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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: 016881

In the matter between

Zaad Holdings Limited	Primary Acquiring Firm
And	
Klein Karoo Saad Bemarking (Pty) Ltd	Primary Target Firm

Panel	:	Takalani Madima (Presiding Member) Mondo Mazwai (Tribunal Member) Anton Roskam (Tribunal Member)
Heard on	:	16 October 2013
Order issued on	:	16 October 2013
Reasons issued on	:	20 November 2013

Reasons for Decision

Approval

[1] On 16 October 2013 the Competition Tribunal ("Tribunal") unconditionally approved the merger between Zaad Holdings Limited ("Zaad") and Klein Karoo Saad Bemarking (Pty) Ltd ("KKSB")

[2] The reasons for approving the proposed transaction follow.

Parties to transaction

[3] The primary acquiring firm is Zaad, which currently owns 49% in the issued share capital of KKSB. Zaad is owned and controlled by Zeder Investments Financial Services ("ZFS").ZFS is directly controlled is directly controlled by Zeder Investments Limited ("Zeder"). Zeder has concluded a management agreement with PSG Corporate Services (Pty) Ltd ("PSG Corporate Services") which is a wholly owned subsidiary of PSG Group Limited ("PSG"), in terms whereof PSG Corporate Services rendered certain management services to Zeder, including investment advice.[1] Zaad general activities include breeding, production, processing and distribution of seeds. These include seeds such as Canola, Lusern, Oats, Rye, Okley Brush, White Buffalo, Blue Buffalo grass and many others.

[4] The primary target firm is KKSB which is a wholly owned subsidiary of Klein Karoo Limited ("KKL"). KKL is not controlled, directly r indirectly by any one firm. KKSB's general activates include breeding, production, processing and distribution of seeds. These include Weeping Laugh grass, However KKSB's involvement in breeding is limited to maize and vegetable seed.

Proposed transaction

[5] In terms of the proposed transaction, through a Sale of Agreement, Zaad intends to acquire the remaining shares (51%) in KKSB from KKS, either in terms of KKS's right to put the remaining shares in KKSB to Zaad. This will result in KKSB being wholly-owned by Zaad.

Competition assessment

[6] The proposed transaction results in both horizontal and vertical overlaps.

[7] The relevant product market is the market for the breeding, production, and commercialisation of seeds, with the geographic market being national as seeds are produced and distributed throughout the country.

[8] The horizontal overlaps arise as a result of both merging parties being active in the market for the distribution of seeds such as sunflower, forage sorghum,

[1] See para 1.4 pages 52-53 of the merger record.

weeping love grass, Rhodes grass, grain sorghum, triticale, kikuyu, tall fescue, perennial rye grass, cocksfoot, canola, lucerne amongst others. However the Commission were satisfied that such overlap will not results in substantial lessening or prevention of competition, due to alternative players in the various markets as well as low barriers to entry.[2]

[9] Vertical overlaps rise from the fact that Zaad produces canola, blue buffalo grass, white buffalo grass, bottle brush, smuts finger, teff, tall fescue and weeping love grass whilst KKSB is involved in the distribution of such.

[10] The other vertical overlap arises since KKSB produces maize and vegetables, whilst Zaad is active in the distribution of such. The Commission has submitted that in instances, existing seed alternatives from the local market and imported seeds, low barriers to entry at distribution level and extensive use of independent seed distributors by seed companies will constrain the merged entity post merger for any activities of customer foreclosure.

Barriers to entry

[11] Barriers to entry are low, and range from, capital requirements, regulatory requirements and reputation requirements. Barriers to entry are only significant in the breeding market as there are advanced breeding technologies, substantial expertise, investment and germplasm required for entry. The commercial market is less specialised and thus requires less investment ranging in the region of R15-R80 million, depending on the scale of facilities required.

[12] The regulatory barriers do not pose that much of a barrier as they are simply aimed at the desired safety, quality and credibility standards of seeds. During the hearing the Commission assured us that they did not only rely on the submission of the Merging parties in relation to barriers to entry, but also relied on submission made by market participants who submitted that entry into the market can take up to three years or less in the respective markets.[3]

[2] See Commission report at pages 8-9.
[3] See Transcript of hearing at page 4.

[13] The merging parties during the hearing went on to add that in the downstream market for the distribution of seeds barriers to entry are very low and as such one finds distributors entering and exiting the market frequently. This they submitted is due to the nature of the industry being research and development in nature, as well as the industry being seasonal, two to three years is not a long period of time for entry.[4]

Market share

[14] The Commission's investigation revealed that market shares, in the various distribution of seeds post merger, would be quiet high, some as high as even 72%(distribution of white buffalo seeds). However it has submitted that the transaction is unlikely to substantially prevent or lessen competition as barriers to entry are low and there are various alternatives such as Barenbrug, Kaap Agri and Calla Viljoen.

Public interest

[15] The merging parties confirmed that the proposed transaction will have no adverse effect on employment[5] and the proposed transaction raises no other public interest concerns.

CONCLUSION

[16] We approve the merger unconditionally.

Takalani Madima

20 November 2013
DATE

Mondo Mazwai and Anton Roskam concurring

Tribunal Researcher:	Caroline Sserufusa
For the merging parties:	Chris Charter for Cliffe Dekker Hofmeyer
For the Commission:	Gilberto Biacuana

[4] Ibid at pages 4-5 respectively.
[5] See merger record at page 91.