Anticipated acquisition by Harmony Gold Mining Company Ltd of Gold Fields Ltd

The OFT's decision on reference under section 33 given on 14 April 2005. Full text of decision published 22 April 2005

PARTIES

1. **Harmony Gold Mining Company Limited** (Harmony) is a gold mining company based in South Africa with principal mining operations in South Africa and Australia.

2. **Gold Fields Limited** (Gold Fields) is also a gold mining company based in South Africa. It has mining operations in South Africa, Australia and Ghana. Gold Fields' estimated turnover in the UK in the most recent financial year was £677 million.

TRANSACTION

3. On 18 October 2004, Harmony announced that it would be making an unrecommended offer to acquire the entire issued share capital of Gold Fields. The administrative target date for the OFT to reach a decision in this case is 14 April 2005.

JURISDICTION

4. As a result of the proposed transaction Harmony and Gold Fields would cease to be distinct. Gold Fields' UK turnover exceeds £70 million, consequently the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. The OFT therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

RELEVANT MARKET

Product market

5. The parties overlap in the supply of newly-mined gold.

Gold

6. Gold is a relatively scarce precious metal that occurs as nuggets or grains in rocks and in alluvial deposits. The value placed on gold's rarity, durability and lustre has long made it a means of commercial exchange.

7. Consequently, as well as having practical applications in (among other things) jewellery, dentistry and electronics, gold is used in many nations as a monetary standard.

8. The gold that is bought and sold within the global economy includes the metal released from the vaults of central banks, sales by investors, recycled scrap gold from jewellery etc ('old gold') and the supply of gold from mining operations ('new gold').

Gold pricing and valuation

9. Given its prominence in worldwide commerce, the price of gold is benchmarked twice daily to accommodate the different time zones within which financial markets operate. This takes place in London[1] by means of an event called the 'London Gold Fixing' (also known as the 'Gold Fix'). During each Gold Fix, five individuals (one from each of the five major gold-trading bullion banks) confer. Each is linked by telephone to his/her firm's trading room, where buy and sell orders for gold are processed at various prices from market participants all over the world. Such participants include (among others) central banks, other bullion banks, wholesale jewellers and gold mining companies. In addition, many other interested parties with no existing buy or sell orders will keep an open line to one of the trading rooms participating in the fixing – with a view to making a decision to buy or sell depending on what price is finally announced.

10. At the beginning of each Gold Fix, the chair announces a price at which trading will begin. Each of the five participants then confers with their respective trading rooms. The trading rooms then tally up supply and demand from orders

[1] Historically, the London bullion banks developed a global reputation for the purity ('fineness') of the gold they traded in by compiling lists of accredited melters and assayers whose gold bars they would accept without question against transactions conducted between themselves and with others. Such gold bars are accorded 'London Good Delivery' status – an internationally accepted standard of bar and refinery quality.

originating from around the world. Within a short period of time (usually only a few minutes) each participant has determined whether it is a net buyer or a net seller of gold. If there is excess supply or demand, a new price is proposed, but no orders are completed until an equilibrium price is determined. The equilibrium price (at which supply matches demand) is quoted in US dollars and is referred to as the 'fixing price'. The morning and afternoon fixing prices are published daily in the major newspapers worldwide and are seen as a transparent and reliable equation of daily global supply and demand.

Geographic market

11. Gold is traded on a worldwide basis.

HORIZONTAL ISSUES

12. The amount of gold traded on the world market is not confined to that produced by gold mining companies (see paragraph 9). However, taking a narrowly defined product reference, the supply of new gold, the global shares of supply are as set out in Table 1 below:

Table 1: Gold production by top 15 mining companies:

Mining Company	Volumes Oz (000)	%
Newmont	7 106	8.3
Anglo-Gold Ashanti	6 300	7.5
Barrick	4 991	5.9
Gold Fields	4 343	5.2
Harmony	3 617	4.3
Combined	***7 960***	***9.7***
Placer Dome	3 553	4.2
Kinross	1 623	1.9
Buenaventura	1 612	1.9
Freeport	1 366	1.6
New Crest	1 051	1.3
Durban Deep	920	1.1
Lihir	563	0.7
GoldCorp	543	0.6
Meridian	308	0.4
Agnico-Eagle	294	0.4
		45.5
Total World Production	84 042	

Source: Competition Tribunal, Republic of South Africa.

13. The parties' combined share of the supply of 'new' gold from the world's largest gold mines will be less than 10 per cent. The increment created by the merger would be 5.2 per cent.

14. Furthermore, even this share of supply overstates the parties' combined position given that the top15 mining companies account for only 45.5 per cent of total world production and that trading occurs in old gold as well as new gold. Third party consultation indicates that the trading and price of gold is only loosely tied to new production. As a result the merger would not have a direct impact on price.

Buyer Power

15. Notwithstanding the impact of the Gold Fix on prices, the extent to which the London bullion banks have buyer power is unclear. However the low margins earned by Harmony[2] may suggest that mining firms are price takers.

Vertical Issues

16. There are no concerns here.

Third party comments

17. There was no response to the OFT's invitation to comment. Few third parties responded to a subsequent questionnaire prepared by the OFT. Those who did respond were unconcerned by the transaction.

ASSESSMENT

18. The proposed transaction would create the largest producer of newly mined gold at the global level. However, the share of supply of 'new' gold attributable to the merged entity would be less than 10 per cent of world production.

19. The ability of gold mining companies to impose price increase in relation to 'new' gold is constrained by the fact there is a large amount of 'old' gold already in circulation and by the fact that the price of gold is benchmarked twice daily by means of a process known as the 'London Gold Fix' – which is beyond the control of the parties. There is therefore no evidence that the merged entity would be able to raise prices for gold.

[2]According to a competition assessment by the South African competition authority, Harmony has barely covered production costs in recent years causing it to require repeated refinancing.

20. Consequently, the OFT does not believe that it is or may be the case that the proposed merger may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

21. This merger will therefore **not be referred** to the Competition Commission under section 33(1) of the Act.