

## DEPARTMENT OF ECONOMIC DEVELOPMENT

NO. 534

18 June 2021

## THE COMPETITION COMMISSION OF SOUTH AFRICA

**NOTICE IN TERMS OF SECTION 10(7) OF THE COMPETITION ACT NO. 89 OF 1998 (AS AMENDED) BY VARIOUS INDEPENDENT CHROME ORE PRODUCERS – EXEMPTION REFUSED**

1. On 21 September 2020, various **Independent Chrome Ore Producers** (“**ICOP**”) hereinafter referred to as (“**Applicants**”) filed an exemption application (the “**Application**”) in terms of section 10(1)(b) of the Competition Act as amended (the “**Act**”). The Applicants seek an exemption for a period of two (2) years.
2. The Applicants are not members of any association and include the following entities:
  - 2.1. Rustenburg Platinum Mines Limited and Atomatic Trading Proprietary Limited;<sup>1</sup>
  - 2.2. Assore Limited and its subsidiaries, including but not limited to: Dwarsrivier Chrome Mine Proprietary Limited and Ore & Metal Company (collectively, “Assore”);
  - 2.3. Bauba Resources Limited and the firms controlled thereby whether directly or indirectly;
  - 2.4. Chrometco Limited and the firms controlled thereby whether directly or indirectly;
  - 2.5. Impala Platinum Holdings Limited and the firms controlled thereby whether directly or indirectly;<sup>2</sup>
  - 2.6. Northam Platinum Limited and the firms controlled thereby whether directly or indirectly;
  - 2.7. Sibanye-Stillwater Limited and the firms controlled thereby whether directly or indirectly;
  - 2.8. Siyanda Resources Proprietary Limited and the firms controlled thereby whether directly or indirectly; and
  - 2.9. Tharisa plc, including its subsidiaries: Tharisa Minerals Proprietary Limited, Arxo Resources Limited and Arxo Metals Proprietary Limited.
3. The Applicants are non-integrated firms involved in the mining and production of chrome ore for both local and international market. The exemption application was filed against the background of government’s intention to impose an export tax (in the form of a levy or duty) on the outbound chrome ore to be exported from South Africa. The proposed export

<sup>1</sup> With both such entities being subsidiaries, alternatively, affiliates of Anglo-American Platinum Limited.

<sup>2</sup> Impala was initially part of the Application when it was filed but pulled out in March 2021.

tax is meant to stabilise and support the declining ferrochrome market in South Africa by ensuring that adequate chrome ore is utilised by local downstream ferrochrome producers.

4. The Applicants submitted that the proposed export tax on chrome ore producers might have dire consequences on the chrome ore industry and sought to find alternative mechanisms to support the ferrochrome industry. . In this regard, the Applicants sought an exemption to ensure that the chrome ore producers can coordinate and engage with each other and consolidate their responses and make proposals to the government on mechanisms to assist the ferrochrome industry.
5. The Applicants requested to undertake engagements with government and industry participants to facilitate research on viable interventions to support the deteriorating ferrochrome industry in South Africa. For this purpose, the Applicants identified the following potential broad areas of coordination in a bid to find alternative interventions to the proposed export tax:
  - 5.1. Palatable and non-destructive form of chrome ore export tax;
  - 5.2. Appropriate off-take arrangements in terms of which the chrome ore sector obtains assurance that it will not be left with unsold volumes of, or reduced prices for chrome ore, as a result of any export tax; and
  - 5.3. Appropriate energy production or purchasing arrangements to improve the cost-effectiveness for the production of both chrome ore and ferrochrome.
6. The Commission considered the exemption request and concluded that the broad areas envisaged for coordination may still be achieved without an exemption. Accordingly, the Commission has decided to refuse granting the exemption. The Commission understands that there are ongoing engagements with government to find viable interventions and/or mechanisms in support of the declining ferrochrome market.
7. During its investigation, the Commission became aware that there are on-going and parallel processes led by government to support the ferrochrome industry. The Commission understands that Cabinet and the Portfolio Committee on Trade and Industry took decisions on some viable mechanisms to be considered to support the ferrochrome industry.<sup>3</sup> Among the proposed interventions include (i) security of competitively price electricity through the short-term and long-term electricity pricing framework for energy intensive users, (ii) a form of chrome export tax that will balance the viability of the chrome

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<sup>3</sup> Portfolio Committee meeting dated 28 October 2020.

and ferrochrome industry. In addition, other industry commitments included (i) preserving upstream and downstream jobs and smelting capacity (iii) restarting idle capacity and encourage investment into new mines and smelters to increase production.

8. The Department of Trade, Industry and Competition (DTIC) further indicated that there are on-going engagements with the industry across the value chain to discuss the proposed support measures that can balance the interest of chrome miners and ferrochrome.<sup>4</sup> The Applicants indicated that they have ongoing engagements with government (Department of Mineral Resources and Energy and Department of Trade Industry and Competition) regarding the proposed export tax. In this regard, the Commission believe that this is an appropriate forum to facilitate discussions to explore other possible interventions that government can take to support both the chrome ore and ferrochrome sectors. In addition, the Commission believes that the exploration process can be achieved utilising this forum without the need for an exemption.
9. The Commission is of the view that the on-going engagements should continue within the context of these government engagements. However, when an agreement or arrangement is reached, the Applicants can then file an exemption with the Commission for consideration.
10. In this regard, Notice is hereby given in terms of Section 10(7) of the Competition Act regarding the Commission's decision to refuse this exemption. The Applicants and any other person with a substantial material interest affected by this decision may appeal to the Competition Tribunal in the prescribed manner in terms of Section 10(8) of the Competition Act.
11. Further queries should be directed to:  
**Ms Balisa Mhambi**, Market Conduct Division  
Tel: 012 763 8613 Email: [BalisaM@compcom.co.za](mailto:BalisaM@compcom.co.za)
12. Kindly refer to the following case number: **2020Sep0032** when sending correspondences in relation to this Notice.

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<sup>4</sup> Submission by the DTIC dated 14 January 2021.