COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM074Jul15

In the matter between:

Puma Energy Africa Holding B.V Primary Acquiring Firm

And

Brent Oil Holdings Proprietary Limited Primary Target Firm

Panel	:	Yasmin Carrim (Presiding Member), Medi Mokuena (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	12 August 2015
Order issued on	:	12 August 2015
Reasons issued on	:	31 August 2015

Reasons for Decision

Approval

[1] On 12 August 2015 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between Puma Energy Africa Holding B.V ("Puma Energy Africa") and Brent Oil Holdings Proprietary Limited ("BOH"). The reasons for approving the transaction follow.

Parties to the transaction

[2] The primary acquiring firm is Puma Energy Africa a company incorporated in accordance with the laws of Netherlands. Puma Energy Africa is ultimately controlled by Puma Energy Holdings Pty Limited ("Puma Energy"), a company incorporated in Singapore. Puma Energy is a global provider of fuel (petrol, diesel, bunker and aviation) lubricants and other oil products. It operates at the upstream bulk supply level

(refining, importing and storage) as well as the downstream marketing and distribution level (sales to commercial and retailer customers). In South Africa, Puma Energy is active through its subsidiaries such as Puma Energy Procurement South Africa Proprietary Limited ("PEPSA"), Drakensburg Oil Proprietary Limited and DP Drakensberg Properties Proprietary Limited (collectively referred to as "Drakensberg") and Ought to Invest 15 Proprietary Limited ("OTI"). PEPSA imports petroleum and diesel from Mozambique and sells it to industrial and commercial end-users, as well as resellers or wholesalers in the Gauteng, KwaZulu-Natal, Mpumalanga and Limpopo Provinces. Through Drakensberg and OTI, the acquiring firm is also involved in the renting out of fuel service stations to third parties, having third parties operate fuel service stations on its behalf and the operation of fuel depots from which customers collect petrol and diesel from. These activities are limited to KwaZulu-Natal and Mpumalanga Provinces.

[3] The primary target firm is BOH a company incorporated in accordance with the laws of the Republic of South Africa. BOH is a holding company that does not conduct any business activities, but simply holds shares in Brent Oil (Pty) Limited ("Brent Oil"). Brent Oil and its subsidiaries are non-refining wholesalers of petroleum (such as leaded and unleaded petrol, standard and low sulphur diesel) and petroleum products (for example, lubricants and illuminating paraffin) to bulk commercial and retail customers such as branded fuel stations on a national basis. It allows station owners to use some of its intellectual property and also assists such stations with branding so as to create a national footprint of Brent Oil branded fuel stations. Brent Oil also owns bulk storage facilities and depots in the Gauteng, Mpumalanga, Orange Free State, Limpopo and Western Cape Provinces. Brent Oil also has a distribution network consisting of 40 tankers and licenses. The target firm sources its petroleum products from various suppliers such as Sasol Ltd ("Sasol"), PetroSA Total SA (Pty) Ltd ("Total"), PEPSA and Chevron.

Proposed transaction and rationale

[4] The proposed transaction will take place by way of a Sale of Share and Claims Agreement (the Agreement"). Puma Energy Africa will acquire 73.57% of the issued share capital in BOH, as well as the 5% shareholding held by Dream World Investment 63 (Pty) Ltd ("Dream World") in Brent Oil, a subsidiary of BOH. Post-merger Puma Energy Africa will enjoy control over BOH and Brent Oil.

[5] The acquiring firm submits that the proposed transaction will assist it to expand its presence in the South African fuel supply industry as it is relatively new in the South African market. The target firm on the other hand submits that the proposed transaction will assist it to get a suitable, substantial, long-term industry partner to grow the BOH/Brent Oil brand so that it can reach its true potential.

Competition assessment

[6] The relevant product market is the market for the wholesale of petrol and diesel. The Commission identified a horizontal overlap emanating from the proposed transaction. This is because the merging parties are both active in the market for the wholesale of petrol and diesel in Mpumalanga, Gauteng, Limpopo and KwaZulu-Natal Provinces. The Commission also identified a vertical overlap as the acquiring group is active in the upstream market for the bulk supply of refined products, whilst the target firm is active in the downstream market for the wholesale supply of petroleum products.

[7] The Commission's analysis revealed that in the provinces where the merging parties are both active, namely Mpumalanga, Gauteng, Limpopo and KwaZulu-Natal, the post-merger market shares will be less than 5% in the market for the wholesale of petrol and diesel. In addition to this, even on a broader national market the post-merger markets shares of the merging parties will still be less than 5%. The Commission

submits that the merged entiy will continue to be constrained post-merger by other market players such as Caltex Oil (SA) (Pty) Ltd ("Caltex"), BP SA (Pty) Ltd ("BP"), Total and Sasol. We agree with the findings of the Commission.

[8] The Commission's analysis of the vertical overlap emanating from the proposed transaction revealed that input foreclosure is highly unlikely as the acquiring group has a national market share of less than 1% in the market for the bulk supply of petroleum and diesel products. It is clearly evident that the merged entity will continue to compete with other refineries such as Engen, Shell, Caltex, BP, Total and Sasol. In addition to this, the Commission spoke to customers of the acquiring group who advised that they do have alternative suppliers should the merged entity channel its supply to the target firm. The Commissions thus concluded that the proposed transaction will not substantially lessen or prevent competition in the identified product market.

[9] Based on the above analysis, the Commission came to the conclusion that the proposed transaction will not substantially prevent or lessen competition in the identified markets. We concur with the Commission on this finding.

Public Interest

[10] The proposed transaction will have no effect on employment and raised no other public interest concerns.

CONCLUSION

[11] We agree with the Commission's findings that the proposed transaction is unlikely to substantially prevent or lessen competition in the identified markets. We therefore approve the transaction without conditions.

Ms Yasmin Carrim

31 August 2015
DATE

Ms Medi Mokuena and Prof. Imraan Valodia concurring.

Tribunal Researcher:	**Caroline Sserufusa**
For the merging parties:	Judd Lurie of Bowman Gilfillan and HB Senekal of ENS
For the Commission:	Xolela Nokele