COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM093Aug22

In the matter between:

Royale Energy Proprietary Limited Acquiring Firm

and

FuelEx Proprietary Limited Target Firm

REASONS FOR DECISION

Approval

[1] On 19 October 2022, the Competition Tribunal ("the Tribunal") conditionally approved the large merger wherein Royale Energy Proprietary Limited ("Royale Energy") intends to acquire 100% of the issued shares in FuelEx Proprietary Limited ("FuelEx"). Post-transaction, Royale Energy will acquire sole control over FuelEx in terms of section 12(2)(a) of the Competition Act 89 of 1998, as amended ("the Act").

The Parties

Primary acquiring firm

[2] The primary acquiring firm is Royale Energy, which is controlled by Royale Energy Group Proprietary Limited ("Royale Energy Group"). Royale Energy Group is a wholly owned subsidiary of the PGC Group. The PGC Group is the investment arm of POPCRU Trust and the Police and Prisons Civil Rights Union.

[3] While Royale Energy does not control any firm, its controlling company Royale Energy Group wholly owns and controls the following entities: Freightcor Logistics Solutions

Proprietary Limited, Viva Oil Proprietary Limited, Royale Gas Proprietary Limited, Royale Energy Terminals Proprietary Limited and Royale Energy Olifantsfontein Proprietary Limited.

Primary target firm

[4] The primary target firm is FuelEx, a private company incorporated in accordance with the company laws of the South Africa. FuelEx is controlled 74% by CJF Holdings Proprietary Limited ("CJF Holdings") and 26% by Febmax Proprietary Limited ("Febmax").

[5] FuelEx controls the following firms: Transportex Proprietary Limited (100%), Fuel Exchange Property Group Proprietary Limited (100%); Int Fuel Exchange Proprietary Limited in Namibia (60%); Eswatini Fuelex Change Proprietary Limited in Eswatini (60%); FuelEx International Traders Proprietary Limited (55%) and Securezza Response Proprietary Limited (70%).

[6] All firms directly and indirectly controlled by Fuelex are collectively referred to as the "Target Group".

Proposed transaction and rationale

Transaction

[7] In terms of the proposed transaction, the Acquiring Group intends to acquire 100% of the issued shares in the Target Group from the following shareholders: CJF Holdings who hold 74% and Febmax who hold 26% in the Target Group. Upon implementation of the proposed transaction Royale Energy will have sole control over FuelEx and its subsidiaries as envisaged by section 12(2)(a) of the Competition Act 89 of 1998, as amended.

Rationale for the transaction

[8] The Acquiring Group submits that it wishes to pursue its diversification strategy and further its socioeconomic development plans which are to further energy access across the various Living Standards Measurement levels. This acquisition will enable them to leverage their infrastructure, deliver capabilities and expand their footprint due to the synergies between the two companies.

[9] The portfolio alignment and benefit of FuelEx to Royale Energy based on FuelEx's existing infrastructure in the Gauteng and Western Cape provinces includes properties with a fleet of transport and distribution vehicles that compliment and expand the current Royale Energy capabilities.

[10] The Target Group submits that it is financially distressed and accordingly the board resolved to commence voluntary Business Rescue proceedings on 22 September 2021.

Activities of the Parties

[11] The Acquiring Group is an energy company that operates in the wholesale, retail, marketing, storage and distribution of petroleum products (including petrol, diesel, and illuminating paraffin) within the energy sector of South Africa.

[12] The Acquiring Group supplies large companies, mines, agriculture and retail companies through established fuel supply agreements.

[13] The Acquiring Group owns bulk and terminal storage facilities, has pipeline access, has its own trucks to ensure service and quality as well as product compliance and owns over 80 retail-sites, of which 55 have their own retail brand.

[14] The Acquiring Group distributes over [redacted] of petroleum products through Freightcor Logistic Solutions.

[15] The Target Group also operates in the wholesale, marketing, storage and distribution of bulk petroleum products including diesel, petrol, illuminating paraffin, jet fuel, heavy furnace oil, lubricants and related petrol products, which are collected from the major fuel refineries and registered storage terminals. It also supplies a full spectrum of mineral and synthetic oil lubricants and hydraulic oils.

[16] The Target Group distributes over [redacted] of petroleum products. The Target group delivers fuel products anywhere in the country.

Relevant markets

[17] The Commission does not conclude on the exact relevant market. However, the Commission assessed the effect of the proposed merger on the following markets:

17.1. national market for the wholesale and distribution of petrol;
17.2. national market for the wholesale and distribution of diesel; and
17.3. national market for the wholesale and distribution of illuminating paraffin.

[18] The merged entity will have less than [redacted] market shares with an accretion of less than [redacted] in all three markets. The competitors contacted by the Commission did not raise any concerns relating to the proposed merger and indicated that the markets are fragmented.

[19] The Commission does not conclude on the product market in the current transaction.

Competition assessment

[20] In its assessment of the proposed transaction, the Competition Commission (the "Commission") considered the activities of the merging parties and found that the proposed transaction gives rise to a horizontal overlap in the wholesale and distribution of petrol, diesel and illuminating paraffin. The Commission found no vertical overlap.

[21] The Commission considered previous Tribunal decisions and accordingly assessed the effects of the proposed merger on the national markets for the wholesale and distribution of petrol, diesel and illuminating paraffin.

[22] The Commission relied on the merger parties and competitors' submissions for the estimated market shares. The market shares are measured using the total litres supplied within the relevant markets.

[23] The Commission found that the merged entity will have less than [redacted] market shares with an accretion of less than [redacted] in all three markets post-merger.

[24] The Commission contacted the competitors of the merged entity in the relevant markets and found that none of the competitors raised any concerns relating to the proposed merger. A competitor indicated that the markets are fragmented and mentioned that there are major competitors in the wholesale and distribution of diesel,

petrol and illuminating paraffin. In addition, none of the customers contacted by the Commission raised any concerns, and they indicated that they are alternative suppliers in the relevant markets.

[25] Based on the above, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in all the relevant markets.

Public interest

Effect on employment

[26] The parties submitted that the merger will not result in any retrenchments. The employees of Royale Energy are represented by Zelda Pretorius ("Zelda") while the employees of the Target Group are represented by United Association of South Africa ("UASA").

[27] The Commission contacted Zelda and the union confirmed that the employees of Royale Energy raised no concerns.

[28] UASA filed a notice to intention to participate.

[29] UASA union raised concerns in respect of FuelEx's business rescue plan which set out that FuelEx was likely to retrench 76 employees. In terms of the business rescue plan, a sworn statement was submitted describing that its financial state which was declining due to consequences of its long-standing dispute with South African Revenue Services ("SARS"), as well as the knock-on effect of the Covid-19 outbreak in March 2020. Accordingly, the Target Group had to resort to other means such as downsizing and voluntary business rescue. UASA requested clarity on the retrenchments outlined in the Business Rescue Plan and the reasons for such retrenchments. Furthermore, UASA requested a 24-month moratorium on retrenchments from the approval date.

[30] In response the merging parties indicated that they will no longer go ahead with the retrenchments contemplated in the Business Rescue Plan. The merging parties indicated that the proposed merger would save all the employees that were supposed to be retrenched as a result of the business rescue plan.

[31] UASA withdrew its participation in the merger process as its concerns were resolved during the investigation.

[32] The DTIC filed an intention to participate and requested a condition to be imposed, requiring the Acquiring Group to offer suitable employment opportunities to retrenched workers, when opportunities become available, for a period of three years post implementation of the merger. In response, the merging parties submitted that the concerns and proposed condition was moot since the business rescue plan and retrenchment would not be implemented. Instead, the merger will result in all jobs being saved.

[33] Considering the above, the Commission is of the view that the proposed merger is unlikely to result in any employment concerns. The business rescue plan contemplated retrenchments which were not merger specific, and the parties have indicated that the process will not be implemented.

[34] We agree with the Commission's findings that the proposed transaction is unlikely to have a negative impact on employment in South Africa if the proposed retrenchments do not occur. However, there is concern that there will be a negative impact on employment should the identified retrenchments go ahead. The parties have assured the Tribunal that the workers will not be retrenched and have agreed to a condition providing for a moratorium on retrenchments for two years from the implementation date.

Spread of ownership

[35] The merging parties submitted that the Acquiring Group is 100% owned by historically disadvantaged persons ("HDPs"). This is because the Royal Energy Group shares are held by POPCRU Trust, the Police and Prisons Civils Rights Union through its investment arm, PCG Group.

[36] The Target Group has an HDP shareholding of 26% which is held by Febmax. The Target Group does not have an ESOP.

[37] Therefore, the Acquiring Group is 100% owned by HDPs, while the Target Group has 26% shareholdings by HDPs. Based on an assessment of the total aggregate

percentage of HDP shareholding, the Commission is of the view that the merger will not result in any dilution of HDP shareholdings. In fact, post-merger the Target Group will be part of a firm that is 100% controlled by HDP.

[38] The Commission found that the proposed transaction raised no further public interest concerns. Noting that merger will increase the % of aggregate HDP ownership significantly and given there is no evidence that the merger will lead to a lower spread in ownership by other measures, the Tribunal finds that the transaction is unlikely to have a negative impact on the spread of ownership.

Conclusion

[39] For the above reasons, we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. The transaction however was approved on the condition agreed to by the merging parties.

Signed by:Sha'ista Goga
Signed at:2022-11-14 16:00:20 +02:00
Reason:Witnessing Sha'ista Goga

Shaista Goga

14 November 2022

Ms Sha'ista Goga

Date

Ms A Ndoni and Ms M Mazwai concurring

Tribunal Case Manager:	Makati Seekane and Theodora Michaletos
For the Merging Parties:	Mmasechaba Moloi of Bakhumi Consulting (Pty) Ltd
For the Commission:	Innocent Mhlongo and Themba Mahlangu