

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 13/LM/Feb06

In the matter between:

Exxaro Limited

Acquiring Firm

And

Namakwa Sands (a division of Anglo Operations Limited)

Target Firm

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and U Bhoola (Tribunal Member)

Heard on : 24 - 25 July 2006

Decided on : 15 August 2006

Reasons Issued: 14 September 2006

Reasons for Decision

APPROVAL

- 1] On 15 August 2006 the Tribunal unconditionally approved, the merger between Exxaro Limited and Namakwa Sands (a division of Anglo Operations Limited). Although this transaction was filed separately, it is dependent on the approval of the merger between Mainstreet 333 (Pty) Ltd and Kumba Resources Limited under case number 14/LM/May06. The Tribunal considered the transactions simultaneously and both were approved unconditionally. The merger between Mainstreet 333 (Pty) Ltd and Kumba Resources Limited is referred to as "Project Pangolin". The current transaction, the merger between Exxaro and Namakwa Sands, is referred to as the "Namakwa option." The reasons for approving the transaction follow.

THE PARTIES

- 2] The primary acquiring firm is Exxaro Limited (“Exxaro”). After the completion of Project Pangolin transaction, the major shareholder in Exxaro will BEE Holdco. BEE Holdco will control approximately 55% of Exxaro. BEE Holdco will, in turn, be indirectly controlled by Eyesizwe Mining, by virtue of its shareholding in Eyesizwe SPV (the Eyesizwe SPV will hold approximately 55% in BEE Holdco)
- 3] The primary target firm is the Namakwa Sands Mining Business (“Namakwa Sands”), a division of Anglo Operations Limited (“AOL”). AOL is a wholly owned subsidiary of Anglo South Africa (Pty) Ltd, which is controlled by Anglo American South Africa Limited (“Anglo American”).¹
- 4] After the completion of Project Pangolin Anglo American will own, directly or indirectly 23% interest in Exxaro

THE TRANSACTION

- 5] The Namakwa option is conditional upon the completion of Project Pangolin. The Namakwa option involves Anglo American granting Exxaro an option to acquire firstly its Namakwa Sands division and secondly, to acquire a 26% minority interest in its South African zinc operations, Black Mountain and Gamsberg. This will include an option to conclude an off-take agreement which will give Exxaro the right to zinc concentrate produced by the Black Mountain concentrator.
- 6] Anglo American currently owns 100% of Namakwa Sands and has a 66% indirect interest in Ticor SA through its interests in Kumba Resources Limited (“Kumba”). At the completion of Project Pangolin but before the implementation of this transaction (Namakwa option) Anglo American will still own 100% of Namakwa Sands, but its interests in Ticor SA will have declined to 23% through its direct or indirect economic interest in Exxaro. At the completion of this transaction, Namakwa Sands and Ticor SA will effectively remain under

¹ Anglo American South Africa is in turn controlled by Anglo American International, which is ultimately controlled by Anglo American plc.

common ownership.

THE RATIONALE FOR THE TRANSACTION

- 7] The rationale in Project Pangolin is fully set out in our decision in case number 14/LM/Feb06 and it is not necessary for us to repeat it in this decision. The Namakwa option furthers the empowerment objectives referred to in that decision as it expands the resource base that Anglo American is offering to Exxaro.

COMPETITION ANALYSIS

Mineral Sands

- 8] The parties have submitted that there is no overlap between the operations of the controlling shareholder of BEE Holdco (the Eyesizwe SPV and through it, Eyesizwe Mining and Eyesizwe Holdings) and those of Namakwa Sands.
- 9] Anglo American effectively controls the mineral sands in this transaction through Kumba (Via the Ticor companies²) and Namakwa Sands. This transaction does not lead to a substantial change of the structure of the mineral sands market since it will result in Anglo American's mineral sands interests, being consolidated under the control of Exxaro and Anglo American relinquishing control over all its current mineral sands interests. After acquiring Anglo American's interests in the mineral sands market, Exxaro will also acquire Anglo American's market share in that market. The market shares and the number of players in the mineral sands market will thus remain the same.

Zinc

- 10] The Namakwa option does not raise vertical and horizontal issues in the zinc market. At the completion of Project Pangolin, but before the exercise of the Namakwa option, Exxaro will not have any zinc operations and will as a result

² The Ticor companies are Ticor SA (Pty) Ltd and Ticor Limited.

have no market share in the zinc market.

PUBLIC INTEREST ISSUES

11] There are no public interest issues.

CONCLUSION

12] The transaction will not lead to a substantial prevention or lessening of competition. There are no public interest issues that may affect this conclusion.

N Manoim

Presiding Member

14 September 2006

DATE

Y Carrim and U Bhoola concur in the judgment of N Manoim.

Tribunal Researchers: M Murugan-Modise and R Kariga

For the merging parties: Adv. D Unterhalter SC and Adv. J Wilson instructed by
Webber Wentzel Bowens

For the Commission : Adv. J Gauntlett SC and Adv. H Shozi instructed by the
Commission and T Kekana (Mergers and Acquisitions)