COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 34/LM/Jun10

In the matter between:

Total South Africa (Pty) Ltd	**Acquiring Firms**
And	
Tosaco Commercial Services (Pty) Ltd	**Target Firm**

Panel	:	Norman Manoim (Presiding Member), Andreas Wessels (Tribunal Member) and Yasmin Carrim (Tribunal Member)
Heard on	:	08 September 2010
Order issued on	:	08 September 2010
Reasons issued on	:	06 October 2010

Reasons for Decision

Approval

[1] On 08 September 2010, the Competition Tribunal ("Tribunal") unconditionally approved a merger between the above mentioned parties. The reasons for approving the transaction follow.

The parties and their activities

[2] The primary acquiring firm is Total South Africa (Pty) Ltd ("Total SA") a public company incorporated under the company laws of the Republic of

South Africa. Total Sociėtė Anonyme ("Total Overseas Holding"), Industrial Partnership Investments Ltd ("Remgro Limited") and Main Street 87 (Pty) Ltd ("Main Street")[1] jointly control Total SA.

[3] Total SA is active in the petrochemicals industry. Through its stake in the Natref refinery based in the inland region, Total SA has refinery capabilities and is a producer, refiner and seller of petroleum products.[2] Total SA sells its petroleum products to retail, commercial and industrial customers; to various customers active in various industries and to dealers (retailers) across about 588 branded service stations throughout South Africa. Total SA also offers commercial customers diesel credit cards with which they use to purchase fuels and lubricants at service stations and make payments at tollgates. Additionally, Total SA offers technical services to commercial customers which include fuel equipment maintenance, tribology and fuel, and lubricant advisory services.

[4] The primary target firm is Tosaco Commercial Services (Pty) Ltd ("TCS") a company incorporated under the company laws of the Republic of South Africa. TCS is jointly controlled by Total SA and Main Street 87 (Pty) Ltd. TCS itself does not directly or indirectly control any firm.

[5] TCS is involved in the sale of petroleum products. TCS markets and distributes petrol, diesel, illuminating paraffin and lubricants to commercial customers.

The Transaction

[6] The proposed merger transaction is for Total SA to exercise a call option by either acquiring 75.1% stake held by Main Street in TCS or the business of TCS as a going concern.

[1] A Black Economic Empowerment consortium

[2] Products including petrol, diesel, fuel oils, aviation fuels, marine fuels, bitumen, liquefied petroleum gas ("LPG"), lubricants, agro chemicals, illuminating paraffin and kerosene.

The relevant market and impact on competition

[7] The proposed transaction arises from a market structure known as dual distribution system where both the supplier and its distributors supply their products to the same market. This market, for analysis, is considered to have vertical and horizontal effects.

[8] There are two relevant markets, the upstream market for the refining and production of petroleum products, and the downstream market for marketing and distribution of petroleum products. Total SA is involved in both these markets. TCS is involved in only the downstream market. The markets are broken down into further narrower markets namely, the market for the production and refining of petroleum products; the downstream market for the commercial or wholesale marketing and distribution of petroleum products; and the downstream market for the retail marketing and distribution of petroleum products.

[9] In the **upstream market for the production and refining of petroleum products** Total SA is active through its stake in Natref refinery which is located in the inland regions. TCS is not present in this market as a supplier but present as a customer of Total SA. Vertical overlaps exist in the market under discussion and the downstream market for the wholesale marketing and distribution of petroleum products. The geographical market is regional, inland, and on this basis the market shares held by Natref and consequently Total SA are low and there is no accretion post the merger.

[10] In the market for the **commercial or wholesale marketing and distribution of petroleum products** both the merging parties are active on a national level (throughout South Africa). There is a horizontal overlap in this market as both the merging parties are involved in the business of selling products comprising of petrol. TCS is a small player in this market. The accretion in market shares as a result of the merger is low and will not be greater than 15% post the merger. There are also

a number of effective competitors in this market. Accordingly the merger does not raise any concerns in this market.

[11] The proposed merger transaction will result in vertical integration. This is because Total SA, the acquiring firm, is active in the upstream market for the production of petroleum products. Further, TCS, the target firm, is active in the downstream market for the commercial marketing and distribution of petroleum products and exclusively purchases various products from Total SA.

[12] Total SA however is already vertically integrated and is a supplier to various other customers as well as its own downstream marketing and distribution divisions. Customers in the downstream market are also able to source product from other oil companies in the country and Total SA's rivals in the inland region. Post the merger transaction Total SA indicates that it will continue to provide products to its competitors and customers, including TCS's customers. Hence the likelihood of customer or input foreclosure is small.

Public interest

[13] Approximately 22% of TCS's workforce will be negatively affected by the proposed merger transaction due to expected duplication of functions in the merged firm. This will see a total of 5 employees being retrenched. However, these are semi-skilled or skilled employees who are likely to find employment elsewhere.

[14] Total SA is a broad based black economic empowerment firm and this transaction is a consequence of a BEE transaction that was framed several years ago and is now coming to its full conclusion.

Conclusion

[15] Due to the low market share accretion, the presence of effective competition and insignificant public interest concerns, the proposed

merger transaction is approved without conditions as it is unlikely to substantially prevent or lessen competition.

____________________ 06 October 2010

Yasmin Carrim DATE

Norman Manoim and Andreas Wessels concurring

Tribunal Researcher	:	Mahashane Shabangu
For the Merging parties	:	Paul Coetser of Werksmans Attorneys
For the Commission	:	Themba Mahlangu of the Mergers and Acquisitions Division