

SOUTH AFRICA / JUDGMENT

Prax South Africa (Pty) Ltd v National Petroleum Refiners of South Africa (Pty) (LM157Dec23) [2024] ZACT 27 (21 June 2024)

[2024] ZACT 27

COURT
Competition Tribunal

BEFORE
L Mncube, M Mazwai, I Valodia

CASE / FILE NUMBER
LM157Dec23

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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

21 June 2024

Prof. Liberty Mncube

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;

1.6 "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;

1.10 "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.

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.

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