

# The Bottom Line

by Stephen Francis & Rico



## Iron Will

**A**rcelorMittal SA (Amsa) CEO, Nonkululeko Nyembezi-Heita, was surprisingly sanguine about the prospects of a speedy conclusion to the iron ore supply dispute between her company and Kumba Iron Ore (Kumba). Assuming an appeal by Imperial Crown Trading (ICT) fails in November, Nyembezi-Heita thinks a long-lasting iron ore supply agreement with Kumba will be finalised by mid-2013.

The dispute made national news last year, and started when the politically connected ICT was awarded a mining right that cut Amsa out of Sishen Iron Ore Company (SIOC). This enabled Kumba, which controls SIOC, to demand a renegotiation of iron ore supplied to Amsa. Amsa called a dispute which resulted in the sides agreeing on an interim supply agreement pending arbitration.

Then the courts said ICT was wrongfully given the stake in SIOC making Kumba its sole owner. It's this judgment ICT is appealing in November. If ICT loses the appeal, focus will turn once again to iron ore price arbitration between Amsa and Kumba.

Enter Government *ex machina*. It's expected to arbitrate a deal in which Amsa will pay only a little above the historic cost plus 3% rate from Kumba, but only on condition it passes the benefit on to consumers. In other words, ICT and Kumba earn an honourable draw, while the SA consumer wins the day.

One wonders, however, if it's a lesson Amsa will take to heart? Government clearly thinks consumers are paying too much for steel. It's for this reason that Amsa is almost being hunted down by the Competition authorities who, to the dismay of Nyembezi-Heita, have slapped Amsa with yet another anti-competitive inquiry.

Says Nyembezi-Heita: "Our lawyers are having fun with this one because they've never seen it before." She's referring to a charge Amsa has to answer for "conscious parallelism", a new-fangled term describing how steel competitors, without tacitly agreeing, mirror each others' pricing levels. This comes at a bad time for Amsa and Nyembezi-Heita who can provide no guidance as to when steel market torpor and depressed earnings will end.

The upshot is that Amsa has another legal position to defend; putting its business case further in question. Accusations include alleged price discrimination on wire rod sales and cartel conduct for long steel products.

Amsa has also entered into fresh legal action with Kumba on its participation in the Phoenix iron ore prospect – a venture from which Kumba alleges Amsa withdrew in 2006.

The Phoenix dispute is wearily similar to Amsa's previous dispute on SIOC. "The project is squarely in the Thabazimbi area, and the supply rules are clear," Nyembezi-Heita said. Kumba, however, maintains Phoenix is ring-fenced from the remainder of

Thabazimbi's resources, a mine it owns in Limpopo province. Kumba also believes the mining rights are the property of SIOC. "We have not withdrawn from this project," says Nyembezi-Heita whose appetite for litigation seems undimmed.

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**Nonkululeko Nyembezi-Heita**