competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM196Oct17

In the matter between:

Total South Africa (Pty) Ltd	Primary Acquiring Firm
And	
Gulfstream Energy (Pty) Ltd	Primary Target Firm

Panel	: Andreas Wessels (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 21 February 2018
Order Issued on	: 21 February 2018
Reasons Issued on	: 8 March 2018

REASONS FOR DECISION

Approval

[1] On 21 February 2018, the Competition Tribunal ("Tribunal") approved the proposed transaction involving Total South Africa (Pty) Ltd ("Total SA") and Gulfstream Energy (Pty) Ltd ("Gulfstream").

[2] The reasons for the approval of the proposed transaction follow.

Parties to the proposed transaction and their activities

Primary acquiring firm

[3] The primary acquiring firm is Total SA. Total SA is owned by Total Overseas Holdings (Pty) Ltd ("TOH"), Main Street 87 (Pty) Ltd ("Main Street") and Industrial Partnership Investments Limited ("IPI"). TOH is a wholly owned

subsidiary of Total France. Total France is a public company listed on the French Stock Exchange.

[4] Total SA has crude oil refinery capabilities through its stake in National Petroleum Refiners of South Africa (Pty) Ltd. It also markets and distributes a number of refined petroleum products throughout South Africa including diesel, petrol, greases, illuminating paraffin, kerosene, liquefied petroleum gas (LPG), bitumen, jet fuel and lubricants. Total SA sells these refined petroleum products to both retail and commercial customers.

Primary target firm

[5] The primary target firm is Gulfstream. Gulfstream is wholly owned by Mrs. Jolyn Hendriena Jegels ("Mrs. Jegels") Mrs. Jegels does not control any other firms.

[6] Gulfstream is an independent wholesaler of petroleum solutions. It primarily supplies diesel, petrol and illuminating paraffin to various customers including commercial and retail customers. Gulfstream however does not have its own refining capabilities.

Proposed transaction and rationale

[7] In terms of the proposed transaction, Total SA intends to acquire 30% of the ordinary issued share capital of Gulfstream from Mrs. Jegels. After the implementation of the proposed transaction, Total SA through certain minority protections, will have negative control over Gulfstream.

[8] Total SA's rationale for the proposed transaction is to allow it to invest in and service customers through an empowered entity.

[9] Gulfstream submitted that the proposed transaction allows it inter alia greater security of supply as well as wider access to markets.

Impact on competition

Horizontal assessment

[10] The Competition Commission ("Commission") found a horizontal overlap between the merging parties' activities in the wholesale and distribution of refined petroleum products. The Commission noted that although Total SA and Gulfstream sell other refined petroleum products, the main focus of their businesses is the wholesale and distribution of petrol and diesel. For this reason the Commission focussed its competition analysis on the wholesale and distribution of (i) petrol; and (ii) diesel to (a) commercial; and (b) retail customers.

[11] In relation to the commercial customer segment, the Commission found that the merging parties will have a combined market share of less than 15% in the market for the wholesale and distribution of diesel to commercial customers; and a market share of less than 15% in the market for the wholesale and distribution of petrol to commercial customers.

[12] In relation to the retail customer segment, the Commission found that the merging parties will have a combined market share of less than 15% in the market for the wholesale and distribution of petrol to retail customers; and a market share of less than 15% in the market for the wholesale and distribution of diesel to retail customers.

[13] Based on these market shares and the presence of a number of competitors, the Commission concluded that, from a horizontal perspective, the proposed transaction is unlikely to raise any competition concerns.

Vertical assessment

[14] The Commission also found that the proposed transaction has a vertical dimension since Total SA is active in the upstream market for the production of refined petroleum products and Gulfstream is active in the downstream market for the wholesale and distribution of refined petroleum products. Total SA currently supplies Gulfstream with products.

[15] The Commission however found that Gulfstream is not a major customer of Total SA and that there are various other suppliers of refined petroleum products in South Africa. The Commission concluded that the proposed transaction does not raise either input or customer foreclosure concerns given the existence of sufficient alternatives in both the up- and downstream markets. We have no reason to disagree with this conclusion.

Public interest

[16] The merging parties confirmed that the proposed transaction will not result in any job losses or retrenchments.[1]

[17] The proposed transaction furthermore raises no other public interest concerns. The Tribunal asked certain questions of the merging parties in relation to public interest considerations and was satisfied with the responses provided.[2]

Conclusion

[18] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Mr Andreas Wessels

8 March 2018
Date

Ms Andiswa Ndoni and Ms Mondo Mazwai

Case Manager:	Jonathan Thomson
For the Merging Parties:	Lara Granville of Cliffe Dekker Hofmeyr
For the Commission:	Rethabile Ncheche

[1] Merger Record, pages 11 and 63.
[2] Also see Commission's Report, pages 23 to 27; and Transcript, pages 9 to 12.