competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM065JUL24

In the large merger between:

Southern Point Resources – Fund I SA L.P	Primary Acquiring Firm
And	
Bushveld Vanchem (Pty) Ltd	Primary Target Firm

Panel:	T Vilakazi (Presiding Member) I Valodia (Tribunal Member) G Budlender (Tribunal Member)
Heard on:	15 October 2024
Order issued on:	16 October 2024
Reasons Issued on:	12 November 2024

REASONS FOR DECISION

Introduction

[1] On 16 October 2024, the Competition Tribunal ("Tribunal") conditionally approved the large merger whereby Southern Point Resources – Fund I SA L.P. ("SPR Fund I") intends to acquire the entire ordinary share capital of Bushveld Vanchem (Pty) Ltd ("Vanchem").

[2] Upon conclusion of the proposed merger, SPR Fund I will exercise sole control over Vanchem.

Parties to the transaction and their activities

Primary acquiring firm

[3] SPR Fund I is an *en commandite* partnership represented and controlled by its general partner [redacted]

[redacted]

[4] [redacted].

[5] [redacted]

[6] SPR Fund I, [redacted], and all the firms that they directly and indirectly control, together with those firms that directly and indirectly control them are, hereafter, collectively referred to as the "Acquiring Group".

[7] SPR Fund I is a newly established investment fund with a mandate to invest in steelmaking inputs, green metals and future transition metals. SPR Fund I's investment mandate and activities are focused on green, transition and non-carbon production investments in the mining industry in South Africa and Southern Africa.

[8] [redacted]

Primary target firm

[1] [redacted]. See the Commission's Recommendation in the Merger Record para 4, page 4.

[9] Vanchem is wholly owned by Bushveld Vanadium 2 (Pty) Ltd ("BV2"), which in turn is ultimately wholly owned by Bushveld Minerals Limited ("Bushveld Minerals"), a company incorporated in Guernsey.

[10] Vanchem does not directly or indirectly control any interest in any firm.

[11] Vanchem is a primary vanadium[2] processing facility with a beneficiation plant located in Mpumalanga. Vanchem produces: (i) vanadium pentoxide flakes which are an intermediate product to make ferrovanadium, used in aerospace applications and specialised coatings for steel used in car manufacturing, as well as (ii) ferrovanadium which is a steel strengthening product that enhances its strength, hardness and grain refinement and which is used, *inter alia*, in reinforcing bars, sheets and plates. Vanchem's processing facility is further capable of producing vanadium trioxite, which is a vanadium powder chemical catalyst used in sulphuric acid production and suitable for glass, optic and ceramic applications.

Description of the transaction and rationale

[12] In terms of the proposed merger, SPR Fund I will acquire the entire issued shares in Vanchem. Post-merger, SPR Fund I will exercise sole control over Vanchem.

[13] With regards to the rationale, the proposed merger presents an opportunity for SPR Fund I to fulfil its investment mandate to invest in steelmaking inputs, green metals and future transition metals and further signifies a valuable opportunity for SPR Fund I to invest in vanadium assets.[3]

[14] From Vanchem's perspective, the proposed merger is informed by its financial and operational needs. The proposed merger presents an opportunity for Vanchem to, *inter alia,* procure an injection of a substantial equity amount from a financial investor to assist in restructuring its balance sheet and provide

[2] Vanadium is an average-hard, silvery-grey, malleable, non-brittle metal that is electrically conductive and thermally insulating. It is harder than most metals and steels and vanadium has a good resistance to corrosion and is stable against alkalis and sulfuric and hydrochloric acids. See the Commission's Recommendation in the Merger Record para 41, page 26.
[3] Competition Report submitted by the merging parties in the Merger Record paras 5.1 and 5.5, page 50.

shareholders with further financing equity initiatives.[4]

Competition assessment

[15] The Competition Commission ("Commission") considered the activities of the merging parties and concluded that the proposed merger does not result in any horizontal overlap given that no firm within the Acquiring Group has a controlling interest/s in any firm that provides products/services that are substitutable or interchangeable with the products and/or services provided by Vanchem.[5]

[16] The Commission further found that there are no pre-existing commercial relationships or vertical overlaps arising as a result of the proposed merger.

[17] The Commission further considered Vanchem's existing market agreements and noted that SPR Fund I will replace the existing arrangements Vanchem has with agents[6] (these are international traders) in order to reduce costs. These agents trade the vanadium products on behalf of Vanchem and in return receive a fee (usually in the form of a commission) for their services. Bushveld Minerals will continue to honour all existing marketing and sales agreements until they come to an end. International agents did not raise any competition concerns regarding the proposed merger.[7]

[18] The proposed merger is unlikely to result in any significant foreclosure of these international agents as Vanchem is a small player in the supply of vanadium products worldwide, with approximately [redacted] of the total volume of vanadium products traded globally in 2023.[8] Additionally, there are several vanadium producers globally in China, Russia, South Africa and Brazil.[9]

[19] We agree with the Commission's assessment that the proposed merger is

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[4] Competition Report submitted by the merging parties in the Merger Record para 6.3, page 51.
[5] Commission's Recommendation in the Merger Record para 46, page 28.
[6] The merging parties submit that Bushveld Minerals Group currently contracts with two agents for the sale and marketing of its vanadium products, being [redacted] and [redacted]. See the Commission's Recommendation in the Merger Record para 48, page 28.
[7] Commission's Recommendation in the Merger Record para 48, page 28.
[8] Commission's Recommendation in the Merger Record para 49, page 29.
[9] The global producers of vanadium include entities such as Glencore Rhovan Mine (a local supplier), Largo Resources Inc., Evraz Plc., Treibacher, Pangang Group Vanadium Titanium & Resources Co., Ltd23, HIBS Group Chengsteel Company, Beijing Jianlog Heavy Industry Group Co Ltd and AMG Vanadium LLC. See the Commission's Recommendation in the Merger Record para 50, page 29.

unlikely to substantially prevent or lessen competition in any market. Moreover, there is no horizontal overlap arising as a result of the proposed merger and Vanchem will continue to be constrained by Glencore Rhovan Mine ("Glencore") (being the only alternative local player) and international suppliers as was the case pre-merger.

Public interest

Employment

[20] The merging parties submit that the proposed merger will not have any adverse effect on the employment conditions of any of the merging parties' employees. In particular, the proposed merger will not result in retrenchments.[10]

[21] The Commission engaged the employee representatives and registered trade unions representing the employees of the merging parties and did not receive any concerns relating to the proposed merger.[11]

[22] The Commission further considered the merging parties' submissions that absent the proposed merger, there is a risk of job losses if Vanchem (and potentially also other Bushveld Minerals employees) are forced to further rationalise their operations and potentially exit the market.[12]

[23] The Commission found that the proposed transaction is unlikely to raise any employment concerns and is likely to safeguard all jobs at Vanchem. We noted the merging parties' submission that the proposed merger is triggered by the financial difficulties experienced by Vanchem and that absent the proposed merger, Vanchem may be liquidated, and all [redacted] employees employed by Vanchem be retrenched. Further, to ensure that no retrenchments would arise as a result of the proposed merger, the merging parties have agreed to a three-year moratorium on merger-specific retrenchments.[13]

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[10] Schedules to Form CC4(1) submitted by the merging parties in the Merger Record page 15.
[11] Commission's Recommendation in the Merger Record paras 73 and 74, page 36.
[12] Competition Report submitted by the merging parties in the Merger Record para 13.5, page 64.
[13] Commission's Recommendation in the Merger Record para 75, page 36.

[24] We are of the view that the proposed merger is unlikely to have a negative impact on employment.

Effect on the ability of small and medium-sized enterprises ("SMMEs") or firms controlled or owned by historically disadvantaged persons ("HDPs"), to effectively enter into, participate or expand within the relevant market

[25] The Commission received concerns from Hilublox (Pty) Ltd ("Hilublox") (a black-owned company), a customer of Vanchem, regarding the proposed merger. The concerns raised by Hilublox pertain to the exclusive rights that SPR Fund I would have to market, sell, and distribute all vanadium products produced at both the Vanchem and Vametco[14] plants, post-merger.

[26] Hilublox is of the view that there is an existing long-term agreement between a marketing division within the Bushveld Minerals Group and international firms for the sale of vanadium products. These international firms then resell the vanadium products to South African local firms, such as Hilublox, at a much higher price than if they were bought directly from the Bushveld Minerals Group in South Africa. Furthermore, Hilublox is concerned that the proposed merger is likely to limit its ability to buy vanadium products from Vanchem, post-merger. Hilublox further submits that the proposed merger would limit Hilublox's ability to sell raw materials to Vanchem and Vametco post-merger, due to the exclusivity clause in favour of SPR Fund I.

[27] The Commission found that the concern raised by Hilublox is not merger-specific because vanadium is generally traded on a global basis due to insufficient demand locally. The merging parties confirmed that vanadium products are sold at the prevailing market price, which is determined based on a global commodity pricing index. This price applies to products sold both locally and internationally. Therefore, this suggests that it is unlikely that local customers will purchase vanadium products from Vanchem or Vametco at prices higher than those determined in the global market.

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[14] Bushveld Vametco Alloys (Pty) Ltd ("Vametco") is a vanadium mine and processing facility ultimately controlled by Bushveld Minerals. See the Competition Report submitted by the merging parties in the Merger Record para 6.1, page 51.

[28] The Commission also engaged the customers of Vanchem to understand the pricing of the vanadium products. The customers contacted by the Commission confirm the merging parties' submissions that local customers purchase vanadium products directly from Vanchem. Further, the Commission notes from its previous investigation in the matter involving *Bioko 760 (Pty) Ltd and certain assets of Vanchem Vanadium Products (Pty) Ltd, South Africa Japan Vanadium (Pty) Ltd (SAJV) and the entire issued share capital of Ivanti Resources (Pty) Ltd (Ivanti)*[15] that vanadium products are subject to international price benchmarking.

[29] Additionally, the merging parties confirmed that SPR Fund I, as the marketing and sales agent, will continue to sell the vanadium products produced by Vanchem and Vametco locally to meet local demand at the prevailing global market price for vanadium.[16]

[30] In light of the above, we agree that the risks raised by Hilublox are unlikely to arise given that there is no horizontal overlap arising as a result of the proposed merger and that Vanchem will continue to be constrained by Glencore (a local supplier) post-merger. Importantly, the pricing of vanadium products has been, and is likely to continue to be, benchmarked with international prices. Accordingly, we find that the proposed merger is unlikely to have a substantial negative impact on local customers of the merging parties, SMMEs or firms controlled or owned by HDPs.

[31] The Tribunal requested Hilublox to make further submissions on the matter and its concerns.[17] Several of these concerns relate to creating opportunities for Hilublox to access beneficial trading and supply terms in the market. We understand from the merging parties that Hilublox will continue to have an opportunity to trade with the merging parties' post-merger, there is evidence of local supply by the merging parties at prices substantively similar to the global prices, and we note that other concerns raised have been adequately assessed by the Commission's investigation.

[15] Commission Case No. 2019Jun0003.
[16] Letter from the merging parties dated 27 August 2024 in the Merger Record para 2.6, page 1258.
[17] Letter from Hilublox (Pty) Ltd dated 15 October 2024.

[32] Having considered these submissions, and those of the merging parties and the Commission, we find that the proposed merger raises no substantial issues regarding the effect on the ability of SMMEs or firms controlled or owned by HDPs, to effectively enter into, participate or expand within the relevant market.

Promotion of a greater spread of ownership

[33] The Acquiring Group has 50% shareholding held by HDPs, whereas Vanchem does not have any shareholding held by HDPs.

[34] The Commission found that the proposed merger results in an increase in HDP shareholding in Vanchem of approximately 27% and therefore in the promotion of a greater spread of ownership.

[35] We are of the view that the proposed merger raises no substantial issues regarding the promotion of a greater spread of ownership, or any other public interest ground.

Conclusion

[36] For the reasons set out above, we are satisfied that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the condition imposed in respect of the moratorium on retrenchments addresses the public interest concern.

[37] We accordingly approved the merger on the basis of the conditions set out in **Annexure A** of our order dated 16 October 2024.

Signed by:Thando Vilakazi
Signed at:2024-11-12 11:42:52 +02:00
Reason:Witnessing Thando Vilakazi

Thando Vilakazi

12 November 2024

Prof. Thando Vilakazi **Date**
Prof. Imraan Valodia and Geoff Budlender SC. concurring

Tribunal Case Manager:	Tarryn Sampson
For the Merging Parties:	Leana Engelbrecht of Alchemy Law Africa
For the Commission:	Zanele Hadebe and Themba Mahlangu