



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM103Jul17

In the matter between:

| | |
|--|------------------------|
| Government Employees Pension Fund | Primary Acquiring Firm |
| Unemployment Insurance Fund and Compensation Fund duly represented by Public Investment Corporation SOC Limited | |
| and | |
| Afgri Poultry (Pty) Ltd t/a Daybreak Farms | Primary Target Firm |

| | |
|-------------------|------------------------------------|
| Panel | : Enver Daniels (Presiding Member) |
| | : Fiona Tregenna (Tribunal Member) |
| | : Medi Mokuena (Tribunal Member) |
| Heard on | : 06 October 2017 |
| Order Issued on | : 09 October 2017 |
| Reasons Issued on | : 06 November 2017 |

Reasons for Decision

Approval

- [1] On 06 October 2017, the Competition Tribunal ("Tribunal") approved the proposed transaction involving the Public Investment Corporation SOC Limited which represents the Government Employees Pension Fund, the Unemployment Insurance Fund and the Compensation Fund and Afgri Poultry (Pty) Ltd t/a Daybreak Farms.
- [2] The reasons for approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is the Public Investment Corporation SOC Limited (“the PIC”) which represents the Government Employees Pension Fund (“the GEPF”), the Unemployment Insurance Fund (“UIF”) and the Compensation Fund (“the CF”).
- [4] The PIC acts as an asset management and investment company for a number of entities such as the GEPF and invests in certain assets set by each of its client’s mandates. The GEPF manages and administers pensions and other benefits for government employees in South Africa. The CF provides compensation to employees who are injured or contract diseases in the course of their employment. The UIF is a fund established to administer contributions made by employers under the Unemployment Insurance Act 4 of 2002

██████████ The PIC and its three principals (GEPF, UIF and CF), through PIC Listed Investments hold non-controlling interests in the target firm’s competitors, ██████████

- [6] In addition, GEPF holds a non-controlling interest of less than 20% in AfriGroupe which wholly owns and controls Afgri Limited (“Afgri”). This means that PIC has an indirect interest in Afgri, a supplier of poultry feed to the target firm.
- [7] The GEPF, PIC, UIF and CF shall collectively be referred to as the Acquiring Group.

Primary target firm

- [8] The primary target firm is Afgri Poultry (Pty) Ltd (“Afgri Poultry”) t/a Daybreak Farms (“Daybreak”). Daybreak shareholders are the AFPO Consortium (Pty) Ltd (“AFPO Consortium”) and the PIC.¹

¹ AFPO Consortium has a ██████████ shareholding in Daybreak and PIC has a ██████████ shareholding in Daybreak. Furthermore, the shareholding held by PIC in Daybreak is held on behalf of GEPF, UIF and CF.

[9] Daybreak produces and supplies fresh and frozen poultry products to the South African market; breeds chickens; and produces and supplies a range of fresh frozen chicken products. It has an integrated operation with its own feed mill (run by Kinross Mills) that manufactures and supplies broiler feed.

Proposed transaction and rationale

[10] In terms of the proposed transaction the Acquiring Group intends to acquire another [REDACTED] of the shares in Afgri Poultry. Post-merger, the debt and equity of Daybreak will be restructured so that the Acquiring Group holds 100% of the equity.

[REDACTED]

Impact on competition

[12] The Commission considered the activities of the merging parties and found that there is no horizontal overlap in the activities of the merging parties. However, the Commission found that a vertical relationship exists as PIC has an indirect interest in AfriGroupe which supplies Daybreak and its competitors with poultry feed. It holds that AfriGroupe operates in the upstream market as a supplier of poultry feed and Afgri Poultry operates in the downstream market as a producer and supplier of fresh and frozen poultry products. In its analysis, the Commission concluded that the GEPF would not be able to engage in any input foreclosure strategy as it does not control AfriGroupe due to its non-controlling interest therein.

[13] [REDACTED]

² [REDACTED]

[REDACTED]. The Commission, therefore, recommends a condition that prevents the directors appointed to the board of Afgri Poultry from being appointed as directors of the boards of competing firms.

[14] The poultry industry has been investigated for cartel conduct facilitated by the exchange of commercially sensitive information that contained pricing and strategy information. The Commission recognised that Afgri Poultry has access to the supply volumes and prices of Daybreak's competitors and that this information could be used to facilitate collusion between the competitors. However, the Commission is of the view that such information only relates to input and may have very little commercial benefit to Daybreak in facilitating collusive conduct. It is also unlikely that Daybreak's competitively sensitive information is to flow to its competitors as AfriGroupe will not have access to such information.

[15] In light of the above, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition through information-sharing as the proposed condition satisfies the concerns raised.

[16] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa. We concur with this finding.

Public interest

[17] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The merging parties submitted that the proposed transaction will secure the retention of [REDACTED] employees of Daybreak. However, the Commission found that the proposed transaction will remove a historically disadvantaged person and/or entity such as [REDACTED] from participating in the market. The Commission, therefore, considered and proposed that the PIC should divest a portion of its shareholding in Afgri Poultry to a BEE entity once the business operations of Daybreak have sufficiently recovered. [REDACTED]



[18] Furthermore, the proposed transaction raises no other public interest concerns. The merging parties also gave the Tribunal an assurance no employees would be retrenched as a result of the merger which the Tribunal accepted.

Conclusion

[19] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction with conditions attached as annexure "A".

Mr. E Daniels

06 November 2017

DATE

Ms MediMokuena and Prof Fiona Tregenna concurring

Tribunal Case Manager: Busisiwe Masina

For the merging parties: Mr Andries le Grange

For the Commission: Ms Portia Bele