

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 29/LM/Mar09

In the matter between:

Aquarius Platinum SA (Pty) Ltd

Rustenburg Platinum Mine Ltd

Acquiring Firms

and

First Platinum (Pty) Ltd

Target Firm

Panel	:	D Lewis (Presiding Member), N Manoim (Tribunal Member) and Y Carrim (Tribunal Member)
Heard on	:	29 April 2009
Order issued on	:	29 April 2009
Reasons issued on	:	7 May 2009

Reasons for Decision

Introduction

- [1] On 26 April 2009 the Tribunal approved the merger between Aquarius Platinum SA (Pty) Ltd (“AQPSA”) and Rustenburg Platinum Mines (“RPM”) (the primary acquiring firms), and First Platinum (Pty) Ltd (“FirstPlats”) (the primary target firm). The reasons follow below.

The transaction and parties

- [2] AQPSA is a South African subsidiary of Aquarius Platinum Ltd, a company listed in Australia and the United Kingdom. RPM is a wholly owned subsidiary of Anglo Platinum, the world’s leading producer of Platinum Group Metals (PGMs), which in turn is controlled by Anglo American PLC. Both acquiring

firms are active in the mining, production and sale of PGMs. FirstPlats is a company incorporated in terms of the laws of South Africa which holds mining rights for PGMs in relation to certain portions of the Brakspuit Farm and Spruitfontein Farm in the North West Province.

- [3] The proposed transaction consists of two phases: In the first phase AQPSA will acquire the business of Firstplats, comprising mining rights, properties and related fixed and movable mining assets of certain portions of the Brakspuit and Spruitfontein farms in the Bushveld Igneous complex in the North West province. In the second phase, AQPSA will transfer the firm to the pooling and sharing venture which exists between it and RPM in respect of Marikana Mine, which is jointly controlled by AQPSA and RPM. On completion of the transaction AQPSA and RPM will jointly control the assets that constitute the transferred firm.

Rationale for the transaction

- [4] The proposed merger will result in making mining and production of PGMs in the area of the transferred firm possible and increase resources and reserves under the control of the acquiring firms. For the target firm, the proposed transaction represents an opportunity to realise certain mining assets which have been isolated for some two years, and which would otherwise not be realised without the kind of investment, technique, mining management and expertise which will be brought in by the acquiring firms.

Relevant Market

- [5] With respect to the relevant market, it has previously been held that PGMs do not constitute a single relevant market but rather six relevant markets being; platinum, palladium, rhodium, ruthenium, iridium and osmium.¹ However the Commission found that there is a potential overlap specifically in the market for platinum, palladium and rhodium. Although FirstPlats merely holds mining rights for PGMs, the Commission, in their assessment considered the potential overlapping product markets should FirstPlats mine its PGMs in future.

¹ See par 9 and 10 Two Rivers Platinum merger (Case No. 54/LM/Sep01) and Pandora Joint Venture merger (Case No. 55/LM/Aug02).

Effect on Competition

- [6] The Commission looked at the acquiring firms' production levels of the relevant products, and also considered the target's firm's anticipated production levels, and found that the accretion in the post merger market shares was insignificant and hence not sufficiently material to raise any competition concerns.² At the hearing the Tribunal queried the source on which the Commission based its market share calculations given that this relied on a 1999 survey.³ However the Commission not only looked at this 1999 survey, but also considered AQPSA's report which dealt with the total reserves of the PGMs market in South Africa. The merging parties also reiterated that the numbers on the global basis have not changed much, and that in terms of output, they have reduced instead of increasing.
- [7] The merger leads to an increase in the PGM mineral rights that will fall under the control of the world's largest producer Anglo Platinum. However, the Tribunal considered that FirstPlats is relatively a small player, not yet in production, and that even if it mines in future, the market share accretion post merger would be low. In addition, the change in HHI for all relevant markets is below 35 points.
- [8] In light of the above the Tribunal finds that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant markets.

Public Interest

- [9] There are no public interest concerns.

N Manoim

7 May 2009
Date

D Lewis and Y Carrim concurring.

² The post merger combined market shares for AQPSA and FirstPlats for platinum, palladium and rhodium was calculated at 5.16%, 2.25% and 7.05% respectively; and for RPM and FirstPlats the same was calculated at 32.35%, 15.16% and 34.27% respectively.

³ Johnson Matthey (Platinum Today) report titled "Resources in South Africa" which refers to a 1999 report by Professor Grant Cawthorn.

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