



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No.: LM196Mar23/INT123Nov23
and LM196Mar23CNF135Nov23**

In the intervention and access applications of:

ASTRON ENERGY (PTY) LIMITED

Applicant

And

VITOL EMERALD BIDCO (PTY) LTD

First Respondent

ENGEN LIMITED (PTY) LTD

Second Respondent

COMPETITION COMMISSION OF SOUTH AFRICA

Third Respondent

In re the large merger between:

VITOL EMERALD BIDCO (PTY) LTD

Primary Acquiring Firm

And

ENGEN LIMITED (PTY) LTD

Primary Target Firm

Panel: M Mazwai (Presiding Member)
A W Wessels (Tribunal Member)
L Mncube (Tribunal Member)

Heard on: 11 January 2024

Decided on: 15 January 2024

ORDER

Having read the papers of record and heard counsel for the parties, the Competition Tribunal ("Tribunal") orders as follows:

1. The Applicant is granted leave to intervene as a participant in the large merger proceedings before the Competition Tribunal ("Tribunal") in relation to the proposed transaction between the First and Second Respondents under case number LM196Mar23, in terms of section 53(c)(v) of the Competition Act 89 of 1998, as amended ("the Act") ("the merger proceedings").
2. The Applicant is permitted to participate in the hearing in relation to the following theories of harm:
 - 2.1. customer foreclosure concerns, both in respect of the merging parties shifting the Second Respondent's ("Engen") source of supply from the Applicant to internal supply, and the merged entity expanding its imports to target and displace Astron Energy's sales to other customers in and around Cape Town;
 - 2.2. input foreclosure concerns related to buy-sell agreements with Engen;
 - 2.3. whether the proposed merger will likely harm employment and have a negative impact on a particular industrial sector or region as a consequence of closure of the Astron Energy refinery; and
 - 2.4. whether the proposed conditions adequately address any anti-competitive consequences of the proposed merger.(collectively "**the scope of intervention**")
3. Subject to the abovementioned scope of intervention and appropriate confidentiality undertakings being provided, Astron Energy's participation in the merger proceedings shall include the rights to:
 - 3.1. attend all pre-hearing conferences;
 - 3.2. adduce oral and documentary evidence, including expert evidence, relevant to the merger proceedings;
 - 3.3. request the Tribunal to direct, summon and or order any person to appear at the hearing, or to produce any book, document or item for purposes of such hearing;

- 3.4. cross-examine the witnesses of the merger parties and/or other participants at the merger hearing;
 - 3.5. inspect any books, documents and other items filed by any participants in the merger proceedings, including inspection by the Applicant's legal representatives and experts, subject to appropriate confidentiality undertakings, of any information filed by any participants subject to a claim of confidentiality;
 - 3.6. have access to the Competition Commission's ("the Commission") record which has been referred to the Tribunal in this matter, including access by the Applicant's legal representatives and economic experts, subject to appropriate confidentiality undertakings, to any information contained in the record which is subject to a claim of confidentiality; and
 - 3.7. participate in any interlocutory proceedings related to the issues referred to in paragraph 2 above;
 - 3.8. present written and oral argument at the merger hearing.
4. Within 12 hours of this order, the First and Second Respondents will grant access (in downloadable electronic form) to the legal representatives and economic experts of the Applicant, Bowman Gilfillan, Inc. and Berkeley Research Group, subject to the confidentiality undertakings that have been provided by them to:
 - 4.1. The confidential merger recommendation made and provided by the Commission that redacts third party confidential information but retains the merging parties' confidential information; and
 - 4.2. The merging parties' documents claimed as confidential contained in the Commission's record of investigation that the merging parties regard as relevant to the Applicant's scope of intervention, as determined by the Tribunal.
 5. In addition, for the purpose of formulating the Applicant's discovery request and for the purpose of determining whether the merging parties' selection of relevant documents provided for in paragraph 4.2 includes all relevant documents, and subject to the same confidentiality undertakings, the First and Second Respondents shall temporarily, but for

a reasonable period, make available for inspection (in electronic, read-only form) all of the merging parties' other documents that have been excluded from those provided in paragraph 4.2, to enable the legal representatives and economic experts of the Applicant to identify any further documents which are relevant to the Applicant's scope of intervention, as determined by the Tribunal.

6. The Commission shall make available to the Applicant's legal representatives and economic experts a full, unredacted copy of the index to the Commission's record of investigation.
7. The Applicant's counsel team, Adv. Michael van der Nest SC, Adv. Jerome Wilson SC, and Adv. Lebogang Phaladi are granted access to the documents set out in paragraph 4.1 - 4.2 and 5 above.
8. There is no order as to costs.



Presiding Member
Ms Mondo Mazwai

15 January 2024

Date

Concurring: Prof. Liberty Mncube and Mr Andreas Wessels