

HARMONY GOLD MINING CO LTD

Form 6-K

February 25, 2005

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Form 6-K**

**REPORT OF FOREIGN PRIVATE ISSUER PURSUANT TO**

**RULE 13a-16 OR 15d-16 UNDER THE SECURITIES**

**EXCHANGE ACT OF 1934**

For the Month of February 2005

Commission File Number: 001-31545

**Harmony Gold Mining Company Limited**

(Translation of registrant's name into English)

**Suite No. 1**

**Private Bag X1**

**Melrose Arch, 2076**

**South Africa**

(Address of principal executive offices)

(Indicate by check mark whether the registrant files or will file annual reports under cover of

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Form 20-F or Form 40-F.)

Form 20-F  Form 40-F

(Indicate by check mark whether the registrant by  
furnishing the information contained in this form  
is also thereby furnishing the information to the  
Commission pursuant to Rule 12g3-2(b) under the  
Securities Exchange Act of 1934.)

Yes  No

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**Harmony Gold Mining Company Limited**

(Incorporated in the Republic of South Africa)

(Registration number 1950/038232/06)

Share code: HAR ISIN: ZAE000015228

( Harmony )

**Text of announcement released in the United States on February 25, 2005**

February 25, 2005

***Proposed Merger Jeopardized after Competition Tribunal Pre-hearing***

Harmony confirmed today that the Competition Tribunal set dates to hear submissions with regard to the Harmony's proposed merger with Gold Fields. Harmony requested that the hearing be held as soon as possible with Advocate David Unterhalter requesting that the proceedings have some regard for commercial reality.

However, the Competition Tribunal has decided that the matter should not be heard until the 3rd, 4th, 5th and 6th May 2005, which will mean that Harmony's offer will lapse on March 18, 2005, unless the South African Securities Regulation Panel ( SRP ) consents to a further extension of the time period for the obtaining of South African Competition Authority approval. Harmony intends to request a second extension of the offer from the SRP, but there can be no assurance that such request will be granted.

In addition, this decision also jeopardizes the status of the entire offer because of the proximity of these dates to the expiry on May 20, 2005 of irrevocable undertaking by MMC Norilsk Nickel to Harmony to tender its Gold Fields securities into Harmony's offer.

Commenting on the decision, Harmony CE, Bernard Swanepoel said, "Obviously we are surprised and disappointed that the Tribunal cannot see a way to hold these hearings earlier. Many Gold Fields shareholders will be unwilling to tender into the subsequent offer with this remaining condition hanging over it.

We will be engaging in discussions with Norilsk over this development but we have no guarantee that Norilsk's undertaking will be extended.

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Throughout the offer Gold Fields management has spent considerable amounts of Gold Fields shareholders' money on legal actions aimed solely at depriving its own shareholders of the opportunity to decide for themselves on Harmony's offer.

While we are working hard with our own advisers to provide Gold Fields shareholders with the right to decide, it is clear that the timing of the hearing is not in the interests of Gold Fields shareholders.

We still believe that our proposal to merge the companies will extend the lives of Gold Fields' mines, provide the necessary consolidation for the industry and create significant value for both sets of shareholders.

Gold Fields security holders are advised that upon satisfaction or waiver of all conditions to Harmony's offer, Harmony's offer will become unconditional, the initial offer period (as then extended) will terminate and Harmony will accept Gold Fields securities that have been tendered and not withdrawn and will issue new Harmony shares in respect of such tendered and accepted Gold Fields securities. Gold Fields security holders' right to withdraw their tenders will terminate immediately upon Harmony's offer becoming unconditional.

Assuming that the SRP consents to a further extension of the time period for the obtaining of South African Competition Authority approval, Harmony believes that the grant of merger clearance by the Competition Tribunal will be the last condition to be satisfied. Gold Fields security holders are therefore advised that Harmony will commence settling Gold Fields securities tendered and not withdrawn immediately after the grant of merger clearance by the Competition Tribunal, even if prior to the scheduled expiration of the initial offer period. Holders of Gold Fields securities that have already accepted Harmony's offer, but whose willingness to accept the offer would be affected by satisfaction of the competition condition may therefore wish to consider withdrawing their acceptances with respect to such securities promptly. Upon Harmony's offer becoming unconditional and expiration of the initial offer period, there will be a subsequent offer period during which time Harmony's offer will remain open for acceptances, but during which time no withdrawal rights apply.

In connection with the proposed merger, Harmony has filed with the U.S. Securities and Exchange Commission (SEC), a registration statement on Form F-4, which includes a preliminary prospectus and related exchange offer materials, to register the Harmony ordinary shares (including Harmony ordinary shares represented by Harmony ADSs) to be issued in exchange for the remainder of Gold Fields ordinary shares held by Gold Fields shareholders resident in the United States and for Gold Fields ADSs held by Gold Fields shareholders wherever resident, as well as a Statement on Schedule TO. Investors and holders of Gold Fields securities are strongly advised to read the registration statement and the preliminary prospectus, the related exchange offer materials and the final prospectus (when available), the Statement on Schedule TO and any other relevant documents filed with the SEC, as well as any amendments and supplements to those documents, because they contain important information. Investors and holders of Gold Fields securities may obtain free copies of the registration statement, the preliminary and final prospectus (when available) and related exchange offer materials and the Statement on Schedule TO, as well as other relevant documents filed or to be filed with the SEC, at the SEC's web site at [www.sec.gov](http://www.sec.gov). The preliminary prospectus and other transaction-related documents may be obtained for free from MacKenzie Partners, Inc., the information agent for the U.S. offer, at the following address: 105 Madison Avenue, New York, New York 10016; telephone 1 212 929 5500 (call collect) or 1 800 322 2885 (toll-free call); e-mail [proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com).

This communication is for information purposes only. It shall not constitute an offer to purchase or exchange or the solicitation of an offer to sell or exchange any securities of Gold Fields or an offer to sell or exchange or the solicitation of an offer to buy or exchange any securities of Harmony in the US, nor shall there be any sale or exchange of securities in any jurisdiction in which such offer, solicitation or sale or exchange would be unlawful prior to the registration or qualification under the laws of such jurisdiction. The distribution of this communication may, in some countries, be restricted by law or regulation. Accordingly, persons who come into possession of this document should inform themselves of and observe these restrictions. The solicitation of offers to buy Gold Fields ordinary shares (including Gold Fields ordinary shares represented by Gold Fields ADSs) in the US will only be made pursuant to a prospectus and related offer materials that Harmony has sent to holders of Gold Fields securities. The Harmony ordinary shares (including Harmony ordinary shares represented by Harmony ADSs) may not be sold, nor may offers to buy be accepted, in the US prior to the time the registration statement becomes effective. No offering of securities shall be made in the US except by means of a prospectus meeting the requirements of Section 10 of the United States Securities Act of 1933, as amended.

ENDS

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