COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case no: 107/LM/Dec04

In The Large Merger Between:

Afgri Operations Ltd

And

Nedan Oil Mills (Pty) Ltd

Reasons for Decision

Approval

On 23 February 2005 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Afgri Operations Ltd and Nedan Oil Mills (Pty) Ltd. The reasons for this decision follow.

The Transaction

Afgri Operations Ltd ("Afgri") is acquiring sole control of Nedan Oil Mills (Pty) Ltd ("Nedan Oil"). As part of the transaction, Afgri will also acquire the loan account against, Nedan Oil. Afgri is a wholly owned subsidiary of Afgri Limited, a public company listed on the JSE Securities Exchange South Africa. Nedan Oil is jointly controlled by the Trihead Trust, Valbridge Trust, Zamin Trust and Afgri.[1]

The Rationale

According to the parties, Afgri is the only shareholder with sufficient resources to assist Nedan Oil in expansions.

The Parties activities

Afgri has four main operating divisions, namely Afgri Products, Afgri Requisites, Afgri Capital (Financial and Logistics Services) and Afgri Services.[2] Afgri supplies producers with various agricultural input commodities and services. Afgri's four divisions focus on the following areas:

1. *Afgri Products* manages the grading, handling, storage and trading of agricultural products through its logistics, trading and risk management business. It also

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[1] According to the parties, Nedan Oil has one subsidiary namely, Nedan Agri Business (Pty) Ltd which is currently dormant and will be deregistered.

[2] More detail on the activities of these divisions can be found in Afgri's Annual Report at page 35 of the record. Also on www.afgri.co.za

provides farmers and agri-processors with hedging facilities and services. This division manages all the secondary agricultural processing businesses of Afgri;

2. *Afgri Requisites* markets and distributes an extensive range of products and farming requisites produced by third parties, including mechanization equipment such as tractors and farm equipment and services;
3. *Afgri Capital* provides business and risk management solutions, which include finance, short term and crop insurance and advisory services, to farmers, traders and agricultural processors;
4. *Afgri Services* sells agricultural science and technology to producers.

Nedan Oil *inter alia* supplies refined edible oils, bulk fats protein for human consumption (supplied in bulk) and protein for animal feed (supplied in bulk).

Evaluating the merger

While there are no horizontal overlaps in the activities of the parties, several vertical relationships do exist.

Afgri provides the following services to Nedan Oil:

i. supply of soya beans by *Afgri Products*;
ii. the handling and storage for soya beans by *Afgri Products*;
iii. provision of finance by *Afgri Capital*; and
iv. supply of crude cottonseed oil by Afgri's subsidiary, Cotton Seed Processors (Pty) Ltd.

Nedan Oil supplies the following to Afgri:

i. RBD palmolein oil; and
ii. a blend of RBD palmolein and cottonseed oil.

The Commission identified and analysed the following relevant markets:

i. Supply of crude edible cottonseed oil;
ii. Processing of crude cottonseed oil;
iii. Supply of soya beans;
iv. Processing of soya beans;
v. Handling and storage of soya beans;
vi. Provision of credit facilities;
vii. Credit utilisation;
viii. Processing of RBD palmolein oil; and
ix. Food processing.

For these purposes, it is not necessary to make a definitive finding on the relevant markets, as we are of the view that the merger will not result in a substantial lessening of competition.[3] However, our only concern was with regard to the handling and storage of soya beans. The Commission's investigation revealed that there was spare capacity in the industry, and the Tribunal was concerned that, post merger, Afgri would allocate all its spare capacity[4] to Nedan Oil in preference to other firms. According to the Commission downstream firms prefer to utilise the nearest silo possible. During the hearing, Nedan Oil's representative, Mr. Kevin Nel, confirmed that because of the

[3] Refer to page 6-16 of the Commission's report for a detailed analysis of the identified markets.
[4] According to the Commission, Afgri has 30% spare capacity in its silos.

position of the silos, it was not economically viable for Nedan Oil to utilise Afgri's spare capacity.[5]

We have no other concerns and are satisfied that there are no significant public interest issues which arise and we accordingly approve this transaction unconditionally.

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N Manoim	**Date**

Concurring: Y Carrim and M Holden

For the merging parties:	Craig Roelofsz (Fluxmans Attorneys)
For the Commission:	Odie Strydom (Mergers and Acquisitions)

[5] According to Mr Nel: "*We wouldn't store in a silo that was very far from the factory, whereas other silo owners have silos closer to the factory.*" At page 7 of the transcript.