



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM229Nov17

In the matter between:

**HARMONY MOAB KHOTSONG OPERATIONS (PTY)
LTD**

Acquiring Firm

And

**VAAL RIVER MINING BUSINESSES, NUCLEAR FUELS
CORPORATION OF SOUTH AFRICA (PTY) LTD, AND
MARGARET WATER COMPANY NPC**

Target Firms

Panel	: Norman Manoim (Presiding Member) : Enver Daniels (Tribunal Member) : Medi Mokuena (Tribunal Member)
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Heard on	: 16 February 2018
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Order Issued on	: 16 February 2018
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Reasons Issued on	: 14 March 2018
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Reasons for Decision

Approval

- [1] On 16 February 2018, the Competition Tribunal ("Tribunal") approved the transaction involving Harmony Moab Khotsong Operations (Pty) Ltd ("Harmony Operations") and Vaal River Mining Businesses ("VR mining businesses"), Nuclear Fuels Corporation of South Africa (Pty) Ltd ("Nufcor"), and membership interests in the Margaret Water Company NPC ("MWC").
- [2] The transaction is, in essence, the purchase of a mine complex and ancillary businesses on the border of the Free State and North-West Provinces.

- [3] The reasons for the approval follow.

Parties to the proposed transaction

Primary Acquiring Firm

- [4] The primary acquiring firm is Harmony Operations, a firm wholly owned and controlled by Harmony Gold Mining Company Limited ("Harmony"). Prior to the transaction, Harmony Operations was a dormant company and thus conducted no activities and controlled no other firm.¹
- [5] Harmony is primarily a producer and supplier of gold, which is also active in the production and supply of silver. Although it holds uranium reserves and uranium is mined as part of its gold mining activities, Harmony does not currently extract or process uranium.

Primary Target Firms

- [6] The primary target firms are VR mining business, Nufcor and MWC. Pre-transaction, the VR mining business, Nufcor and the relevant MWC membership was controlled by AngloGold Ashanti Limited ("AGA").
- [7] The VR mining business comprises the mining, ore processing and gold production business, and ancillary assets at the Great Noligwa and Moab Khotsong Mines as well as the Great Noligwa plant complex, situated adjacent to the Great Noligwa Mine.²
- [8] Nufcor was established in 1967 to process and market uranium concentrate produced by South African gold mining companies to nuclear power generators around the world. Since then it has become a wholly owned subsidiary of AGA.

¹ At the time of notification, Harmony Operations was titled Coreland Investments. The merging parties have informed the Tribunal that since notification, the name of the company has been amended.

² The Noligwa Plant Complex comprises the South Uranium Plant, The Great Noligwa Gold Processing Plant, the Mispah Gold Plant and storage facilities.

Whilst it is active in the exportation of uranium oxide to conversion plants, it is not active in the conversion, enrichment or fabrication of uranium.

- [9] MWC was incorporated in 2007 as the result of a directive issued by the Department of Water Affairs and forestry which made the mining companies operating in the Vaal region responsible for the long term sustainable management of water arising from mining activities in the KOSH basin.³ MWC pumps underground water to manage the flooding of the KOSH basin.
- [10] After the Commission had filed its recommendations with the Tribunal, but prior to the Tribunal hearing the matter, the merging parties submitted additional information, indicating that a number of ancillary assets had been included in the transaction since the date of notification. The ancillary assets included the remainder of a plot of land, a mine garage, the great Nologwa Bridge and various surface rights permits and servitudes. The Commission assessed the ancillary assets, finding that such were essential for the activities of the VR mining business, that no third parties would be affected by the addition of the assets and therefore the addition would not impact its finding.⁴

Proposed transaction and rationale

- [11] The proposed transaction involves the acquisition by Harmony Operations of the VR mining business, equity in Nufcor and membership interests in MWC. Upon the conclusion of the transaction, the target firms will be directly controlled by Harmony Operations and indirectly controlled by Harmony.
- [12] In terms of rationale, the acquiring firm submitted that the proposed transaction is in line with its strategy of increased growth and improved quality of assets.
- [13] AGA, the seller, indicates that selling the VR mining business is in line with its strategy of optimizing returns and generating sustainable cash flow. And as the

³ An area encompassing the locals of Klerksdorp, Orkney, Stillfontein, and Hartebeestpoort.

⁴ Tribunal Transcript page 7 lines 13-16.

shares in Nufcor and membership interests in MWC are critical to the operations of the VR mining business, it was sensible to dispose of these interests together with the VR mining business.

Impact on competition

[14] The Competition Commission ("Commission") identified a product overlap between the activities of the merging parties insofar as both were active in production and supply of gold and silver. The Commission assessed the transactions impact on the international market for the production and supply of gold and the international market for the supply of silver. In both instances, the Commission found that the post-merger market share of the merged entity was less than 1.5% in the market for the supply of gold and less than 1% in the supply of silver. The Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen the competition in the relevant market.

[15] We see no reason to differ from this conclusion.

Public interest


[16] The merging parties confirmed that the proposed transaction will have no negative effects on employment and particularly that no retrenchments or job losses will occur as a consequence of the proposed transaction.⁵

[17] No other public interest concerns arise from the proposed transaction.

⁵ Merger Record page 675.

Conclusion

[18] 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.



Mr. Norman Manoim

14 March 2018
Date

Mr. Enver Daniels and Mrs Medi Mokuena concurring.

Tribunal researcher: Alistair Dey-Van Heerden.

For the acquiring firm: Gomolemo Kekesi and Michelle De Lange of Bowmans.

For the target firm: Richardt van Rensberg of ENS Africa.

For the commission: Rethabile Ncheche and Zanelle Hadebe.