



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM008Apr22

In the matter between:

Strategic Fuel Fund Association NPC

Primary Acquiring Firm

And

Avedia Energy Proprietary Limited
(In Business Rescue)

Primary Target Firm

Panel: M Mazwai (Presiding Member)
I Valodia (Tribunal Member)
L Mncube (Tribunal Member)


Heard on: 24, 25 November 2022 and 6,7,19 December 2022

Order Issued on: 28 December 2022

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that—

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).



Presiding Member
Ms Mondo Mazwai

28 December 2022

Date

Concurring: Professor Imraan Valodia and Professor Liberty Mncube



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 28 December 2022

To : Werksmans Attorneys

Case Number: LM008Apr22

Strategic Fuel Fund Association NPC And Avedia Energy
Proprietary Limited (In Business Rescue)

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on 31 March 2022 for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

no conditions.

the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

Tebogo H. Mphahlele

ANNEXURE A
STRATEGIC FUEL FUND ASSOCIATION NPC

AND

AVEDIA ENERGY PROPRIETARY LIMITED (IN BUSINESS RESCUE)

CASE NUMBER: LM008Apr22

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Approval Date"** means the date the Tribunal issues a Clearance Certificate (Notice CT10) in **terms** of the Competition Act;
- 1.2. **"Avedia Energy"** means Avedia Energy Proprietary Limited;
- 1.3. **"Avedia Gas"** means Avedia Gas Proprietary Limited, a wholly owned subsidiary of Avedia Energy.
- 1.4. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.5. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6. **"Competitively Sensitive Information"** means information in relation to Avedia Gas' competitors that is not in the public domain, which is or may reasonably be expected to be competitively sensitive in that it *inter alia* relates to, but is not limited to:
 - 1.6.1. pricing, tariffs, discounts, rebates;
 - 1.6.2. volumes of products imported;

- 1.6.3. information on specific customers, including information relating to the areas of operation;
- 1.6.4. information on volumes, quantities, sales, capacities, and costs;
- 1.6.5. marketing, strategic and business plans;
- 1.7. **"Conditions"** mean these conditions contained in this Annexure A, agreed to by the Merging Parties and the Commission;
- 1.8. **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.9. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.10. **"LPG"** means liquified petroleum gas;
- 1.11. **"LPG Off-loading Facility"** means the different infrastructure that is required to ultimately transfer LPG from vessels to the other modes of transport or an LPG Storage Facility. This includes, *inter alia*, offshore/marine offloading facilities where ships are berthed, the pipelines interconnecting the offshore facilities to the onshore storage facilities, jetty, and the road dispatch facilities.
- 1.12. **"LPG Storage Facility"** means Avedia Energy's LPG storage facility situated in Saldanha Bay Western Cape (in its current form as well as when it is extended).
- 1.13. **"Merger"** means the acquisition of 60% issued share capital of Avedia Energy by SFF;
- 1.14. **"Merging Parties"** mean the SFF and Avedia Energy;
- 1.15. **"NERSA"** means the National Energy Regulator of South Africa;
- 1.16. **"Petroleum Pipeline Act"** means the Petroleum Pipelines Act, No. 60 of 2003;
- 1.17. **"SFF"** means Strategic Fuel Fund Association NPC;
- 1.18. **"Tribunal"** means the Competition Tribunal of South Africa a statutory body established in terms of section 26 of the Competition Act;
- 1.19. **"Uncommitted Capacity"** means the throughput rate of at least [REDACTED] metric tonnes per month (or [REDACTED]) on Avedia Energy's current nameplate throughput, which will increase when Avedia Energy increases its storage capacity.

2. Conditions to the approval of the Merger

2.1. Open access

- 2.1.1. The Merging Parties shall operate the LPG Off-loading Facility on a common user basis and the LPG Storage Facility on an open access basis, with the former providing third parties access according to their needs and the latter providing third parties access to Uncommitted Capacity in accordance with the operating licence, the relevant provisions of, and regulations issued in terms of the Petroleum Pipelines Act.
- 2.1.2. For the avoidance of doubt, the common user basis enables third-parties to have access to the LPG Off-loading Facility in proportion to their needs and the open access basis enables third parties to have access on commercially reasonable terms to Uncommitted Capacity in the LPG Storage Facility. The Merging Parties reserve the right to give users access to the LPG Storage Facility on the basis that the capacity is shared among all users in proportion to their needs.
- 2.1.3. The Merging Parties shall, in line with Avedia Energy's LPG storage operating licence conditions from NERSA, publish on Avedia Energy's website its allocation mechanism for Uncommitted Capacity and keep a copy at the storage facility to enable potential customers to understand the procedure for obtaining access.
- 2.1.4. Within 30 (thirty) Days from Implementation Date and every first week of the month, the Merging Parties shall promptly publish on their website their Uncommitted Capacity whenever it is available.
- 2.1.5. The Merging Parties shall publish these conditions on Avedia Energy's website, within 20 (twenty) Days of the Implementation Date.
- 2.2. No director, representative or other person appointed by the Atose and Monica Aguele Trust to the Avedia Energy board of directors shall have access to any third-party's Competitively Sensitive Information, whether relating to that third party's access to the LPG Storage Facility or otherwise. The Merging Parties, as shareholders in Avedia Energy, must ensure that Avedia Energy complies with this merger condition.

3. Duration of the Conditions

- 3.1. The open access conditions in clause 2.1 above shall apply for as long as SFF controls Avedia Energy.
- 3.2. The condition in clause 2.2 above shall apply for as long as the Atose and Monica Aguele Trust is a shareholder in both Avedia Energy and Avedia Gas Proprietary Limited.

4. Monitoring of compliance with the Conditions

- 4.1. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 4.2. Within 20 (twenty) Days from Implementation Date, the Merging Parties shall provide the Commission with proof of implementing clause 2.1.3 and 2.1.5 of these Conditions.
- 4.3. For as long as these Conditions remain in place, the Merging Parties shall annually, within 30 (thirty) Days of each anniversary of the Implementation Date, submit to the Commission a report accompanied by an affidavit from each of their directors confirming compliance with clause 2 of the Conditions. This report shall include *inter alia* the names and contact details of all third parties that approached the Merging Parties, those that succeeded and did not succeed, in using the LPG Storage Facility and the LPG Off-loading Facility, and the reasons those third parties were unsuccessful.

5. Apparent Breach

- 5.1. An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.
- 5.2. The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.

6. Variation

- 6.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.

7. General

- 7.1. The affidavits/reports and or documents referred to in the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.