



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM243Mar17

In the matter between:

SACOIL HOLDINGS LIMITED

Acquiring Firm

And

PHEMBANI OIL (RF) (PTY) LTD

Target Firm

| | |
|-------------------|------------------------------------|
| Panel | : Andiswa Ndoni (Presiding Member) |
| | : Imraan Valodia (Tribunal Member) |
| | : Fiona Tregenna (Tribunal Member) |
| Heard on | : 17 May 2017 |
| Order Issued on | : 17 May 2017 |
| Reasons Issued on | : 7 June 2017 |

REASONS FOR DECISION

APPROVAL

- [1] On 17 May 2017, the Competition Tribunal approved the large merger between SacOil Holdings Limited ("SacOil") and Phembani Oil (RF) (Pty) Ltd ("Phembani").
- [2] The reasons for the approval follow.

PARTIES TO THE TRANSACTION AND THEIR ACTIVITIES

Primary Acquiring Firm

- [3] The primary acquiring firm is SacOil, a company incorporated in accordance with the laws of South Africa.¹ SacOil's largest shareholder is the Government Employee's Pension Fund ("GEPF") as represented by the Public Investment Corporation SOC limited ("PIC").
- [4] SacOil has a diverse portfolio of assets on the African continent and focuses on investing in the exploration of oil and gas. SacOil is not involved in the refining of petroleum crude oil and the processing of raw natural gas.

Primary Target Firm

- [5] The target firm is Phembani, a ring fenced special purpose vehicle controlled by Gentacure (Pty) Ltd.² The minority shareholder, Moopong Investment Holding Ltd ("Moopong"), holds the remaining shares. Phembani's only interest is a 71% equity interest in Afric Oil (Pty) Ltd ("Afric Oil").
- [6] Afric Oil is involved in the marketing and distribution of petrol, diesel, illuminating paraffin, jet fuels and lubricants to a client base that comprises of local and national governments, parastatals, the mining industry, the construction industry, the transport sector, the manufacturing sector, resellers and agricultural industries. Afric Oil is only active in the marketing and distribution of such products, it does not own or operate a refinery nor does it own independent storage where it holds stock of petroleum products.

¹ SacOil is listed on the Johannesburg Securities Exchange and on the Alternative Investment Market on the London Securities Exchange.

² Gentacure holds a 75% shareholding in Phembani.

PROPOSED TRANSACTION AND RATIONALE

- [7] In terms of the proposed transaction, SacOil intends to acquire 100% of the issued share capital of Phembani Oil. On completion of the proposed transaction, SacOil will control Phembani Oil.
- [8] In terms of the sale of shares agreement, SacOil will purchase 75% of the issued share capital in Phembani from Gentacure and thereafter, in terms of a share subscription and repurchase agreement entered into between SacOil and Moppong, SacOil will subscribe for the remaining 25% shareholding in Phembani.
- [9] In terms of rationale, the acquiring firm submits that the acquisition is in line with its strategy to become a fully-integrated, pan-African industry player along with providing a number of attractive business opportunities.
- [10] The target firm submits that the proposed transaction will assist Afric Oil to gain access to working capital through a shareholder who has a large balance sheet to raise capital for any future projects.

RELEVANT MARKETS AND IMPACT ON COMPETITION

- [11] On the Commission's analysis, the proposed transaction presented no horizontal overlaps, with the target firm involved in the exploration of oil and gas and the primary target firm involved in the wholesale/ distribution of petroleum products.³ The Commission submits that neither of the parties are involved in the refining of petroleum crude oil and the processing of raw natural gas.
- [12] In the absence of any horizontal overlap in the merging parties' activities and absent any other competition concerns, the Commission concluded that the proposed merger is unlikely to substantially prevent or lessen competition in any market and we find no reason to disagree with this conclusion.

³ Commission Report, page12, para 25.

CONCLUSION

- [13] The merger is unlikely to substantially prevent or lessen competition in the relevant markets in South Africa.
- [14] The merger additionally does not raise any public interest concerns.
- [15] Accordingly we approved the transaction without conditions.



Prof F Tregenna

7 June 2017

Date

Prof. I Valodia and Ms. A Ndoni concurring

Tribunal Researcher: Alistair Dey-Van Heerden

For the Commission: Billy Mabatamela

For the Merging Parties: Maphanga Maseko