

COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No.: LM157Dec23

In the matter between:

Prax South Africa (Pty) Ltd

Primary Acquiring Firm

And

National Petroleum Refiners of South Africa (Pty) Ltd

Primary Target Firm

Panel: L Mncube (Presiding Member)

M Mazwai (Tribunal Member)

I Valodia (Tribunal Member)

Heard on: 18 June 2024

Decided on: 21 June 2024

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b)(ii) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that–

1. the merger between the abovementioned parties be approved subject to the conditions set out in "**Annexure A**" in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Presiding Member
Prof. Liberty Mncube

21 June 2024
Date

Concurring: Ms Mondo Mazwai and Prof. Imraan Valodia

ANNEXURE A
PRAX SOUTH AFRICA PROPRIETARY LIMITED
AND
NATIONAL PETROLEUM REFINERS OF SOUTH AFRICA PROPRIETARY LIMITED
CASE NUMBER: LM157Dec23

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below, and cognate expressions bear corresponding meanings –

- 1.1 **"Acquiring Firm"** means Prax South Africa Proprietary Limited;
- 1.2 **"Approval Date"** means the date referred to on the Commission's merger clearance certificate (Form CC 15), being the date on which the Merger is approved in terms of the Competition Act;
- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.4 **"Competition Rules"** means the Rules for the Conduct of Proceedings in the Commission;

1.5 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;

1.6 **"Conditions"** mean these conditions;

1.7 **"Days"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;

1.8 **"HDP"** means a historically disadvantaged person as defined in section 3(2) of the Competition Act;

1.9 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.10 **"Merged Entity"** means the Target Firm subject to the control of the Acquiring Firm following the Implementation Date;

1.11 **"Merger"** means the proposed acquisition by the Acquiring Firm of 36.36% of the issued ordinary share capital of the Target Firm;

1.12 **"Merger Parties"** means the Acquiring Firm and the Target Firm;

1.13 **"Target Firm"** means National Petroleum Refiners of South Africa Proprietary Limited; and

1.14 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act.

2. **HDP TRANSACTION(S)**

Within 24 (twenty-four) months of the Implementation Date, the Acquiring Firm shall

conclude and implement a transaction in terms of which one or more HDPs and/or a trust intended for the benefit of HDPs will subscribe for, or will acquire, no less than 25% (twenty-five percent) of the issued share capital of the Acquiring Firm.

3. **CAPITAL EXPENDITURE**

The Acquiring Firm, in its capacity as a minority shareholder in the Target Firm, commits to support the Target Firm's operational capital expenditure requirements, at a minimum value of [...] over a period of not less than [...] from the date of implementation of the Proposed Transaction, on the understanding that the Target Firm's shareholder support is procured on a proportional shareholding basis.

4. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of the Implementation Date.

4.2 Within 10 (ten) Days of the determination of the HDP transaction set out in clause 2, the Acquiring Firm shall provide the Commission with the following details in relation to the HDP(s) involved, namely: (i) the identity of the HDP; (ii) evidence that the HDP is appropriately classified as an HDP; (iii) confirmation of the proportion of shareholding in the Acquiring Firm that the HDP will acquire; and (iv) confirmation of whether the transaction constitutes a merger for the purposes of the Competition Act.

4.3 Within 30 (thirty) Days of receipt of the details of the HDP transaction in clause 2, the Commission shall review and provide the Acquiring Firm's representative with any comments or queries in relation to the empowerment transaction, in writing.

4.4 For the avoidance of doubt, the HDP transaction in clause 2 may not be implemented prior to the Commission's written approval, which approval shall

not be unreasonably withheld or delayed.

4.5 For the avoidance of further doubt, to the extent that the HDP transaction in clause 2 also constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.

4.6 The Acquiring Firm shall, within 30 (thirty) days of the implementation of the HDP transaction contemplated in clause 2, provide the Commission with an affidavit attested to by a senior official of the Acquiring Firm, confirming the Acquiring Firm's compliance with the Conditions.

4.7 The Merged Firm shall, within 30 (thirty) Days of the first anniversary of the Implementation Date and for a period of [...] thereafter submit to the Commission a written report detailing compliance with Clause 3 of these Conditions. The report shall be accompanied by an affidavit from a senior official attesting to the correctness of the report.

4.8 The Commission may request such additional information from the Merger Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

5. APPARENT BREACH

Should the Commission receive any complaint in relation to non-compliance with the above Conditions or otherwise determine that there has been an apparent breach by the Merger Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

6. VARIATION OF CONDITIONS

The Merger Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised, or amended. Should a dispute arise in relation to the variation of the Conditions, the Merger Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised, or amended.

7. GENERAL

All correspondence concerning these Conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.