COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 14/LM/Mar04

In the large merger between:

Engen Petroleum Limited

and

ExxonMobil South Africa (Pty) Limited

Reasons

Introduction

1. The Tribunal unconditionally approved the proposed transaction between the Engen Petroleum Limited ("Engen") and ExxonMobil South Africa (Pty) Limited ("EMSA") on 24 March 2004. The reasons for our decision follow.

Merger transaction

2. In terms of this transaction, Engen, one of South Africa's largest petroleum retailers, will acquire and thus control certain assets from EMSA and will be appointed as the exclusive distributor and marketer of ExxonMobil's lubricants business in South Africa. Engen will therefore import, blend and market the ExxonMobil's branded lubricants in the country.

3. This transaction is made up of several agreements reached between Engen and various members of EMSA group of companies.[1]

Parties to the merger

4. Both Engen and EMSA are companies duly incorporated within the Republic of South Africa. Engen[2] is controlled by Engen Management Services (Pty) Ltd, which is in turn controlled by Engen Ltd. Engen Ltd is in turn controlled by Petroleum Nasional Berhad ("Petronas").

5. EMSA is an indirect wholly owned subsidiary of Exxon Mobil Corporation.[3]

1 These agreements include, inter alia, the Asset Sale agreement, the Lubricants Blending Distribution agreement ("LBDA"), two Trade Mark Licence agreements and the Marine Lubricants Supply and Services agreement.
2 Engen controls Gas Africa (Pty) Ltd and Renaissance Petroleum (Pty) Ltd.
3 Exxon Mobil Corporation is a company incorporated within the United States of America.

EMSA controls two firms namely, Cape Petroleum (Pty) Ltd and Safri-Lube (Pty) Ltd. Control of these two firms will not be transferred to the control of EMSA hence these two firms will not form part of the merger.

Rationale for the transaction

6. The transaction is driven by the parties' mutual desire to combine their complementary assets and abilities in the lubricants field. Engen, as a South African company, will be able to offer a comprehensive range of ExxonMobil's lubricant products and will have access to ExxonMobil's lubricants technology. This will allow Engen to compete more effectively in South Africa against larger competitors such as BP/Castrol, Shell and Total who are already backed by the international technology in the lubricants market.[4]

7. ExxonMobil's South African lubricants business lacks the scale and distribution network (i.e. service stations) that would enable it to compete effectively against the larger suppliers mentioned above. Following this transaction, through Engen, ExxonMobil's lubricant products will enjoy improved sales and distribution, which will place them in a better position to compete against the leading lubricant brands available in South Africa.

8. As Engen is the only one of the five major oil companies that is not part of a global group of companies, it feels that it is at a considerable disadvantage in terms of access to technology, product portfolios, research and development.

9. EMSA believes that this transaction will enable it to market and distribute its products with greater efficiency by making use of Engen's large distribution infrastructure, while Engen believes that it will benefit from ExxonMobil's research capabilities, access to global technology and more comprehensive product range. Engen further says that this transaction addresses its long-term need to remain competitive in the industrial and automotive lubricants markets by combining with a supplier like EMSA which is able to offer the product range and research and development capabilities that Engen cannot provide on its own.

10. The parties maintain that this transaction will result in a broader distribution of ExxonMobil's products in South Africa and will thus further increase competition with the leading suppliers and bring clear benefits to South African consumers. In addition, the level of technological support for the range of products available in this country will be much higher and customers will gain access to a regional network supported by international standards.

4 See page 8 of the transcript.

Activities of the parties

11. Both parties participate in various aspects of the oil and petroleum industry. Engen operates in the broad petroleum product market and in the market for lubricants. Its principal business activities revolve around the refining, marketing and distribution levels of petroleum products and at the manufacturing, blending, marketing and distribution levels of the lubricant production chain.[5]

12. The categories of petroleum products manufactured, refined, marketed and/or distributed by Engen include diesel, petrol, jet fuel, gasoline, avgas (aviation fuel), liquid petroleum gas, base oil and other petroleum products. In the lubricants business, Engen is involved in manufacture of the following types of lubricants: automotive, industrial, marine, and aviation lubricants.[6]

13. EMSA operates in the marketing of a full range of lubricants and chemicals. These include automotive, industrial, marine lubricants, and specialty chemicals.[7]

The overlaps between the businesses of the Engen and EMSA

14. It is apparent from the above that the only aspect of the businesses of Engen and EMSA that overlap is the marketing of automotive lubricants, industrial lubricants, and the specialty chemicals. No overlap exists between the parties' marine lubricants businesses because Engen manufactures them whereas EMSA markets them. The parties indicated that this transaction only relates to lubricants and not specialty chemicals. Therefore the parties will remain competitors in respect of specialty chemicals.[8]

15. Having found that this transaction does not raise any competition concerns, we considered it unnecessary to go into the nature and structure of the lubricants market any further.

5 According to the Commission, the so-called petroleum products differ with respect to lubricants because they are manufactured through the refining process whereas lubricants are not manufactured through this process.
6 Engen also markets and provides the following services: toll blending lubricants for other marketers, trading of products with other oil companies for system balancing and in terms of product swap agreements, forecourt convenience shop retailers, shared depot facilities, and the management and operation of the base oil manufacturing plant owned by South African Fuel Oil Refinery (Pty) Ltd ("SAFOR"). Engen is one of the only two producers of base oil in South Africa.
7 EMSA also provides a lubricant management service known as "Fluidlink" responsible for customer care in the lubricants market. Fluidlink performs the following services: order taking, storage, advising on the applications of lubricants, used oil analysis, and the monitoring of the customer's lubricant consumption.
8 See page 191 of the file.

Competition analysis

16. Engen is involved in the refining, marketing and distribution level of petroleum products whilst EMSA operates only in the marketing side of a full range of lubricants. However, there are already five major oil companies in South Africa. As indicated above, Engen is the only one of the five major oil companies that is not part of a global group of companies.[9]

Vertical integrated concerns

17. In its investigation, the Commission found that the merger itself does create any vertical integration but results in the increased use of base oil in the production of Engen and ExxonMobil branded lubricants. The Commission further examined whether the customers purchasing base oil from Engen would be foreclosed from the market. It found that Engen's customers could import base oil as many other market players do or they could import the manufactured product. However, Engen has advised that it would continue supplying its customers' needs by operating at full capacity and by expanding its base oil plant should this become necessary.[10]

18. As far as the vertical relationship is concerned, the Commission suggested that there would be no vertical concerns in that Engen, through its refinery capacity, would sell to anybody else who is prepared to purchase from it. However, the parties confirmed this at the hearing and indicated that Engen does toll blending at the moment for Mobil, Sasol and other competitors. They asserted that Engen sell some finished products to Sasol and to a number of other smaller suppliers who then sell to their own customers. Engen further indicated that there is nothing in the current agreements, which they have with ExxonMobil, which precludes Engen from selling base oil to competitors including those of ExxonMobil products.[11]

Horizontal relationships between Engen and ExxonMobil

19. Prior to the merger Engen has had a toll blending agreement with ExxonMobil in terms of which it produces lubricants for ExxonMobil in South Africa using additives supplied by ExxonMobil. This is because ExxonMobil does not produce lubricants in this country.

20. ExxonMobil does not utilise Engen's retail network to distribute any of its products. In addition, ExxonMobil does not have any activities in retail

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9 Although Engen is by market share the leading petroleum downstream company in South Africa, it is not a global fully integrated petroleum products supplier like most of its main lubricants competitors. The parties also indicated that ExxonMobil is a leading global integrated supplier of petroleum products, but it does not enjoy a leading position in South Africa.

10 See page 3 of the Commission's mergers and acquisitions report.

11 See Mr Rob Hill's testimony (currently the Product Manager: Lubes Division, Engen) on page 6 and 7 of the transcript dated 24 March 2004.

networking and its relationships had been direct to customer and there is no retail network that is going to be affected by this merger. The parties further asserted that the customers would have a choice of the lubricant provider/s. It appears that these lubricants will ultimately be sold essentially through distributors.[12]

21. The Commission found that the combined post-merger market shares would not exceed 20% in either of the automotive and/or industrial lubricants market. It further appears that at a more narrowly defined market based on customer segments, the merged entity's market shares would not exceed 26% in any of the identified markets.[13]

22. In addition, the markets for automotive and industrial lubricants seem to be highly competitive, with numerous competing players thus constraining the merged entity from acting anti-competitively or otherwise.

Public interest considerations

23. The parties maintained that this transaction would result in the transfer of employment contracts from EMSA to Engen. Consequently, the parties do not foresee any job losses following this transaction.

Conclusion

24. We therefore agree with the Commission that this transaction would not substantially prevent or lessen competition in any of the relevant markets.

_______________ 4 May 2004

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Concurring: P. Maponya, L. Reyburn

For the merging parties:	Ms Caryn Myers, Mallinicks Inc.

For the Commission: Mr Mark Worsley assisted by Ms. Seema Nunkoo, Competition Commission

12 See Mr R. D'Huart's testimony (Director of EMSA) on page 5 to 6 of the transcript.

13 Refer to footnote 10 supra.