COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case Number: 26/LM/Dec99

In the large merger between

Engen Petroleum Ltd

and

Zenex Oil (Pty) Ltd

Reasons for Competition Tribunal's Decision

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 26 January 2000 approving the merger between Engen Petroleum Ltd and Zenex Oil (Pty)

Ltd without conditions. The reasons for our decision to approve the merger are set out below.

The Merger transaction

The Merger entails Engen acquiring 49% of the shares in the share capital of Zenex , as well as the claims on loan account presently held by SCMB, 51% of the shares in the share capital of Wimmeria Investments, presently held by Worldwide, as well as the claims on loan account presently held by Worldwide, and all the shares in Waldeck Investments presently held by management.

Evaluating the merger

In assessing a merger in terms of section 16 of the Competition Act, the Tribunal must consider–

a. whether or not the merger is likely to substantially prevent or lessen competition; and

b. whether the merger can or cannot be justified on substantial public interest grounds by considering the effect of the merger on each of the following: a particular industrial sector or region; employment; the ability of small businesses or firms controlled by historically disadvantaged persons, to become competitive; and the ability of national industries to compete in international markets.

To answer the question whether the merger is likely to substantially prevent or lessen competition, the Tribunal must, in terms of Section 16(2), assess the strength of competition in the **relevant market** and the probability that the firms in the market after the merger will behave competitively or co-operatively.

<u>The Relevant Market</u>

The principal business activities of Engen revolve around the refining and marketing of petroleum products.

Zenex is a regional oil company that does not have its own refining facilities. Zenex finds itself in the vulnerable situation where it is totally dependant on its competitors for the supply of petrol and diesel and other petroleum products. In a deregulated market Zenex will be unable to subsidize discounts given by its dealers, as it does not possess the upstream profit resources that rival refining companies have. This will cause Zenex's service stations to become uncompetitive.

There are three main areas in which both Zenex and Engen are active i.e. 1) the marketing of petroleum products through retail service stations, appointed agents depots or directly to the consumer, 2) the blending and packaging of lubricants for other marketers of lubricants as well as for itself, 3) the storing of petroleum products for and on behalf of marketers of petroleum products.

1) The marketing of petroleum products

Seven individual product markets can be identified in the marketing of petroleum products, namely petrol/gasoline, diesel, illuminating kerosene, heavy furnace oil, bitumen, liquid petroleum gas and lubricants. Diesel can further be subdivided into 1) sales through retail service stations and 2) sales through short to medium term contracts to government, agriculture and the industrial sector.

Zenex sells petrol in six provinces excluding the Northern Cape Province, the Eastern Cape Province and the Northern Province. Due to the unavailability of other market figures, the magisterial districts in the Republic will be regarded as the relevant geographical markets for the sale of petrol/gasoline and diesel sold through retail service stations.

In the Tribunal's opinion the merger does not pose competitive concerns in respect of diesel sold through retail service stations or for diesel sold through contracts. The price of diesel sold through retail service stations is fixed by Government regulation and only 0,5% of the national market share is sold through this channel. The market for diesel sold through contracts is, *inter alia*, a deregulated market with vast countervailing purchasing power in which Engen is not a dominant player.

Neither is competition affected in the markets for illuminating kerosene, heavy furnace oil, bitumen and lubricants. Zenex have small market shares in these highly competitive markets.

The Tribunal will, therefore, for purposes of this decision only consider the competitive effects of the merger on the petrol/gasoline product market.

2) Blending and packaging of lubricants

Zenex, Sasol and Agrip manage a joint venture to blend and package lubricants for Zenex itself and other marketers of lubricants. The shareholders agreement is unaffected by the merger. The Tribunal is satisfied that the merger will not have any competitive effect on this product market.

3) Storage of petroleum products

This service is rendered for other marketers of petroleum products on an *ad hoc* basis when capacity is available. There are other competitive firms dedicated to serve the market for storage facilities and Zenex's market share is insubstantial. The tribunal is satisfied that the merger has no competitive effect on this market.

Horizontal impact of the merger

On a national basis Zenex adds little market share to Engen. The merged firm will not have a market share of 30% in any of the categories of sales in which figures are available. The national market shares are:

Gasoline	27%
Diesel	28%
Illuminating Kerosene	29.7%

Lubricants	21%

With regard to the sale of petrol/gasoline the market shares of Zenex in North West Province, Mpumalanga, Free State, Western Cape and Kwazulu-Natal are relatively insubstantial, below 5%, with at least three of the major oil companies (excluding Engen) presented in most of the magisterial districts. The competitive effect of the merger in these areas is negligible and warrants no further comment by the Tribunal.

The only magisterial districts in Gauteng that might raise some competitive concerns as a result of the merger are Benoni (33.3%), Kempton Park (45%), Oberholzer (43.3%), Randburg (33.6%), Springs (44.6%) and Western Area (33.5%). However Shell, BP, Caltex, CFP and Sasol are all represented in these districts.

Public interest considerations

Although black empowerment was raised as a public interest consideration, the Tribunal is of the opinion that, because the merger doesn't affect competition, it does not have to address this issue.

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D.H. Lewis **Date**

Presiding member

Concurring: N.M. Manoim and P.E. Maponya