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## **TRIBUNAL DECISIONS: Complaint against Industrial gas company dismissed/ Merger of Deneb Investments and New Just Fun Proprietary Limited conditionally approved**

### **Tribunal dismisses complaint lodged in industrial gas sector**

The Competition Tribunal has dismissed a complaint by industrial gas distributor Alba Gas against manufacturer, supplier and distributor, Air Products, for dominance and price fixing.

Alba and Air Products had a contractual relationship dating back to February 2002 in terms of which Alba was as an accredited industrial gas distributor. At the time of the hearing Alba had exited the market and was no longer distributing gas.

Alba privately referred a complaint to the Tribunal alleging that Air Products was dominant in the market and that it had abused its dominance by granting preferable rates to a new entrant. Alba alleged that because of the contractual clauses contained within its sole distributorship agreement, it was unable to source industrial gas from any other supplier and therefore Air Products was able to assert market power and was thus dominant in the market.

Air Products, by way of an exception application, argued that the contractual relationship between the two parties was insufficient to constitute an exercise of market power in terms of the Competition Act and therefore Alba had failed to properly allege dominance in the market for the provision of industrial gas in the West Rand.

The Tribunal, agreeing with Air Products, indicated that “to define the relevant market as the provision of industrial gas to Alba, is too myopic a view of the competitive landscape relevant to this matter. It conflates the concept of market power derived from a firm’s market position with power derived from a contract freely entered into by Alba”.

The Tribunal upheld the exception and dismissed the complaint.

### **Merger in traditional toy market conditionally approved**

The Competition Tribunal has conditionally approved the merger of JSE-Listed Deneb Investments Limited and target company New Just Fun Group Proprietary Limited (“Just Fun”), a toy supply and distribution business. Post-transaction, Just Fun will ultimately become a wholly-owned subsidiary of Deneb.

The merger is in the market for the distribution and supply of traditional toys.

Deneb is a diverse investment company operating in Southern Africa and controlled by Hosken Consolidated Limited Group (HCI). HCI Group is invested in a diverse range of industries, including hotels and leisure, interactive gaming, media and broadcasting, transport, mining, industrial and textile manufacturing, branded product distribution, real estate and the market for traditional toys.

Target company, New Just Fun Group Proprietary Limited is the wholly-owned subsidiary of Main Street Holdings (Pty) Ltd and is an importer and distributor of traditional toys in SA and has distribution rights for some branded toys.

The Tribunal has approved the merger with public interest conditions relating to employment.

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