

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 78/LM/Oct02

In the large merger between:

**Rustenburg Platinum Mines Ltd & The royal Bafokeng Nation in their
capacity as the Participants in the “Bafokeng Rasimone Joint Venture”**

and

Rustenburg Platinum Mines Ltd and the Royal Bafokeng Nation

Reasons for Decision

Approval

On 11 December 2002 we unconditionally approved the joint venture between Rustenburg Platinum Mines Ltd, the Royal Bafokeng Nation and Royal Bofokeng Resources (Pty) Ltd. The reasons for our decision follow.

The Transaction

1. Rustenburg Platinum Mines Ltd (“RPM”) intends to establish a joint venture, the Bafokeng Rasimone Joint Venture (“the JV”), with the Royal Bafokeng Nation (“RBN”) through Royal Bafokeng Resources (Pty) Ltd (“RBR”) ¹.
2. The acquiring firms, RPM and RBN, in their capacity as participants in the JV, each holding a 50% interest, will acquire the right to use the Styldrift, Boschkopie and Frischgewaagd mineral and surface rights, the concentrator area and the existing mining infrastructure, plant, equipment and operations of Boschkopie.
3. The parties will continue to hold their respective mining rights, but will hold them for the benefit and use of the JV. RPM and RBR (being a wholly owned subsidiary of RBN) will each contribute half of the nett expenditure to the joint venture. The mine will be managed by a joint management committee and will be operated by Anglo Platinum

¹ Xshelf Trading 5 (Pty) Ltd, a shelf company which is wholly owned by the Royal Bafokeng Nation, is in the process of changing its name to Royal Bafokeng Resources (Pty) Ltd

Management Services (Pty) Ltd, an Anglo Platinum Company.

4. Part of the JV agreement is that RPM will refine RBR's portion of concentrate for a limited period² from the effective date of the JV. Thereafter RBR will be entitled to sell its 50% of the concentrate mined to other smelters/refiners, subject to the right of RPM to accept and match any offer made by such a refiner.

The parties

3. Rustenberg Platinum Mines Limited ("RPM") is ultimately controlled by Anglo Platinum. Its primary operations comprise 6 mines, a smelting complex, a base metal refinery and a precious metals refinery, used in the production of PGMs³. It holds the mineral rights in respect of portions 1 and 2 and the remaining extent of the farm Boschkoppe 104 and half a share of a portion of portion 10, and portion 14 of Frischgewaagd in the Rustenburg area.
4. RPM will contribute to the JV the use of its existing mining operations on Boschkoppe. The existing mining infrastructure, plant, equipment and mining operations of Boschkoppe will form a substantial part of the mining infrastructure which will be used for the exploitation of Boschkoppe and Styldrift as one combined mine. Its existing rights to the surface of Boschkoppe and the concentrator area and its PGM mineral rights in respect of the JV area are also included for the use of the JV.
5. RBR is a shelf company acquired by RBN for its mining rights. RBN is the owner of surface rights and mineral rights over the farm Styldrift 90, a property adjacent to Boschkoppe.
6. RBN's largest source of income, apart from its retail interests, is from royalty payments from RPM, Impala Platinum, Kudu Granite, Marlin Granite and Kelgran. It is not currently involved in the mining of PGMs.⁴
7. RBN shall, for the life of the combined mine, contribute to the JV such use of the surface of Styldrift as may be reasonably required for the purposes of the JV. RBR will contribute its PGM mineral rights in the JV area.

² Confidential information.

³ PGMs is the abbreviation for Platinum-group metals.

⁴ RBN currently only has a passive role in the PGM mining industry in the sense that it receives royalty payments and as a result of its 1% shareholding in Impala Platinum.

Rationale for Transaction

8. According to the JV partners the purpose of the JV is to exploit PGMs in the UG2 and Merensky Reefs under Boschkoppe, Styldrift and Frischgewaagd in the North West Province and to process and beneficiate to concentrate stage the PGM ore generated by the exploitation as one combined mine. The JV will provide RBR, a black owned and controlled firm, an opportunity to enter the PGM market in its capacity as a firm with joint ownership and control of the JV. The capital costs for the development of the combined mines are substantial. The JV will allow RBR to use its share of the proceeds of the operations of the mine to pay for its share of the capital costs.
9. RBN and RBR lack the requisite skills and expertise necessary to independently manage the platinum mine. Participation in the JV will provide them with an opportunity to acquire and develop skills and expertise in this sector. The JV provides for a joint management committee consisting of three members from Royal Bafokeng and three members from Anglo Platinum that will make decisions on, for example, policy and approving of budgets. The parties will also engage in a skills transfer program.
10. RBR and the RBN's participation in the JV forms part of a strategy to become an active participant in both the platinum and the wider mining sector, rather than relying on royalty payments from other operators from the exploitation of its natural assets.
11. The properties are adjacent to each other and its utilisation of the existing infrastructure will lead to significant efficiency gains.
12. RPM is entering into the JV as part of its strategy to open new mines and expand mining operations with a fifty-fifty black empowerment JV. This is also in line with the firm's obligations in terms of the new minerals legislation.

The relevant market

9. As was noted in Competition Tribunal case No: 55/LM/Aug02, *the Pandora Joint Venture merger*, Platinum group metals – PGMs – comprise platinum, palladium, rhodium, ruthenium, iridium and osmium. The properties of this group of metals are such that substitution of PGMs with metals outside of this group is not commercially or technically viable over an important range of uses. There is a certain degree of substitutability *between* the members of the PGM. However the 1996 European Commission report on the

proposed merger of the platinum interests of Gencor (viz. Implats) and Lonrho (viz. LPD) (henceforth 'the Gencor-Lonrho report') found that PGMs do not constitute a single relevant market but rather six relevant markets, each comprising the various members of the platinum group of metals.⁵ Although subsequent developments may indicate a greater degree of substitutability between platinum and palladium in the manufacture of auto-catalysts than that suggested in the EC report, we are confident that the relevant markets identified by the European Commission remain valid.⁶ We will consider the same relevant market as defined in the above-mentioned *Pandora Joint Venture merger case*.

10. Since the Tribunal, in that case discussed the platinum product market in great detail, in par. 9 – 19 of that decision, we will not repeat the information again, other than to add that Anglo Platinum, the largest primary platinum producer in the world intends to expand its platinum production to 3.5 million ounces a year by 2006. Its current capacity is 2 million ounces per year and its estimated market share of the total world platinum supply is 38.43%.

The impact on competition

11. As stated earlier the merger will result in the acquisition of joint control by RPM and RBR over existing mining operations currently exclusively controlled by RPM. Although the transaction does not impact significantly on the market share of RPM - it is estimated that the Styldrift part of the JV will produce 3% of the total world platinum production - there are vertical aspects to this merger that raise competition concerns.⁷
12. RPM will control the supply of PGMs to the market for a limited period after which time the concentrate is then split 50/50 and RBR will then have the right to refine their half of the concentrate independently, subject to RPM's right of first refusal. This tying of RBR into the vertical process is a matter on which the Tribunal has previously expressed concern in PGM joint venture cases, it has had to consider because

⁵ Commission Decision of the 24 April 1996 declaring a concentration to be incompatible with the common market and the functioning of the EEA Agreement (Case No IV/M.619 – Gencor/Lonrho). Note that we shall refer to this report at other points in this decision. The EC report is particularly apposite because both analyses deal with the same geographical market populated by the same participants.

⁶ The parties pointed out that in 2001, the autocatalyst sector accounted for approx. 40% of platinum demand and 71% of palladium demand. They remarked that this demand substitutability signified that platinum and palladium could indeed constitute a single product market, especially as fabricators become more price sensitive.

⁷ In *Two Rivers Platinum Limited and Assmang Limited*, Case No: 54/LM/Sep01, we examined the vertical aspects of this industry in par. 19 – 37. This is referred to in par. 23 of Case No 55/LM/Aug02.

the barriers to entry in the refining stage are becoming so high that it becomes highly unlikely that a new entrant will enter the refining market. In fact, in the previous two merger cases, mentioned earlier, the Tribunal noted that it was becoming increasingly difficult to enter the capital-intensive refining stage of the market because Angloplats, Implats and Lonmin controlled sufficient of the present ore output and reserves to deter any would-be entrant at the refining stage.⁸

13. The parties argue that the period is purely a commercial arrangement, on the one hand to finance the project, i.e. to expand RPM's refining capacity and ensure a return on its investment, and on the other hand for RBN to be able to finance its 50% interest in the JV. Moreover, this JV agreement differs from, for example, the Two Rivers JV, in that it will continue for a limited time only and not for the life of the mine. The parties allege that had it been a commercial bank financing this transaction the bank would have insisted, as a safety factor, on a much longer term probably until the full amount was paid back. Anglo is also offering a lower interest rate.

14. In light of the commercial reasons advanced for tying the refining process to the JV for a specified time we find that the transaction will not substantially prevent or lessen competition. We therefore approve the transaction unconditionally.

Public interest

15. There are no public interest concerns which would alter this conclusion.

D. Lewis

14 January 2003

Date

Concurring: N. Manoim, M. Holden

For the merging parties:	Deneys Reitz Attorneys and Bell, Dewar and Hall.
For the Commission:	A.Coetzee, Competition Commission

⁸ See par. 23 of Case No 55/LM/Aug02