

**COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

Case No: 10/AM/Jan12

In the matter between:

SILICON TECHNOLOGY (PTY) LTD

Applicant

and

THABA CHUEU MINING (PTY) LTD

First Respondent

SAMQUARZ (PTY) LTD

Second Respondent

THE COMPETITION COMMISSION

Third Respondent

In re: the intermediate merger between:

THABA CHUEU MINING (PTY) LTD

Primary Acquiring Firm

and

SAMQUARZ (PTY) LTD

Primary Target Firm

Panel : Y Carrim (Presiding Member);
A Wessels (Tribunal Member); and
M Mokuena (Tribunal Member)

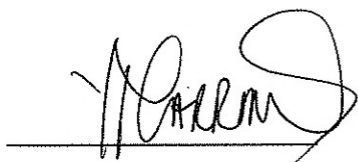
Heard on : 02 April 2012

Decided on : 02 April 2012

INTERVENTION ORDER

1. Further to the Applicant's submissions to intervene, the Tribunal hereby orders that the Applicant is granted leave to intervene, in terms of section 53(1)(c)(v) of the Competition Act (No. 89 of 1998), as amended, in the merger proceedings before the Tribunal in relation to the acquisition by Thaba Chueu Mining (Pty) Ltd of SamQuarz (Pty) Ltd under Case No: 10/AM/Jan12, on the following aspects:
 - 1.1 The correct and proper definition of the upstream and downstream markets relevant to the merger with respect to the following products: silica, silicon metal, ferrosilicon, silicon carbide, silica fume, and silicon slag;
 - 1.2 The market share and market power of the merging parties in the relevant markets and concentration in the relevant markets generally;
 - 1.3 Barriers to entry, countervailing power and import competition in the relevant markets;
 - 1.4 Whether the merger will increase the likelihood of foreclosure of firms in the downstream ferrosilicon, ferrosilicon slag and silica fume markets (and any possible submarkets) by reason of foreclosure of inputs provided by the proposed merged firm in the upstream silica market (and any possible submarkets);
 - 1.5 Whether the merger will increase the likelihood of raising of the Applicant's costs in the downstream ferrosilicon, ferrosilicon slag and silica fume markets (and any possible submarkets);
 - 1.6 Whether the merger will increase the likelihood of predatory pricing in the downstream ferrosilicon, ferrosilicon slag and silica fume markets (and any possible submarkets), excessive pricing of silica, price discrimination in respect of silica supplies, cross-subsidisation within the merged entity and/or margin squeeze in the these markets;

- 1.7 Whether and to what extent any remedies which may be proposed by the merging parties would adequately address the concerns set out in 1.4 to 1.7 above.
- 1.8 Whether the merger would have an adverse effect in the steel foundry and in the FESI 15% industry;
- 1.9 The conditions, if any, considered by the Tribunal in relation to the approval of the proposed merger.
2. The Applicant's participation in the hearing shall include, without limitation, the right:
 - 2.1 To attend pre-hearing conferences;
 - 2.2 To adduce oral and documentary evidence;
 - 2.3 To present argument;
 - 2.4 To request the Tribunal to direct, summon and/or order any person to appear at the hearing;
 - 2.5 To cross-examine the merging parties' witnesses;
 - 2.6 To inspect any books, documents and other items filed by any of the other participants in the merger proceedings, including inspection by the Applicants' legal representatives and economic experts, subject to appropriate confidentiality undertakings, of any information filed by any participants subject to a claim of confidentiality; and
 - 2.7 To have access to the Commission's record that has been referred to the Tribunal in this matter, including access by the Applicants' legal representatives and economic experts, subject to appropriate confidentiality undertakings, to any information contained in the record which is subject to a claim of confidentiality.
3. Notwithstanding the orders in clause 1 and 2, the Applicant's actual participation in the main matter may, at the discretion of the Tribunal, be truncated for the sake of expedition and to avoid duplication or repetition of evidence.
4. There is no order as to costs.

A handwritten signature in black ink, appearing to read 'Yasmin Carrim', is written over a horizontal line.

Yasmin Carrim

Presiding member

Concurring: Andreas Wessels and Medi Mokuena