COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM175Feb22

In the matter between:

TFC Operations (Pty) Ltd	**Primary Acquiring Firm**
And	
PEG Retail Holdings (Pty) Ltd	**Primary Target Firm**

Panel:	Y Carrim (Presiding Member) A Wessels (Tribunal Member) S Goga (Tribunal Member)
Heard on:	26 April 2022
Decided on:	26 April 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)(a) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Signed by:Yasmin Tayob Carrim
Signed at:2022-04-26 09:30:01 +02:00
Reason:I approve this document

Yasmin Tayob Carrim

Presiding Member
Ms Yasmin Carrim

26 April 2022
Date

Concurring: Mr Andreas Wessels and Ms Sha’ista Goga

competitiontribunal
SOUTH AFRICA

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.

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

Merger Clearance Certificate

Date : 26 April 2022

To : Werksmans Attorneys

Case Number: LM175Feb22

TFC Operations (Pty) Ltd) And PEG Retail Holdings (Pty) Ltd

You applied to the Competition Commission on **28 January 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:

- [x] 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.

The Registrar, Competition Tribunal

Tebogo Mpurie

This form is prescribed by the Minister of Trade and Industry in terms of section 27 (2) of the Competition Act 1998 (Act No. 89 of 1998).

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM175Feb22

In the large merger between:

TFC Operations (Pty) Ltd (Primary Acquiring Firm)

And

PEG Retail Holdings (Pty) Ltd (Primary Target Firm)

REASONS FOR DECISION

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1. On 26 April 2022, the Tribunal unconditionally approved the large merger between TFC Operations (Pty) Ltd ("TFC") and PEG Retail Holdings (Pty) Ltd ("PEG").

2. The proposed transaction involves TFC's acquisition of the entire issued share capital of PEG. Post-transaction, PEG will have sole control of TFC and its subsidiaries.

3. The primary acquiring firm, TFC, is a company incorporated in accordance with the laws of South Africa. TFC does not control any firm, and its shares are held by Kaap Agri Bedryf Limited ("Kaap Agri Bedryf") (as to 70.5%), C-Max Investments 71 (Pty) Ltd (as to 23.5%), and Empowerment and Transformation Investments (Pty) Ltd (ETI") (as to 6%). Kaap Agri Bedryf is, in turn, a wholly owned subsidiary of Kaap Agri Limited ("Kaap Agri") whose shares are widely held.[1]

4. The Acquiring Group provides retail services and supplies a variety of products and services mainly to customers operating in the agricultural sector, but also to the general public.[2] The Acquiring Group sells fuel directly to farmers, which is delivered via its three depots.[3] In addition, the Acquiring Group controls and operates forty-three (43) retail fuel stations, and also operates fuel forecourts, quick services restaurants ("QSRs"), and convenience shops where it retails fast-moving consumer goods ("FMCGs") at some of its fuel service stations.[4] The Acquiring Group's service stations are operated under the brands Total, Sasol, Caltex, BP, and Engen.

5. The primary target firm, PEG, is a firm incorporated in accordance with the laws of South Africa. PEG is wholly owned by Stoney Meadows Investments 22 (Pty) Ltd, which is in turn jointly owned in by [redacted]

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[1] All firms directly and indirectly controlled by Kaap Agri are collectively referred to as the "Acquiring Group."
[2] The Acquiring Group's product and service offering includes, but is not limited to: farming requisites, packaging materials, building materials, steel and fencing products, lifestyle products, grain handling services, mechanisation services, and financing services.
[3] The three fuel depots are situated at Moorreesburg and Worcester in the Western Cape and Keimoes in the Northern Cape.
[4] The retail fuel service stations are situated in the Western Cape, Northern Cape, Gauteng, Limpopo, North West and Eastern Cape provinces.

[redacted] is in turn controlled by the trustees of the [redacted] PEG directly and indirectly controls several firms in South Africa.

6. PEG is an independent fuel retailer in South Africa, housing forty-one (41) service stations situated throughout South Africa (most of which are national highway service stations) where it supplies petrol and diesel products to the public. It also operates fuel forecourts, QSRs, and convenience stores on the premises which sells FMCGs. PEG's service stations are operated under the brands Engen, Sasol, Total, and BP.

Competition assessment

7. In its assessment of the proposed transaction, the Competition Commission (the "Commission") found no vertical overlap between the activities of the merging parties but identified a horizontal overlap in the activities of the merging parties in that both are active in the the retail market for the supply of fuel products to consumers through fuel stations and the retail sale of FMCGs through convenience stores and QSRs at petrol stations.

8. The merging parties' sale of FMCGs through convenience stores and QSRs at their service stations are primarily targeted at their fuel stations. Rather than being primary competitors against the national supermarkets, their convenience offerings are connected to the fuel stations operations, and therefore the Commission did not assess this market further.[5]

9. The Commission assessed the effect of the proposed transaction in the market for the retail of fuel, specifically in the following magisterial districts: Ekurhuleni North, Tshwane Central, Madibeng, and Vredendal.

10. The Commission found that in three of the four geographic markets assessed, the merged entity will have a market share of less than 6% with the remaining market, Vredendal, having an estimated market share of approximately 32.2%. The Commission is of the view that post-transaction, the merged entity will continue to face competition from oil companies, with previous findings indicating that oil companies in South Africa collectively account for more than 80% of the petroleum products market in South Africa.[6]

11. In light of the above, we agree with the Commission that the transaction is unlikely to substantially prevent or lessen competition in any relevant market in South Africa.

Public interest

Employment

12. The merger parties have stated that the proposed transaction will not have an adverse effect on employment and no retrenchments are contemplated.[7]

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[5] These operations provide convenience shopping on a 24-hour basis to local and passing vehicle traffic as well as to residents living in close proximity.

[6] Competitors include oil companies such as Engen (Pty) Ltd ("Engen"), Shell South Africa Energy (Pty) Ltd ("Shell"), BP Southern Africa (Pty) Ltd ("BP"), Total South Africa (Pty) Ltd ("Total"), and Sasol Limited ("Sasol")

[7] See CC4(1), page 7 of the Merger Record as well as the merging parties' Joint Competitiveness Report, page 75 of the Merger Record.

13. The employees of the Acquiring Group are represented by the National Union of Metalworkers of South Africa ("NUMSA"). The Commission contacted NUMSA on several occasions and, according to its report, has not received any submissions from them.

14. The Commission engaged the relevant employee representatives of the merging parties who confirmed that the employees were made aware of the proposed transaction and no concerns had been raised by any of the employees.

15. The Commission assessed the retrenchments which took place over the course of 2020 and 2021 within PEG. The Commission considered the timelines on when the discussions around retrenchments commenced vis-à-vis the time when the merging parties commenced discussions on the proposed merger and found that the retrenchments were contemplated after the merging parties had commenced discussions on the proposed transaction.

16. The Commission however found that retrenchments could not be attributed to the merger, because it is evident that PEG suffered financial difficulties during this period as a result of the Covid-19 pandemic, lockdown regulations, and subsequent changes in consumer behaviour.

17. The Minister of the Department of Trade Industry and Competition ("dtic") participated in the Commission's investigation on employment issues. The dtic sought the imposition of conditions relating to offers of employment to all retrenched employees when suitable positions become available within a period of two (2) years following the approval of the current transaction.

18. In response, and given that the retrenchments were not merger specific, the merging parties proposed an undertaking in lieu of a condition, that:

    18.1 PEG will, within 15 (fifteen) days of the approval date, establish a database of the retrenched employees ("Affected Employees") and their contact details, and will send a communication to such Affected Employees informing them of the commitments made in the investigation of the proposed transaction, requesting them to update their contact details and offering them to opt out of receiving vacancy communications for the duration of these undertakings.

    18.2 For a period of 24 (twenty-four) months from the implementation date, if any merged entity will, simultaneously with internal notification of such opportunity to existing employees, procure that a batch notification is sent, at the PEG's election, either to –

        18.2.1 All Affected Employees whose addresses fall within reasonable proximity to the location at which such opportunity has arisen; or

        18.2.2 Affected Employees who are suitably experienced and/or qualified for the position/s in question and whose addresses fall within reasonable proximity to the location at which such opportunity has arisen, informing them of the position, requirements and location.

    18.3 The provisions of 18.2.2 above will not apply in circumstances where the vacant position is of such a nature that it is evident that no Affected Employee has the requisites skills and/or qualifications for the position.

19. The Commission accepted this undertaking and the dtic made no further submissions.

20. The Tribunal in its assessment proposed that this undertaking be imposed as a condition of the merger. In response, the merging parties provided an additional undertaking as follows:

20.1 The parties undertake to provide the Commission with a report setting out their compliance with the undertakings at paragraph 18. Such report will be submitted within 10 business days of the first and second anniversary of the Implementation Date, and will include:

20.1.1 The number of jobs advertised in the previous 12 months.

20.1.2 The number of jobs for which the Affected Employees received communication.

20.1.3 The number of applications received from Affected Employees; and

20.1.4 The number of positions offered to Affected Employees.

21. The Tribunal is satisfied with this undertaking and approved the transaction on this basis.

Spread of Ownership

22. TFC's has an HDP shareholding of 47.21%, with black female ownership accounting for 27.9% in the company. Furthermore, Kaap Agri (the holding company of TFC as previously mentioned), is a Level 3 B-BBEE contributor with a 25.14% black ownership.

23. PEG is not owned or controlled by a member of a HDPs.

24. The merging parties submitted that post-transaction, the employees of PEG will be able to participate [redacted]

25. The Commission concluded that proposed transaction is unlikely to have a negative impact on the promotion of a greater spread of ownership and the Tribunal concurs with this.

Conclusion

26. In conclusion we find that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns.

Signed by:Yasmin Tayob Carrim
Signed at:2022-04-26 14:50:15 +02:00
Reason:I approve this document

Yasmin Tayob Carrim

26 April 2022

Ms Yasmin Carrim **Date**
Mr Andreas Wessels and Ms Sha'ista Goga concurring

Tribunal Case Managers:	Leila Raffee
For the Merging Parties:	Simba Rodze and Petra Krusche of Werksmans Attorneys
For the Commission:	Zanele Hadebe and Thabelo Masithulela