

In the matter between:

Lexshell 38 General Trading (Pty) Ltd

Clidet No 832 (Pty) Ltd

Acquiring Firms

and

Richtrau No 123 (Pty) Ltd

Target firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and
M Mokoena (Tribunal Member)

Heard on : 23 September 2008

Order issued on : 23 September 2008

Reasons issued on : 22 October 2008

REASONS FOR DECISION

Introduction

1. On 23 September 2008 the Tribunal unconditionally approved the merger between the above mentioned parties.

The Parties

2. There are two primary acquiring firms in this proposed transaction: Lexshell 38 General Trading (Pty) Ltd ("Lexshell") which is controlled by Bakgatla Tribe ("Bakgatla") (100%), and Clidet No 832 (Pty) Ltd ("Clidet") which is controlled by Newshelf 927 (Pty) Ltd ("Newshelf 927"). Newshelf 927 is controlled by Ivy Lane Capital Limited, which is in turn controlled by four shareholders, namely; Pallinghurst Resources (Guernsey) Ltd ("PR") (21.89%), AMCI ConsMin

(Cayman) L.P. (“AMCI”) (27.74%), Investec Bank Limited (“Investec”) (15.09%), and NGP Midstream and Resources L.P. (“NGPMR”) (21.89%).

3. Bakgatla and Newshelf 927 jointly control Newshelf 926 (Pty) Ltd (“Newshelf 926”), which in turn controls Moepi Group (Pty) Ltd, which also in turn controls Moepi Uranium (Pty) Ltd and Moepi Platinum (Pty) Ltd.
4. The primary target firm is Richtrau No 123 (Pty) Ltd (“Richtrau”), which is controlled by Rustenburg Platinum Mines Limited (“RPM”) (74%), which in turn is controlled by Anglo Platinum Limited. Lexshell has 26% shareholding in Richtrau.
5. Richtrau is awaiting the approval by the Department of Minerals and Energy (“DME”) of the transfer of new order prospecting mining rights in respect of platinum group metals in a Magazynskraal 3 in North West Province.¹

The Transaction and its Rationale

6. In terms of the proposed transaction, Lexshell intends to increase its existing shareholding of in Richtrau to 40% by means of a conversion of a loan funding into new shares in Richtrau. Clidet will also acquire 40% of the entire issued share capital of Richtrau by means of a conversion of a loan funding into new shares in Richtrau. Post merger, Lexshell will hold 40%, Clidet 40%, and RPM 20%. We are informed that post merger RPM will not enjoy any minority protection in respect of its stake.² Lexshell and MineCo, a shelf company which is ultimately controlled by Newshelf 927 will acquire joint control over Richtrau by virtue of certain provisions in the shareholders’ agreement governing the relationship between them.
7. The rationale for the proposed transaction for Richtrau is to obtain funding for the Bankable Feasibility Study (“BFS”) in respect of Magazynskraal. For Lexshell

¹ For the pre transaction structure refer to annexure A.

² For the post transaction structure refer to annexure B.

and Clidet, this is an opportunity to increase its shareholding in the mining industry in respect of platinum group metals.

Competition Evaluation

8. Bakgatla owns platinum mining rights housed in Itereleng Bakgatla Mining Resources (“IBMR”)³, and also holds 55% share in Lexshell 49 which is waiting transfer of new order prospecting mining rights in respect of platinum group metals (“PGMs”). Richtrau is awaiting approval from DME of a new order prospecting rights in respect of PGMs. For this reason, the Commission found that there is a potential horizontal overlap in the activities of the merging parties since they will both mine and produce platinum in future once IBMR has completed its exploration activities, and once Richtrau obtains its new order prospecting rights.

9. The Commission found that the merging parties are likely to have a combined post market share of 6.48% in the platinum mining sector. The Tribunal accepts that the potential post merger market share estimate is too low to raise competition concerns in the relevant sector.

Conclusion

10. In light of the above, we find that the proposed merger will not result in any substantial lessening or prevention of competition in the relevant market. Accordingly, we approve the merger without conditions.

11. There are no public interest issues.

N Manoim
Tribunal Member

22 October 2008
Date

³ The Commission submitted that IBMR is being acquired by Barrick Platinum Mine in a separate transaction which has been notified at the Commission as a small merger

Y Carrim and M Mokoena **concur** in the judgment of N Manoim

Tribunal Researcher: L Xaba

For the merging parties : Edward Nathan Sonnenbergs

For the Commission : X. Nokele

(Mergers and Acquisitions)