

SOUTH AFRICA / JUDGMENT

South African Gas Development Company SOC Ltd and Another v Republic of Mozambique Pipeline Investments Company (Pty) Ltd (LM116Nov21) [2022] ZACT 11 (5 January 2022)

[2022] ZACT 11

COURT

Competition Tribunal

BEFORE

Mondo Mazwai, Yasmin Carrim, Andreas Wessels

CASE / FILE NUMBER

LM116Nov21

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM116Nov21

South African Gas Development Company SOC Ltd and Companhia Moçambicana de Gasoduto S.A. (Primary Acquiring Firms)

And

Republic of Mozambique Pipeline Investments Company (Pty) Ltd (Primary Target Firm)

REASONS

FOR DECISION

- [1] On 22 December 2021, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger in terms of which South African Gas Development Company SOC Ltd (“iGas”) [1] and Companhia Moçambicana de Gasoduto S.A. (“CMG”)[2] intend to increase their existing shareholding in the Republic of Mozambique Pipeline Investments Company (Pty) Ltd (“ROMPCO”).[3]
- [2] iGas and CMG each hold 25% of ROMPCO, with the balance of 50% being held by Sasol South Africa Limited (“Sasol SA”). Through this transaction, iGas and CMG will each acquire an additional 15% of the issued share capital of ROMPCO from Sasol SA, thereby increasing their shareholding to 40% each, and Sasol SA reducing its shareholding to 20%.

- [3] Following the implementation of the proposed transaction, the South African government (through iGas) and Mozambique governments (through CMG) will each acquire joint negative control of ROMPCO, which pre-merger, is controlled by Sasol SA. Sasol SA will post merger have joint negative control of ROMPCO.
- [4] iGas is mandated by the South African government as a state-owned entity for hydrocarbon gas and gas infrastructure development in Southern Africa. iGas' sole investment is its 25% non-controlling interest in ROMPCO.
- [5] CMG is incorporated under the laws of Mozambique and CMG's main object is the provision of transport services for natural gas and other hydrocarbons through gas pipelines and the exercise of activities related and/or subsidiary to its main activity, as well as the provision of services related thereto.
- [6] ROMPCO owns and operates a pipeline which transports natural gas from the Pande and Temane gasfields in Mozambique to Sasol SA's operations at Secunda in South Africa. ROMPCO sells gas transportation services to customers in terms of which ROMPCO provides capacity in its high-pressure pipeline and transports natural gas from Sasol SA's onshore gas fields in Pande and Temane in Mozambique to Sasol SA's operations in Secunda in South Africa and to customers in Mozambique.
- [7] ROMPCO also sells capacity in its transmission pipeline to customers who wish to transport natural gas from the source in Mozambique to delivery points in Mozambique and South Africa.

Competition assessment

- [8] The Competition Commission ("Commission") concluded that the transaction constituted a single indivisible transaction due to [...]
- [4] We found no basis to disagree.
- [9] The Commission found that there is no horizontal overlap between the merging parties' activities. ROMPCO is active in the transmission of natural gas from Mozambique to South Africa and to customers in Mozambique. Neither iGas nor CMG is active in the same product and geographic market (except through its interest in ROMPCO). As such, the proposed transaction does not remove a competitor from the market. Further, the Commission noted that the ROMPCO natural gas pipeline is the only pipeline from Mozambique to Secunda. Therefore, the proposed transaction will not change the structure of the market.
- [10] The Commission concluded that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

Employment

[11] The employees of iGas in South Africa were notified of the proposed transaction and no concerns from the employees were reported. CMG does not have any employees in South Africa.

[12] Given that iGas and CMG are only increasing their respective shareholding in ROMPCO, the proposed transaction is unlikely to have a negative effect on employment.

Other public interest issues

[13] The proposed transaction raised no other public interest concerns.

Third Party Views

[14] No third party raised any concerns.

Conclusion

[15] For the above reasons, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest.

05 January 2022

Ms Mondo Mazwai

Ms Yasmin Carrim and Mr Andreas Wessels concurring

Tribunal Case Manager:

Juliana Munyembate

For the Merging Parties:

Daryl Dingley and Andriza Liebenberg of

Webber Wentzel

For the Competition Commission: Billy Mabatamela, Ratshidaho Maphwanya

Ipeleng Selaledi and Candice Slump

[1] iGas is wholly owned by Central Energy Fund Group (CEF SOC Ltd), a Schedule 2 state-owned diversified energy company reporting to the Department of Mineral Resources and Energy.

[2] CMG is controlled by Empresa Nacional de Hidrocarbonetos De E.P. ("ENH"). ENH is 100% owned by the Mozambican State,

which is represented by the Institute for the Management of State Holdings as established in accordance with the Business Sector Law.

[3]ROMPCO is currently controlled by Sasol SA with a 50% shareholding. The remaining shareholders in ROMPCO are iGas and CMG, each holding 25% shareholding in ROMPCO

[4] Crown Gold Recoveries (Pty) Ltd and Industrial Development Corporation of South Africa Limited and Khumo Bathong Holdings (Pty)

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