



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM002Apr18

In the matter between

New Largo Coal (Pty) Ltd

Primary Acquiring Firm

And

New Largo Coal Business of Anglo American
Inyosi (Pty) Ltd

Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Yasmin Carrim (Tribunal Member)
Heard on	: 5 July 2018
Order Issued on	: 5 July 2018
Reasons Issued on	: 24 July 2018

REASONS FOR DECISION

Approval

- [1] On 5 July 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction in terms of which New Largo Coal (Pty) Ltd ("New Largo Coal") is acquiring the New Largo Coal Business of Anglo American Inyosi (Pty) Ltd ("AAIC") (hereafter referred to as the "target business").
- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] New Largo Coal is a newly incorporated company which currently has no activities. However, its three shareholders have interests in the national market for the supply of thermal coal to the tied domestic market.¹
- [4] The three shareholders are Seriti New Largo (Pty) Ltd ("Seriti New Largo") with a 45% interest, the Industrial Development Corporation of South Africa Ltd ("IDC") with a 22,5% interest and Coalzar (Pty) Ltd ("Coalzar") with a 22.5% shareholding.² According to the merging parties the acquiring firm will be jointly controlled by Seriti New Largo and the IDC. (Despite Coalzar holding an equal equity interest to the IDC it is not identified as a joint controller).
- [5] Seriti New Largo is a wholly-owned subsidiary of Seriti Resources Holdings (Pty) Ltd ("Seriti Resources"). Seriti Resources is not directly or indirectly controlled by any single firm.³ Seriti Resources directly controls Seriti Coal (Pty) Ltd ("Seriti Coal").
- [6] Through Seriti Coal, Seriti Resources recently acquired thermal coal assets. In July 2017, the Competition Commission ("Commission") approved an intermediate merger in terms of which Seriti Resources acquired the Kriel business ("Kriel Business"), New Denmark Business ("ND Business") and New Vaal Business ("NV Business") of of Anglo Operations (Pty) Ltd ("AOPL") and its closed Collieries Businesses. Seriti Resources, through its recently acquired Businesses, supplies thermal coal to Eskom power stations through *Coal Supply Agreements*.⁴
- [7] The IDC holds non-controlling minority interests in Exxaro Resources ("Pty") Ltd ("Exxaro"), and South32 Ltd ("South32"). Exxaro manages six coal mines that produce

¹ Relates to sale and supply of thermal coal through long-term contracts (+30 years) with customers like Eskom.

² The remainder of the issued share capital of New Largo Coal are held by the New Largo Community Trust (5%), and the New Largo Employees Trust (5%).

³ Its shareholders are Masimong Beneficiation (Pty) Ltd, CIH Projects (Pty) Ltd, Thebe SPV 0011 (Pty) Ltd and Kamanda Investments (Pty) Ltd (each shareholder owns 25% of Seriti Resources).

⁴ See merger record, pages 72 and 73.

thermal coal to Eskom power stations, steam and coking coal. South32 has four mining operations as well as processing plants that produce energy coal for the domestic and export market.

Primary Target Firm

[8] The target business is a division of the AAIC, which is in turn controlled by Anglo South Africa (Pty) Ltd ("ASA"). ASA is a wholly-owned subsidiary of Anglo American South Africa Limited ("AASA"), which is in turn ultimately controlled by Anglo American plc ("plc").⁵

[9] The target firm comprises a coal mining project under development, a closed colliery which ceased operations in or about 1998 and a conveyor belt under development. The target business is being developed specifically for the exclusive supply of thermal coal to the Kusile power station.

Proposed transaction and rationale

[10] In terms of the *New Largo Sale and Purchase Agreement*, New Largo Coal will acquire control over the target business. Post-merger, the New Largo Business division will be jointly controlled by Seriti Resources and the IDC.

Relevant market and impact on competition

[11] The Commission found that the three shareholders of the acquiring firm operate in the thermal coal business. Exarro, and Seriti Resources' recently acquired assets in particular, supply thermal coal to Eskom power stations. Therefore, the Commission found that the target business is a potential competitor due to the fact that it is being developed to supply Eskom. Eskom's practice is to enter into long term supply contracts with mines situated adjacent to its power stations. These are referred to in the industry as tied mines as they either do not compete or compete in a limited respect with the market for the domestic supply or export supply of coal

⁵ AA plc has a primary listing on the London Stock Exchange and a secondary listing on the JSE.

- [12] The Commission found that as the merger resulted in a dilution of the market share previously held by AAIC the merger would not lead to increased concentration.

Information exchange: IDC

- [13] However, the Commission further found that the proposed transaction is likely to facilitate the exchange of economically sensitive information. This is because the IDC who are to have a director in the acquiring firm also has interests in Exxaro and South32. The IDC has given an undertaking that it will not appoint the same director to the New Largo board who it has appointed to Exxaro. The IDC does not enjoy the right to appoint a director to the South32 board. The merging parties also made the point that the IDC in any event does not have a controlling stake in either of these latter two companies.

Information exchange: Seriti

- [14] The Commission also considered whether the proposed transaction would result in information sharing because of cross-directorship with the subsidiary interests of the other controlling shareholder, Seriti Resources. This is because one of the two directors of Seriti Resources (Mr Teke), who is earmarked to sit on the New Largo board, also sits on the boards of Seriti Coal, Lephalale Coal Mines and Liviero Group Ltd ("Liviero") among others. The merging parties submitted that Mr Teke has since resigned from Lephalale Coal Mine, and therefore, there is no issue of cross-directorship with regards to Lephalale.⁶
- [15] The merging parties further submitted that Liviero provides open casts mining services, and is therefore not active in the supply of thermal coal. Therefore, there is no overlap between the activities of Liviero and New Largo Coal and the issue of cross-directorship should fall away.

⁶ See pages 18, 19 and 20 of the Transcript.

- [16] Coalzer will appoint Pius Mokgokong and Yacoob Mansoor to the New Largo board. Both Mr Mokgokong and Mr Mansoor sit on board of Msobo Coal. In addition Mr Mokgokong sits on the board of Liketh Investments. The merging parties submitted that this will not lead to any concerns about information exchange as Msobo Coal is an export mine, while Liketh is in the downstream coal processing market and does not own any mines itself.
- [17] The merging parties explained that given that the target firm will be a tied mine. This means that the only competition that will take place will be when Eskom calls for bids to supply Kusile. The merger does not increase the bargaining power of the target firm in this respect from what it was pre-merger. This is because the entities which have been identified to give rise to cross-directorship with New Largo are not direct competitors of New Largo, and that there is no material overlap between those entities' activities and New Largo's.
- [18] Moreover Eskom has significant countervailing power due its importance as a customer and because it is the largest purchaser of domestic thermal coal volumes.⁷ Moreover the merging parties further submitted that there is *ex ante* competition for Eskom tied opportunities, and that the market is highly fragmented with a number of large firms supplying thermal coal to Eskom.
- [19] We were advised that Eskom had no concerns regarding the proposed transaction.
- [20] The Commission concluded on these facts that co-ordination is unlikely. We agree with the Commission's findings.


Public interest

- [21] The proposed transaction will not have any adverse effect on employment as the employees of AAIC will be transferred to New Largo. The proposed transaction raises no other public interest concerns.

⁷ See pages 18 of the Transcript and 93 of the Merger Record.

Conclusion

[22] In light of the above, we concluded 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 approved the proposed transaction unconditionally.



Mr Norman Manoim

24 July 2018

Date

Mr Enver Daniels and Ms Yasmin Carrim.

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : D Dingley of Webber Wentzel

For the Commission : R Mokolo and R Maphwanya