



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM005Apr23

In the matter between:

**PETREFUEL HOLDINGS PROPRIETARY
LIMITED**

Acquiring Firm

and

ROYALE ENERGY PROPRIETARY LIMITED

Target Firm

Panel: : Prof. Liberty Mncube (Presiding Member)
: Adv. Geoff Budlender SC (Tribunal Member)
: Prof. Fiona Tregenna (Tribunal Member)

Heard on : **15 August 2023**
Order issued on : **16 August 2023**
Reasons issued on : **11 September 2023**

REASONS FOR DECISION

Approval

[1] On 16 August 2023, the Competition Tribunal (**Tribunal**) conditionally approved the large merger whereby Petrefuel Holdings Proprietary Limited (**Petrefuel Holdings**) intends to acquire 100% of the entire issues share capital of Royale Energy Proprietary Limited (**Royale Energy**).

Parties to the transaction and their activities

Primary acquiring firm

- [2] The primary acquiring firm is Petrefuel Holdings¹. [REDACTED] of Petrefuel Holdings' shareholding is held by Petredec South Africa Holdings Proprietary Limited (**Petredec SA**), and the residual [REDACTED] is held by White Orange Proprietary Limited (**White Orange**). White Orange is owned and controlled by a Historically Disadvantaged Person (**HDP**). Petredec SA is a wholly owned subsidiary of Petregaz Holdings Private Limited (**Petregaz**), a company incorporated in terms of the company laws of Singapore.
- [3] The companies forming part of the broader Petredec Group, including in South Africa, are ultimately controlled by Petredec Limited. These companies will collectively be referred to as the "**Petredec Group**".
- [4] Globally, the Petredec Group is active in the (i) trade of Liquefied Petroleum Gas (**LPG**) (ii) shipping, transport of products in all sectors of gas tanker market² (iii) the supply of LPG through a LPG terminal it owns in Port Louis, Mauritius.³
- [5] In South Africa, the Petredec Group, through Petrefuel Holdings and its subsidiaries, is active in the (i) importation of LPG (ii) wholesale and distribution of bulk LPG (iii) wholesale and distribution of refined fuel products (petrol, diesel, lubricants and illuminating paraffin).
- [6] The Petredec Group has the following operations:
- 6.1. Petrol and diesel operations in Eastern Cape, Limpopo, Northern Cape, North-West, KwaZulu-Natal, Mpumalanga, and Western Cape. It operates Quest-branded retail fuel service stations in these provinces;
- 6.2. LPG operations in KwaZulu-Natal, Eastern Cape. In relation to illuminating paraffin, the Petredec Group has operations in the Western Cape, KwaZulu-Natal, Gauteng , and Eastern Cape;

¹ Formely known as Petre Moya Holdings Proprietary Limited.

² This includes pressurised to semi-refrigerated, fully refrigerated and ethylene vessels.

³ The terminal is used to supply LPG to East Africa and the Indian Ocean Islands.

6.3. Lubricant operations in Gauteng and KwaZulu-Natal. It has petrol and diesel storage facilities in Eastern Cape, Free State and KwaZulu-Natal.

Primary target firm

[7] The primary target firm is Royale Energy. [REDACTED] of Royale Energy's shares are held by Royale Energy Group Proprietary Limited (**Royale Energy Group**), and the residual [REDACTED] is held by Reirocmar Proprietary Limited (**Reirocmar**). Royale Energy Group is held [REDACTED]

[8] Royale Energy controls a number of firms in South Africa through which it conducts its operations. Royale Energy and all the firms that it controls will collectively be referred to as the "**Target Group**"

[9] The Target Group is active as a non-refining wholesaler and marketer of refined fuel products (petrol, diesel, illuminating paraffin, lubricants and LPG) throughout South Africa and operates small petrol and diesel storage facilities.

[10] The Target Group has the following operations:

10.1. Diesel and petrol operations in Free State, Gauteng, Mpumalanga, Northern Cape, Limpopo, and North-West. It operates a network of retail service stations under its own Viva Oil brand in Free State, Gauteng, Mpumalanga, Northern Cape, Limpopo, and North-West;

10.2. Retail service fuel stations as an Astron Energy branded marketer for certain Caltex branded service stations in the southern region of Mpumalanga.

10.3. LPG and illuminating paraffin operations in Gauteng;

10.4. Lubricant operations in Limpopo.

Proposed transaction and rationale

Transaction

[11] In terms of the proposed transaction, Petrefuel Holdings intends to acquire 100% of the entire issued share capital of Royale Energy. On completion of the proposed transaction, Petrefuel Holdings will acquire sole control over Royale Energy.

[12] To enable Petrefuel Holdings to acquire Royale Energy, the proposed transaction involves several steps which will see a change in the shareholding structure of Royale Energy. The Competition Commission (**Commission**) notes that the proposed transaction excludes “non-transferring assets”, which we do not deal with in these reasons because these assets have, for the purposes of the proposed transaction, been carved out.

12.1. [REDACTED]

12.2. [REDACTED]

12.3. [REDACTED]

Rationale

[13] Petrefuel Holdings submits that the proposed transaction will [REDACTED]

⁴ RE HoldCo has been incorporated for the purposes of the proposed transaction.

In addition, [REDACTED]
[REDACTED]
[REDACTED] □

[14] The Target Businesses submit that the proposed transaction [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Market definition

[15] The proposed transaction will result in a horizontal overlap between the activities of the merging parties as they are both active as non-refining wholesalers and distributors to refined fuel products. The proposed transaction does not result in a vertical overlap in the merging parties' activities. The merging parties state that they do not sell any products to or purchase any products from one another.

Product market

[16] The merging parties are both non-refining wholesalers of refined fuel products. They are involved in the wholesale and distribution, as well as the storage of fuel products. As such, the merging parties identified the relevant product market as the wholesale and distribution of diesel, petrol, LPG, lubricants and illuminating paraffin.

[17] In defining the relevant market, the Commission relied on, *inter alia*, the Tribunal's decisions in:

17.1. *Total South Africa and Tasaco Commercial Services Proprietary Limited*⁵ where the Tribunal accepted that there were two relevant markets (i) the upstream market for the refining and production of petroleum products (ii) the downstream market for the marketing and distribution of petroleum products;

⁵ Tribunal Case No. 34/LM/Jun10.

17.2. *Shell SA Proprietary Limited and Tepco Petroleum Proprietary Limited*⁶ where the Tribunal segmented the downstream market for the wholesale and distribution of refined petroleum products (i.e., petrol, diesel and illuminating paraffin) according to retail and commercial customers. The Tribunal defined the retail market to be products that are sold to consumers through retail franchise networks such as petrol stations;

17.3. *Royale Energy Proprietary Limited and Afric Oil Proprietary Limited and Total and Gulfstream*⁷ where the Tribunal accepted the Commission's definition of the product market as the wholesale and distribution of refined petroleum products with a specific focus petrol and diesel to retail and commercial customers.

[18] Without conclusively defining the product market, the Commission considered the effects of the proposed transaction on the following markets:

18.1. The wholesale and distribution of refined petroleum products:

18.1.1. The wholesale and distribution of diesel to (i) commercial customers (ii) retail service stations;

18.1.2. The wholesale and distribution of petrol to (i) commercial customers (ii) retail service stations.

18.2. The wholesale and distribution of LPG;

18.3. The wholesale and distribution of lubricants;

18.4. The provision of bulk liquid storage.

18.5. The wholesale and distribution of illuminating paraffin.

[19] In this case, we have not received any evidence suggesting a departure from this approach, and therefore considered the impact of the merger in the product markets identified by the Commission.

[20] In this case, it is not necessary for us to conclude on the precise product market since, on the basis of the evidence before us, (i) the market for refined fuel

⁶ Tribunal Case No. 66/LM/Oct01.

⁷Tribunal Case No LM111Oct21

products is highly regulated⁸ and (ii) the vertically integrated market players enjoy a significant share of the market. Competition concerns in relation to these activities are unlikely to arise on any plausible basis.

Geographic market

[21] In relation to the geographic ambit of the proposed transaction, the merging parties considered a national market. This was premised on the basis that their competitors, [REDACTED] are generally active in the South African market at a national level and as such, a national market is more appropriate assessment of the proposed transaction.

[22] The Commission, except in respect of the market for bulk storage⁹ which was assessed on a regional basis, assessed the effects of the proposed transaction at a national level.

[23] Again, the Commission did not conclusively define the relevant geographic markets, it considered the effects of the proposed transaction on the following markets:

23.1. The broad national market for the wholesale and distribution of refined petroleum products.

23.1.1. The narrower national market for the wholesale and distribution of diesel to (i) commercial customers (ii) retail service stations;

23.1.2. The narrower national market for the wholesale and distribution of petrol to (i) commercial customers (ii) retail service stations.

23.2. The broad national market for the wholesale and distribution of LPG;

23.3. The broad national market for the wholesale and distribution of lubricants;

23.4. The regional market for the provision of bulk liquid storage;

23.5. The broad national market for the wholesale and distribution of illuminating paraffin.

⁸ The Government sets wholesale margins and the retail fuel price. No firm has the ability to price excessively.

⁹ See *Bidvest Group Proprietary Limited and Island View Storage Limited*.

[24] We have not received any evidence indicating that the geographic markets should be wider or narrower than the markets assessed by the Commission, and therefore considered the impact of the merger in the geographic markets identified by the Commission. Given that the proposed transaction does not raise any competition concerns on any basis, it is not necessary for us to conclude on the precise scope of the geographic markets.

[25] The Commission found that there is no geographic overlap between the storage activities of the merging parties because the merging parties' storage facilities are not located within the same region. We agree with this conclusion.

Competitive assessment

[26] The merging parties submit that despite the horizontal overlap, the proposed transaction will not result in any substantial lessening or prevention of competition. The merging parties submit that the South African petroleum market features seven oil companies (**oil majors**), all of which are active in the wholesale and retail distribution of petrol and diesel in South Africa.

[27] In comparison to the oil majors, the merging parties submit that they have *de minimis* market share in the wholesale of petrol and diesel. Given the presence of the oil majors, the merging parties submit that they do not anticipate that their respective or combined market share in relation to any narrower market would differ significantly and further submit that the proposed transaction will create an industry player that – although not large – may be able to compete with the oil companies on a better footing.

[28] The Commission engaged with the DMRE and the merging parties' competitors, who, except for ██████ raised no concerns about the proposed transaction. ██████ concerns were dismissed by the Commission on *inter alia* the basis that they are not merger specific.

[29] In assessing the merging parties' market shares, the Commission considered the volumes (liters) of diesel and petrol consumed for the year 2022 (received

from the Department of Minerals and Energy (DMRE)), and made the following estimates and conclusions, per relevant market:

The broad national market for the wholesale and distribution of petrol and diesel

PETREDEC GROUP		TARGET GROUP		MERGED ENTITY	
Petrol	Diesel	Petrol	Diesel	Petrol	Diesel
█████	█████	█████	█████	█████ with an accretion of █████	█████ with an accretion o █████

The narrower market for the wholesale and distribution of petrol to commercial customers and to retail service stations

PETREDEC GROUP		TARGET GROUP		MERGED ENTITY	
Petrol to retail service stations	Petrol to commercial customers	Petrol to retail service stations	Petrol to commercial customers	Petrol to retail service stations	Petrol to commercial customers
█████	█████	█████	█████	█████ with an accretion of █████	█████ with an accretion of █████

The narrower market for the wholesale and distribution of diesel to commercial customers and retail service stations

PETREDEC GROUP		TARGET GROUP		MERGED ENTITY	
Diesel to retail service stations	Diesel to commercial customers	Diesel to retail service stations	Diesel to commercial customers	Diesel to retail service stations	Diesel to commercial customers
█████	█████	█████	█████	█████ with an accretion o █████	█████ with an accretion o █████

The national markets for the wholesale and distribution of illuminating paraffin, LPG and lubricants¹⁰

PETREDEC GROUP			TARGET GROUP			MERGED ENTITY		
Illuminating Paraffin	LPG	Lubricants	Illuminating Paraffin	LPG	Lubricants	Illuminating Paraffin	LPG	Lubricants
██████████	██████████	██████████	██████████	██████████	██████████	██████████ with an accretion of ██████████	██████████ with an accretion of ██████████	██████████ with an accretion of ██████████

[30] Based on the above estimates, the Commission found that the merging parties' combined and post-transaction shares in the relevant markets remain low and that the merged entity will continue to face competition from larger players in the market.

[31] In view of the above small market shares with a small to minimal increment, our view is that the proposed transaction is unlikely to substantially lessen competition in any of the relevant markets.

Conclusion on the competitive assessment

[32] Based on the above, we do not believe that the proposed is likely to give rise to a substantial lessening of competition.

Public interest assessment

Employment

[33] The merging parties submitted that the proposed transaction will not result in any job losses.

¹⁰ The Commission notes that for these markets, it was unable to obtain volume sales by competitors from the DMRE and accordingly relied on the estimates provided by the merging parties.

[34] The Commission engaged with the trade unions and employee representatives representing the merging parties' employees. The Commission received a concern from Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union (**CEPPWAWU**) that the horizontal overlap between the activities of the merging parties is likely to result in duplications which may culminate into retrenchments. After filing its notice of intention to participate in the proposed transaction, the Department of Trade, Industry and Competition (**DTIC**) raised similar concerns. Both CEPPWAWU and the DTIC submitted that a 36-month moratorium on retrenchment be made a condition of the proposed transaction.

[35] After engagements between the Commission and the merging parties, the merging parties agreed to the imposition of a 3-year moratorium on retrenchment. This has been made a condition of the proposed transaction.

The promotion of a greater spread of ownership

[36] As indicated above, [REDACTED] of Royale Energy is held by the Royale Energy group, with the residual [REDACTED] held by Reirocmar. The Royale Energy group [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[37] On the other hand [REDACTED] of Petrefuel Holdings is owned by White Orange which is wholly owned by an HDP. As such, Petrefuel Holdings has an HDP shareholding of [REDACTED]

[38] The merging parties have indicated that the proposed transaction will result in a diminution of Royale Energy's HDP shareholding. To proactively address this diminution, the merging parties have proposed the implementation of an ESOP. To this end, post-transaction (i) [REDACTED] of Petrefuel Holdings will be held by Petredec SA (ii) [REDACTED] will be held by RE HoldCo (MJD) (iii) [REDACTED] by White Orange (iv) [REDACTED] by the ESOP.

[39] The merging parties have also committed to the establishment of a supplier and enterprise development condition (**ESD commitment**). The ESD commitment

will be geared towards the creation of independent HDP owner drivers by providing financing or security to purchase fuel tanker vehicles as reflected in the conditions imposed by the Tribunal, attached hereto as Annexure "A".

Conclusion on the public interest assessment

[40] Based on the above, we do not consider it likely that the proposed transaction will result in a negative public interest effect.

Conclusion

[41] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in the relevant markets and is unlikely to give rise to any negative public interest effects.

[42] We therefore approve the proposed transaction subject to the conditions annexed hereto as **Annexure A**.

Signed by:Liberty Mncube
Signed at:2023-09-11 18:27:46 +02:00
Reason:Witnessing Liberty Mncube



Prof. Liberty Mncube

11 September 2023
Date

Adv. Geoff Budlender SC and Prof. Fiona Tregenna concurring.

Tribunal case manager : Ofentse Motshudi and Sinethemba Mbeki

For the merging parties : Judd Lurie and Disebo Leokaoke of Bowmans Attorneys.

For the Commission : Nomthandazo Mndaweni and Portia Bele.