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By Themba Chauke at 11:20 am, Jun 11, 2024

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**(HELD AT PRETORIA)**

CT CASE NUMBER: **CR142OCT22**

CC CASE NUMBER: **2020JUN0021**

IN THE MATTER BETWEEN:

**THE COMPETITION COMMISSION**

Applicant

And

**VITA GAS (PTY) LTD**

Respondent

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**FILING SHEET**

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**TAKE NOTICE THAT** the Applicant files herewith the following documents:

1. Competition Tribunal form CT6; and

2. Settlement Agreement between the Competition Commission and Vita Gas (Pty) Ltd  
("The Respondent")

Dated at **PRETORIA** on this the **7<sup>th</sup>** day of **June 2024**

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**COMPETITION COMMISSION**

**Applicant**

77 Meintjies Street

Sunnyside

Pretoria

Tel: 012 394 3527

Ref: Bakhe Majenge/ Maya Swart/

Simphiwe Gumede

Email: BakheM@compcom.co.za/

MayaS@compcom.co.za/

Simphiweg@compcom.co.za

**TO:**

**THE REGISTRAR**

**The Registrar of the Competition Tribunal**

Block C DTI Campus

Mulayo Building

Meintjes Street

Sunnyside, Pretoria

Tel: (012) 394 3468

Fax: (012) 394 4468

Email: Registry@comptrib.co.za / tebogom@comptrib.co.za/  
MatshidisoT@comptrib.co.za

**AND TO:**

**THE RESPONDENTS**

**c/o Bowmans Gilfillan**

11 Alice Lane,

Sandton, Johannesburg

P O Box 785812, Sandton, 2146, South Africa

Ref: T Dini / A Gloor

Tel: 083 288 0348

Per email: tamara.dini@bowmanslaw.com /

alexander.gloor@bowmanslaw.com



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**competitiontribunal**  
SOUTH AFRICA

## Form CT 6

### About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

### Contacting the Tribunal

The Competition Tribunal  
Private Bag X24  
Sunnyside  
0132  
Republic of South Africa  
tel: 27 12 394 3300  
e-mail: ctsa@comptrib.co.za

### Notice of Motion

**Date:** \_\_\_\_\_ **File #** \_\_\_\_\_

**To:** The registrar of the Competition Tribunal

### Concerning the matter between:

\_\_\_\_\_ (Applicant)  
and \_\_\_\_\_ (Respondent)

Take notice that the \_\_\_\_\_  
intends to apply to the Tribunal for the following order:

### Name and Title of person authorised to sign:

### Authorised Signature:

### Date:



**For Office  
Use Only:**

Tribunal file number:

Date filed:

\_\_\_\_\_

\_\_\_\_\_

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**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA  
(HELD AT PRETORIA)**

**CT CASE NUMBER: CR142Oct22**

**CC CASE NUMBER: 2020JUN0021**

In the matter between:

**THE COMPETITION COMMISSION OF SOUTH AFRICA**

**Applicant**

And

**VITA GAS (PTY) LTD**

**Respondent**

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**SETTLEMENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(lii) AND 58(1)(b) OF THE COMPETITION ACT, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND VITA GAS IN RESPECT OF ALLEGED CONTRAVENTIONS OF SECTION 8(1)(d)(i), ALTERNATIVELY SECTION 8(1)(c), OF THE COMPETITION ACT, 1998, AS AMENDED.**

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- 1.4. **“Complaint”** means the complaint submitted by Sunrise Energy to the Commission in terms of section 49B(2)(b) of the Act under case number 2020Jun0021;
- 1.5. **“Complaint Referral”** means the application filed with the Tribunal, by the Commission, in terms of section 50(2)(a) of the Act read with rule 14(1)(a) of the Rules for the Conduct of Proceedings in the Tribunal under case number: CR142Oct22;
- 1.6. **“LPG”** means Liquid Petroleum Gas;
- 1.7. **“LPG Terminal”** means the import and storage facility located in the Port of Saldanha Bay in the Western Cape Province, owned and operated by Sunrise Energy;
- 1.8. **“Respondent”** means Vita Gas Proprietary Limited;
- 1.9. **“Settlement Agreement”** means this agreement duly signed and concluded between the Commission and Vita Gas;
- 1.10. **“Sunrise Energy”** means Sunrise Energy Proprietary Limited, a company incorporated under the company laws of South Africa, with its principal place of business at Off MR559, Industrial Area, Saldanha, 7395, Western Cape;

RJM 

- 2.3. Sunrise specifically alleged that clause 12.2.3 of the Throughput Agreement granted Vita Gas rights to use 5500 MT of the LPG Terminal, while it restricted third parties or LPG aggregators wishing to use the LPG Terminal to only use 1100 MT capacity. It further alleged that even if Vita Gas had left one or more bullets empty, the maximum of 1100 MT assigned to the incoming customer (LPG aggregators) was small and uneconomical to import. According to Sunrise, this restriction effectively insulated Vita Gas from competing with potential importers. Sunrise alleged that these provisions contravened, either collectively or cumulatively, section 5(1), section 8(b), section 8(c) and section 8(d)(i) of the Act.
- 2.4. Vita Gas made submissions to the Commission in which it addressed the 'take or pay' nature of the Throughput Agreement and denied that the provisions of the Throughput Agreement contravened the Act. Vita Gas also asserted that the Throughput Agreement had pro-competitive benefits.
- 2.5. The investigation was extended to 31 October 2022 by agreement with Sunrise Energy.
- 2.6. The Commission found that the Throughput Agreement had, *inter alia*, the following anti-competitive terms and features:
- 2.6.1. In terms of the Throughput Agreement, Vita Gas was entitled to use all five bullets at the LPG Terminal with a storage capacity of 5500 MT,

RJM 10

Sunrise Energy only afforded third party customers or LPG Aggregators a ten-day dwell time which further contributed to the capacity available to third party LPG importers or LPG Aggregators being meaningless and insufficient.

2.6.4. The duration of the Throughput Agreement was for a period of five years, but Sunrise Energy granted to Vita Gas the right to extend the duration on the same terms and conditions for up to a maximum of three additional periods, each of 5 (five) calendar years. The maximum duration of the agreement was accordingly 20 years and six months<sup>4</sup>.

2.7. This near-exclusive Throughput Agreement covered almost all of the available LPG import terminal services and facilities in the Western Cape from March 2018 until the date of the Complaint referral, 28 October 2022, as Sunrise Energy was the principal LPG terminal operator in the Western Cape at the time. The Commission found that the remaining throughput capacity at the LPG Terminal which was available to third parties or LPG Aggregators was rendered meaningless by the terms of the Throughput Agreement.

2.8. The Commission considered that the effect of the Throughput Agreement was that at any given point in time, competitors (including potential competitors) of Vita Gas were unable to import LPG through the LPG Terminal in quantities and at prices that would afford them sufficient scale to enter into, participate in,

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<sup>4</sup> See clause 2 read with clauses 4.



### **3. TERMINATION OF LPG HANDLING AND THROUGHPUT AGREEMENT**

- 3.1. On 19 June 2023, Vita Gas informed the Commission that it had terminated the Throughput Agreement concluded with Sunrise Energy in respect of the LPG Terminal with effect from 15 June 2023.

### **4. ADMISSION**

- 4.1. Vita Gas does not admit that it contravened sections 8(d)(i) and 8(1)(d)(i), alternatively 8(c) and 8(1)(c) of the Act.

### **5. FUTURE CONDUCT**

- 5.1. Vita Gas agrees to:

5.1.1. prepare and circulate a statement summarizing the contents of this Settlement Agreement to all relevant employees, managers, and directors within fourteen (14) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;

5.1.2. refrain from engaging in conduct in contravention of section 8(1)(d)(i) or 8(1)(c) of the Act; and

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Dated and signed at Green Point on the 23 day of May 2024

**For Vita Gas Proprietary Limited**

  
\_\_\_\_\_

**Name in Full:** Richard Moorhouse

**Position:** Managing Director

Dated and signed at PRETORIA on the 06 day of JUNE 2024

**For the Competition Commission**

  
\_\_\_\_\_

**Doris Tshepe**  
**Commissioner**