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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM063Jul16

In the matter between:

AFRIC OIL (PTY) LTD	Acquiring Firm
And	
PART OF THE BUSINESSES OF BIG RED INVESTMENTS (PTY) LTD, SOME OF THE ASSETS, LICENSES AND CONSENTS BELONGING TO TURQOISE MOON (PTY) LTD AND SOME OF THE ASSETS BELONGING TO REDLEX (PTY) LTD	Target Firm

Panel	: Mondo Mazwai (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 14 September 2016
Order Issued on	: 14 September 2016
Reasons Issued on	: 19 October 2016

Reasons for Decision

APPROVAL

[1] On 14 September 2016, the Competition Tribunal ('Tribunal') approved a large merger between Afric Oil (Pty) Ltd ('Afric Oil') and part of the businesses of Big Red Investments, some of the assets, licenses and consents belonging to Turquoise Moon (Pty) Ltd and assets belonging to Redlex (Pty) Ltd.

[2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

[3] The primary acquiring firm is Afric Oil, a private company incorporated in accordance with the laws of the Republic of South Africa. Afric Oil is controlled by Phembani Oil RF (Pty) Ltd which is in turn controlled by Phembani Group (Pty) Ltd ('Phembani Group').

[4] Afric Oil is involved in the marketing and selling of petrol, diesel, paraffin and lubricants to a client base that comprises of local and national governments, parastatals, the mining and construction industry, the transport and manufacturing sector, resellers and agricultural industries. Afric Oil's parent company, Phembani Group, holds investments in the energy, mineral resources and infrastructure sectors.

[5] Afric Oil does not operate a fuel refinery and is only active in the national marketing and distribution of the above-mentioned fuel products. It does not own independent storage facilities, rather leasing approximately 2 million litres of storage space from Transnet wherein it stores its 1.5 million litres of fuel transported weekly via a pipeline from Durban in terms of an agreement it has with Transnet.

[6] When customers place an order with Afric Oil for petroleum products, they are directed to use their own transport company to collect the fuel at depots owned by other companies or from Transnet's storage facility directly. Alternatively, Afric Oil is able to make transport arrangements for the fuel products to be delivered to specific customers.

Primary Target Firm

[7] The target firms are the immovable properties, statutory licenses and consents ('immovable properties and licenses') held by Turquoise Moon (Pty) Ltd ('Turquoise Moon'), vehicles owned by Redlex (Pty) Ltd ('Redlex') and the wholesale distribution business ('wholesale business') of Big Red Investments (Pty) Ltd ('Big Red').

[8] The immovable properties and licenses held by Turquoise Moon consist of two immovable properties and all statutory licenses and consents required for the storage of fuel on such properties.

[9] The vehicles owned by Redlex consist of a fleet of trucks comprising of eight fuel tankers trucks and trailers.

[10] The wholesale businesses of Big Red comprise of one immovable property, certain vehicles,[1] movable property,[2] all statutory licenses and consents required for the conduct of the business of Big Red,[3] supplier and customer databases, goodwill and the bank account of Big Red.

[11] The wholesale business of Big Red is branded under the name 'Forever Fuels' and its fuel is supplied by various suppliers.[4] This fuel is stored in facilities on the property of, and in accordance with the licenses held by, Turquoise Moon. Big Red then rents the vehicles owned by Redlex to facilitate its distribution network which covers areas in the Gauteng, Limpopo, Northern Cape and Free State Provinces. Big Red supplies its fuel to seven franchised independently owned and franchised branded stations, supplying other retail stations on an *ad hoc* basis.

PROPOSED TRANSACTION AND RATIONALE

[12] The proposed transaction involves an acquisition by Afric Oil of the target firms. On completion of the proposed transaction, Afric Oil will control the target firms.

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[1] Sixteen Fuel tankers trucks, trailers and four pick-up bakkies.

[2] Including but not limited to workshop fittings and fixtures

[3] Big Red Licenses and consents include all statutory licenses, approvals and consents (including without limitation, environmental consents) required for the conduct of businesses of the Wholesale Business of Big red as a going concern under the name and style of Forever fuels.

[4] BP Southern Africa (Pty) Ltd, Chevron South Africa (Pty) Ltd, Engen Petroleum (Pty) Ltd, Sasol Limited, Shell South Africa (Pty) Ltd and Total South Africa (Pty) Ltd.

[13] In terms of the rationale, Afric Oil submits that the proposed transaction will increase its distribution footprint and enable it to more effectively compete with large competitors in the market.

[14] The Target firms submit that the proposed transaction affords an opportunity to realize their investments.

RELEVANT MARKETS AND IMPACT ON COMPETITION

[15] The transaction presents a horizontal overlap in the wholesale/ distribution of petroleum products arising from Afric Oil and Big Red operating in the same market and a vertical overlap between the merging parties arising from the fact that the wholesale business of Big Red procures some of its supplies from Afric Oil.

[16] The Commission comprehensively assessed the horizontal overlap between the merging parties in the regional geographic markets of the Gauteng, Limpopo, Northern Cape and Free State Provinces as well as the national market. In none of the markets assessed did the market share of the merged entity exceed 6%, nor did the market share accretion exceed 2%.[5] Given the low accretion and market share percentages, the horizontal overlap does not present a threat to competition.

[17] Any concerns of input and customer foreclosure arising from the vertical overlap presented by the proposed merger are rendered nugatory when the presence of strong competition from reputable refineries is considered. On the Commission's version, there are currently a number of petroleum product wholesalers readily competing in the market and customers of the merging parties are easily able to switch to alternative suppliers should the wholesale business of Big Red Choose to only supply Afric Oil and its customers.[6] Given the presence of strong competition in a market in which it is, according to the commission, easy to switch between suppliers, and the small market share

[5] Competition Commission's Report, pages 17-22.
[6] Competition Commission's Report, page 24 paragraph 72.

possessed by the post-merger Afric Oil, the vertical overlap does not present a threat of foreclosure.

[18] The proposed merger thus does not present anti-competitive effects to the market for the wholesale/ distribution of petroleum products.

PUBLIC INTEREST

[19] The Commission also investigated the potential effects of the merger on third party transporters and the concerns raised by a holder of a wholesale fuel license.

Third party Transporters

[20] Under its pre-merger business model, in the instances where Afric Oil needed to organise the distribution of its petroleum based product to consumers, it would utilise third party trucks from Force Fuel CC and Copasync (Pty) Ltd. Given that post-merger Afric Oil would have access to a fleet of vehicles it previously did not have access to, the Commission examined the possibility of the foreclosure of Force Fuel and Copasync post-merger.

[21] Afric Oil submitted that the existing contractual agreements entered into between itself and the transportation companies would continue post-merger. Notwithstanding this submission, the Commission, upon investigating the contractual agreements entered into between Afric Oil and the transportation companies, found that the transportation contracts have no completion clauses, nor do they allow for termination on the grounds of conditions created by the merger. It is thus not likely that the merger would result in the foreclosure of such companies.

Other Third Party Concerns

[22] During its investigation, the Commission received a concern from a competitor of Afric Oil, raising the point that the proposed transaction may concentrate the

market further. This concentration, according to the competitor, is undesirable because major oil refineries provide discounts to larger wholesalers and the barriers to entry presented by a concentrated market are thus exacerbated in the market for the wholesale of petroleum products.

[23] The merged entity will account for less than 3% of the national market for the wholesale of petroleum products. The merger does not enhance the market position of the merged entity post-merger to a significant extent.

[24] We thus find that the merger presents no public interest concerns.

CONCLUSION

[25] Although presenting horizontal overlaps in the market for the wholesale of petroleum products, the small market share accretion renders the effects of such market overlap nugatory.

[26] The merger does not raise foreclosure concerns in the markets for the wholesale of petroleum products.

[27] The proposed transaction does not raise any public interest concerns.

[28] Accordingly, we approved the transaction without conditions.

Mondo Mazwai — **19 October 2016**
Date

Medi Mokuena and Andiswa Ndoni concurring

Tribunal Researcher: Alistair Dey-Van Heerden

For the Merging Parties: Candice Upfold of Norton Rose Fullbright

For the Commission: Billy Mabatamela