



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM039May19

In the matter between

FFS Calpet (RF) (Pty) Ltd

Primary Acquiring Firm

and

Calulo Marine (Pty) Ltd

Primary Target Firm

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Panel : Enver Daniels (Presiding Member)  
: Andreas Wessels (Tribunal Member)  
: Imraan Valodia (Tribunal Member)  
Heard on : 07 August 2019  
Order Issued on : 07 August 2019  
Reasons Issued on : 04 September 2019

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### REASONS FOR DECISION

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#### Approval

- [1] On 07 August 2019, the Tribunal unconditionally approved a transaction in terms of which FFS Calpet (RF) (Pty) Ltd ("FFS Calpet") acquired sole control of Calulo Marine (Pty) Ltd ("Calulo Marine").
- [2] The reasons for the approval follow.

## **Parties to the transaction**

### *Primary Acquiring Firm*

- [3] FFS Calpet is a private company incorporated in accordance with the laws of the Republic of South Africa. FFS Calpet is jointly controlled by Calulo Petrochemicals (Pty) Ltd (51.65%); Bud Chemicals and Minerals (Pty) Ltd (42.73%) and FFS Calpet Management (5.62%).
- [4] Calulo Petrochemicals is wholly owned and controlled by Calulo Investments (Pty) Ltd (“Calulo Investments”). Calulo Investments is ultimately jointly controlled by the Ntinga Trust and the management and employees of the firm. Bud Chemicals is wholly owned and controlled by Synchem Management Services (Pty) Ltd. Calulo Petrochemicals and Bud Chemicals both control several entities.<sup>1</sup> FFS Calpet wholly owns FFS Refiners (Pty) Ltd (“FFS Refiners”). Collectively, these entities will be referred to as the “acquiring group”.
- [5] The acquiring group is involved in the procurement, processing, refining, distribution and marketing of industrial heating fuels. The acquiring group also sells creosote wood preservative used in the utility pole industry and produces base oil used in the manufacture of lubricating oils. The acquiring group supplies its marine fuel nationally as well as internationally.

### *Primary Target Firm*

- [6] Calulo Marine was established in 2003 as the first independent black owned business to operate as a supplier of marine fuels and lubricants to the local marine sector. Calulo Marine is a wholly owned subsidiary of Calulo Services (Pty) Ltd (“Calulo Services”). Calulo Services is in turn wholly controlled by Calulo Investments. Calulo Marine does not control any firms.

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<sup>1</sup> Please see page 39 of the merger record for a comprehensive list of these entities.

- [7] Calulo Marine markets and distributes marine fuels along the South African coastline, primarily to the fishing industry, Transnet National Ports Authority and the South African Navy. Calulo Marine sources marine fuel from Engen Petroleum Group (“Engen”) and the Acquiring Group. Calulo Marine does not engage in any export activities.

### **Proposed transaction and rationale**

- [8] In terms of the transaction, the Acquiring Group intends to acquire 100% of the issued share capital in Calulo Marine from Calulo Services. Post-merger, the Acquiring Group will exercise sole control over Calulo Marine.
- [9] Regarding rationale, it was submitted that as both the acquiring and target firms are part of the same group of companies being majority-owned by Calulo Petrochemicals and Calulo Investments, the shareholders of Calulo Marine and FFS Calpet foresee the transaction facilitating the growth of the group’s marine business to better compete in an internationally competitive market against larger players.

### **Relevant market and impact on competition**

- [10] The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in relation to the wholesale distribution of marine fuel.
- [11] The Commission utilised revenue figures from the merging parties’ competitors to calculate market shares and found that the merged entity will have approximately 14.9% market share in the relevant market.
- [12] The Commission is of the view that the aforementioned market share estimates are likely to present a worst-case scenario given that customers such as Pioneer Fishing, and Sea Harvest had indicated that there are multiple

alternative wholesale suppliers of marine fuel nationally.<sup>2</sup> Further, customers of the merging parties confirmed that they were not concerned by the merger due to presence of ample alternatives post-merger.<sup>3</sup>

[13] In view of the foregoing, the Commission concluded that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market.

### **Public interest**

[14] The merging parties submitted that no retrenchments will occur as a result of the proposed transaction. In addition to filing proof of service to the employees of the proposed transaction, the merging parties provided the Commission with an unequivocal undertaking that the proposed transaction will not result in any merger specific retrenchments.<sup>4</sup> Ms Mona Naicker and Miss Pearly Leong, who represent Calulo Marine and FFS Calpet respectively, did not raise any concerns regarding the proposed transaction.<sup>5</sup>

[15] In view of the foregoing, the Commission concluded that the merger was unlikely to result in any public interest concerns.

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<sup>2</sup> Such as World Fuel Services Incorporated, Peninsula Petroleum Limited, Cockett Marine Oil PTE, South African Bunkering Trading, SA Fuel & Lubricants (Pty) Ltd; Moov Fuel (Pty) Ltd; African Shipping Bunkering Services, Aegean Marine Petroleum (Pty) Ltd, amongst others.

<sup>3</sup> Please see page 334-342 of the merger record.

<sup>4</sup> Paragraph 12.2 of the Competitiveness Report page 85 of the merger record.

<sup>5</sup> Please see page 289-292 of the merger record.

## Conclusion

[16] In light of the above, we concluded that the transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no adverse public interest issues arise from the transaction. Accordingly, we unconditionally approved the transaction.



**Mr. Enver Daniels**

**04 September 2019**

**Date**

**Mr. Andreas Wessels and Prof. Imraan Valodia concurring.**

Tribunal Case Manager : Andiswa Nyathi

For the Merging Parties : Ahmore Burger-Smidt of Werksmans Attorneys & Louise Cleland of Shepstone and Wiley

For the Commission : Wiri Gumbie and Zanele Hadebe