

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No.: 18/LM/Apr03

In the large merger between:

**Main Street 87 (Pty) Ltd
Tosaco Commercial Services (Pty) Ltd**

and

**Total South Africa (Pty) Ltd
Total Petroleum Renaissance (Pty) Ltd**

Reasons for decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 30 April 2003 approving the merger without conditions. The reasons are set out below.

The merger transaction

The transaction comprises three stages:

- 1) the buyback of shares in Total South Africa (Pty) Ltd (“Total South Africa”) from Old Mutual Nominees (Pty) Ltd, which holds 8% and Industrial Partnership Investments Ltd, which holds 34.34%¹,
- 2) the acquisition by Tosaco (Pty) Ltd² (“Tosaco”), a black empowerment consortium, of 25% of the issued share capital of Total South Africa through its wholly owned subsidiary Main Street 87 (Pty) Ltd, and
- 3) the sale by Total Petroleum Renaissance (Pty) Ltd (“Total Renaissance”), of its

¹ This part of the transaction is not a merger transaction in terms of the Competition Act because there is no change in control at this stage. TotalFinaElf Group will remain in control of Total South Africa.

² Tosaco’s Control Pool will consist of Total South Africa (Pty) Ltd 20,2%, Calulo Investment (Pty) Ltd 17.0%, South Base Investments Holdings (Pty) Ltd 15%, Capital Oil Investments Holdings (Pty) Ltd and the Development Trust 10%. The Control Pool will collectively control Tosaco and Main Street.

entire business to Tosaco Commercial Services (Pty) Ltd (“Tosaco Services”).

The second leg of the transaction, the acquisition of 25% in Total South Africa by Tosaco, constitutes an acquisition of joint control over Total South Africa through a shareholder’s agreement with significant minority protection rights.

Post the merger Total South Africa’s shareholders will consist of TotalFinaElf holding 50.1%, Remgro holding 24.9% and Tosaco holding 24.9% through its wholly owned subsidiary Main Street 87 (Pty) Ltd.

Reasons for the transaction

Total South Africa is a signatory to “*The Charter for the South African Petroleum and Liquid Fuels Industry on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry*”, in which the Fuel Companies undertake to place 25% of the ownership in the Petroleum and Liquid Fuels Industry in the hands of empowerment entities. With this transaction Total South Africa fulfils its empowerment requirements.

Relevant Market

The petroleum supply chain can be divided into upstream and downstream activities. The upstream activities consist of oil exploration, extraction and transportation. The downstream activities consist of refining, marketing and distribution.

For purposes of this transaction three separate markets are identified in the vertical supply chain:

- 1) The upstream market is the national market for the manufacture and supply of petroleum products such as diesel, petrol, greases, brake fluids and lubricants. Total South Africa is active in this market. Tosaco will acquire 25% in Total South Africa.
- 2) The first downstream market is the market for the marketing and selling of petroleum products. Total Renaissance, a wholly owned subsidiary of Tosaco Services, is active in this market. The geographic market is national.
- 3) The second downstream market is the regional market for the distribution of the petroleum products to the retail customers. Fuelogic, a cargo transporter, is active in this market.

Effect on Competition

Horizontal relationship

Tosaco is a special purpose vehicle created for the purpose of acquiring 25% of the issued share capital in Total South Africa through its subsidiary Main Street 87. Both Tosaco and Main Steet are special purpose vehicles that have never been active in the market.

There is thus no horizontal overlap in the activities of the merging parties.

Vertical relationship

There is an existing vertical relationship between Calulo, one of the shareholders in Tosaco, through its 50% interest in Fuelogic, a joint venture with Imperial Group.

Fuelogic is a logistics company that distributes petroleum and petroleum products nationwide. Fuelogic owns 80 road tankers, which distributes fuel through 16 depots that operate in Western Cape (where it enjoys a market share of 3%), Eastern Cape (market share 6%), Kwazulu Natal (market share 2%), Mpumalanga (market share 20%), Free State (market share 12%), Northwest (market share 10%) and Limpopo (market share 4%).

Total South Africa currently takes up approximately 92% of Fuelogic's operations and Sasol takes up the remaining 8%. Due to a new contract that Shell awarded to Fuelogic its customer mix will change to Total South Africa representing 69% of its business, Shell 25% and Sasol 6%.

The parties also aver that Fuelogic and Imperial compete directly in the market place and their brands are independent. They tender seperately and in some cases may be awarded different portions of the same geographic clusters. Other competitors in this industry that services Total South Africa and its competitors³ are Unitrans, Freight Dynamics, Cargo Carriers, Bulk Trans, Tanker Services (Imperial), Lobtrans and various small operators.

Total South Africa also outsources some of its road transportation activities to other players in the market such as Unitrans, Bulktrans, Arrow Bulk and Nonke Petroleum.

From the above it is evident that market foreclosure is unlikely to take place in either the upstream or downstream markets and we, therefore, agree with the Commission that the transactions will not substantially prevent or lessen competition.

Public Interest

The transaction will not result in any job loses or have any negative effect on the remaining public interest factors.

³ Engen, Casltex, BP, Sasol and Shell

N. Manoim

15 May 2003

Date

Concurring: D Lewis and L. Reyburn