

COMPETITION TRIBUNAL SOUTH AFRICA

Case NO: 38/LM/Apr09

In the matter between:

Royal Bafokeng Resources (Pty) Ltd

Acquiring Firm

And

Bafokeng Rasimone Platinum Mine Joint Venture

Target Firm

Panel : Y Carrim (Presiding Member); M Mokuena (Tribunal Member) and M Holden (Tribunal Member)

Heard on : 08 July 2009

Decided on : 08 July 2009

Reasons Issued on : 30 July 2009

Reasons for Decision

Approval

[1] On 08 July 2009 the Competition Tribunal issued a Merger Clearance Certificate unconditionally approving the merger between Royal Bafokeng Resources (Pty) Ltd and Bafokeng Rasimone Platinum Mine Joint Venture. The reasons appear below.

Parties

[2] The acquiring firm is Royal Bafokeng Resources (Pty) Ltd ("RBR"), a company incorporated in accordance with the laws of the Republic of South Africa. RBR is controlled by Lisinfo 223 Property 673 (Pty) Ltd, which is, in turn controlled by Pacific Breeze Trading 673 (Pty) Ltd¹ ("Pacific Breeze").

[3] The primary target firm is Bafokeng Rasimone Platinum Mine Joint Venture ("BRPM JV") an unincorporated joint venture. The BRPM JV is jointly controlled by RBR, the primary

¹ Pacific Breeze is controlled by Royal Bafokeng Holdings (Pty) Ltd ("RBH"), which is turn controlled by the Royal Bafokeng Nation Development Trust ("RBND Trust"). RBH controls several subsidiaries including the following RBH Resources Holdings (Pty)Ltd; Royal Bafokeng Tholo Investment Holding Company (Pty)Ltd and Royal Bafokeng Impala Investment Holding Company (Pty)Ltd.

acquiring firm in the instant transaction and Rustenburg Platinum Mines Ltd² (“RPM”). The BRPM JV does not control any firm.

Transaction

[4] The Royal Bafokeng Nation previously held joint control of the target firm. The interests in the BRPM JV were held as follows: RBR as to 50% and Rustenburg Platinum Mines Ltd, which is a subsidiary of Anglo Platinum Ltd 50%. In terms of the proposed transaction, RBR intends to increase its shareholding in BRPM JV from 50% to 67% by acquiring an additional 17% share in RPM.

Parties Activities

[5] The Royal Bafokeng Nation Development Trust (“RBN Development Trust”) has through its various subsidiaries a diversified investment portfolio with assets in the resources; industrial and financial sectors. In the resources sector it has assets and interests in platinum; chrome and quarrying industries.³ In the industrial sector it has assets and interests in the packaging, consumer, motor and construction sectors. In the financial sector it has assets and interests in a number of investment companies.

[6] BRPM JV mines platinum group metals (“PGMs”) concentrate, which is shared proportionally by the joint venture partners, namely RBR and RPM. Then RBR sells its share of the concentrate to RPM in terms of an off-take agreement.

Rationale for the Transaction

[7] The RBN Development Trust intends to create an independently managed PGM mine which is solely controlled by RBR and which will attract direct public investment for its operations and further development.

[8] From BRPM JV the transaction will allow BRPM JV to be restructured so as to resolve the certain commercial disagreements between RPM and RBR on an appropriate and mutually beneficially basis and so as to ensure that the BRPM JV operates on a sustainable basis, profitably and safely.

² RPM has several subsidiaries including: Bafokeng Rasimone Management Services (Pty) Ltd; Kwanda Platinum Mine; Modikwa Mining Personnel Services (Pty) Ltd and Modikwa Platinum Mine (Pty) Ltd. RPM is controlled by Anglo Platinum Ltd. Anglo Platinum control several subsidiaries including Anglo Platinum Development Ltd; Anglo Platinum Shared Services Unit (Pty) Ltd; Potgietersrus Platinum Ltd and Kaymin Resources Ltd.

³ According to the parties the resources sector makes up the largest portion of the RBN Development Trust interests.

Competition Analysis

[9] The proposed transaction results in a product overlap in as far as the acquiring firm has prior shareholding in the primary target firm. The Commission however found that this overlap will not result in an increase in the market share or change in market structure. We therefore agree with the Commission's conclusion that the transaction is unlikely to substantially prevent or lessen competition.

[10] There are no public interest issues and accordingly the transaction is unconditionally approved.

Y Carrim

Tribunal Member

30 July 2009

Date

M Mokuena and M Holden concurring

Tribunal Researcher : Jabulani Ngobeni

For the merging parties : Bell Dewar

For the Commission : Mfundo Ngobese (Mergers and Acquisitions)