

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 121/LM/Nov08

In the matter between:

Shanduka Coal (Pty) Ltd

Acquiring Firm

And

Springlake Holdings (Pty) Ltd

Target Firm

Panel	:	D Lewis (Presiding Member), Y Carrim (Tribunal Member) and N Manoim (Tribunal Member)
Heard on	:	11 February 2009
Order issued on	:	11 February 2009
Reasons issued on	:	06 May 2009

Reasons for Decision

Introduction

- [1] On 11 February 2009 the Tribunal unconditionally approved the acquisition by Shanduka Coal (Pty) Ltd of Springlake Holdings (Pty) Ltd. The reasons follow below.

Parties

- [2] The primary acquiring firm is Shanduka Coal (Pty) Ltd ("Shanduka Coal"). Shanduka Coal is controlled by Glencore International AG ("Glencore") and Shanduka Resources (Pty) Ltd ("Shanduka Resources"). Glencore also controls Xstrata Plc ("Xstrata Plc"), which in turn controls Xstrata South Africa (Pty) Ltd ("Xstrata SA").

- [3] Shanduka Coal controls the following firms:

- Graspan Colliery (Pty) Ltd 100%

- Wakefield Investments (Pty) Ltd 100%
- Lexshell 99 General Trading (Pty) Ltd 50%

[4] Glencore controls Xstrata Plc (“Xstrata Plc”). Glencore is not controlled by any firm. Xstrata Plc is a company incorporated under the laws of the United Kingdom and is listed on the London and Swiss stock exchanges. Xstrata Plc controls Xstrata (Schweiz) AG (“Xstrata Schweiz”), a company registered in Switzerland. In turn Xstrata Schweiz holds a controlling stake in a number of subsidiaries of the following four main groups of companies:

- Xstrata South Africa (Pty) Ltd (“Xstrata SA”)
- Xstrata Holdings (Pty) Ltd (“Xstrata Holdings”)
- Xstrata Canada Corporation (“Xstrata Canada”) and
- Xstrata Zinc B.V. (“Xstrata ZBV”)

[5] Xstrata SA’s subsidiary relevant for this transaction is Maloma Colliery Ltd (“Maloma Colliery”), a company based in Swaziland.

[6] The primary target firm is Springlake Holdings (Pty) Ltd (“Springlake Holdings”). Springlake Holdings is a wholly owned subsidiary of Petmin Ltd (“Petmin”). Springlake Holdings controls the following firms:

- Springlake Mining (South Africa (Pty) Ltd
- Tweewaters Fuel (Pty) Ltd
- Umgen Coal (Pty) Ltd
- Carnarvon Anthracite Coal Mines (Pty) Ltd
- Tendele Coal Mining (Pty) Ltd

Description of the transaction

[7] Shanduka Coal is acquiring all the issued shares in Springlake Holdings from Petmin, as well as all claims which Petmin may have against Springlake Holdings and its subsidiaries. On completion, Shanduka Coal will control Springlake Holdings and its subsidiaries.

Rationale for the transaction

- [8] Shanduka Coal's rationale is to enter the anthracite market and sell the output produced by Springlake Holdings onto both domestic and export markets together with its current thermal coal product offerings.
- [9] Petmin submits that Springlake Holdings is no longer viable business and is therefore selling it. Petmin also submits that it wants to obtain additional cash resources in order to expand its other mine projects.

Parties' Activities

The Acquiring Group

- [10] Shanduka Coal and its subsidiaries are involved in the mining of coal in several places in South Africa including Middelburg, Kendal and Delmas in Mpumalanga Province. Glencore is involved in the mining, smelting, refining, processing, marketing and trading of metals and minerals, energy products and agricultural products. Glencore also provides financing, logistics and other services to producers and consumers of commodities.
- [11] Xstrata SA is involved in the mining, production and sale of ferrochrome, chromite ore, vanadium pentoxide, ferrovanadium anthracite and thermal coal. Its subsidiary, i.e. Maloma Colliery Ltd ("Maloma Colliery") is involved in the mining and selling of anthracite coal to the South African market.

The Target Firm

- [12] Springlake Holdings and its subsidiaries are involved in the production of sized and unsized anthracite coal. The sized anthracite is suitable for domestic heating requirements as well as industrial and metallurgical applications. The unsized anthracite is used in selected metallurgical processes primarily as a reductant in sintering in the iron, steel and ferromanganese industries.

- [13] Anthracite broadly falls into grades, namely high-grade and mid-grade, which are used in different applications. These grades are produced in different sizes referred to as “breeze”, “duff”, “peas”, “small nuts” and “large nuts”. The main difference between the two grades lie in the analysis with high-grade anthracite having high fixed carbon content and lower ash, volatile, sulphur and phosphorus contents than mid-grade anthracite.
- [14] The merging parties submitted to the Commission that Maloma produces all specifications (sized and unsized) of the high-grade anthracite while Springlake Holdings produces all specifications of the mid-grade anthracite. According to the merging parties, high-grade anthracite is used in the production of ferrochrome, titanium-rich oxide slag and electrode paste while mid-grade anthracite is used in the production of ferromanganese, steel and to a limited extend ferrochrome.

Competition Analysis

- [15] The activities of the merging parties overlap in respect of the production and supply of high and medium grade anthracite coal. High-grade anthracite is used in the production of ferrochrome, titanium-rich oxide slag and electrode paste manufacture. On the other hand, Mid-grade anthracite is used to produce ferromanganese, steel and to a limited extent ferrochrome. This transaction also results in a vertical integration in respect of the supply of anthracite as an input in the production of ferrochrome.
- [16] According to the merging parties, high-grade and mid-grade anthracite are not substitutes of one another because of different compositions found in each grade as well as the pricing of each grade. The Commission therefore investigated whether different grades and sizes of anthracite constitute distinct and separate relevant product markets.
- [17] In this regard, the Commission found that some anthracite customers require the composition of the product to meet specific levels of ash, sulphur and phosphorus to be able to use in their furnaces. For these customers, it would appear that substitution is limited if not impossible. However, there are other

customers such as ASA Metals who are able to substitute between different grades in their applications.

- [18] The Commission also noted the difference in the merging parties' pricing of anthracite. The pricing of Maloma's high-grade anthracite is higher than that of Springlake Holding's mid-grade anthracite. In particular, the price of duff was at least 45.6% higher than that of breeze between 2004 and 2006 before the premium declined to 29.3% in 2007 and 22.8% in 2008. This difference in pricing is mainly because of the ash content with duff having an ash content of less than 10% while breeze typically has about 12%.
- [19] The Commission's analysis of the pricing of anthracite also revealed that there has been a general upward trend in prices pre-merger both for Maloma and Springlake Holdings. However, this increase is not peculiar to the merging parties and the anthracite market, but to the broader coal market.¹
- [20] Although the Commission acknowledged that there could be narrower relevant markets for anthracite and that the products of the merging parties could fall into separate relevant markets (due to differences in composition, namely sulphur, ash, phosphorus and volatile content), it concluded by defining the relevant product market as the broader market for the mining of anthracite coal (including both high and mid grades and all other sizes). The geographic market is described as national.
- [21] The merging parties submitted that Maloma has 7% and Springlake Holdings 16% pre-merger market share for the production of anthracite, with the combined share of the parties being 23%. The Commission, however, found that the merging parties' combined post-merger market share is approximately 27%, resulting in the merged entity being a leading supplier of anthracite nationally. Competitors include Leeuw Mining (17%), Riversdale Mining (23%), Slater Coal (10%), Sentula Mining (9%) and others.
- [22] According to the merging parties, barriers to enter this market are not insurmountable. They further submitted that funding for the establishment of a new coal mine can be provided by the IDC or alternatively new entrants can

¹ As shown by figures published by the Department of Minerals and Energy in the SA Coal market for 2006.

outsource the actual mining activity to contractors and merely commence the mining without significant start-up capital and pay the mining fee as it generates revenue for its coal sales. There have also been two new recent entrants in the market, i.e. Somkhele Mining and Piet Retief Colliery.

- [23] Most of the customers and competitors of the merging parties interviewed by the Commission did not have any concerns about the merger. However, Mogale Alloy (a customer) was concerned about the effect of this transaction on its agreement with Maloma.² In this regard, the merging parties assured that any dealings with their customers will not be affected by the merger.
- [24] Another customer, SA Calcium and Carbide raised a concern about the risk of price increases post-merger. SA Calcium and Carbide, however, did not fully submit why price increase would be more probable post-merger. It further acknowledged the presence of other supplies in the market in the event of price increases by the merged entity.
- [25] The Tribunal does not need to come to a conclusion on the relevant product market, as even if the respective anthracite grades are considered substitutes, the merging parties' market shares are not sufficiently high to raise competition concerns. Further, barriers to entry are low in this market as evidenced by two new entrants in the past three years.

Vertical integration

- [26] The Commission submits that there is a vertical integration in the activities of the merging parties as Springlake Holdings produces and supplies anthracite which Xstrata (a subsidiary of Glencore, which controls the primary acquiring firm) uses as an input in the production of ferrochrome. This means that Springlake Holdings is a potential anthracite supplier of Xstrata and its subsidiaries.
- [27] However, the merging parties submitted that there is no vertical integration as the anthracite produced by Springlake Holdings is not suitable for the production of ferrochrome as the sulphur and phosphorus contents are too

² Mogale Alloys has a 3 year supply agreement with Maloma of sales of 3000 metric tons per month and the price is free on truck delivery.

high for ferrochrome production purposes. In this regard, the parties pointed out that sulphur content plays a highly sensitive part in the process of producing ferrochrome whereas with the production of other metals, e.g. ferromanganese, it does not. The Commission nevertheless analysed this aspect since there have been previous purchases of anthracite from Springlake Holdings for ferrochrome production.

[28] The Commission found that in 2007 ASA Metal (a customer) sourced 1482 tonnes of anthracite from Springlake Holdings, whose total production is 686 000. This amounted to 0.2% of anthracite from Springlake Holdings for ferrochrome production purposes.

[29] This amount is insignificant when comparing Springlake Holdings total sales of anthracite with the broader anthracite market. Further, Xstrata's remainder of purchases of anthracite from third parties amount to approximately 7% of sales by competitors of the merging parties. This integration is therefore unlikely to result in any input or customer foreclosure.

[30] In light of the above the Tribunal finds that the proposed transaction is unlikely to substantially prevent or lessen competition in the anthracite market.

Public Interest

[31] The transaction does not raise any significant public interest concerns.

N Manoim

06 May 2009
Date

D Lewis and Y Carrim concurring.

Tribunal Researcher : I Selaledi
For the merging parties : Werksmans Incorporated

For the Commission : L Madhlaba