



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 69/LM/Aug11

In the matter between:

Total Energie Development S.A.S

Acquiring Firm

And

Tenesol S.A

Target Firm

Panel	:	Norman Manoim (Presiding Member) Andiswa Ndoni (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	21/09/2011
Order issued on	:	21/09/2011
Reasons issued on	:	06/10/2011

Reasons for Decision

APPROVAL

- 1] On 21 September 2011 the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction between Total Energie Development S.A.S and Tenesol S.A. The reasons for approval of the proposed transaction follows below.

THE MERGING PARTIES

- 2] This is an international merger between Total Energie Development S.A.A ("TED"), the primary acquiring firm, a subsidiary of Total which is incorporated under the laws of France, and Tenesol S.A, the primary target firm, which is jointly controlled by the Total Group and EDF Energie Nouvelles Reparties S.A ("EDF"), also a French based company.

- 3] Total group has various subsidiaries in South Africa and is active in among other things; the production and distribution of petrochemicals, lubricants, oils, gas, agro-chemicals, etc. Internationally, it is active in the solar energy sector, particularly in the manufacture and sale of solar cells, solar modules and solar systems for the generation of solar energy. In South Africa, it is only involved in the solar energy sector through its 50% shareholding in Tenesol SA which is involved in the manufacturing of solar modules.
- 4] Total also has controlling interest in Photovoltech N.V, a firm active in the production and sale of solar cells. It also has sole control in SunPower Corporation (“SunPower”), a firm active in the design, manufacture and supply of solar cells, modules and systems. SunPower is a United States based company which recently entered the South African market through Total’s recent acquisition¹. However it has not yet commenced with production in South Africa.
- 5] Tenesol internationally is active in the production and supply of solar modules and solar systems. It was submitted that 96.1% of the solar modules that Tenesol produces in South Africa are exported to Tenesol in Europe for the production of solar systems, and that the solar systems produced by Tenesol in Europe are sold worldwide except in South Africa. The remaining 3.9% of the modules produced in South Africa by Tenesol are sold in South Africa to producers of solar systems.

THE TRANSACTION AND RATIONALE

- 6] This transaction has been notified with and cleared by various jurisdictions including the European Commission.
- 7] Essentially, this transaction is a move from joint to sole control as TED intends to acquire the remaining 50% shares and the voting rights held by EDF in Tenesol. That way TED will acquire sole control (100%) of the shares and voting rights in Tenesol.

¹ This transaction was notified and approved in the EU, and was not notifiable in South Africa.

COMPETITION ASSESSMENT

- 8] There is a horizontal overlap in the activities of the merging parties, in respect of the production and supply of solar modules as a result of Total's 50% shareholding in Tenesol. However this does not result in an accretion in market share or any change in the market structure given that this deal is essentially a move from joint to sole control.
- 9] There is currently no vertical integration in respect of the merging parties' activities in South Africa. However, the Commission did a future market analysis for when SunPower does commence production in South Africa, and found that this would result in a horizontal overlap with respect to solar modules and a vertical overlap with respect to solar cells, solar modules and solar systems. Nevertheless the Commission found that this would not raise serious competition concerns as Tenesol's market shares are relatively low (about 15%) in the market for production and supply of solar modules in South Africa. The Commission also found that SunPower's entry into this market is unlikely to increase this market share significantly as there are other larger competitors in this market.
- 10] From a vertical perspective, the Commission found that SunPower's entry is likely to allow Total to become fully vertically integrated in the solar energy market in South Africa, though this would not result in any foreclosure concerns given the insignificance of SunPower's entry in this market.

PUBLIC INTEREST

- 11] The merging parties in their competitiveness report said that the proposed transaction will not result in any job losses. The Commission in its investigation established that 13 employees were voluntarily retrenched prior to the transaction. The Commission is of the view that these retrenchments were operational and in the normal course of business of Tenesol and not related to the merger.
- 12] This deal therefore does not give rise to any public interest issues as the job losses are not as a result of the merger.

CONCLUSION

13] We therefore conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the relevant identified markets.

N Manoim

06/10/2011
Date

M Mokuena and A Ndoni concurring

Tribunal Researcher: Londiwe Senona

For the merging parties: Bowman Gilfillan

For the Commission: Lerato Monareng