



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.:** LM106Oct23

In the matter between:

TotalEnergies Marketing South Africa Proprietary Limited

**Primary Acquiring Firm**

And

TotalGaz Southern Africa Proprietary Limited

**Primary Target Firm**

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|-------------------|---|--------------------------------------|
| Panel             | : | Prof. T Vilakazi (Presiding Member)  |
|                   | : | Adv G Budlender SC (Tribunal Member) |
|                   | : | Ms A Ndoni (Tribunal Member)         |
| Heard on          | : | 21 December 2023                     |
| Order issued on   | : | 21 December 2023                     |
| Reasons issued on | : | 19 January 2024                      |

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### REASONS FOR DECISION

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#### Introduction

[1] On 21 December 2023, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger whereby TotalEnergies Marketing South Africa Proprietary Limited (“TotalEnergies”) intends to acquire the entire issued share capital of TotalGaz Southern Africa Proprietary Limited (“TotalGaz”).

#### The parties and their activities

[2] The primary acquiring firm is TotalEnergies. TotalEnergies is controlled by TotalEnergies Marketing South Africa ZA (“TotalEnergies ZA”) Proprietary Limited which holds 50.1% percent of TotalEnergies. The remaining shareholding is held by two minority shareholders, Industrial Partnership

Investments Limited (“Industrial Partnership”) which holds 24.9% and Main Street RF Proprietary Limited (“Main Street”) which holds 25%. By virtue of their minority shareholder rights, Industrial Partnership and Main Street exercise joint control with TotalEnergies ZA over TotalEnergies.

- [3] Industrial Partnership is wholly owned and controlled by Remgro Limited. Main Street is controlled by Kilimanjaro Sakhumnotho Consortium RF Proprietary Limited<sup>1</sup> (“Kilimanjaro”) and the remaining shareholding in it is held by Tosaco Proprietary Limited<sup>2</sup> (“Tosaco”) which is wholly owned by Tosaco Trust.
- [4] TotalEnergies ZA is wholly owned by TotalEnergies Holdings Netherlands BV, which is in turn wholly owned and controlled by TotalEnergies Marketing Afrique (“TotalEnergies Afrique”). TotalEnergies Afrique is wholly owned and controlled by TotalEnergies Marketing and Services S.A.S which in turn is wholly owned and controlled by TotalEnergies SE.
- [5] TotalEnergies has 53.23% shareholding by Historically Disadvantaged Persons (“HDP”).
- [6] The target firm is TotalGaz. TotalGaz is wholly owned and controlled by TotalEnergies Afrique. TotalGaz does not control any firms and has no HDP shareholding.

### **Transaction and rationale**

- [7] The proposed transaction will see Totalenergies acquire the entire issued share capital of TotalGaz from TotalEnergies Afrique. Of relevance to the proposed transaction is that TotalEnergies, TotalGaz and TotalEnergies Afrique form part of the same group of companies that is ultimately indirectly controlled by

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<sup>1</sup> With a shareholding of 91.8%.

<sup>2</sup> With a shareholding of 8.2%.

TotalEnergies SE. The proposed transaction therefore constitutes an internal group restructuring.

- [8] Given the nature of the proposed transaction (internal restructuring), the merging parties submit that they share a common rationale for the proposed transaction. TotalEnergies' primary rationale for the proposed transaction is to enable TotalGaz to benefit from TotalEnergies' better HDP ownership and B-BBEE profile. Recall that TotalEnergies has an HDP shareholding of approximately 53.2% and TotalGaz has no HDP shareholding. Therefore, the merging parties submit that the proposed transaction will improve TotalGaz's HDP ownership and B-BBEE profile (by effectively absorbing TotalGaz into TotalEnergies) and will place it (TotalGaz) in a favourable position to acquire new major bulk customers and qualify for public tenders, thereby increasing revenue and sales.

### **Competition Assessment**

- [9] The merging parties submit that given that the proposed transaction is, in principle, an internal restructuring where TotalEnergies will retain ultimate majority control of TotalGaz, and that there will be no change to TotalGaz's day-to-day operations, it is not necessary to conclude on a definitive market definition.
- [10] The merging parties further submit that the proposed transaction will result in new shareholders, Remgro (through Industrial Partnership) and Killimanjaro (through Main Street), acquiring indirect interest in TotalGaz, through TotalEnergies. In its assessment, the Competition Commission ("Commission") found that the proposed transaction will not result in a horizontal or vertical overlap because none of the abovementioned firms have business activities in the LPG industry that overlap with those of TotalGaz as a wholesaler and reseller of LPG and related services in South Africa.

[11] We received no evidence to the contrary and as such, we find that for the purposes of this transaction there is no need to conclude on the definition of the relevant market. In addition, no third parties raised competition concerns about the proposed transaction.

[12] Based on the above facts, we concluded that the merger is unlikely to give rise to a substantial lessening of competition in any market/s in which the merging parties are involved.

## **Public Interest**

### *Effect on employment*

[13] The merging parties submit that the proposed transaction will not result in any retrenchments.

[14] We note that during its investigation, the Commission engaged with the Chemical, Energy, Paper, Wood and Allied Workers Union (“CEPPWAWU”), TotalEnergies’ registered trade union; and TotalGaz’s employee representative, Ms. Jill Van Graan. Initially, both CEPPWAWU and Ms Van Graan (on behalf of TotalGaz employees) were concerned about retrenchments. However, their concerns were addressed after being informed by the merging parties that the proposed transaction will not result in any retrenchments. In addition, both CEPPWAWU and Ms Van Graan indicated that there have been no retrenchments by any of the merging parties in the last 12 months.

[15] Based on the above, we are of the view that the proposed transaction does not raise employment concerns.

### *Effect on the spread of ownership*

[16] As noted above, TotalEnergies has an HDP shareholding of 53.2% and TotalGaz has no HDP shareholding. Using the modified flow-through principle the Commission found that TotalGaz’s HDP shareholding will increase from 0

– 53.2% following the merger. If the simple flow-through principle is applied, TotalGaz’s HDP shareholding will increase from 0% to at least 26%. Regardless of the methodology applied, the level of ownership by HDPs in TotalGaz will increase significantly post-merger.

[17] For these reasons, we find that the proposed transaction does not raise any negative public interest concerns overall.

### **Conclusion**

[18] We conclude that the proposed transaction is unlikely to lessen or prevent competition in any relevant market and does not raise any public interest concerns.

[19] We therefore approve the proposed transaction without conditions.

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**Presiding Member**  
**Professor Thando Vilakazi**

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**19 January 2024**  
**Date**

**Concurring: Ms Andiswa Ndoni and Advocate Geoff Budlender SC**

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|------------------------------------|---|
| Tribunal Case Manager:             | Ofentse Motshudi  |
| For the Merger Parties:            | Martin Versfeld and Clare-Alice Vertue of Webber<br>Wentzel |
| For the Competition<br>Commission: | Tarryn Sampson, Raksha Darji and Grashum<br>Mutizwa         |