



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.018432

In the matter between:

Zeder Financial Services Limited

Primary Acquiring Firm

and

Agri Voedsel Limited

Primary Target Firm

Reasons for Decision

Panel : T Madima (Presiding Member), A Roskam (Tribunal Member) and I Valodia (Tribunal Member)

Heard on : 26 February 2014

Decided on : 26 February 2014

Reasons issued on: 19 March 2014

Approval

On 26 February 2014, the Competition Tribunal ("Tribunal") conditionally approved the merger between Zeder Financial Services Limited ("Zeder") and Agri Voedsel Limited ("Agri Voedsel"). The reasons for approving the proposed transaction follow below.

Parties to the transaction

[1] The primary acquiring firm is Zeder, an investment holding company which does not provide any products or services to any identifiable market. Zeder is part of a group of companies which holds various controlling and non-controlling interests in a number of companies across a broad spectrum of industries, including financial services, banking, private equity, agriculture and education. Zeder currently owns less than 50% shareholding in Agri Voedsel.

[2] The primary target firm is Agri Voedsel, a passive investment holding company with its only investment being a non-controlling shareholding interest in Pioneer Food Group Limited ("Pioneer"). Agri Voedsel does not itself provide any products and/or services. The shareholding in Agri Voedsel, a company which trades over the counter ("OTC"), is widely dispersed amongst a large number of shareholders none of which control Agri Voedsel.

Proposed transaction

[3] It is the strategic intention of Zeder to continue purchasing shares in Agri Voedsel as and when they become available for sale. Zeder is therefore acquiring sufficient shares in Agri Voedsel so that it may soon own more than 50% of the issued share capital, thus acquiring sole control of the target firm. Although Zeder's intention is to acquire sole control of Agri Voedsel, it cannot identify the exact date upon which it will acquire sufficient further shares to do so.

Relevant markets and impact on competition

[4] There is no horizontal overlap emanating from the proposed transaction, since the acquiring firm does not control any investment in companies that compete with Pioneer Foods or provide any reasonable substitutable products or services with those of Pioneer Foods.

[5] However the acquiring firm acknowledges the fact that it is currently negotiating an acquisition of a non-controlling stake in a milling firm. The Commission's assessment revealed that such acquisition is unlikely to raise any competition concerns as the target firm will not acquire control over such milling firm. In addition to this, Agri Voedsel does not have control over Pioneer.

[6] The Commission's assessment revealed that there is a potential vertical relationship between the activities of the merging parties. This emanates from the fact that within the acquiring group of companies like Kaap Agri Limited ("Kaap Agri") and Capespan Group Ltd ("Capespan"), could potentially supply Pioneer with products such as raisins and grain. The Commission submits however that such relationship raises no competition concerns since both merging parties have no controlling shareholding in their respective investment companies.

Proposed condition

[7] As mentioned in para 3 above, Zeder intends to acquire sole control of Agri Voedsel shares as and when they become available. As such the merging parties had proposed that any approval for sole control will only be valid if the control is acquired within a limited and defined time period of eighteen months from the date of approval.¹

[8] The Commission however is of the view that the suggested time period by the Merging parties is too long, thus creating uncertainties on changes in the market that could possibly occur. The Commission thus decided to limit the time period to twelve months from the date of approval, as prevailing market conditions at present in the markets in which Zeder and Agri Voedsel are active are unlikely to change significantly in the period as now recommended by the Commission. Furthermore, the Commission has assessed the potential acquisition of control over Agri Voedsel by Zeder,

¹ See Merger record at page 27.

given the commercial reasons (i.e. nature of OTC sales) as stated in para 2 above.²

[9] The Commission thus recommended that the proposed transaction be approved subject to the following conditions:

- *The Approval of the proposed transaction shall apply for a period of twelve months from the Approval Date.*
- *Should Zeder not acquire control over Agri Voedsel within the prescribed period, Zeder shall again apply to the Competition Authorities for the approval of transaction before implanting the acquisition.*³

Public Interest

[10] The merging parties confirmed that the proposed transaction will have no adverse effect on employment⁴ and the proposed transaction raises no other public interest concerns.

CONCLUSION

[11] We accordingly approve the transaction subject to the conditions attached as Annexure "A".



Dr. Takalani Madima

19 March 2014
DATE

Mr. Anton Roskam and Mr. Imraan Valodia concurring.

² See Commission's Report at page 15.

³ See Annexure A attached hereto, for the full set of conditions.

⁴ See Merger record at page 14.

Tribunal Researcher: Caroline Sserufusa

For the merging parties: Susan Meyer for Cliffe Dekker Hofmeyer

For the Commission: Kholiswa Mnisi

ANNEXURE A

ZEDER FINANCIAL SERVICES LIMITED

And

AGRI VOEDSEL LIMITED

CONDITIONS

1. Definitions and interpretation

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1 **"Agri Voedsel"** means Agri Voedsel Limited;
- 1.2 **"Approval Date"** means the date referred to in the Competition Tribunal's Merger Clearance Certificate (Form CT10);
- 1.3 **"Commission"** means the Competition Commission of South Africa;
- 1.4 **"Competition Authorities"** means the Commission and the Competition Tribunal of South Africa;
- 1.5 **"Proposed transaction"** means large merger whereby Zeder intends within a period of 18 (eighteen) months to acquire sole control over Agri Voedsel; and
- 1.6 **"Zeder"** means Zeder Financial Services Limited.

2. Recordal

- 2.1 The Proposed Transaction relates to a future acquisition of control in Agri Voedsel. Zeder is proactively notifying the Competition Authorities of the imminent acquisition(s) now.

Zeder has indicated that given the nature of OTC sales, the acquisition (i.e., acquisition of sole control of Agri Voedsel) will need to be settled immediately, and cannot be made subject to first obtaining approval from the Competition Authorities. Zeder further submits that it is mindful that the Competition Authorities may be reluctant to provide an open-ended approval, thus is willing to agree that any approval for sole control will only be valid if the control is acquired within a limited and defined time period of 12 (twelve) months from the approval date.

- 2.2 The Commission is of the view that the conditions offer a reasonable compromise between the public interest in having effective control of mergers and the private interests (commercial justifications) of Zeder in not missing out on an opportunity to increase its shareholding in Agri Voedsel because of excessive compliance requirements.

3. Conditions to the approval of the merger

- 3.1 The approval of the Proposed Transaction shall apply for a period of 12 (twelve) months from the Approval Date.
- 3.2 Should Zeder not acquire control over Agri Voedsel within the prescribed period, Zeder shall again apply to the Competition Authorities for the approval of the transaction before implementing the acquisition.

4. Monitoring of Compliance with the conditions

- 4.1 Should Zeder implement the transaction within the 12 (twelve) month period, it shall notify the Commission in writing.
- 4.2 The written notice must be submitted to the following email address:
mergerconditions@compcom.co.za