

DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 1357

17 OCTOBER 2019

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

EKAPA MINING PROPRIETARY LIMITED

AND

CROWN RESOURCES PROPRIETARY LIMITED

CASE NUMBER: 2018JUL0052

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above-mentioned firms subject to conditions as set out below:

1. On 25 July 2018, the Competition Commission (Commission) was notified of an intermediate merger whereby Ekapa Mining (Pty) Ltd (Ekapa Mining) intends to acquire sole control of Crown Resources (Pty) Ltd (Crown).
2. Ekapa Mining is a firm incorporated in accordance with the company laws of the Republic of South Africa (South Africa), Ekapa Mining is not controlled by any firm and its shares are held by a number of different broad based black economic empowerment (BBBEE) entities. Ekapa controls several firms, of relevance to the proposed transaction is its interest in the Kimberley Ekapa Mining Joint Venture (KEM JV).
3. Crown Resources is a firm incorporated in accordance with the company laws of South Africa. Crown is ultimately controlled by Petra Diamonds Limited (Petra Diamonds). Crown Resources owns an interest in the KEM JV. As a result of the proposed transaction, Ekapa will have sole control of the KEM JV, which it currently co-owns with Crown Resources. Petra Diamonds will exit the joint venture.

4. The Ekapa Mining group provides loading and hauling services, commission of diamond polishing and holds certain investments and investment properties. Ekapa Minerals holds a diamond dealers' licence and buys, sells and exports rough diamonds. Ekapa Mining is in a Joint Venture partnership with Crown Resources in respect of the KEM JV.
 5. Crown Resources does not have any activities apart from its interest in the KEM JV. The KEM JV is the owner and operating firm of the Kimberley underground diamond mines. The Kimberley underground mines comprise of underground diamond mines and tailing of mineral resources (TMRs), namely, Bultfontein, Dutoitspan and Wesselton mines situated in Kimberley, in the Northern Cape Province. The diamond mine was previously owned by De Beers.
 6. The proposed merger raises a horizontal overlap between the activities of the merging parties only as far as both parties are partners in the KEM JV. KEM JV operates as a diamond miner and sells diamonds on the global market. The proposed transaction does not give rise to any overlap as Ekapa Mining does not have any other activities outside of the KEM JV.
 7. The Commission considered the activities of the merging parties in relation to the production (mining) and supply of diamonds. The Commission found that Ekapa Mining will only assume the market shares of KEM JV and there will be no material change to the structure of the market as there will be no market share accretion. Therefore, the Commission concluded that it is unlikely that the proposed transaction will raise competition concerns.
 8. In relation to public interest, the Commission found that the KEM JV retrenched 79 employees prior to the proposed merger. Of the 79 retrenchments, the Commission found that 17 are merger specific. Of the 17 merger specific retrenchments, the Commission found that 7 of these employees are unskilled and therefore unlikely to be able to find alternative employment in the short term. With respect to the remaining 10 employees, the Commission found that they are skilled with post-matriculation qualifications. Given that the KEM JV is in financial distress and the fact that the 10 employees are skilled, the Commission is of the view that the retrenchments can be allowed under the circumstances.
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9. The Commission engaged with the merging parties on how to mitigate the negative effects on employment. Through these engagements, the Commission and the merging parties agreed that the Commission impose a condition on approval of the proposed transaction that the merging parties would reinstate the 7 (seven) unskilled employees reducing the number of merger specific retrenchments to 10 (ten). In this way, the merging parties will only be allowed to retrench up to 10 skilled employees as a result of the proposed transaction for a period of 2 (two) years from implementation date. Furthermore, the conditions require merging parties to offer the remaining 72 retrenched employees first preference for employment should conditions improve at the KEM JV and positions become available in future.
10. The Commission therefore approves the proposed merger subject to the conditions stated above.

All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3755, or Facsimile: (012) 394 4755.