

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 05/LM/Jan09

In the matter between:

**Rio Tinto / Rio Tinto Ltd and
BHP Billiton South Africa Holdings BV**

Acquiring Firms

And

**Richards Bay Mining (Pty) Ltd and
Richards Bay Titanium**

Target Firms

Panel	:	N Manoim (Presiding Member), U Bhoola (Tribunal Member) and M Mokuena (Tribunal Member)
Heard on	:	11 March 2009
Order issued on	:	11 March 2009
Reasons issued on	:	06 May 2009

Reasons for Decision

Introduction

- [1] On 11 March 2009 the Tribunal unconditionally approved the acquisition by Rio Tinto Plc and Rio Tinto Ltd and BHP Billiton South Africa Holdings BV of Richards Bay Mining (Pty) Ltd and Richards Bay Titanium (Pty) Ltd. The reasons follow below.

The Parties

- [2] The primary acquiring firms are Rio Tinto Plc and Rio Tinto Ltd ("herein after referred to as Rio Tinto"), through Rio Tinto International Holdings ("RTIH") and BHP Billiton South Africa Holdings BV ("hereinafter referred to as BHP Billiton Holdings BV"). Rio Tinto Plc and Rio Tinto Ltd are listed on the United

Kingdom and Australian Stock Exchanges respectively, and as such no firm controls Rio Tinto.¹

- [3] BHP Billiton Holdings BV is controlled by BHP Billiton Ltd, which is in turn controlled by BHP Billiton Plc (“BHP Billiton”). BHP Billiton Plc and BHP Billiton Ltd are also listed on the United Kingdom and Australian Stock Exchanges respectively, and as such no firm controls BHP Billiton.
- [4] The primary target firms are Richards Bay Mining (Pty) Ltd (“Tisand Opco”) and Richards Bay Titanium (Pty) Ltd (“RBIT Opco”), shelf companies established for purposes of this transaction. Both firms will be jointly controlled by BHP Billiton and Rio Tinto.

Description of the transaction

- [5] This transaction entails a restructuring of BHP Billiton and Rio Tinto’s interest in Richards Bay Minerals (“RBM” – in which both firms have a 50-50 joint venture) in order to facilitate the introduction of Black Economic Empowerment shareholders. RBM comprises of two entities, i.e. Richards Bay Iron and Titanium (Pty) Ltd (“RBIT”) and Tisand (Pty) Ltd (“Tisand”).
- [6] As part of this restructuring, Rio Tinto through its holding company RTIH and BHP Billiton Holdings BV will incorporate two South African Holding companies namely RBIT Holdco and Tisand Holdco.
- [7] The shares in Tisand Holdco will be held as to 51% by the BHP Group through BHP Billiton Holdings BV and as to 49% by the Rio Tinto Group through RTIH. The shares in RBIT Holdco will be held as to 51% by the Rio Tinto Group through RTIH and as to 49% by the BHP Billiton Group through BHP Billiton Holdings BV.
- [8] In addition, Tisand Holdco, a BEE consortium (“BEE Holdco”) and an Employee Share Participation Scheme (“ESPS”) will incorporate a South African operating company to which the business currently held by Tisand will

¹ Rio Tinto also has 80% interest in QIT Madagascar Minerals (“QMM”). The remaining 20% is held by the government of Madagascar. QMM started producing zircon in January 2009.

be transferred to Tisand Opco, in which they will have the following shareholding: Tisand Holdco 74%, BEE Holdco 24% and the ESPS 2%.

- [9] RBIT Holdco, BEE Holdco and the ESPS will also incorporate a South African operating company to which the business currently held by RBIT will be transferred to RBIT Opco, in which they will have the following shareholding: RBIT Holdco 74%, BEE Holdco 24% and the ESPS 2%. Upon implementation of the restructuring, BHP Billiton and Rio Tinto will have joint control in Tisand Opco and RBIT Opco.

Rationale

- [10] According to the merging parties, this transaction represents an opportunity for RBM to meet its BEE obligation as well as to resolve various commercial issues, including disagreements over marketing between BHP Billiton and Rio Tinto in relation to RBM.

Parties' Activities

- [11] Both BHP Billiton and Rio Tinto are international mining and resources companies with interests and operations in a broad of resources including aluminium raw materials and products, thermal and metallurgical coal, iron ore, copper, diamonds, gold etc.
- [12] As indicated above, the merging parties have a 50%-50% joint venture in Richards Bay Minerals ("RBM"), which comprises of two entities, i.e. Richards Bay Iron and Titanium (Pty) Ltd ("RBIT") and Tisand (Pty) Ltd ("Tisand"). Tisand operates a mine that produces ilmenite, rutile and zircon. RBIT owns and operates a smelter which smelts and beneficiates the ilmenite transferred to it from Tisand to produce titania slag and nodular pig iron.
- [13] Tisand Opco and RBIT Opco are newly established companies and do not currently conduct any business.

Effect on Competition

[14] This transaction constitutes a restructuring process which will result in the rearrangement of the marketing agreement relating to all RBM products, i.e. rutile, zircon, titanium slag and nodular pig iron. Currently all rutile and zircon production of RBM is independently marketed by Tisand, whilst all titania slag and nodular pig iron is marketed by RTIT.²

[15] Upon implementation of the restructuring Rio Tinto will be responsible for the marketing of all RBM's products. The transaction is therefore unlikely to substantially prevent or lessen competition in the affected markets.

Public Interest

[16] The transaction does not raise any significant public interest concerns.

N Manoim

06 May 2009

Date

U Bhoola and M Mokuena concurring.

Tribunal Researcher	:	I Selaledi
For the merging parties	:	Edward Nathan Sonnenbergs Inc.
For the Commission	:	X Nokele

² RTIT had from the outset assumed marketing responsibilities of all RBM's products by virtue of exclusive sales agency agreements between BHP and Rio Tinto with common terms. These agreements came to an end in 2006. However, the parties decided to reinstate RTIT as the marketer of all RBM products