



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 017855**

In the matter between:

**SIBANYE GOLD LIMITED**

Primary Acquiring Firm

And

**NEWSHELF 1114 (PROPRIETARY) LIMITED**

Primary Target Firm

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|-------------------|-----------------------------------------|
| Panel             | : Norman Manoim (Presiding Member)      |
|                   | : Dr Takalani Madima (Tribunal Member)  |
|                   | : Prof Imraan Valodia (Tribunal Member) |
| Heard on          | : 5 February 2014                       |
| Order Issued on   | : 5 February 2014                       |
| Reasons Issued on | : 3 March 2014                          |

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### Reasons for Decision

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#### Approval

- [1] On 5 February 2014, the Competition Tribunal ("Tribunal") conditionally approved the acquisition by Sibanye Gold Limited of 76% of the shares held in Newshelf 1114 (Pty) Ltd from Gold One International Limited.

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

### **Parties to transaction**

#### *Acquiring firm*

[3] The primary acquiring firm is Sibanye Gold Limited ("**Sibanye**"). Sibanye is a public company listed on the JSE with a secondary listing of its American Depositary Receipts on the New York Stock Exchange. Sibanye controls a number of firms *inter alia* Living Gold (Pty) Ltd, Sibanye Gold Nursing College (Pty) Ltd, Sibanye Gold Shared Service (Pty) Ltd, St Helena Hospital (Pty) Ltd and Sibanye Gold Protection Services Ltd.

#### *Target firm*

[4] The primary target firm is Newshelf 1114 (Pty) Ltd ("**Newshelf**"). Newshelf is solely controlled by Gold One International Ltd ("**Gold One**") which holds 76% of its shares with the remaining 24% being held by Rand Uranium Empowerment Partnership ("**RU Partnerships**"). Newshelf wholly controls Rand Uranium (Pty) Ltd ("**Rand Uranium**") which in turn wholly controls the Cooke Rehabilitation Trust. Gold One is a public company listed on the ASX Limited in Australia with a secondary dual listing on the JSE that is controlled by a consortium of investors from the People's Republic of China through BCX Gold Investment Holdings Ltd (BVI) ("**BCX**").

[5] BCX is controlled by:

- The Baiyin Group;
- The Chinese African Development Bank; and
- The Changxin Element Group.

Gold One controls:

- Gold One Europe Ltd;
- Gold One Africa Ltd;
- Twin Hills Operations (Pty) Ltd;
- Australian Silicon Operations (Pty) Ltd;
- Gold One Asia Ltd (BVI).

Gold One Europe in turn controls:

- Ezulwini Mining Company (Pty) Ltd;

Gold One Africa in turn controls:

- Etendeka Prospecting and Mining Company (Pty) Ltd;
- Gold One Mozambique Limitada;
- New Kleinfontein Mining Company Ltd;
- Goliath Gold Mining Ltd.

[6] It must be noted that in order to undertake the proposed transaction, a restructuring and consolidation of the Cooke Mining Operations currently housed within Rand Uranium ("**Cooke Shafts 1 through 3**") and Ezulwini ("**Cooke Shaft 4**") will take place. Post the aforementioned restructuring and consolidation, Ezulwini will be controlled by Newshelf 1114. As such, Newshelf 1114 comprises of the Cooke shafts 1 through 4 underground operations and the Randfontein Surface Operations in the Western Witwatersrand Basin region, collectively referred to as (the "**Cooke Mining Operations**").

### **Proposed Transaction**

[7] Sibanye Gold intends to acquire control over Gold One's Cooke Mining Operations i.e. the underground operations of Gold One's Cooke Shafts 1 through 4 and the Randfontein Surface Operations, by acquiring 76% of the shares in Newshelf 1114. Upon implementation Sibanye Gold will acquire sole control over the business of Newshelf 1114 and the RU Partnership will retain its 24% non-controlling interest in Newshelf 1114.<sup>1</sup>

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<sup>1</sup> It must be noted that the Commission also considered the effects of a related transaction on the proposed transaction. In terms of this related transaction the RU Partnership which currently holds a 24% non-controlling interest in Newshelf 1114, intends to acquire negative control over Newshelf 1114 in terms of section 12(2)(g) of the Act. Upon implementation of the proposed related transaction, Newshelf 1114 will be jointly controlled by Gold One (76%) and the RU Partnership (23.4%). The RU Partnership/Newshelf 1114 transaction contemplates the RU Partnership's acquisition of joint control over Newshelf 1114, while the proposed transaction contemplates Sibanye Gold's parallel acquisition of Gold One's 76% shareholding in Newshelf 1114 (i.e. sole control over same) such that Sibanye Gold essentially 'steps into the shoes' of Gold One as Newshelf 1114's majority shareholder. Upon the successful implementation of both transactions, the cumulative effect of the proposed transaction and the RU Partnership/Newshelf 1114 transaction which currently run parallel with one another is such that Newshelf 1114 will be jointly controlled by Sibanye Gold (76%) and by the RU Partnership (24%). The cumulative effect of both these transactions constitutes a move from sole control by Gold One to joint control by Sibanye Gold and the RU Partnership of Newshelf 1114. This transaction is hereinafter referred to as the "**RU Partnership/Newshelf 1114 Transaction**".

## **Rationale**

### *Acquiring firm*

- [8] This transaction presents Sibanye with an opportunity to consolidate the West Rand and West Witwatersrand surface gold production opportunities in a joint venture with Gold one and will allow Sibanye exclusively to develop and exploit the potential of the West Rand and Western Witwatersrand Basin Region, resulting in material infrastructure and operational synergies. The transaction also allows for the introduction of an anchor Sibanye Gold Shareholder with long term investment potential. The Cooke operation will serve to support Sibanye Gold's organic growth profile.

### *Target firm*

- [9] Gold one submits that it will acquire a healthy dividend stream by obtaining a stake in the equity of Sibanye Gold through a relative valuation merger of the Rand Uranium and Ezulwini.

## **Relevant Market and Impact on Competition**

- [10] The relevant market is the market for the international production and supply of gold and silver. The merging parties' activities overlap in the international markets for the production and supply gold and silver.
- [11] In the international market for the production of gold the merged entity will have a market share of approximately 1.41% with a market share accretion of 0.08%. The market for the supply of gold is highly fragmented with the likelihood of significant competition being faced by the merging party from other players.<sup>2</sup>
- [12] In the international market for the production of silver Sibanye Gold's production of silver is so negligible that reliable data cannot be found to determine its market share. The merged entity would continue to face significant competition from other viable competitors.<sup>3</sup>

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<sup>2</sup> See Table 2 on page 30 of the Commission's Report.

<sup>3</sup> See Table 3 on page 31-32 of the Commission's Report

- [13] The Commission found that the proposed transaction is unlikely to substantially prevent or lessen competition given the merged entities minimal market share of less than 2% in respect of gold and 1% in respect of silver.

### **Public Interest Analysis**

- [14] The merging parties submitted that no retrenchments were envisaged as a result of the proposed transaction. The Commission's investigation however revealed that all the relevant unions were given notice prior to the merger filing of possible retrenchments within all divisions of Sibanye Gold. The merging parties stated that this retrenchment process was not merger specific and was based solely on their operational requirements.
- [15] The Commission conducted an extensive investigation to assess the possible link between the retrenchments and the proposed transaction. During this investigation Gold One issued a Section 189 Notice in respect of a possible retrenchment of 82 employees from the Cooke Mining Operations. This process was subsequently withdrawn as there was a concern from Gold One that the retrenchment exercise impact on the proposed transaction.<sup>4</sup> This raised concerns that Gold One would embark on a retrenchment process post-merger.
- [16] The Commission, after reviewing all the information submitted, found that it was not able conclusively to determine whether the retrenchments were merger specific or not. However, taking into account all the information they had gathered, including the withdrawn retrenchments by Gold One, the Commission recommended that the transaction be approved subject to the condition which would prevent the merged entity from retrenching any employee(s) as a result of the merger for a period of two years following the merger implementation date.<sup>5</sup> The merging parties chose not to contest this condition. We agree with this condition as set out in Annexure A to these reasons.

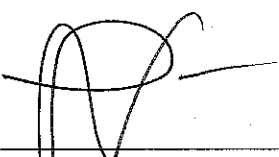
### **Conclusion**

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<sup>4</sup> See page 37 of the Commission's Report.

<sup>5</sup> This sentiment was echoed by the representatives from the USASA and Solidarity trade unions.

- [17] In light of the above we agree with the Commission's conclusion that the proposed transactions are unlikely to substantially prevent or lessen competition in the market for the international production and supply of gold and silver. In addition, no public interest issues arise if the condition proposed is imposed to prevent the retrenchment of employees of the merged entity as a result of the merger. Accordingly we approve the proposed transaction subject to the condition contained in Annexure A.

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**Imraan Valodia**

03 March 2014  
**DATE**

**Norman Manoim and Takalani Madima concurring**

Tribunal Researcher: Derrick Bowles

For the merging parties: ENS Africa (on behalf of the acquiring and target firms)

For the Commission: Portia Bele assisted by Themba Mahlangu and Jatheen Bhima