



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:07/LM/Jan11

In the matter between:

NORTHAM PLATINUM LIMITED

Acquiring Firm

And

MVELAPHANDA RESOURCES LTD

Target Firm

Panel : Norman Manoim (Presiding Member),
Yasmin Carrim (Tribunal Member)
Andreas Wessels (Tribunal Member)
Heard on : 09 March 2011
Order issued on : 09 March 2011
Reasons issued on : 22 March 2011

Reasons for Decision

Approval

- 1] On 9 March 2011 the Competition Tribunal ("Tribunal") approved the large merger between Northam Platinum Limited and Mvelaphanda Resources Limited. The reasons for approving the proposed transaction follow below.

The Parties to the transaction

- 2] The primary acquiring firm is Northam Platinum Limited (Northam), a company incorporated in terms of the laws of the Republic of South Africa. Northam is a listed company and is controlled by Mvelaphanda.¹ Northam wholly owns and operates the Northam (Zondereinde) platinum mine and metallurgical complex on

¹ Listed at the Johannesburg Securities Exchange (JSE).

the Western limb of South Africa Bushveld complex. It is also developing the Booyseindal mine on the Western limb of South Africa Bushveld complex which is expected to go into production in 2013.

- 3] The target firm is Mvelaphanda Resources (Mvelaphanda), a company incorporated in terms of the laws of the Republic of South Africa. Mvelaphanda is listed and not controlled by any single shareholder.
- 4] In terms of the proposed transaction Mvelaphanda will unbundle the shareholding it has in Northam Platinum. The unbundling will result in the shares being held directly by the ordinary shareholders of Mvelaphanda

The activities of the parties

- 5] Northam is focused on platinum mining operations which it conducts through its Zondereinde Platinum Mine and metallurgical complex on the western limb and through the Booyseindal mine located on the eastern limb, of the Bushveld complex. The Zondereinde Mine exploits two reefs being the Merensky and UG2 reef. It produces about 300 000 oz platinum, palladium, rhodium and gold annually. In addition, the Northam group is also involved in amongst other things; Northam Platinum Restoration Trust Fund which was established to assist the company in making financial provision for the environmental rehabilitation of the mine; Northplats Properties which owns residential erven in Northam and has erected thereon as an initiative to assist employees; Northam Platinum Educational Trust which was established to fund projects in the education sector.
- 6] Mvelaphanda is a broad based empowerment mining and mineral investment company, which has established itself as one of the leading empowerment mining investment companies in South Africa since its inception in 2002. It has significant investments in precious metals and mineral companies with operation interests in gold, platinum, exploration and diamond sectors.

The Rationale

- 7] This transaction is part of the restructuring that Mvelaphanda is required to do in order to satisfy JSE requirements. The JSE is of the view that Mvelaphanda is a "pyramid" company. The JSE generally prohibits the listing of pyramid companies and has requested Mvelaphanda to restructure itself or face delisting. This transaction is aimed at assisting Mvelaphanda to unlock the trapped value within the corporate structure and to satisfy the requirements of the JSE.
- 8] Furthermore, the Mvela Resources board believes that the continued separate listing will not benefit Mvela Resources shareholders for Northam, with its infrastructure to develop the remaining assets of Mvela Resources.

The relevant market and the impact on competition

- 9] The parties submitted that no overlap arises in this transaction as Mvelaphanda does not conduct mining operations but invests in resources companies while Northam conducts platinum mining operations.
- 10] However, Mvelaphanda holds investment interests in companies operating in the platinum industry. Northam also holds interests in the platinum mining industry. In this regard, there is an overlap with respect to the parties' activities in the platinum industry.
- 11] The Commission submitted that the merged entities are unlikely to be significant players in the global market. Further, the transaction itself does not create any changes to the platinum industry as the parties were part of the same group pre-merger and will remain as such post merger. The merger does not result in any accretion in market share or change in the market structure.
- 12] In light of the above, the Commission found that the transaction would not substantially prevent or lessen competition the relevant markets.

Public Interest

- 13] There are six employees who are likely to be retrenched. Of these, 3 hold senior positions. These are highly skilled employees and can easily find alternative employment. The other employees are skilled, although not as highly, and will be able to obtain alternative employment relatively easy. In this regard it is the parties' submission that these retrenchments are not expected to have any substantial impact on the public interest.

CONCLUSION

- 14] The Tribunal has on several occasions in the past defined the relevant geographical market for PGMs to be an international one. The merged entities are unlikely to be significant players in the global market as there are other significant competitors and players in the market such as Anglo Platinum, Impala Platinum, Lonmin Platinum, Norilsk Nickel amongst others.
- 15] There will be limited employment consequences as a result of the transaction.
- 16] Accordingly, the merger is approved without conditions.

YASMIN CARRIM

22 March 2011
DATE

N Manoim and A Wessels concurring.

Tribunal Researcher: Thabo Ngilande

For the merging parties: Bowman Gilfillan Inc. and Werksmans Attorneys

For the Commission: Mr Bheki Masilela

Ms Seema Nunkoo