

# COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019570

In the matter between:

**Fraser Alexander (Pty) Ltd**

Primary Acquiring Firm

And

**Close-Up Mining (Pty) Ltd**

Primary Target Firm

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Panel	:	Norman Manoim (Presiding Member), Andiswa Ndoni (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	05 November 2014
Order issued on	:	05 November 2014
Reasons issued on	:	19 November 2014

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## Reasons for Decision

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### Approval

- [1] On 05 November 2014 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Fraser Alexander (Pty) Ltd ("Fraser") and Close-Up (Pty) Ltd ("Close-Up Mining"). The reasons for approving the proposed transaction follow.

### Parties to transaction

- [2] The primary acquiring firm is Fraser, a wholly-owned subsidiary of Fraser Alexander Holdings Proprietary Limited ("FA Holdings"), which in turn is wholly-owned by RBH Services Holdings Proprietary Limited, which is a wholly-owned subsidiary of Royal Bafokeng Holdings Proprietary Limited ("RBH"). RBH is 100% owned by the Royal Bafokeng National Development Trust ("RBN

Trust"). Fraser operates through various divisions namely, Fraser Alexander Tailings ("FAT"), Fraser Alexander Bulk Mech ("FABM"), Fraser Alexander Mineral Processing ("FAMP") and Fraser Alexander Construction ("FAC"). Fraser Alexander has only one subsidiary, a dormant entity named Dikuno Trading Limited.

- [3] For the purpose of this transaction the relevant division of Fraser is FAC. FAC provides civil engineering services to the mining industry. Its main focus lies with bulk earthworks and geotechnical structures. The services it provides include water and material containment sites and structures, civil structures for waste, water and minerals; and environmental and pollution control and civil works.
- [4] Relevant to note for purposes of this transaction is that RBH has a shareholding in Impala Platinum Holdings Ltd ("Impala") and Royal Bafokeng Platinum Ltd ("Royal Platinum"), which are platinum producers.
- [5] The primary target firm is Close-Up Mining, which provides open pit mining related services on an outsourced basis. It has a substantial fleet of mobile equipment for moving topsoil and overburden and for the mining of primary product and partings between coal seams. Close-Up Mining's core competencies include on-mine road construction, drilling, blasting and turnkey mining projects amongst others.

#### **Proposed transaction and Rationale**

- [6] In terms of the proposed transaction, Fraser is acquiring shares from Close-Up shareholders comprising of up to 100% of the shares in the issued share capital of Close-Up Mining. This will take place in the form of two stages with the last stage taking

place in December 2015.<sup>1</sup> Currently Fraser owns 16% of the issued share capital in Close-Up Mining.

- [7] Fraser submits that the current transaction is in line with its strategy to offer customised, integrated solutions to the mining industry. Whilst Close-Up Mining's shareholders submit that they require a strategic partner to improve the business's exposure to greater number of opencast mining contracts, to enable Close-Up Mining to maintain its growth curve and decrease the risk associated with its current exposure, to allow a number of clients and a limited service offering to its mining clients.

### **Competition assessment**

- [8] The Commission submitted that the proposed transaction gives rise to a horizontal overlap in the broad market for the provision of mining services. The merging parties argued that the services are distinct and hence there is no overlap as Fraser's services are more in relation to the development phase of mines, whilst Close-Up Mining's services are more in relation to open cast mines,
- [9] The Commission submitted that even though this description of the parties' present activities is correct nothing precludes the merging parties from providing each other's services in the identified product market. For this reason the Commission concluded that the firms compete in the same market albeit that it defined it more broadly.
- [10] However the Commission's analysis revealed that in the broader market of the provision of mining services the merged entity will have a market share of less than 5%. The Commission is therefore of the view that due to the low market shares, the proposed transaction is unlikely to raise any competition

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<sup>1</sup> See page 5 of the Transcript of the hearing.

concerns. Also, the merged entity will continue to face competition from other market players such as Aveng, Basil Read and Trollope Mining Services, which offer both initial mine development and opencast mining services.

[11] The Commission also assessed the transaction for potential vertical overlaps. The Commission analysed RBH's ownership in Royal Platinum and Impala, to see whether any foreclosure concerns may arise. The Commission concluded that it was unlikely that any foreclosure concerns would arise as Close-Up Mining offers opencast mining, whilst Impala and Royal Platinum are deep underground mines.

[12] The Commission also looked at whether any vertical concerns may arise since Close-Up Mining has been contracted by FABM for two contracts in relation to loading and hauling of discarded material and top soil respectively. The Commission came to the conclusion that since both contracts are for a very short period of time and since the merging parties do not operate at the same level of the value chain in the identified product market, it is unlikely that any foreclosure may arise post-merger. The Commission therefore submits that the proposed transaction will not substantially lessen or prevent competition in the market for the provision of mining services.

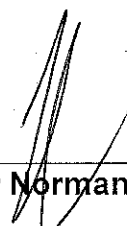
### **Public Interest**

[13] The Commission also submits that the proposed transaction does not raise any public interest concerns.

### **CONCLUSION**

[14] For the purpose of this case we do not need to decide between the merging parties and the Commission's view of the relevant market. Even if we accept the Commission's view that the firms

compete in the same market, we agree with its conclusion that the increments are not sufficient to raise horizontal concerns. We also agree with the Commission's conclusion on the vertical and public interest issues. In summary we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition and thus approve the transaction without conditions.

  
**Mr Norman Manoim**

19 November 2014  
DATE

**Ms Andiswa Ndoni and Prof. Imraan Valodia concurring.**

Tribunal Researcher:

**Caroline Sserufusa**

For the merging parties:

Shawn van der Meulen for Webber Wentzel

For the Commission:

Relebohile Thabane