

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case NO: 54/LM/May08**

In the matter between

Calulo Petrochemicals (Pty) Ltd

Primary Acquiring firm

And

Automated Fuel Systems Group (Pty) Ltd

Primary Target Firm

---

Panel : D Lewis (Tribunal member); N Manoim (Tribunal member) and  
Y Carrim (Tribunal member)

Heard on : 17 September 2008

Decided on : 17 September 2008

Reasons Issued : 24 November 2008

---

### Reasons for decision

---

#### Approval

[1] On 17 September 2008 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Calulo Petrochemicals (Pty) Ltd and Automated Fuel Systems Group (Pty) Ltd unconditionally. The reasons for the approval appear below.

#### Parties

[2] The primary acquiring firm is Calulo Petrochemicals (Pty) Ltd ("Calulo Petrochemicals"), a company incorporated in terms of the laws of the Republic of South Africa. Calulo Petrochemicals is jointly controlled by Calulo Investments (Pty) Ltd (70%) and Investec Bank Ltd acting through its Private Equity Division (30%).

Calulo Petrochemicals controls a number of firms.<sup>1</sup> The relevant one for purposes of this transaction is TOTAL SA (Pty) Ltd (“TOTAL SA”), in which Calulo Petrochemicals has negative control.

[3] The primary target firm is Automated Fuel Systems Group (Pty) Ltd (“AFS”), a company incorporated under the laws of the Republic of South Africa. AFS is not controlled by a single shareholder. It controls AFS Forecourt Solutions (Pty) Ltd (“AFS Forecourt”), Transit Solutions (Pty) Ltd (“Transit Solutions”) and AFS Group Namibia (Pty) Ltd (AFS Namibia”).

### **Transaction**

[4] In terms of the structure of the proposed transaction, Calulo Petrochemicals intends to acquire 30% share in AFS with minority protection rights. Post-merger, Calulo Petrochemicals will have negative control over AFS.

### **Rationale**

[5] Calulo Petrochemicals submits that this transaction fulfils one of its objectives, i.e. investing in companies that provide complementary products and services throughout the value chain.

[6] AFS submits that this acquisition by Calulo Petrochemicals will contribute to its BEE equity status.

### **Parties Activities**

#### **The Acquiring Group**

[7] Calulo Investments is a holding company and does not provide any products/services. It trades through firms involved in, inter alia, underground drilling services to the mining industry, diamond exploration, coal and industrial minerals services.

---

<sup>1</sup> Refer to CC 4(2) filed by the merging parties for a list of all firms directly or indirectly controlled by Calulo Petrochemicals.

[8] Calulo Petrochemicals trades through firms involved in, inter alia, the production and marketing of heating fuels and wood treatment oils (creosote), production of chlorine and caustic soda, manufacture and sale of a full range of petroleum products including lubricants and greases, kerosene, jet fuel and liquid petroleum gas, provision of tanker ship brokerage and bulk liquid services.

[9] The Investec Group is a specialist banking group that provides a diverse range of financial products and services to a niche client base. Its activities are broadly classified into investment banking, treasury and specialised finance, private client activities and asset management. Investec's private equity division invests in companies involved in the following industries: chemicals, building materials, fast food, industrial coatings, heavy engineering, IT and the supply of swimming pool equipment.

### **The Target Firm**

[10] AFS, through its subsidiaries, provides products and services that automate and manage all aspects of the procurement, delivery, storage, sale and consumption of fuel. AFS's products and services are divided into three broad areas, namely, wet stock management, automated on-road refuelling and automated home based refuelling.

[11] Wet stock management include tank gauging, pumps and dispensers. These collectively function as an electronic probe that is installed into an underground fuel storage tank which is used to monitor and gauge fuel levels in the underground fuel tank. Customers of wet stock management services are petroleum companies such as TOTAL SA, Engen, BP, Caltex and Shell.

[12] Automated on-road refuelling is a payment solution for customers that own a fleet of vehicles to refuel and for payment of lubricants at retail service stations. Automated home-based refuelling enables customers to refuel their vehicles on their own premises as opposed to refuelling at a retail fuel service station.

## Competition analysis

[13] There is no horizontal overlap in the activities of the merging parties as the acquiring firm is not involved in the provision of wet stock management, automated on-road refuelling and automated home-based refuelling where the target firm is active.

[14] The transaction results in a vertical integration in the activities of the merging parties as the wet stock management and automated on-road refuelling technologies supplied by AFS are utilised by TOTAL SA in its retail petrol stations. Thus, markets affected by this transaction are the market for the supply of wet stock management technology, the market for the supply of automated on-road refuelling technology and the market for the retailing of petrol (where TOTAL SA is active).

[15] TOTAL SA has a market share of 13% for the retailing of fuel. It competes with firms such as Engen with 26%, Caltex with 21%, Shell with 18%, BP with 16% and Sasol with 6% market share.<sup>2</sup>

[16] AFS has 10% market share for the provision of wet stock management. AFS did not supply TOTAL SA with any service in the previous financial year. However, it supplied Tosaco Commercial Services<sup>3</sup> with wet stock management devices which represented less than 1% of its total turnover. This figure is insignificant and does not raise any foreclosure concerns. AFS's competitors in this market include Dresser Wayne (30%), Petrologic (25%), Prowalco (25%), Liquid Automation Systems (5%) and others.

[17] AFS's market share for the provision of automated on-road refuelling systems is 5%. It competes with firms such as First Auto (Pty) Ltd (40%), Standard Bank Card Services (20%), ABSA Fleet Cards with (15%), Nedfleet with 5% and others. In the previous financial year, TOTAL SA sourced 20% of its automated on-road refuelling devices from AFS. The remaining 80% was done by Route Africa, which is in-house.

---

<sup>2</sup> The Commission submits that these market shares are based on the number of service stations each petroleum company has in South Africa.

<sup>3</sup> Tosaco is a separate entity in which TOTAL SA has a shareholding of 24.9%.

[18] This transaction is unlikely to lead to any foreclosure concerns in the market for automated on-road refuelling services as AFS is not a major supplier with only 5% market share. There are other alternative suppliers such as First Auto (Pty) Ltd, Standard Bank Card Services, Absa Fleet Cards and Nedfleet from whom AFS will still face competition.

**Public Interest**

[19] The transaction does not give rise to any public interest issues and is approved without conditions.

---

**D Lewis**  
**Tribunal Member**

**24 November 2008**

**Date**

**Concurring: N Manoim and Y Carrim**

Tribunal Researcher : I Selaledi

For the merging parties : Cliffe Dekker Hofmeyr Inc

For the Commission : Thabelo Masithulela (Mergers and Acquisitions)