

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 30/LM/Apr06

In the matter between:

Lexshell 676 Investment (Pty) Ltd

Acquiring Firm

And

Xstrata South Africa (Pty) Ltd

Target Firm

Panel: M Moerane (Presiding Member), M Mokuena (Tribunal Member) and U Bhoola (Tribunal Member)

Date of Hearing: 14 June 2006

Order issued on: 14 June 2006

Reasons issued on: 16 August 2006

Reasons for Decision

APPROVAL

- 1] On 14 June 2006, the Tribunal approved the merger between Lexshell 676 Investment (Pty) Ltd and Xstrata South Africa (Pty) Ltd. The reasons for approval follow.

THE TRANSACTION

- 2] The acquiring firm is Lexshell 676 (Pty) Ltd ("Newco"). African Rainbow Minerals Limited ("ARM") holds 51% shareholding in Newco and the target firm, Xstrata South Africa (Pty) Ltd ("Xstrata") holds 49%. ¹
- 3] In terms of the transaction, Newco will acquire a 51% participation interest in a joint venture to be formed by and between Newco and Xstrata in relation to a coal mine owned by Xstrata viz. the Goedgevonden mine. Post merger, Xstrata and Newco will exercise joint control over the mine.

¹ ARM is a public company listed on the JSE. A list of ARM's shareholders can be found on page 2 of the Commission's Report. Xstrata is ultimately owned by Xstrata Plc.

- 4] According to the parties, the transaction will enable ARM, through its control of Newco, to enter and exploit the coal market, and thereby increasing the types of minerals it produces, which will inevitably result in increased revenue.

IMPACT ON COMPETITION

- 5] Xstrata's Goedgevonden business mines coal in the Goedgevonden mining area and is also involved in the prospecting for coal in the Zaaiwater West area. Newco has not previously engaged in any commercial activities. ARM is a diversified mining company, involved in the mining and selling of ferrous metals, platinum group metals, nickel and gold. ARM also conducts exploration work.
- 6] According to the parties and the Commission, the acquiring firms do not have any business operations which produce products that are substitutable for the products produced by the Goedgevonden business in South Africa. There is accordingly no overlap in the product offerings of the merging parties. The Commission and parties further submit that the transaction does not result in any vertical integration.
- 7] In the absence of evidence to the contrary, we agree with the Commission and the parties that the transaction is unlikely to substantially prevent or lessen competition in any of the markets that the parties are active in.

CONCLUSION

- 8] There are no public interest issues and we accordingly approve this transaction without conditions.

M Mokuena

M Moerane and U Bhoola concurring.

Tribunal Researcher: M Murugan-Modise

For the merging parties: D Rudman and C Roelofs (Werksmans) for Xstrata
South Africa (Pty) Ltd and L Mtanga (Bowman Gillfillan)
for African Rainbow Minerals Limited

For the Commission : T Letsietsa (Mergers and Acquisitions)