

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case no: 113/LM/Nov05

In The Large Merger Between:

Afgri Operations Ltd

Acquiring Firm

And

Daybreak Farms (Pty) Ltd

Target Firm

Reasons for Decision [NON CONFIDENTIAL]

Approval

1. On 22 March 2006 the Competition Tribunal issued a Merger Clearance Certificate approving the transaction between Afgri Operations Ltd and Daybreak Farms (Pty) Ltd. The reasons for this decision follow.

The Transaction

The Parties to the transaction

2. The acquiring firm is Afgri Operations (Pty) Ltd ("Afgri"), a wholly owned subsidiary of Afgri Limited. Afgri has four main operating divisions, namely Afgri Products, Afgri Requisites, Afgri Financial and Logistics Services and Afgri Commercial and Producer Services.¹
3. The target firm is Daybreak Farms (Pty) Ltd ("Daybreak"), which is jointly controlled by JG Kruger and IG Taylor. Daybreak has interests in the following firms: Daybreak Properties Springs (Pty) Ltd, Die Plaas Olifantsfontein 196 CC, Partnership Die Plaas Olifantsfontein, Daybreak Superior Marketing (Pty) Ltd, Superior Foods (Pty) Ltd, Telsek Investments 1001 (Pty) Ltd, Telsek Investments 1013(Pty) Ltd, Midway Chix (Pty) Ltd, Partnership Midway Chix and Waltmerwe Park (Pty) Ltd.

The Structure of the transaction

4. In terms of the proposed transaction, Afgri is acquiring from JG Kruger and IG Taylor their entire interests in Daybreak including:
 - 4.1. 100% of the share capital of and shareholders' claims against the following firms: Daybreak, Daybreak Properties Springs (Pty) Ltd, and Telsek Investments 1001 (Pty) Ltd;
 - 4.2. 50% of the share capital of and the shareholders' claims against the following firms: Daybreak Superior Marketing (Pty) Ltd, Die Plaas Olifantsfontein 196 CC, Superior Foods (Pty) Ltd and Telsek Investments 1013(Pty) Ltd; as well as

¹ A list of Afgri's subsidiaries can be found on pages 29-38 of the record.

- 4.3. 65% of the entire issued shares in the share capital of and shareholders' claims against Waltmerwe Park (Pty) Ltd.

The Rationale for the transaction

5. Afgri wishes to participate in the broiler market as it contributes 40% of the total market for protein for human consumption and consumes over 50% of animal feed produced by the formal animal feed industry. According to the parties, *'it is Afgri's strategic imperative to participate in this industry to ensure growth for its animal feed business.'*² From the perspective of the shareholders of Daybreak, since JG Kruger wishes to exit the business, the transaction offers IG Taylor an opportunity to realise his investment in the group and to obtain a partner to grow the business.

The Merging parties' activities

6. According to the parties, Afgri supplies farmers with various agricultural input commodities and services.³ Through its operating divisions, Afgri is involved in financial services products, trading of agricultural commodities, handling and storage facilities, manufacture and distribution of animal feeds, operating retail outlets, marketing of farming equipment and the sale and distribution of care crop products.
7. Daybreak is a fully integrated broiler producer, which produces, processes and distributes poultry and poultry products. Through its subsidiaries, Daybreak is also involved in marketing, property, rearing and growing of live chickens, production of a day old broiler chicks and retail.
8. Afgri and Daybreak are in a vertical relationship due to the fact that Afgri, through its Products division is involved in the manufacturing and supply of poultry feed, and Daybreak is a consumer of poultry feed. The transaction will therefore result in the vertical integration of a poultry feed business with broiler production; a phenomenon, which the Commission submits, is not uncommon.⁴

The Relevant Market

Upstream market

9. Poultry feed can be divided into broiler starter, grower, finisher and layer ration. The poultry, which are fed can further be grouped into three subcategories namely, layers, broiler breeders and broilers.⁵ According to the Commission, each type of chicken is given a specific ration, containing nutrients necessary for that particular type of chicken. The

² Page 153 of the record.

³ Page 148 of the record.

⁴ According to the Commission the following poultry feed companies are vertically integrated with broiler producers: Meadow Feeds with Astral Foods Group, Epol with Rainbow, Pioneer Foods with Tydstroom and Senwesco Voere with Country Bird. See pages 6-7 of the Commission's report.

⁵ Breeders mean the parent chickens that produce fertile eggs and broiler breeders are used to produce eggs, which are hatched to produce broiler chicks. Broilers are chicken hatched from the eggs of breeders and are grown purely for slaughtering purposes. Layers are breeders, which produce eggs, which are sold directly as table eggs. Poultry refers to any type of chicken and it includes broilers, layers and breeders.

relevant upstream product market can therefore be defined broadly as that for the production of poultry feed with sub markets for layers, broiler breeders and broilers feed.

10. Afgri's customers are located in the inland region, which includes Mpumalanga, Gauteng and the Free State.⁶ According to the parties, Afgri's mills supply customers in the province it is situated in as well as to customers outside that province but still close to the mill. Without concluding on the geographic market we will follow the Commission's analysis of both a regional and inland market.
11. The Commission provided the following table sourced from the Animal Feed Manufacturers Association (AFMA), which reflects the market shares for its members.⁷ The shares are based on sales in 2004/2005 in the inland region.

Producer	% Market share		
	Layers	Broiler Breeders	Broilers
Meadow	20	41	24
Afgri	19	11	24
Epol	24	36	33
Senwes	3	8	9
Alzu	7	-	1
Kanhym	11	-	-
Others	17	5	8

Source: Animal Feed Manufacturers Association Chairman's Report 2004/2005

12. In the broader market for poultry feed in the inland, the Commission provided the following table sourced from information provided by the merging parties:

Producer	% Market share
Meadow	24
Afgri	22
Epol	31
Senwes	7
Alzu	3
Kanhym	3
Others	10

13. For the regional market, the Commission calculated the shares based on the parties' total sales per province and AFMA's total sales per province. In the Free State, Afgri accounts for 37% of the market, in Gauteng, 26% and in Mpumalanga, 7%.

⁶ Afgri recently built a mill (for animal feed manufacturing) in the Western Cape but this has not supplied any customers.

⁷ AFMA members are feed manufacturers and their production represents 87% of the total poultry feed produced in South Africa.

Downstream market

14. We will accept for these purposes the Commission's definition of the relevant downstream market as the production and processing of poultry products in South Africa. The parties provided the following market shares based on the number of birds slaughtered per week nationally:

Producer	% Market share
Daybreak	4
Country Bird	8
Rainbow	36
Astral	27
Tydstroom	5
Chubby Chick	4
Rocklands	4
Argy	2
Others	10

Source: South African Poultry Association

Impact on competition

15. We are of the view that post merger, foreclosure is not likely due to a number of reasons. Firstly, there are several competitors in both the upstream and downstream markets, from whom customers could source product. In the broad market for poultry feed, Afgri faces strong competition from players such as Meadow and Epol. In the downstream market, Daybreak is a relatively small player and faces very strong competition from Astral and Rainbow who are both vertically integrated.
16. According to the parties, in 2004, Daybreak accounted for approximately 19% of Afgri's total sales of poultry feed. Afgri is therefore not likely to exclude other poultry feed customers in order to benefit from broiler production.

[CONFIDENTIAL INFORMATION]⁸

Collusion is not likely as information relating to Daybreak's competitors' prices and volumes of supply is to a large extent already available and easily determined

17. Furthermore, the customers and industry participants the Commission contacted during its investigations, had no concerns with the merger. Firstly, customers indicated that the poultry feed market is very competitive with several competitors. According to AFMA, some of the vertically integrated broiler producers even source from competing feed manufacturers. Secondly some of Afgri's customers informed the Commission that choice of feed manufacturer is determined by inter alia price, quality and service and that switching between suppliers is easy and common with no cost. One customer informed the Commission that his company switches every month from one supplier to others.
18. Based on the above, we agree with the Commission that the transaction is unlikely to substantially prevent or lessen competition in the markets in which the parties compete.

⁸ See page 9 of the Commission's report as well as 394-395 of the record.

Conclusion

19. According to the parties, the transaction will not have any adverse effects on employment and there are no other significant public interest issues, which arise. We accordingly approve the transaction for the above reasons.

Y Carrim

18 May 2006
Date

Concurring: M Moerane and L Reyburn

For the merging parties: A Nikani (Fluxmans Attorneys)

For the Commission: M van Hoven (Mergers and Acquisitions)