



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No:49/LM/JUN11**

In the matter between:

**ACQUARIUS PLATINUM SA (PTY) LTD**

Acquiring Firm

And

**BLUE RIDGE PLATINUM (PTY) LTD**

Target Firm

Panel : Norman Manoim (Presiding Member)  
Yasmin Carrim (Tribunal Member)  
Andreas Wessels (Tribunal Member)  
Heard on : 24 August 2011  
Order issued on : 24 August 2011  
Reasons issued on : 01 September 2011

### **Reasons for Decision**

#### **Approval**

- 1] On 24 August 2011, the Competition Tribunal ("Tribunal") approved the large merger between Aquarius Platinum SA (Pty) Ltd and Blue Ridge Platinum (Pty) Ltd. We explain below our reasons for this conclusion.

#### **The Parties to the transaction**

- 2] The primary acquiring firm is Aquarius Platinum SA (Pty) Ltd ("AQPSA"), a private company incorporated in terms of the laws of the Republic of South Africa. AQPSA is controlled by Aquarius Platinum Ltd ("AQP"), a company

incorporated in terms of the laws of Bermuda. AQPSA controls a number of subsidiaries around South Africa; however AQP is not controlled by any entity. For the sake of convenience, AQP and all its companies controlled by it will be referred to as the “AQP Group”.

- 3] The primary target firm is Blue Ridge Platinum (Pty) Ltd (“Blue Ridge”), a South African company jointly controlled by Ridge Mining (Pty) Ltd and Imbani Platinum SPV (Pty) Ltd (“Imbani”).
- 4] In terms of the transaction, AQPSA proposes to acquire a further 7%<sup>1</sup> shareholding in Blue Ridge from Imbani, which will increase AQP group’s shareholding in Blue Ridge to 57%, thereby resulting in AQP crossing the ‘bright line’. The transaction does not result in any substantial change of control as, due to certain minority protections, although AQP will be deemed to have sole control by virtue of owning more than half of the company’s share capital , it will de facto still retain joint control with Imbani.

### **The Rationale**

- 5] According to the merging parties, the transaction is as a result of Imbani’s failure to provide certain funding required in terms of the shareholders agreement which then resulted in Imbani being diluted thereby automatically leading to the crossing of the bright line by AQP.

### **The parties’ activities**

- 6] The AQP Group is involved in PGM mineral exploration, mine development and concentrate production. The group mines and produces PGM concentrate in various provinces around South Africa<sup>2</sup> as well as in Zimbabwe.
- 7] Blue Ridge is involved in mining and exploration of mineral resources and it currently is involved in mining operations at Blue Ridge mine. The concentrate produced from this mine is sold to IRS.

---

1 According to the Commission, this is not the exact percentage as the final percentage will only be known on the date of dilution but will not be more than 10%. See Commission report p.6

2 For a list of areas where AGP Group mines, see Commission Report p.7

## **The relevant market and the impact on competition**

- 8] The Commission found that the relevant product market is that for PGMs, minerals which are primarily used in the automotive industry to produce autocatalysts and are also used in the production of jewellery. PGM is made up of six elements, being platinum, palladium, rhodium, ruthenium, iridium and osmium. With reference to previous Tribunal decisions relating to the PGM market<sup>3</sup>, both the Commission and the merging parties submitted that as the Tribunal has previously recognised the relevant geographic market for PGMs as international, it is unnecessary to deviate from that decision.
- 9] The Commission found that there is an overlap at the concentrate level of the supply chain in respect to PGMs, namely platinum, palladium, rhodium, ruthenium and iridium. However, with a post merger market share of not more than 9% in each of the relevant PGM markets, the Commission found that the market share was too low to raise any competition concerns. The Commission also found that there are a number of significant competitors in the PGM markets, which include companies such as Impala Platinum, MMC Norilsk Nickel, Anglo-American plc, Northam Lonmin plc, and Xstrata.
- 10] The Commission concluded that the merger is unlikely to result in any substantial prevention or lessening of competition in the PGM market.

## **CONCLUSION**

- 11] The parties submitted that the proposed transaction will not result in employments losses. The proposed transaction does not raise any other public interest issues.
- 12] We agree with the Commission's conclusion above and find that the merger is unlikely to lead to any substantial prevention or lessening of competition in the relevant market. Accordingly, we approve the above merger unconditionally.

---

<sup>3</sup> Two Rivers Platinum Limited and Assmang Limited, case no: 54/LM/Sep01

**NORMAN MANOIM**

01 September 2011  
**DATE**

**Andreas Wessels and Yasmin Carrim**

Tribunal Researcher: Tebogo Hlafane

For the merging parties: Werksmans Attorneys

For the Commission: Bheki Masilela