's complaint and concluded that it did not differ in substance from the complaint Foskor had laid against RBM and Exxaro alleging excessive pricing and exclusionary conduct with respect to zircon. Furthermore, the supply restrictions and price escalation were due to international supply and demand dynamics following the global financial crisis,[5] and in part, due to the closure of one of Exxaro's mines in Kwa-Zulu Natal.[6] These market dynamics will prevail irrespective of the merger and prices will continue to be determined, as highlighted by Zirtille Milling, by global market forces.[7] The merger will not exacerbate Foskor's concerns because the market structure and Rio Tinto's incentives do not change. The Commission thus concluded that Foskor's concerns were not merger specific. Moreover, after the pre-hearing, the Commission completed its investigation into the enforcement complaint and determined that RBM and Exxaro had not abused their dominant positions.

[16] The merging parties addressed Foskor's concerns both in their submissions and at the hearing. They submitted that the supply restrictions are a result of the current zircon supply deficit which is forcing large producers to ration their supply among all their respective customers.[8] Demand for zircon reached its lowest level in a decade in 2009, and zircon customers "reduced their inventories to the bare minimum."[9] In response, zircon producers decreased their production.[10] As Mr Derek Folmer (the general manager of sales and marketing for zircon and rutile products for Rio Tinto) indicated in his evidence at the hearing this combination eliminated any surplus capacity that would have been in the system.[11] Consequently when zircon demand recovered rapidly from

[5] See pages 310-311, 323, and 691-692 of the Record
[6] The Commission's Report, page 27
[7] ibid, pages 23, 27
[8] See page 691 of the Record; Transcript, page 31
[9] Transcript, page 11
[10] ibid
[11] ibid

2010 onwards it outstripped supply.[12] Although zircon producers increased their production, and some producers also expanded their operations,[13] the merging parties do not expect global production to exceed [...][14] over the period 2012-2016.[15] This accords with TZ Mineral International Pty Ltd's view that zircon supply from existing operations will peak in 2011 as Iluka's Eucla Basin operation will reach full capacity and there are only two new sources of zircon globally where the plans for mining operations have been government approved.[16] As demand is forecast to continue to increase, the supply deficit is also expected to grow.[17]

[17] The merging parties submitted that the massive price increases since 2010[18] are primarily a consequence of this supply shortage.[19] [...][20] In addition, although he has not attended RBM's board or [...][21] meetings, he did confirm that to the best of his knowledge BHP Billiton has not objected to any of Rio Tinto's pricing recommendations for RBM, and had not exercised any constraint on RBM's pricing decisions since 2009.[22] [...][23]

[18] Finally, Gill Winkler (a director of RBM and Vice President of Strategy and Development for BHP Billiton commodity group) and Haydn Hillestad (a senior manager of BHP Billiton Legal) confirmed that there is no legal restraint of trade on BHP Billiton re-entering the mineral sands market post-merger.[24]

[19] It is evident that Foskor's concerns are not merger specific. The supply restrictions and price increases are prevalent throughout the global market, and arise from the growing global demand fuelled by urbanisation

[12] Transcript, page 11
[13] See pages 310 and 323 of the Record
[14] Redacted due to confidentiality
[15] See page 323 of the Record
[16] See TZ Mineral International Pty Ltd's Mineral Sands Annual Review, June 2011, page 691 of the Record
[17] See pages 691-692 of the Record; Transcript, page 21
[18] See pages 310 and 692 of the Record; Commission Competition Report, page 21
[19] Transcript, page 11
[20] Redacted due to confidentiality
[21] ibid
[22] Transcript, pages 23-26
[23] Redacted due to confidentiality
[24] Transcript, page 37

in emerging economies[25] and the global supply shortage. We thus agree with the Commission that the proposed transaction is unlikely to substantially lessen or prevent competition in the relevant markets.

Public Interest

[20] The merging parties submitted that the proposed transaction will have no adverse effects on employment since they do not foresee any retrenchments as a result of the merger.[26] No other public interest issues arise due to this transaction.

Conclusion

[21] Having regard to the facts above, we find that the proposed merger is unlikely to substantially lessen or prevent competition in any relevant markets. Furthermore, the proposed transaction raises no public interest concerns. Accordingly, we approve the merger unconditionally.

____________________	19 July 2012
Norman Manoim	**DATE**

A Wessels and Y Carrim concurring

Tribunal Researcher:	Elizabeth Preston-Whyte
For the merging parties:	Anthony Crane of Norton Rose and Justin Balkin of Edward Nathan Sonnenbergs
For the Commission:	Rakgole Mokolo and Grace Mohammed

[25] Transcript, page 28

[26] See page 517 of the Record