



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM111Oct21

Royale Energy (Pty) Ltd

Primary Acquiring Firm

And

Afric Oil (Pty) Ltd

Primary Target Firm

REASONS FOR DECISION

- [1] On 20 December 2021, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger in terms of which Royale Energy (Pty) Ltd (“Royale Energy”)¹ intends to acquire 100% of the entire issued share capital of and Afric Oil (Pty) Ltd (“Afric Oil”)². Following the implementation of the proposed transaction, Afric Oil and its subsidiaries will ultimately be solely controlled by Royale Energy.
- [2] The proposed transaction arises from a business rescue plan following a decision by the board of Afric Oil to place the business in voluntary liquidation. It is viewed by the business rescue practitioner as the best possible way for Afric Oil to resolve its current financial position.

Competition assessment

- [3] Royale Energy, through its subsidiaries, is an independent non-refining wholesaler and marketer of petroleum products such as petrol, diesel, illuminating paraffin, liquefied petroleum gas and lubricants throughout South

¹ Royale Energy is a wholly owned subsidiary of Royale Energy Group (Pty) Ltd, an investment arm of the POPCRU, the Police & Prisons Civil Rights Union.

² Afric Oil is owned by Afric Oil Holdings with a shareholding of 71.13% and the remaining 28.87% being held by the Compensation Fund. 100% of the shareholding in Afric Oil Holdings is owned by Efora Energy Limited, which is controlled by the Government Employees Pension Fund (86.34%).

Africa. Afric Oil is also an independent wholesaler offering diesel, petrol and paraffin to diversified customers in Southern Africa. Afric Oil's activities include the marketing, sale and distribution of refined fuels products.

- [4] The Competition Commission ("Commission") found that there is a horizontal overlap between the merging parties' activities as they are both active in the downstream market for the wholesale and distribution of refined petroleum products, namely diesel, petrol and paraffin. The Commission did not conclusively define the relevant product market but assessed the effects of the proposed merger on the wholesale distribution of petroleum products to *retail* and *commercial* customers.³
- [5] The Commission also did not conclusively define the relevant geographic market but assessed the competition effects of the proposed transaction on a national basis since the merging parties both operate in all the nine provinces.
- [6] The Commission concluded that the merger is unlikely to substantially prevent or lessen competition in any relevant market since there will be no structural change in the wholesale and distribution of *diesel* to *retail* customers because there is no horizontal overlap between the activities of the merging parties in this market. In the national market for the wholesale and distribution of *diesel* to *commercial* customers, the merged entity will have an estimated market share of less than 25%, with an accretion of less than 10%, as a result of the proposed transaction.
- [7] In relation to the market for the wholesale distribution of *petrol* to *commercial* customers the Commission found that the merged entity will have an estimated market share of less than 15%, with an accretion of less than 10%, as a result of the proposed transaction, while in the wholesale distribution of *petrol* to *retail*

³ See *Puma Energy Africa Holding B.V and Drakensberg Oil (Pty) Ltd and Drakensberg Properties (Pty) Ltd 2014Dec0760* where the relevant product market was defined as the downstream market for the wholesale of refined petroleum products focusing on diesel and petrol , as well as, *Shell SA (Pty) Ltd & Tepco Petroleum (Pty) Ltd 66/LM/Oct01* where the Tribunal defined the downstream market as the market for the wholesale and distribution of refined petroleum products (specifically focussing on petrol and diesel) to retail and commercial customers.

customers the merged entity will have post-merger market shares of approximately less than 5%, with no accretion in market shares as Afric Oil does not supply petrol to retail customers.

- [8] The Commission found that the proposed merger is unlikely to raise significant competition concerns considering that the merged entity will continue to face competition from numerous vertically integrated oil companies such as Engen, Astron, Shell, BP, Total and Sasol, amongst others. The Commission also noted that there are also numerous independent wholesalers and suppliers of refined petroleum products in South Africa.

Public interest

Employment

- [9] The Commission is of the view that the proposed transaction will ensure that 37 jobs are saved at Afric Oil since Afric Oil is in financial distress and absent the transaction it is likely that there will be job losses. The Commission noted that there will be two job duplications involving the Managing Director and Senior Supply Chain Manager of Afric Oil. The employee representative at Afric Oil has confirmed that Afric Oil and the two employees have mutually agreed separation terms.

- [10] It is therefore unlikely that the proposed transaction will raise any significant employment concerns post-merger.

Ownership

- [11] Royale Energy, is a 100% black-owned entity and a Level 3 B-BBEE contributor. Afric Oil, is 66% black owned, 36% black female owned and black managed. The proposed transaction is therefore unlikely to have a negative impact on the promotion of a greater spread of ownership.

Other public interest issues

- [12] The proposed transaction raised no other public interest concerns.

Third Party Views

[13] No third party raised any concerns.

Conclusion

[14] For the above reasons, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest.



Ms Mondo Mazwai

Ms Yasmin Carrim and Mr Andreas Wessels concurring

23 December 2021

Date

Tribunal Case Manager: Juliana Munyembate

For the Merging Parties: Matodzi Ramashia of Rams Attorneys

For the Competition: Thabelo Masithulela and Zanele Hadebe

Commission: