COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 27/LM/May10

In the matter between:

Lexshell 140 General Trading (Pty) Ltd	Acquiring Firm
And	
Incwala Resources (Pty) Ltd	Target Firm

Panel	:	Norman Manoim (Presiding Member), Yasmin Carrim (Tribunal Member), and Andreas Wessels (Tribunal Member)
Heard on	:	23 June 2010
Order issued on	:	23 June 2010
Reasons issued on	:	16 July 2010

Reasons for Decision

Approval

1] On 23 June 2010 the Competition Tribunal ("Tribunal") approved the acquisition by Lexshell 140 General Trading (Pty) Ltd of Incwala Resources (Pty) Ltd. The reasons for approval follow below.

The parties to the transaction

2] The primary acquiring firm is Lexshell 140 General Trading (Pty) Ltd ("Lexshell"), a dormant special purpose vehicle (SPV) acquired specifically for the purposes of the proposed transaction. Lexshell is wholly owned by Lexshell 806 Investments (Pty) Ltd ("Lexshell Investments"), also a dormant SPV. Lexshell Investments is wholly owned by Shanduka Resources (Pty) Ltd ("Shanduka Resources"). All firms controlled by and controlling Shanduka Resources will collectively be referred to hereinafter as "Shanduka". Shanduka has various investments in the resources sector.

3] The relevant firms within the Shanduka group for the purposes of assessing the competition aspects of the instant transaction are Assore, Pan African Resources plc ("PAR"), DRA and Minopex.[1]

4] The target firm is Incwala Resources (Pty) Ltd ("IR"). IR is a SPV established for the purpose of holding shares, as a black economic empowerment shareholder, in South African mining subsidiaries of Lonmin plc. Lonmin plc and its subsidiaries will be referred to hereinafter as "Lonmin". Lonmin and the Industrial Development Corporation of South Africa Limited ("IDC") each hold 23.56% of the share capital of IR, with the remaining 52,88% being held by the following empowerment shareholders:

- SAWIMIH Trust 0.273%
- The Lonmin Employees Masakhane Trust 1.095%
- Thelo Incwala Investments (Pty) Ltd 16.22%
- Vantage Capital Incwala Investments (Pty) Ltd 16.22%
- Dema Incwala Investments (Pty) Ltd 16.22%

  (the above-mentioned shareholders are collectively referred to as the "target shareholders" hereinafter); and

- Mirrorball Investments 0019 (Pty) Ltd 2.85%

5] IR holds 100% of the issued share capital of Incwala Platinum (Pty) Ltd ("IP"). IP in turn holds 18% of the issued share capital of each of Eastern Platinum Ltd and Western Platinum Ltd (collectively "Lonplats").[2] Lonplats is a primary producer of certain platinum group metals (PGMs), and it also obtains the following minerals in the PGM mining process: gold, copper, nickel and chromite concentrate.

6] IR also holds a 26% shareholding interest in Akanani Mining (Pty) Ltd ("Akanani"), a company in the Lonmin group which owns prospecting rights. However, at this point Akanani produces no products and renders no services.[3]

1 For a full description of the relevant shareholding of Shanduka in these firms, their shareholding interests in other firms and their various activities, see pages 59 to 66 of the record.
2 The remaining 82% of Lonplats is held by Lonmin.
3 Akanani remains in the project phases of possible mine development.

The proposed transaction

7] The proposed transaction effectively replaces the existing empowerment shareholders in IR, i.e. the above-mentioned target shareholders, with Shanduka. After the proposed transaction Lexshell will hold interests directly and indirectly representing in aggregate 50.03% of the issued share capital of IR.

The rationale

8] From Lonmin's perspective the proposed transaction will result in Lonmin securing a high quality BEE partner via a robust funding structure. According to the merging parties, Shanduka will provide leadership to IR and strategic support to Lonmin in achieving its BEE objectives. From the perspective of Shanduka the proposed transaction affords it an opportunity to invest in operational mining activities in the PGM industry.

Product overlap

9] Shanduka and IR both have indirect minority shareholdings in PGM and gold mining companies. The overall PGM market includes the following products: platinum, palladium, rhodium, ruthenium, iridium and osmium. PGMs are mostly used in the automotive industry to produce autocatalysts and are also used in jewellery production. However, the notional horizontal overlap between the activities of the merging parties is limited to the production and sale of only three PGMs, namely platinum, palladium and rhodium, as well as gold.

Relevant markets

10] In line with previous Tribunal decisions we define the production and sale of gold[4] and the production sale of each of the relevant PGMs[5], i.e. platinum, palladium and rhodium, as separate relevant product markets. The geographic scope of these markets is considered to be international.

11] From a vertical perspective Shanduka has a minority shareholding interest of 11.7% in Assore which produces ferrochrome. Lonplats produces chromite fines from the tailings (waste product) generated from its PGM production activities. These chromite fines can be used in ferrochrome production as a partial substitute for metallurgical grade chrome concentrate.

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4 See, for example, the large merger involving *Harmony Gold Mining Company Limited and Pamodzi Gold Free State (Pty) Ltd* (71/LM/Oct09).

5 See, for example, the large merger involving *Aquarius Platinum SA (Pty) Ltd, Rustenburg Platinum Mines Limited and First Platinum (Pty) Ltd* (29/LM/Mar09).

Completion analysis

Horizontal assessment

12] The merging parties submit that the proposed merger will have no effect on competition in the above-mentioned relevant markets since the merger is essentially a restructuring of the empowerment shareholding of IR, and will not confer control to Shanduka over the underlying operational assets of Lonmin.[6] However, the proposed transaction will result in Shanduka indirectly acquiring a further minority stake in certain additional PGM assets.

13] The merged entity's estimated market shares in all of the above-mentioned relevant markets remain below 15% post merger. Furthermore, the accretion in these market shares as a result of the proposed deal is very low, i.e. less than 1% in each of the affected markets. The merged entity further competes with a number of major mining houses in all of the said markets.

Vertical assessment

14] The merging parties contend that there can be no post merger concern that Lonplats may withdraw its chromite fines supply from the market and supply them exclusively to Assore given that this supply will post merger be committed to certain third parties for a number of years. Furthermore, there are a number of alternative PGM producers from which ferrochrome producers can obtain their chromite tailings requirements. We therefore conclude that the proposed deal does not result in any significant foreclosure concerns.

Public interest

15] The merging parties confirmed that the proposed transaction will have no adverse effect on employment. Furthermore, no other public interest issues arise from this proposed merger.

CONCLUSION

16] The merged entity's post merger market shares remain low in all the potentially affected horizontal markets. Furthermore, no vertical foreclosure concerns arise as a result of the proposed transaction. The transaction is therefore unlikely to substantially prevent or lessen competition in any of the relevant markets. Lastly, no public interest concerns arise from the proposed deal. We accordingly approve the

6 See pages 72 and 73 of the record, par 8.1.7 of the merging parties' competitiveness report.

transaction.

____________________ 16 July 2010

Andreas Wessels **DATE**

Norman Manoim and Yasmin Carrim concurring.

Tribunal Researcher:	Thandi Lamprecht
For the merging parties:	Werksmans Incorporating Jan S. De Villiers
For the Commission:	Maarten van Hooven