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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019026

In the matter between:

AIR PRODUCTS SOUTH AFRICA (PTY) LTD Primary Acquiring Firm

And

SASOL CHEMICAL INDUSTRIES LTD ("SCI")
In respect of the
A2100 AIR SEPARATION PLANT owned by SCI Primary Target Firm

Panel	: Norman Manoim (Presiding Member)
	: Yasmin Carrim (Tribunal Member)
	: Prof Imraan Valodia (Tribunal Member)
Heard on	: 31 July 2014
Order Issued on	: 31 July 2014
Reasons Issued on	: 28 August 2014

Reasons for Decision

Approval

[1] On 31 July 2014, the Competition Tribunal unconditionally approved the acquisition by Air Products SA (Pty) Ltd ("**Air Products SA**") of the A2100 Air Separation Plant ("**A2100 Plant**") owned by SCI.

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

Primary acquiring firm

[3] The primary acquiring firm is Air Products SA which is jointly controlled by Air Products and Chemicals Incorporated ("**APCI**") and Remgro Limited ("**Remgro**"). Remgro is a public company listed on the Johannesburg Stock Exchange Limited ("**JSE**") and controls the following firms:

- TTR Holdings (Pty) Ltd;
- TSB Sugar Holdings Limited;
- Wipesco Holdings Limited; and
- Remgro Management Services Limited.

Air Products SA controls the following firms:

- APSAP Gas Newcastle (Pty) Ltd;
- Erfmark (Pty) Ltd;
- Oxy-Gen and General (Pty) Ltd; and
- MIA Gas (Pty) Ltd.

Primary target firm

[4] The primary target firm is the A2100 Air Separation Plant and associated air plants, storage facilities and certain pipelines ("**A2100 Plant**") owned by SCI, SCI is a wholly-owned subsidiary of Sasol Limited ("**Sasol**"). Sasol is a publically listed company and is as such not controlled by any firm.

Proposed Transaction and Rationale

[5] In terms of the Purchase and Sale Agreement, Air Products SA shall acquire the A2100 Plant from SCI. The A2100 Plant includes pipelines spanning from the Air Products SA's Vanderbijlpark facility to Sasol's Sasolburg facility for the purpose of supplying it (SCI) with the volumes required in excess of the production off the A2100 Plant (or to provide SCI with backup volumes in the event of plant shutdowns). This also includes a tributary pipeline off the main oxygen pipeline which runs between the Air Products SA's Vanderbijlpark facility and Sasol's Sasolburg facility for the supply of Oxygen by Air Products to Natref.

[6] The merging parties have indicated in a letter of intent ("**Letter of Intent**") that they will enter into negotiations to finalise the following agreements on mutually acceptable terms:

- Supply agreements in terms of which Air Products SA undertakes to supply and SCI to purchase products at the agreed volumes and specifications;
- Property lease agreements in terms of which Air Products SA shall lease the land the A2100 Plant is situated on at the factory;
- Utilities and service agreements in terms of which Air Products SA undertakes to supply and SCI to purchase liquid oxygen, liquid nitrogen and gaseous nitrogen supplied by Air Products SA via the pipelines from the site to the factory as backup to the plant at the agreed volumes and specifications.

Relevant Market and Impact on Competition

[7] Air Products SA's primary business is to manufacture, supply and distribute a wide variety of industrial and speciality gas products and chemicals servicing, *inter alia*, the steel, stainless steel, chemical, petrochemical and engineering industries. Air Products SA supplies industrial gases through a variety of different delivery channels.

[8] SCI is a producer of chemicals, synthetics, and fuel co-products in South Africa, China and Malaysia. The A2100 plant is an air separation plant ("**ASU**") currently operated by Air Products for the benefit of the ASU's owner, SCI. An ASU takes atmospheric air and separates it into one or more of its main component gases principally oxygen, nitrogen and/or argon. The A2100 Plant has the following capacities: 2100 TPD[1] gaseous oxygen ("**GOX**"), 1260 TPD of gaseous nitrogen ("**GAN**"), 70 TPD of liquid nitrogen ("**LIN**") and 50 TPD of liquid argon ("**LAR**").

[9] Upon an assessment of the merging parties' activities, the Commission found that there is a horizontal overlap in the activities of the merging parties in the supply of industrial gases. In the Commission's assessment of the relevant markets it found there are distinct product markets, namely (i) tonnage market supply for the supply of GAN and GOX, and (ii) the bulk supply of LIN and LAR.

(i) *Tonnage market for the supply of GAN and GOX*

[10] In the tonnage market for the supply of GAN and GOX, the Commission found that the GAN and GOX produced by the A2100 plant are used almost entirely by SCI and are therefore not available to the general market, with only a negligible amount of GAN (10 to 20 TPD) being sold to Karbochem (Pty) Ltd ("Karbochem"), which supply to Karbochem will continue post-merger.

(ii) *Inland regional market for the bulk supply of LIN and LAR*

[1] Tons per day.

[11] In the inland regional market for the bulk supply of LIN, Air Products SA will not be accreting any market share, as it already has access to 45 TPD pre-merger and SCI will be increasing its requirement of LIN from 10 TPD to 25 TPD.

[12] In the national market for the bulk supply of LAR, Air Products SA will have a post-merger market share of between 55-60% with an accretion of less than 2%. The Commission is of the view that the market share accretion is low and are thus unlikely to raise any competition concerns. The negligible volumes of LAR that was available to the open market when the A2100 Plant was still owned by SCI will continue to be available post-merger through Air Products SA. Post-merger, Air Products SA will continue to face competition from Air Liquide South Africa and African Oxygen Limited ("**AFROX**") and further, none of the effected customers have raised concerns about the transaction.

Conclusion

[13] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the (i) tonnage market supply for the supply of GAN and GOX, and (ii) the bulk supply of LIN and LAR. The Letter of Intent further does not contain any terms or clauses that raise competition concerns. In addition, no public interest issues arise from the proposed transactions. Accordingly we approve the proposed transaction unconditionally.

Mr Norman Manoim — 28 August 2014 **DATE**

Ms Yasmin Carrim and Prof Imraan Valodia concurring

Tribunal Researcher: Derrick Bowles

For the merging parties: Sakia Rohi

For the Commission: Glementine Mahlangu and Xolela Nokele