



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM007Apr16

In the matter between:

**KIMBERLEY EKAPA MINING JOINT VENTURE**

Primary Acquiring Firm

and

**THE PROCESSING AND TREATMENT PLANT AND  
RELATED MINING ASSETS HELD BY EKAPA  
MINERALS PROPRIETARY LIMITED**

Primary Target Firms

**THE PROCESSING AND TREATMENT PLANT, RIGHT TO OPERATE THE  
TAILINGS (THROUGH THE KIMBERLEY MINERS FORUM) AND RELATED  
MINING ASSETS HELD BY SUPER STONE MINING PROPRIETARY LIMITED**

**THE RIGHT TO OPERATE AND CONDUCT MINING ACTIVITIES AT THE  
KIMBERLEY UNDERGROUND MINES HELD BY CROWN RESOURCES  
PROPRIETARY LIMITED**

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|-------------------|--------------------------------------|
| Panel             | : Andreas Wessels (Presiding Member) |
|                   | : Imraan Valodia (Tribunal Member)   |
|                   | : Medi Mokuena (Tribunal Member)     |
| Heard on          | : 18 May 2016                        |
| Order Issued on   | : 18 May 2016                        |
| Reasons Issued on | : 02 June 2016                       |

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**Reasons for Decision**

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## **Approval**

[1] On 18 May 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between the abovementioned parties.

[2] The reasons for approving the proposed transaction follow.

## **Parties to proposed transaction**

### *Primary acquiring firm*

[3] The primary acquiring firm is Kimberley Ekapa Mining Joint Venture ("KEM JV"), a newly established joint venture incorporated in accordance with the laws of the Republic of South Africa.

[4] KEM JV's shareholding will be held by the following entities:

- Crown Resources Proprietary Limited ("Crown Resources") as to 64.85%;
- Ekapa Minerals Proprietary Limited ("Ekapa Minerals") as to 22.14%; and
- Super Stone Mining Proprietary Limited ("Super Stone") as to 13.01%.

[5] The abovementioned entities will collectively be referred to as "the Joint Venture Partners".

[6] Crown Resources is controlled by Luxanio Trading 105 Proprietary Limited ("Luxanio Trading") with a 68.5% shareholding.<sup>1</sup> Luxanio Trading is, in turn, wholly owned and controlled by Petra Diamonds Limited ("Petra Diamonds"), a company listed on the London Stock Exchange.

[7] Crown Resources controls Kimberley Underground Mines Joint Venture ("Kimberly Underground Mines") with a 74% shareholding.<sup>2</sup> Prior to the implementation of the proposed joint venture, Kimberly Underground Mines will no longer be a standalone company. It will be integrated into Crown Resources. Other than Crown Resources, Luxanio Trading has a non-controlling 49.9% shareholding in Ekapa Minerals (one of the shareholders of KEM JV).

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<sup>1</sup> The remaining shareholding is held by Kago Diamonds Proprietary Limited (13.0%) and Itumeleng Petra Diamonds Employee Trust (18.5%).

<sup>2</sup> The remaining shareholding is held by Sedibeng Mining Proprietary Limited ("Sedibeng") (26%).

- [8] Petra Diamonds and its subsidiaries including Crown Resources will collectively be referred to as the "Petra Group."
- [9] The Petra Group is involved in the mining, processing and sale of rough diamonds. In addition to its mining activities, the Petra Group through its subsidiary, Tarorite<sup>3</sup> conducts limited diamond cutting and polishing activities as well as diamond sale activities from time to time.
- [10] Ekapa Minerals is controlled by Ekapa Mining Proprietary Limited ("Ekapa Mining") with a 50.01% shareholding.<sup>4</sup>
- [11] Ekapa Minerals wholly owns and controls KOIN International DMCC ("KOIN")<sup>5</sup> and Ekapa Mining controls the following firms: (i) Super Stone; (ii) Ekapa Consolidated Minerals Proprietary Limited; and (iii) Basfour 2309 Proprietary Limited.
- [12] Super Stone controls Kimberley Miners Forum Proprietary Limited ("Kimberley Miners Forum")<sup>6</sup> with a 60.6% shareholding.<sup>7</sup>
- [13] Ekapa Mining and its subsidiaries including Ekapa Minerals and Super Stone will collectively be referred to as the "Ekapa Group."
- [14] The Ekapa Group through its subsidiary Ekapa Minerals holds a diamond dealer licence and buys, sells and exports rough diamonds. Since the acquisition of Kimberley Mines from De Beers, the Ekapa Group through Ekapa Minerals also holds the exclusive right to use and exploit the Kimberly Mines and conduct the relevant mining activities. The Ekapa Group furthermore, through Super Stone, renders haulage and processing services to Kimberley Miners Forum on a cost recovery basis, in return for a service fee. It also sells stone aggregate as a by-

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<sup>3</sup> Tarorite holds a diamond dealer and diamond beneficiation licence and has equipment that can be utilised for the cutting and polishing of rough diamonds.

<sup>4</sup> The remaining shareholding is held by Luxanio Trading (49.9%).

<sup>5</sup> A company incorporated in Dubai. KOIN does not control any firm in South African.

<sup>6</sup> Kimberly Miners Forum is a consortium of small diamond miners operating in Kimberley that processes Tailings Mineral Resources ("TMRs") to recover rough diamonds which are supplied to Ekapa Minerals. TMRs are partially processed kimberlite ore (the host rock for diamonds). Typically they have been processed by previous miners over the years but because of improvements in technology they can still be re-treated and diamonds recovered from them.

<sup>7</sup> The remaining shareholding is held as by Superkolong Proprietary Limited (30.4%) and El Nino Proprietary Limited (9.0%).

product of its operations.<sup>8</sup> The Ekapa Group also provides loading and hauling services; commissions diamond polishing; and holds certain investment properties.<sup>9</sup>

[15] KOIN facilitates the sale of rough and polished diamonds to the international market using an internet-based tender platform.

*Primary target firms*

[16] The transferred firms for purposes of the proposed transaction are:

- the processing and treatment plant and related mining assets held by Ekapa Minerals;
- the processing and treatment plant, right to operate the Tailings (through the Kimberley Miners Forum and related mining assets held by Super Stone; and
- the right to conduct mining activities at the Kimberley Underground Mines held by Crown Resources.

[17] The Joint Venture Partners will each contribute the following to KEM JV:

- Crown Resources will contribute all of the ore recovered from Kimberley Underground Mines<sup>10</sup> and associated assets of Kimberley Underground Mines;
- Ekapa Minerals will contribute the sole and exclusive right to use and exploit the Kimberley Mines<sup>11</sup> and conduct the relevant mining activities; and
- Super Stone will contribute the sole and exclusive right to use and exploit the Super Stone operation<sup>12</sup>.

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<sup>8</sup> It should be noted that Super Stone does not recover rough diamonds for its own account. Ownership of all recovered rough diamond vests in Kimberley Miners Forum, which in turn supplies Ekapa Minerals.

<sup>9</sup> The merging parties submitted that the Ekapa Group does not themselves (or any entity within the group) conduct cutting and polishing activities. This activity is on an ad-hoc basis outsourced to third parties, although on a relatively small scale. Further, they indicated that the Ekapa Group retains ownership of these stones and pays the relevant fees for the services rendered to the applicable cutters and polishers. After that the Ekapa Group markets and sells such polished stones directly to its customers.

<sup>10</sup> Kimberley Underground Mines comprises of underground diamond mines and tailing of TMRs, namely the Bultfontein, Dutoitspan and Wesselton mines situated in Kimberley in the Northern Cape.

<sup>11</sup> The Kimberley Mines comprise of the following: the mining right, all assets and operations and infrastructure required to conduct processing operations, specific TMRs, the combined diamond treatment plant located at Kimberley Mines, specific immovable properties and other assets and liabilities related to the mine and the mining right and specific immovable properties and liabilities used for mining or processing purpose.

<sup>12</sup> The Super Stone operation comprises of the load, doze, haul and TMR processing business, operations and all related rights and assets held by Super Stone.

- [18] The abovementioned transferred firms to be contributed to KEM JV will collectively be referred to as “the Transferred Businesses”.

### **Proposed transaction and rationale**

- [19] The proposed transaction involves the establishment of a joint venture wherein the Joint Venture Partners intend to group the Transferred Businesses into KEM JV. On completion of the proposed transaction the Joint Venture Partners will have joint control of KEM JV and KEM JV will control the Transferred Businesses.
- [20] The merging parties submitted that KEM JV offers the potential to improve the operational efficiencies of *inter alia* the combined treatment and processing operations and will substantially increase the overall life of mine and plant of the respective mining assets.

### **Impact on competition**

- [21] The Competition Commission (“Commission”) found that the proposed transaction results in a horizontal overlap between the activities of the merging parties in the international market for the production and sale of rough diamonds.
- [22] The Commission also noted a potential vertical dimension between the merging parties’ activities since, as mentioned above, the Petra Group through its subsidiary, Tarorite, is active in the cutting and polishing of diamonds, as well as the sale of diamonds from time to time.
- [23] In relation to the horizontal overlap, the Commission found that the merging parties have an estimated market share of less than 10% in the international market for the production and sale of rough diamonds. The Commission further found that the merging parties will continue to be constrained by other players in this market such as the De Beers Group of companies, ALROSA, SODIAM and the Rio Tinto Group amongst others.
- [24] The Commission furthermore noted that there is no restraint of trade<sup>13</sup> or non-compete agreement entered into by the merging parties.

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<sup>13</sup> Also see Transcript, page 11.

[25] In relation to the vertical aspect, the Commission found that Tarorite does not and has not previously offered beneficiation services to any third parties. Counsel for the merging parties stated that the only instances where Tarorite has ever been utilised for the cutting and polishing services, were in relation to instances where Petra Diamonds was unable to secure the necessary capacity for polishing and cutting of diamonds from beneficiators within the market, those being independent beneficiators. In those outlying instances Petra Diamonds then provided the necessary employees with the skills to fulfil the function.<sup>14</sup> Furthermore, the merging parties indicated that post-merger, the cutting and polishing activities will continue to be outsourced to third parties.

[26] Given the above the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. We concur with the Commission's conclusion.

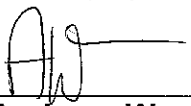
#### **Public interest**

[27] The merging parties confirmed that the proposed transaction will not have a negative effect on employment.<sup>15</sup>

[28] The proposed transaction further raises no other public interest concerns.

#### **Conclusion**

[29] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

  
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**Mr Andreas Wessels**

02 June 2016  
DATE

#### **Prof. Imraan Valodia and Ms Medi Mokuena concurring**

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|--------------------------|--------------------------------------------|
| Tribunal Researcher:     | Kameel Pancham                             |
| For the merging parties: | Ahmore Burger-Smidt of Werksmans Attorneys |
| For the Commission:      | Billy Mabatamela                           |

<sup>14</sup> Transcript, page 6.

<sup>15</sup> Merger Record *inter alia* pages 10 and 66.