

SOUTH AFRICA / JUDGMENT

Sasol South Africa Ltd v Vitol Emerald Bidco (Pty) Ltd and Others (LM196Mar23) [2023] ZACT 78 (6 December 2023) [2023] ZACT 78

COURT
Competition Tribunal

BEFORE
M Mazwai

CASE / FILE NUMBER
LM196Mar23

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM196Mar23

In the matter between: SASOL SOUTH AFRICA LTD Applicant And VITOL EMERALD BIDCO (PTY) LTD First Respondent ENGEN LTD Second Respondent COMPETITION COMMISSION OF SOUTH AFRICA Third Respondent

Panel:

M Mazwai (Presiding Member)

Heard on:

06 December 2023

Decided on: 06 December 2023

ORDER

Further to the submissions made by the Applicant (Sasol) at the pre-hearing on 14 November 2023 and by agreement between the Sasol, and the First Respondent (Vitol), the Second Respondent (Engen) and the Third Respondent (Commission), the Tribunal hereby orders that:

1. Sasol is granted leave to intervene in the above-mentioned merger proceedings before the Tribunal under Tribunal Case Number LM196Mar23 (Commission case number 2023Mar0009), in terms of section 53(1)(c)(v) of the Competition Act 89 of 1998 ("Competition Act").

2. Having regard to the procurement framework in respect of which Sasol, Vital and Engen reached consensus on or about 9 November 2023 relating to the procurement of refined petroleum products by Engen from Sasol's inland South African refineries with effect from 1 July 2024 ("the Procurement Framework"), Sasol's participation in the aforementioned merger proceedings shall be limited to making written and oral submissions on the following issue ("Participation Scope"): The appropriateness and adequacy, in light of the Procurement Framework, of the local procurement remedy proposed by the Commission in paragraph 3.3.1 and Annexure B of the proposed merger conditions set out in the Commission's referral, including, without limitation, the extent to which such remedy aligns with and does not compromise the terms of the Procurement Framework.
3. Sasol's participation in the abovementioned merger proceedings shall include the right and entitlement, to the extent applicable and relevant to the Participation Scope -

3.1 of Sasol's independent legal representatives and competition economic experts ("Sasol's advisors") to access the confidential version of the Commission's large merger report and record where it deals with the Participation Scope, subject to Sasol's advisors furnishing the appropriate confidentiality undertakings;

3.2 to make written submissions to the Tribunal within the time periods stipulated in any Tribunal directive;

3.3 to make oral submissions at the merger hearing at a date and time stipulated by the Tribunal, subject to time limitations imposed by the Tribunal; and

3.4 to make an application for the calling of any witness / witnesses, cross- examination and or the production of relevant documents at the merger hearing, which application shall be determined by the Tribunal. This will be done in adherence to the timetable set by the Tribunal for the proceedings before it in respect of the merger hearing, attached as Annexure A to this order, and any subsequent timetable determined by the Tribunal.

Presiding Member

06 December 2023

Ms Mondo Mazwai

Date

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