COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 03/LM/Jan01

In the large merger between

Randfontein Estates Ltd

and

Anglogold Ltd

Reasons For The Competition Tribunal's Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 28 March 2001 approving the merger between Randfontein Estates Ltd and Anglogold Ltd without conditions. The reasons for our decision are set out below.

The merger transaction

In this transaction Randfontein Estates Ltd, a wholly owned subsidiary of Harmony Gold Ltd, is acquiring two businesses from Anglogold Ltd [1], the Deelkraal and Elandsrand mines. Randfontein Estates will acquire the businesses as going concerns.

According to the parties both Deelkraal and Elandsrand cannot continue to operate successfully as mining entities because they are near the end of their economic life and cannot sustain the current staffing levels. Harmony has positioned itself in the market to take unprofitable mines that are close to the end of their life span, and by using low-cost mining methods, restructuring them into low cost, high productivity producers. Both Deelkraal and Elandsrand fit this profile.

Furthermore, the sharp decline in the price of gold, coupled with the maturity of the

1 Anglogold is a wholly owned subsidiary of Anglo South Africa, which, in turn, is a wholly owned subsidiary of Anglo American plc.

South African gold mining industry, forces rationalisation on the industry.

Evaluating the merger

The relevant market

The relevant market is the international market for the production and supply of gold for reasons set out below.

Gold is priced extraneously by reference to the London daily price fixings of the London Bullion Association. The international gold price is influenced by factors such as the sale of new production by worldwide producers, global economic trends, currency exchange fluctuations, expectations of investors and the sale of reserves by financial institutions such as international central banks, the World Bank and the IMF. As we have observed in earlier decisions concerning the mining industry a single producer of gold can, therefore, not influence prices in the international market.[2]

Effect on competition

Due to Harmony's relatively insignificant proportion of its production against total world production post the merger (i.e.5 % of world production), it cannot influence the price of gold and will, therefore, not be in a position to exercise market power after the merger.

The estimated market shares in South Africa as provided by the parties are:

Supplier	**Market share pre-merger**	**Market share post-merger**
Anglogold	**42%**	**32,5%**
Gold Fields Ltd	28%	28%
Harmony	**17%**	**26,5%**
Durban Roodepoort Deep	9%	9%
Western Areas Ltd	2%	2%
Total	100%	100%

As will be observed from the table above although the market share of Harmony increases with 9,5%, the combined market shares of Deelkraal and Elandsrand, it does so at the expense of the largest domestic producer Anglogold.

Public interest considerations

Whilst the merger raised no competition concerns the public interest concerns were more difficult. In terms of section 12A(3) one of the public interest grounds we have to consider is the effect that the merger will have on employment. It is well known that due

2 See Tribunal Cases No. 16/LM/Feb00 and No. 77/LM/Jul00

to the unfavourable conditions in the mining industry a large number of jobs are being lost.

The merging parties have informed us that if the merger is implemented a large number of jobs will be lost at both mines. However they argue that if the merger does not proceed Anglogold will have to effect measures to drastically downscale both operations and the result would be that more jobs would be lost if the merger is not implemented.

Should the transaction not take place, Deelkraal will be closed by July 2001 which will place 3100 jobs in jeopardy while mining output at Elandskraal will be significantly reduced, which would place approximately 1500 jobs at risk.

If the acquisition goes ahead Harmony will reduce operations at Deelkraal to ensure that the remaining life of the operation is extended to four years. This will affect 1600 jobs, 400 being supervisory and managerial levels and the remainder from lower levels. Although Harmony will not cut back the production output at Elandsrand it will restructure the operation to ensure that it focuses primarily on rock breaking, its core business, thereby extending its life by more than 20 years. Approximately 400 jobs could be affected, with 90% being at supervisory and managerial level.

Two trade unions the National Union of Mine Workers (NUM) and United Association of South Africa (UASA) attended the Tribunal hearing.

NUM indicated to the Tribunal that it was not against the merger as such but expressed concern about the extent to which restructuring in the mining industry resulted in job losses and said that the Tribunal should, therefore, not assess this transaction in isolation but as part of a much broader restructuring process. The Num suggested that greater obligations should be placed on the seller, Anglogold, to absorb the social implications of the merger. No specific suggestions were made to us as to what these should be. It must be observed that the acquiring firm will be subject to the same obligations as the seller in relation to employees' rights. Employees who are retrenched post-merger will receive the equivalent benefits to employees who might have been retrenched by the respective mines if they had remained in the Anglogold group.

On the evidence before us we agree with the Commission's conclusion that the effect on employment will be more adverse if the transaction is prohibited. Since no conditions have been suggested to us to attach to the approval we approve the merger unconditionally.

19 April 2001

N.M. Manoim **Date**

Concurring: D.H. Lewis and D.R. Terblanche