



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM194Oct18

In the matter between

**AAF Energy Ltd and Weijo Investments (Pty) Ltd**

Primary Acquiring Firms

And

**Quest Petroleum (Pty) Ltd, Montidox (Pty) Ltd, Quest  
Lubricants (Pty) Ltd and On Route Convenience (Pty)  
Ltd**

Primary Target Firms

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Panel	: Yasmin Carrim (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 20 February 2019
Order Issued on	: 20 February 2019
Reasons Issued on	: 11 March 2019

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### REASONS FOR DECISION

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#### Approval

- [1] On 20 February 2019, the Competition Tribunal (“Tribunal”) unconditionally approved the proposed transaction involving the acquiring firms: AAF Energy Ltd (“AAF Energy”), Weijo Investments (Pty) Ltd (“Weijo”) and the target firms: Quest Petroleum (Pty) Ltd (“Quest Petroleum”), Montidox (Pty) Ltd (“Montidox”), Quest Lubricants (Pty) Ltd (“Quest Lubricants”), On Route Convenience (Pty) Ltd (“ORC”).
- [2] The reasons for the approval of the proposed transaction follow.

## Parties to the transaction

### *Primary Acquiring Firms*

- [3] The primary acquiring firms are AAF Energy and Weijo. AAF Energy is a wholly owned subsidiary of Overberg Agri Bedrywe (Pty) Ltd which in turn, is a wholly owned subsidiary of Acorn Agri and Food Limited (“AAF”). Weijo is a wholly owned subsidiary of AAF. AAF directly and indirectly controls numerous firms in South Africa. Of relevance to the proposed transaction is MOOV Fuel (Pty) Ltd (“MOOV”).
- [4] AAF Energy and Weijo are newly established firms and as such, they do not control any firms, nor have they traded yet. MOOV controls two firms.
- [5] MOOV and its subsidiaries are an independent wholesaler of petroleum products<sup>1</sup> and related services. MOOV operates under four divisions namely Branded Marketer, Commercial, Logistics and Property. MOOV’s operations include the wholesale and distribution of petroleum products to branded retailers; the commercial wholesale and distribution of petroleum products to industrial and agricultural users; providing fuel logistics services to third party clients; and leasing of retail sites. MOOV is active in the Western Cape, Eastern Cape and Northern Cape.

### *Primary Target Firms*

- [6] The primary target firms are Quest Petroleum, Montidox, Quest Lubricants and ORC. Pre-transaction, the target firms were ultimately controlled by common shareholders through various trusts.
- [7] The target firms are managed by a sole CEO and operate as a single economic entity. The target firms operate as an independent wholesaler of petroleum products. They operate through four divisions namely Retail, Commercial, Logistics and Property.

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<sup>1</sup> The petroleum products include petrol, diesel, lubricants and liquid petroleum gas.

## **Proposed transaction**

- [8] In terms of the *Sale of Shares Agreement*, AAF Energy will acquire 51% of the share capital holding in each of the target firms. The remaining share capital (49%) in each of the target firms will be acquired by Weijo. Post-merger, the target firms will be jointly controlled by AAF Energy and Weijo.
- [9] The proposed transaction will take place in various steps. The first few steps comprise of an internal restructuring of the AAF group of companies. The restructure includes a change in control of the acquiring firms. In addition, the minority shareholders of MOOV will exchange their shares in MOOV for shares in either AAF Energy or Weijo. The final step involves AAF Energy and Weijo exercising joint ownership and control over the target firms.

## **Impact on competition**

- [10] The Competition Commission (“Commission”) found a horizontal overlap in the following markets: (i) the market for the wholesale/distribution of petroleum products in Eastern Cape, (ii) the market for the wholesale/distribution of petroleum products in Northern Cape, (iii) the market for the wholesale/distribution of petroleum products in Western Cape and (iv) the market for the wholesale/distribution of lubricants in the Eastern Cape.
- [11] In its investigation, the Commission found that the merged entity would have relatively low post-merger market shares in all the relevant markets save for the market for the wholesale/distribution of petroleum products in Eastern Cape which was approximately 21.4%.
- [12] The Commission was of the view that the post-merger market share for wholesale/distribution of petroleum products in Eastern Cape would unlikely raise competition concerns as the market accretion is *de minimis* and the merged entity would continue to face competition from other market participants such as Engen, Sasol and Shell SA.

- [13] In light of the above, the Commission concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market.
- [14] At the hearing, the merging parties raised concerns around the Commission's findings specifically, the finding that the merged entity would have a post-merger market share of 21.4%. According to merging parties, the information used by the Commission was unreliable and the post-merger market share should have been 6%.<sup>2</sup> The Commission itself admitted that there were discrepancies in the Department of Energy's statistics, yet it proceeded to utilise those figures in its report.<sup>3</sup>
- [15] In response, the Commission explained where it may have erred. The Commission failed to properly state that even though it had included the Department of Energy's figures in the report, it accepted and relied on the market share provided by the merging parties which is 6%. The Commission acknowledged that the 21.4% figure may have been overstated given the discrepancies in the statistics.<sup>4</sup> This response was accepted by the Tribunal.

### **Public interest**

- [16] The merging parties submitted that approximately 12 employees of the target firms may be retrenched as a result of the proposed transaction. The Commission raised concerns over the retrenchments and in response to the concerns, the merging parties undertook to place a moratorium on merger related retrenchments for a period of two years from the date of implementation of the proposed transaction ("the undertaking"). The Commission did not make the moratorium a condition for its approval as it was satisfied with the undertaking.
- [17] The Tribunal raised concerns about the monitoring of the undertaking by employees and directors of the merged entity as well as the Commission, as would be the case had the undertaking been imposed as a condition to the merger.
- [18] To address these concerns the Tribunal gave the following direction:

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<sup>2</sup> Transcript, pg 15.

<sup>3</sup> Transcript, pg 16.

<sup>4</sup> Transcript, pg 17.

*“ The merging parties must, within 30 days after the date of approval of the proposed transaction, deliver a written notice of the undertaking and the terms thereof to all employees, directors, and persons involved in the proposed transaction. In addition, the merging parties must deliver a covering letter to the Commission confirming that they have adhered to the Tribunal’s instruction. The letter, together with an affidavit deposed to by a director and a copy of the notification, must be delivered within 30 days after the date of approval of this proposed transaction.”<sup>5</sup>*

[19] The merging parties agreed to comply with the Tribunal’s direction. The proposed transaction raised no other public interest concerns.

## **Conclusion**

[20] In light of the above, we approved the proposed transaction unconditionally.



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**Ms Yasmin Carrim**

11 March 2019

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**Date**

**Ms Mondo Mazwai and Ms Andiswa Ndoni concurring.**

Tribunal Researcher: Hlumelo Vazi

For the merging parties: P Neethling of Vanderspuy and Partners Incorporated

For the Commission B Ntshingila and T Masithulela

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<sup>5</sup> Transcript, pg 8 and 9.