COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019398

In the matter between:

Engen Holdings (Pty) Ltd Primary Acquiring Firm

And

South African Oil Refinery (Pty) Ltd Primary Target Firm

Panel	:	Yasmin Carrim (Presiding Member), Fiona Tregenna (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	29 October 2014
Order issued on	:	29 October 2014
Reasons issued on	:	18 November 2014

Reasons for Decision

Approval

[1] On 29 October 2014 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Engen Holdings (Pty) Ltd ("Engen") and South African Oil Refinery (Pty) Ltd ("SAFOR"). The reasons for approving the proposed transaction follow.

Parties to transaction

[2] The primary acquiring firm is Engen which is a wholly owned subsidiary of Engen Limited ("Engen Limited") and the holding company of the various subsidiary and associate companies constituting the Engen group of companies ("Engen Group"). Engen Limited is controlled by PETRONAS International

Corporation Limited ("PICL"). PICL is controlled by Petroliam Nasional Berhad ("PETRONAS"), the Malaysian National oil company wholly owned by the Government of Malaysia. The Engen Group's main activities consist of refining, marketing and distributing of petroleum products, as well as the provision of convenience services through a network of retail service stations.

[3] The primary target firm is SAFOR, which does not directly or indirectly control any other firm. SAFOR is a base oil refinery that Engen Group operates under contract to process Engen Group owned crude-based feedstock into Group I base oils for and on behalf of SAFOR's shareholders. The SAFOR base oil refinery is located in Durban immediately adjacent to, and is inter-linked with Engen Group's ENREF refinery.

[4] The procedure normally entails Engen preparing the feedstock and providing it to SAFOR, who in turn supplies the Engen Group with any hydrocarbons retained and being converted into base oils. SAFOR then processes Engen's crude-based feedstock into Group I base oils for and on behalf of SAFOR's shareholders[1].

Proposed transaction

[5] In terms of the Sale of Shares Agreements, Engen intends to acquire 100% of the issued share capital in SAFOR. Engen currently owns 47% of the issued share capital in SAFOR, with Chevron South Africa (Pty) Ltd ("Chevron") owning 34% and Total South Africa (Pty) Ltd("Total") owning the balance of 19%. Engen will acquire Chevron's 34% interest and Total's 19% interest in SAFOR. Post-merger Engen will exercise sole control over SAFOR.

[1] In terms of the SAFOR Shareholders Agreement entered into between Engen, Total and Chevron, SAFOR processes feedstock into Group I base oils on behalf of its shareholders. See pages 54-56 of the merger record.

[6] Due to diminishing demand and because Group I base oils can be more economically imported than manufactured, the SAFOR Base I oil refinery no longer offers an attractive return on investment. As a result, the shareholders of SAFOR elected to cease base oil production, as the cost of local production exceeded import cost. [2]

[7] Engen's rationale for wanting to acquire the 100% issued share capital in SAFOR is because it's chemical and solvents' income stream is dependent on the sale of bitumen and solvents obtained from SAFOR's activities.

Competition assessment

[8] The Commission submitted that the proposed transactions does not raise any horizontal or vertical overlaps as Engen does not directly or indirectly offer any products or services that are interchangeable with those provided by SAFOR. In South Africa there are only two processing facilities through which Group I base oils could be obtained, namely SAFOR and SAMCO. SAMCO is a joint venture between Shell and BP located at the SAPREF refinery in Durban. Therefore no foreclosure concerns arise as a result of the proposed transaction as SAMCO also produces Base I oils.

Public Interest

[9] As of 31 July 2014, SAFOR stopped the production of Group I base oils. The merging parties submit that although SAFOR comprises of three units, namely the PDA, Furfural and Methyl-

[2] See pages 58-59 of the merger record.

Ethyl-Ketone De-Waxing, only the PDA unit is currently operational. The units that were shut down are those that were responsible for the production of Group I base oils. As a result thereof, the closure of the two production units will result in negative impact on employment.

[10] SAFOR currently has 45 employees. Absent the proposed transaction, 43 employees will be retrenched, as two employees will be required to maintain the facilities. However, if the proposed transaction is approved, at least 27 jobs will be saved by retaining the staff required to operate portions of SAFOR.

[11] During the hearing, the merging parties re-assured us that of the 18 employees that might be retrenched, 17 of these employees might be employed at the ENREF refinery, and therefore would not have to be relocated anywhere else.[3] During the hearing, the Commission also re-assured us that they were satisfied with the fact that the SAFOR closure unit was not related to the proposed transaction.[4]

[12] The Commission submitted that CEPPWAWU (Chemical, Energy, Paper, Printing, Wood and Allied workers Union), which represents employees at Engen was consulted and did not raise any concerns in relation to the proposed transaction. The Commission came to a conclusion that the proposed transaction does not raise significant employment concerns, nor does it raise any other public interest concerns.

[3] See page 10 of the Transcript of the hearing.
[4] See page 5 of the Transcript of the hearing.

CONCLUSION

[13] We agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition and thus approve the transaction without conditions.

Ms Yasmin Carrim	18 November 2014 DATE

Prof. Fiona Tregenna and Mr Andreas Wessels concurring.

Tribunal Researcher:	**Caroline Sserufusa**
For the merging parties:	Rudolph Labuschagne for Bowman Gilfillan
For the Commission:	Zanele Hadebe