

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: LM127Sep20**

In the matter between:

Air Liquide Large Industries South Africa (Pty) Ltd

**Primary Acquiring Firm**

And

The 16 Air Separation Units owned and operated by  
Sasol South Africa Ltd

**Primary Target Firms**

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Panel : Y Carrim (Presiding Member)  
: AW Wessels (Tribunal Panel Member)  
: I Valodia (Tribunal Panel Member)  
Heard on : 08 June 2021  
Last Submission : 10 June 2021  
Decided on : 11 June 2021

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### **PUBLIC ORDER**

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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 subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

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**Presiding Member**  
**Ms Yasmin Carrim**

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**11 June 2021**  
**Date**

**Concurring: Mr Andreas Wessels and Prof. Imraan Valodia**

**PUBLIC**

**Case Number: LM127Sep20**

**IN THE MERGER INVOLVING:**

**Air Liquide Large Industries South Africa (Pty) Ltd**

**and**

**The 16 Air Separation Units owned and operated by Sasol South Africa Ltd**

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**ANNEXURE A: CONDITIONS**

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**1. DEFINITIONS**

- 1.1 **“Act”** means the Competition Act, No. 89 of 1998 as amended.
- 1.2 **“ALLISA”** means Air Liquide Large Industries South Africa (Pty) Ltd, a company incorporated under the laws of South Africa.
- 1.3 **“Approval Date”** means the date referred to on the Tribunal’s Merger Clearance Certificate (Form CT 10).
- 1.4 **“Assets”** means the 16 Air Separation Units of Sasol that will be acquired by Air Liquide pursuant to the Merger.
- 1.5 **“Business”** means the business of owning and operating the Assets.
- 1.6 **“Commission”** means the Competition Commission of South Africa.
- 1.7 **“Conditions”** means these conditions.
- 1.8 **“DTIC”** means the Department of Trade, Industry and Competition of South Africa.

- 1.9 **“GSA”** means the Gas Supply Agreement entered into between the Parties dated 9 September 2020.
- 1.10 **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Parties.
- 1.11 **“Merger”** means the acquisition of control by ALLISA over the Business.
- 1.12 **“Parties”** means ALLISA and Sasol.
- 1.13 **“Sasol”** means Sasol South Africa Limited.
- 1.14 **“South Africa”** means the Republic of South Africa.
- 1.15 **“Tribunal”** means the Competition Tribunal of South Africa.

## 2. **RECORDAL**

- 2.1 As ALLISA was incorporated for purposes of the Merger, its shareholders will enable ALLISA’s implementation of the Conditions by making reasonable and necessary resources available to it.

## 3. **CONDITIONS**

### Carbon Emissions Reductions

- 3.1 ALLISA commits to target a reduction of carbon emissions associated with the Assets by 30%, within 10 years from the Implementation Date, based on the operating data provided by Sasol in the 2020 calendar year and reported by ALLISA in terms of clause 4.5 for the calendar year following the Implementation Date. Sasol commits to providing reasonable support to enable ALLISA’s objectives in this regard.
- 3.2 In pursuing this objective:

- 3.2.1 ALLISA commits to invest in the Assets by spending [**confidential**] in sustaining and upgrading the performance and integrity of the Assets within 10 years from the Implementation Date and commits to spend at least 50% of this amount during the first five years from the Implementation Date.
- 3.2.2 The Parties commit to pursue a collaborative renewable energy procurement process, aimed at procuring an aggregate amount of up to 900MW of renewable energy for the Secunda site [**confidential**]. The renewable energy procured in terms of this clause shall be allocated between ALLISA and Sasol in proportions agreed between the Parties, which enable achievement of the objective in clause 3.1 above.
- 3.3 The Parties note that the reduction of emissions in clauses 3.1 and 3.2 relies on a number of variable factors, some of which are out of the Parties' control. For example, procurement of renewable power is subject to identifying an appropriate supplier and numerous regulatory approvals. ALLISA's targeted reduction of carbon emissions is subject to these uncertainties, and subject to practical and market circumstances enabling the Parties to achieve their objectives.

#### Employment and skills development

- 3.4 The Parties record that no retrenchments are contemplated as a result of the Merger. The Merger will not negatively impact employment and the employees of the Business will transfer to ALLISA in terms of section 197 of the Labour Relations Act, No. 66 of 1995 (as amended).

- 3.5 Without detracting from the commitment in clause 3.4 above, the Parties commit that they shall not retrench any employees as a result of the Merger for a period of 2 (two) years from the Implementation Date.
- 3.6 For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance.
- 3.7 If, unrelated to the Merger, the future operational requirements of ALLISA's business give rise to the possibility of employment reductions, ALLISA and Sasol commit to cooperate in order to identify available opportunities for those affected employees, including by Sasol assisting through rehiring those employees where practicable and providing them access to Sasol internal mobility opportunities.
- 3.8 In order to further reduce the likelihood of any future retrenchments for operational requirements unrelated to the Merger, and to ensure that the transferred employees are capable of operating in other areas of industry, for example the hydrogen and energy transition industries, ALLISA commits to spend ZAR 20 000 000 (twenty million Rands) in the

training and upskilling of those employees transferred to ALLISA from Sasol, within two years from the Implementation Date.

Availability of spare liquid oxygen produced by the Assets

3.9 In the event that surplus liquid oxygen produced by the Assets becomes available in future and is required in the event of excess demand from, and/or shortage of supply from providers of oxygen to, the healthcare sector, then ALLISA undertakes to make that excess liquid oxygen available to customers in the healthcare sector subject to:

3.9.1 the product meeting the relevant quality specifications applicable to the healthcare sector; and

3.9.2 any required authorisations being issued timeously by the applicable regulatory authorities.

3.10 Supply of liquid oxygen will be made on fair and reasonable terms and at a market-related price.

3.11 In respect of the supply of liquid oxygen in terms of clauses 3.9 and 3.10, ALLISA commits to prioritize supply to the public healthcare sector.

Broad Based Black Economic Empowerment, preferential procurement and enterprise and supplier development

3.12 The Parties are committed to transformation, preferential procurement and to supporting enterprise and supplier development in South Africa, and therefore undertake as follows:

3.12.1 ALLISA commits to achieving a B-BBEE rating of Level 4 within 3 (three) years from the Implementation Date.

- 3.12.2 In achieving a B-BBEE rating of Level 4 in accordance with 3.12.1 above, ALLISA shall procure that it will achieve a B-BBEE shareholding in **[confidential]**.
- 3.12.3 When structuring the B-BBEE shareholding, ALLISA will duly consider ways to achieve participation **[confidential]**.
- 3.12.4 If it is necessary in order to ensure that the B-BBEE transaction contemplated in clause 3.12.2 is achievable, **[confidential]**.
- 3.12.5 ALLISA will update the DTIC and Commission in writing once the structure of the B-BBEE transaction contemplated in Clause 3.12.2 has been agreed. In addition, ALLISA shall update the DTIC and the Commission on the development of its plans and engagements in implementing the commitments in clause 3.12.2. above, in the annual compliance reports contemplated in clause 4.1 below. Should ALLISA become aware of circumstances outside its control that place fulfilment of the plans in clause 3.12.2 at risk, ALLISA will inform the DTIC and Commission.
- 3.13 When upgrading the Assets in accordance with clause 3.2.1, ALLISA will maximise where reasonable, and practically and technically feasible, having regard to the technical nature of the products and services required, procurement of services and input material from Small, Medium and Micro Enterprises ('SMMEs') and black-owned enterprises. ALLISA will liaise with DTIC to assist with identifying potential SMME and black-owned suppliers who may have the necessary technical expertise and capabilities to provide the relevant technical services and input material

to ALLISA, which would preferably be in addition to the pool of existing suppliers identified by ALLISA.

- 3.14 When procuring renewable energy in terms of clause 3.2.2, appropriate renewable energy suppliers will be required. In this regard, the Parties agree that in identifying any potential supplier of renewable energy they will take into account a potential supplier's commitment to the principles of localisation and transformation, and specifically its procurement of technical services and input material from SMMEs and black-owned enterprises where reasonable, and practically and technically feasible, having regard to the nature of the products and services required.
- 3.15 For purposes of Variation in terms of clause 6 if required, it is further recorded that:
- 3.15.1 Introduction of a B-BBEE shareholding into ALLISA requires appropriate potential B-BBEE investor(s) to be identified and approved in accordance with ALLISA's internal governance processes and board approval, and for such investor(s) to agree to acquire shareholding in ALLISA; and
- 3.15.2 It is uncertain whether future market conditions, including the outcome of the renewable energy procurement process contemplated in clause 3.2.2 above, may constrain the ability and desire of potential B-BBEE investors to invest in a shareholding of ALLISA.

#### Enterprise and Supplier Development

- 3.16 In addition to ALLISA's commitment in clauses 3.2.1 and 3.17, ALLISA commits to establish a programme, or programmes aimed at supporting



and developing opportunities for SMMEs and firms owned and controlled by previously disadvantaged persons in the value chain of ALLISA, and to make available at least ZAR 100 000 000 (one hundred million Rands) for investment in these programmes within five years from the Implementation Date.

3.17 In addition to ALLISA's commitment in clauses 3.2.1 and 3.16, and to support the Economic Reconstruction and Recovery Plan tabled by President Ramaphosa in Parliament in October 2020, ALLISA commits to contribute over a five-year period from the Implementation Date an additional ZAR 100 000 000 (one hundred million Rands) to localisation initiatives to drive industrialisation agreed upon by the DTIC and ALLISA, with ninety per cent (90%) of the commitment focused on localisation initiatives in value chains core to ALLISA's expertise, including energy, the green economy, industrial infrastructure and machinery. An appropriate committee, to agree on and monitor this commitment will be established by the DTIC and ALLISA and will have suitable representation from both of them.

3.18 In implementing the programmes mentioned in clause 3.16 above, ALLISA will liaise with the DTIC in identifying potential SMME and black-owned firms that may be eligible for support.

#### **4. MONITORING OF CONDITIONS**

4.1 The Parties shall submit a confidential compliance report to the Commission and the DTIC, describing the extent of its compliance with the Conditions in clause 3. These reports must be lodged within 5 (five)

Days after each anniversary of the Implementation Date for a period of ten years.

- 4.2 The Parties shall circulate a copy of the Conditions to all employees within 5 (five) Days of the Approval Date and/or their respective elected representatives within 5 (five) Days of the elections.
- 4.3 As proof of compliance thereof, the Parties shall within 5 (five) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Parties attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.4 The Parties shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 4.5 For the purposes of monitoring clause 3.1 of the Conditions, the Parties shall provide the DTIC and the Commission with data on the current carbon emissions associated with the Target Assets at the time of the annual reporting requirement on each anniversary of the Implementation Date.
- 4.6 Any person who believes that the Parties have failed to comply with clause 3 of the Conditions may approach the Commission with his/her complaint.
- 4.7 The Commission may request additional information from the Parties which is relevant and necessary for the monitoring of compliance with these Conditions.

## **5. BREACH OF CONDITIONS**

5.1 If the Parties appear to have breached the above Conditions or if the Commission determines that there has been an apparent breach by the Parties of the Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

## **6. VARIATION**

6.1 The Parties or the Commission may at any time, on good cause shown and on notice to the other, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted. Either party may oppose or support such an application. The DTIC shall be informed of any application in terms of this clause.

## **7. GENERAL**

7.1 All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [Ministry@thedtic.gov.za](mailto:Ministry@thedtic.gov.za).