

# ***Competition Tribunal of South Africa***

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*Hearing in the matter of*

***SACOIL HOLDINGS LTD***

*and*

***GENTACURE (PTY) LTD AND  
MOOPONG INVESTMENTS (PTY) LTD***

*Case No. LM243Mar17  
(Large Merger)*

*held at*

***DTI Building  
Sunnyside***

*on*

***17 May 2017***

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*Panel:*                      *A Ndoni  
                                     I Valodia  
                                     F Tregenna*

*Case Manager:*           *A Dey-Van Heerden*

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CHAIRPERSON: The next matter on the roll is Sacoil Holdings and Gentacure (Pty) Ltd and Moopong Investments (Pty) Ltd. The panel is as before. Can the parties place themselves on record, starting with the Commission please?

5 MR MABATAMELA: Billy Mabatamela and Xolela Nokele for the Commission.

MR MASEKO: Maphanga Maseko. I'm with my colleague, Busi Masangu. We are from TGR Attorneys and we are with our client, Mr Damion Matroos from Sacoil.

10 CHAIRPERSON: The Commission has recommended an unconditional approval. Can you please take us through your report?

MR MABATAMELA: Thank you Chair. The primary acquiring firm in this transaction is Sacoil Holdings Ltd, hereon referred to as Sacoil. The primary target firm is Phembani RF (Pty) Ltd, hereon referred to  
15 as Phembani Oil. So, in terms of the proposed transaction, Sacoil intends to acquire the entire issued share capital of Phembani Oil from Gentacure and Moopong Investment Holdings (Pty) Ltd.

On completion of the proposed transaction, Sacoil will control Phembani Oil. Sacoil is mainly focused on the exploration of oil and  
20 gas. This includes, among other things, the searching for potential underground and underwater oil and gas fields. Phembani Oil is a ring-fenced special purpose vehicle, which only holds interest in

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Afric Oil. Afric Oil is involved in the marketing and distribution of petrol, diesel, illuminating paraffin, jet fuel and lubricants.

The Commission considered the activities of the merging parties and found that the proposed transaction does not present any  
5 overlaps, as the merging parties operate at different levels of the value chain and neither of them have any refining activities. The Commission also found that the merging parties initially agreed on a restraint of trade for a period of 5 years, but after the Commission enquired about and raised concerns about the restraint of trade, the  
10 merging parties decided to actually delete the entire restraint of trade from the agreement.

The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market and in addition, the proposed transaction does not raise  
15 any public interest concerns. The Commission therefore recommends that the proposed transaction be approved without conditions. Thank you, Chair.

CHAIRPERSON: Thank you. Merging parties, anything to add?

MR MASEKO: No, we don't have anything to add, Chair, but  
20 however, we just want to point out that I heard you when you announced the transaction that it's between Sacoil Holdings and Moopong as well as Gentacure. Actually the transaction is between

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Sacoil Holdings Ltd and Phembani Oil RF (Pty) Ltd. We have communicated this to the Commission. Initially we had notified it as between Sacoil, Gentacure and Moopong. However, we did amend our CC42, which was sent to the Commission.

5 CHAIRPERSON: I can confirm that it is correct on the Commission's report. It's just the roll that reflects different parties.

MR MASEKO: Thank you Chair.

CHAIRPERSON: Thank you.

MR MASEKO: Thank you Chair, that's the extent. I don't have  
10 anything to add.

PROF VALODIA: Perhaps the merging parties could just address us on the restraint of trade kind of question that came up. So, why was it there in the first place? I mean, I kind of understand that you dropped it, but I'm trying to understand the economic reasons for why it was  
15 there in the first place.

MR MASEKO: I will answer and I will ask my client to add anything if I miss anything. The acquirers, Sacoil wanted to protect their future investment. So, if you buy, for example, a shop from X and then after 5 years it goes and starts another rival shop next door, then it  
20 wouldn't make sense for you to buy the shop, because then in the future then he might compete with you.

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So, that was the underlying rationale for it, but then the Commission engaged us on it. They said, look, we don't see the need for this restraint. We didn't want to ... we thought because we wanted to expedite the merger approval, there is nothing wrong, so we removed it. I think that's my understanding of it.

PROF VALODIA: I mean, I'm still not understanding why it was there in the first place and why it was there for 5 years. Was that just ... I mean, were there some specific economic reasons why it was there in the first place?

10 MR MASEKO: My understanding, and I will take further instructions on it, is that the client wanted it there, but upon further deliberation, they also admitted that actually it was not necessary to be there, because first of all Moopong doesn't trade and Gentacure doesn't trade. So, they thought, well, in actual fact it's not needed to be there.

15 So, we engaged the Commission on that issue, like they said, look, they don't want it there and we thought as well we might as well remove it.

So, I do understand your concern as to why it was 5 years, why is it not 3, why is it not 2. We have deliberated that issue with the Commission. However, in the end we've decided that we don't need to have it there. It doesn't make economic sense. Yes, we can understand X buying a shop to want to protect their future in this

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matter, but in this case there was no merit for it to be there, which is why we deleted it.

PROF VALODIA: So, can I just understand it properly. So, the firms, the two businesses that are selling don't really trade in this market.

5 MR MASEKO: Correct. That is correct, Chair.

CHAIRPERSON: Okay, thank you. We have come to the end of this matter. You can be excused. We will let you know of our decision later.

MR MABATAMELA: Thank you Chair.

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***A D J O U R N M E N T***

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# ***Transcriber's Certificate***

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