COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM226Mar17

In the matter between:

K2015356066 (South Africa) (Pty) Ltd. Primary Acquiring Firm

and

The Ferrochrome Production Assets of ASA Metals (Pty) Ltd Primary Target Firm

Panel	: Ms Andiswa Ndoni (Presiding Member) : Prof Imraan Valodia (Tribunal Member) : Prof Fiona Tregenna (Tribunal Member)
Heard on	: 17 May 2017
Order Issued on	: 17 May 2017
Reasons Issued on	: 12 June 2017

Reasons for Decision

Approval

[1] On 17 May 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction between K2015356066 (South Africa) (Pty) Ltd ("Newco") and the ferrochrome production business of ASA Metals (Pty) Ltd ("ASA metals").

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

Parties to the Proposed Transaction

Primary Acquiring Firm

[3] The primary acquiring firm is Newco, a newly created firm incorporated in accordance with the laws of the Republic of South Africa. It is jointly controlled by Sinosteel Corporation Limited ("Sinosteel") and Samancor Chrome Limited ("Samancor").

[4] Sinosteel is wholly owned by the government of the People's Republic of China. Sinosteel controls a number of firms including East Asia Metal Investment Co. Limited ("EAMI"). Sinsoteel is active in the production and supply of chrome ore and ferrochrome

[5] Samancor is wholly owned and controlled by Samancor Chrome Holdings (Pty) Ltd. Samancor controls a number of firms including Ferroveld Partnership (South Africa) ("Ferroveld"). Samancor is engaged in the production and supply of chrome ore, electrode paste and ferrochrome.

Primary Target Firm

[6] The target property is the ferrochrome production business of ASA Metals. ASA Metals is a firm incorporated in accordance with the company laws of the Republic of South Africa. The firm is in business rescue and the sale of its ferrochrome production business assets occurs out of these business rescue proceedings.

[7] ASA Metals is controlled by EAMI (60%) and the Limpopo Economic Development Agency (40%). Sinosteel therefore indirectly controls ASA Metals through EAMI. ASA Metals produces ferrochrome and, through its control of Dilokong Chrome Mine (Pty) Ltd, also produces ore.

Proposed Transaction and Rationale

[8] Newco will purchase ASA Metals' ferrochrome production assets, primarily comprising of four furnaces, a pelletising and sintering plant, and other assets. Post-merger Sinosteel and Samancor will jointly control these assets while ASA Metals will continue to own and control its remaining mining and other assets.

[9] The proposed transaction, through the Newco joint venture, will enable Samancor and Sinosteel to re-commence ferrochrome production at the ASA Metals site. From ASA Metals' perspective disposal of its assets to a third party is a reasonable prospect for rescuing the business

Relevant Market and Impact on Competition

[10] The Commission found that there is a potential horizontal overlap in the global[1] market for the production and supply of ferrochrome since Samancor, Sinosteel and ASA Metals are all active in this market.

[11] The Commission also found that the proposed transaction gives rise to a vertical overlap since both Sinosteel and Samancor are involved in the upstream mining of chrome ore and Samancor, through Ferroveld, is active in the production and distribution of electrode paste. Both chrome ore and electrode paste are used in the downstream manufacture of ferrochrome by ASA Metals. The Commission, therefore, identified three relevant vertical markets, namely (i) the upstream market for the mining and production of chrome ore, (ii) the upstream market for the production and distribution of electrode paste and (iii) the downstream market for the production and supply of ferrochrome.

[1] The definition of the geographic market as global is in accordance with the approach adopted with the Tribunal in the *Xstrata SA Ltd and Egalite (Pty) Ltd and International Carbon (Pty) Ltd*, and *Samancor Chrome Limited and NST Ferrochrome (Pty) Ltd* merger cases.

Horizontal Overlap

[12] The Commission considered 2016 global market shares and found that post-merger the merged entities will have less than 15% of the relevant market with insignificant accretion and that these market shares are minimal to confer market power.[2] Furthermore, the merged entity will continue to be constrained by other local and global ferrochrome producers including, Glencore and Hernic Ferrochrome.

[13] The Commission also noted that the target firm ceased ferrochrome production activities in 2015, due to financial distress and industry decline. In 2016 the firm went into full care and maintenance resulting in all production assets ceasing operations. The firm has therefore not been active in the South African Ferrochrome market for this period and did not exert a competitive constraint

Vertical Overlap

[14] In the market for the mining of chrome ore the Commission found that foreclosure concerns are unlikely to arise as ASA Metals procures relatively small amounts of chrome ore from the open market and currently procures a majority of its chrome ore requirements from its vertically integrated chrome ore mine. Furthermore, Samancor has only one South African customer for chrome ore, which has confirmed that it will have alternative suppliers even if ASA Metals were to acquire its entire chrome ore requirements from Samancor.

[15] In the market for the manufacture of electrode past, the Commission found that pre-merger, ASA Metals purchased all of its electrode paste requirements from Ferroveld. Therefore, any customer foreclosure would not be considered merger specific. With regard to potential input foreclosure concerns, the Commission found that ASA Metals is an insignificant customer of Ferroveld since ASA Metals procures only a small percentage of the electrode produced by Ferroveld.

[2] Transcript page 2.

[16] We conclude that the proposed transaction overall is unlikely to substantially prevent or lessen competition in any of the relevant markets.

Public Interest

[17] According to the merging parties, the business rescue proceedings and operational requirements of ASA Metals have led to retrenchments. The merging parties submit that these retrenchments are not a result of the merger, and that the proposed transaction will not have an adverse effect on employment.[3]

[18] The Commission received concerns from the National Union of Mineworkers ("NUM"), a union representing some of the employees of ASA Metals, regarding the proposed transaction. NUM requested the imposition of a condition requiring the merged entity to commit to employing retrenched workers once operations re-commence.

[19] The Commission, however, is of the view that the retrenchments were carried out as a result of business rescue proceedings and are not related to the merger. It also notes the positive effect the merger will have on employment as the merged entity will require more employees once ferrochrome operations at ASA Metals recommence.

[20] No other public interest concerns arise from the proposed transaction.

Conclusion

[21] In light of the above, we conclude 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 approve the proposed transaction unconditionally.

[3] Merger Record page 72.

12 June 2017

Ms Andiswa Ndoni **DATE**

Prof Imraan Valodia and Prof Fiona Tregenna concurring

Tribunal Researcher:	Hayley Lyle
For the merging parties:	Paul Cleland of Werksmans
For the Commission:	Seabelo Molefes