

competitiontribunal
south africa

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to	Derek Lotter Bowman Gilfillan Inc	fax	011 669 9001
	Legal Services Competition Commission		44283
ref	17/LM/Mar11	date	13 July 2011
from	Tebogo Mputle	pages	7 (including this page)
re	Reasons		

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Attached please find the Tribunal's reasons for the decision in the above matter.

Regards

Tebogo Mputle

CC: Werner Rysbergen - 44146



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 17/LM/Mar11

In the matter between:

Rio Tinto Plc and Rio Tinto Ltd

Acquiring Firms

And

Riversdale Mining Ltd

Target Firm

Panel	:	Andreas Wessels (Presiding Member) Medi Mokuena (Tribunal Member) Andiswa Ndoni (Tribunal Member)
Heard on	:	19 May 2011
Order issued on	:	19 May 2011
Reasons issued on	:	12 July 2011

Reasons for Decision

APPROVAL

[1] On 19 May 2011 the Competition Tribunal ("Tribunal") unconditionally approved the acquisition by Rio Tinto Plc and Rio Tinto Ltd of Riversdale Mining Ltd. The reasons for approval follow below.

PARTIES TO THE TRANSACTION

[2] The primary acquiring firms are Rio Tinto Plc and Rio Tinto Ltd. Rio Tinto Plc and Rio Tinto Ltd are public companies listed on the London Stock Exchange and the Australian Securities Exchange respectively. Rio Tinto Plc and Rio Tinto Ltd together comprise the Rio Tinto Group (hereinafter "Rio Tinto") in terms of a dual listed company structure, which is managed as a single economic unit.¹ Rio Tinto's shares are widely held and as such it is not controlled by any single entity. It has direct and indirect controlling interests in various companies throughout the world.

[3] The primary target firm is Riversdale Mining Ltd ("Riversdale"), a public company incorporated in accordance with the laws of the State of Victoria, Australia and listed on the Australian Securities Exchange. As such its shares are widely held and it is not controlled by any single entity. It has direct and indirect controlling interests in various companies located in Australia, Mauritius, Mozambique and South Africa. In South Africa, Riversdale controls the following firms: Riversdale Holdings (Pty) Ltd (100%); Riversdale Anthracite Colliery (Pty) Ltd (74%); and Zululand Anthracite Colliery (Pty) Ltd ("Zululand Anthracite Colliery") (74%).

PROPOSED TRANSACTION

[4] In terms of the structure of the proposed transaction Rio Tinto intends to acquire all of the issued and outstanding shares of Riversdale. Following the completion of the proposed transaction Rio Tinto will control a majority of the issued shares in Riversdale.

RATIONALE FOR TRANSACTION

[5] For Rio Tinto the rationale is that this acquisition is in line with its growth strategy of investing in, developing and operating large, long term, cost-competitive mines and businesses. Further, Rio Tinto submitted that because of its extensive experience in infrastructure and large project development combined with its significant financial capacity, it is well placed to take Riversdale's asset base through a next phase of development.

¹ See page 8 of the record.

- [6] Riversdale submitted that this transaction offers its shareholders the opportunity to realise value in their shares. In addition Riversdale submitted that considering the fact that the majority of its assets are in a pre-production phase and the significant time, risks and uncertainties involved in bringing those assets to the production stage, Rio Tinto's offer provides immediate value and certainty.

ACTIVITIES OF MERGING PARTIES

Rio Tinto

- [7] Rio Tinto is an international mining group involved in the finding, mining and processing of mineral resources. Its major products globally are aluminium, copper, diamonds, energy, gold, industrial minerals (i.e. borax, titanium dioxide, salt and talc) and iron ore. The only activity of Rio Tinto that is however relevant for purposes of the present transaction is the mining of coal.
- [8] In South Africa Rio Tinto operates a coal exploration project, i.e. the Chapudi Coal Project ("Chapudi") in the Limpopo province with a joint venture partner, Kwezi Mining. According to the merging parties, this project is still in its pre-feasibility stage and mining has not yet begun. Chapudi contains both coking and thermal coal.
- [9] The merging parties however have also indicated that Rio Tinto is currently divesting its interest in Chapudi.² This divestiture will, according to the merging parties, bring an end to Rio Tinto's involvement in coal operation in South Africa for the time being. This process of divestiture was confirmed at the Tribunal hearing by the legal representatives of the merging parties.

Riversdale

- [10] As stated in paragraph 3 above, Riversdale has a 74% shareholding in Zululand Anthracite Colliery, which is involved in the underground mining of anthracite in KwaZulu-Natal. Zululand Anthracite Colliery is currently the only Riversdale entity involved in mining in South Africa.

² See *inter alia* page 79 of the record and page 10 of the Commission's recommendation.

[11] The merging parties however indicated that Rio Tinto does not have the intention to retain an interest in Zululand Anthracite Colliery following the completion of the proposed transaction (also see paragraph 18 below).³

[12] Riversdale's other primary assets are two coking and thermal coal projects in Mozambique: the Benga⁴ and Zambeze⁵ projects. According to the merging parties a mining concession has been granted for the Benga project and construction of stage one has commenced. With regard to the Zambeze project, the merging parties submitted that a mining concession has not yet been granted for the project and that it continues to operate under an exploration licence.

COMPETITION ANALYSIS

Horizontal assessment

[13] The Competition Commission ("Commission") concluded that there is no horizontal overlap in the activities of the merging parties in South Africa. Although the merging parties both have projects in the mining of thermal and coking coal, there is no geographic overlap in these activities since Rio Tinto's interest is in the Chapudi project in the Limpopo province of South Africa (which interest is in the process of being divested, see paragraph 9 above) and Riversdale's interests are in the Benga and Zambeze projects in Mozambique.

Vertical assessment

[14] A supply relationship exists between the merging parties in terms of which Zululand Anthracite Colliery supplies Rio Tinto's joint venture, RBM⁶, with anthracite coal. The anthracite is used as a reductant in the production of titanium dioxide slag at RBM's Richard's Bay mineral separation plant, as well as in the production of high purity iron.

[15] The merging parties submitted that in the preceding twelve months approximately [80 – 100]% of RBM's annual requirement of anthracite was

³ See page 82 of the record.

⁴ A joint venture between Riversdale and Tata Steel Ltd.

⁵ Adjacent to the Benga project.

⁶ Joint venture between Rio Tinto and BHP Billiton Ltd.

purchased from Zululand Anthracite Colliery, which represents less than 30% of Zululand Anthracite Colliery's total annual anthracite production. The merging parties further submitted that for technical reasons the balance of RBM's anthracite requirements is obtained from sources outside of South Africa, which anthracite is then blended with that purchased from Zululand Anthracite Colliery in order to obtain the correct blend of anthracite for RBM's manufacturing process.

[16] The Commission highlighted that the other South African customers of Zululand Anthracite Colliery do not produce or supply high purity iron and titanium dioxide slag and that the merged entity therefore is likely to lack an incentive to foreclose the target firm's customers.

[17] There are also a number of other players in respect of the mining of anthracite from which customers potentially could obtain their anthracite requirements, including Petmin (Somkhele Colliery), Leeuw Mining (Vaalkranz Colliery) and Tweewaters Fuel (Springlake Colliery).

[18] Furthermore, the merging parties submitted that any potential vertical effects of the proposed merger are likely to be short term since Rio Tinto *"has already announced its intention to divest Riversdale's interest in Zululand Anthracite Colliery to a suitable purchaser"*.⁷

[19] For the above reasons we conclude that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition since both customer foreclosure and input foreclosure appear unlikely as a result of the proposed deal.

PUBLIC INTEREST

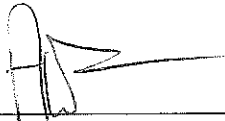
[20] The merging parties have confirmed that the proposed deal will not result in any retrenchments.⁸ No other public interest issues arise from the proposed transaction.

⁷ See page 91 of the record.

⁸ See *inter alia* pages 12 and 92 of the record.

CONCLUSION

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



Andreas Wessels

12 July 2011

DATE

Medi Mokuena and Andiswa Ndoni concurring

Tribunal researcher:	Ipeleng Selaledi
For the merging parties:	Bowman Gilfillan Inc.
For the Commission:	Werner Rysbergen

* * * Communication Result Report (13. Jul. 2011 11:11) * * *

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