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## OUTCOME OF CASES HEARD BY THE TRIBUNAL ON WEDNESDAY 24 APRIL 2019

Type of matter	Parties involved	Commission's recommendation to the Tribunal	Tribunal Decision
Access to confidential information	Klein Karoo International (Pty) Ltd; Mosstrich (Pty) Ltd; Cape Karoo (Pty) Ltd (previously Ostrich Skins (Pty) Ltd) And EES Millenery (Pty) Ltd and others		Access to confidential information granted
Large merger	K2012150042 South Africa (Pty) Ltd And Wanooka Properties (Pty) Ltd	Approval without conditions	Approved without conditions
Large merger	Senwesbel Ltd (Also The Senwes Group) And KLK Landbou Ltd	Approval without conditions	Decision pending

### **Lawyers and economic experts representing ostrich meat companies granted access to confidential information**

The Tribunal has ordered that expert economic advisors and lawyers -- representing three companies (the merging parties) involved in the supply of ostrich meat – must be given access to confidential information which was used and relied on by the Competition Commission (the Commission) to prohibit a merger involving their clients.

The information was supplied to the Commission by EES Millenery (Pty) Ltd (EES Millenery), Charles Gibbs N.O (trustee of Classic Trusts) and Lewitton Industrial Corporation CC (Lewitton) during the investigation of the merger. However, EES Millenery and Lewitton claimed confidentiality over the information.

On 20 December 2018, the Commission prohibited the merger between the ostrich meat companies (Klein Karoo International (Pty) Ltd; Mosstrich (Pty) Ltd; and Cape Karoo (Pty) Ltd). On 22 January 2019, the companies approached the Tribunal for the merger prohibition to be reconsidered. They want the Tribunal to approve the merger without conditions.

The Commission prohibited the merger on the basis that it would result in a substantial lessening of competition in the market for the supply of ostrich meat. The Commission also found that the merging parties would have the ability and incentive to foreclose the downstream ostrich feather market.

However, the merging parties argue that the Commission erred in its market definition in respect of ostrich meat -- and erred in its finding that they (the merging parties) would foreclose the downstream ostrich feather market.

The companies, which initially raised concerns over the proposed merger, did not attend the Tribunal proceedings to formally oppose the application for access to the confidential information. Their legal representatives were also not present.

The Tribunal has ordered that the Commission must provide the full version of the confidential merger report to the lawyers and economic experts within five days. The Commission must also provide access to the submissions made by EES Millenery and Lewitton, which raised concerns about the merger.

Charles Biggs N.O. had also made a submission but the Commission said it did not rely on it when considering the proposed merger. The ostrich meat companies therefore withdrew their application to access information provided by Charles Biggs N.O.

### **Merger in market for provision of rentable office space approved without conditions**

The Tribunal has approved the proposed property merger whereby K2012150042 (Pty) Ltd ("K2012") seeks to acquire Wanooka Place from Wanooka Properties (Pty) Ltd as a going concern. Wanooka Place is a grade A office property located in Parktown, Johannesburg.

K2012, a property-owning company, is ultimately controlled by Old Mutual Limited. The Old Mutual Group invests in fixed property in various provinces. Relevant to this transaction is Old Mutual Group's interests in grade A office properties in Rosebank, Pretoria and Sandton.

### **Proposed merger in the market for the supply of petroleum products through retail service stations and in farming requisite stores**

In this proposed large merger, Senwesbel Limited (Senwesbel) and its subsidiary Senwes Limited (Senwes) seek to acquire KLK Landbou Limited (KLK). The Tribunal has requested the Commission and the merging parties to draft a condition relating to the control of the target firm, before it issues an order in relation to the merger.

Senwesbel is an investment holding firm. Senwes controls numerous companies in South Africa. Its products and services include financing, agricultural services, grain handling and marketing, grain trading, grain transport, retail outlets and wholesale distribution, among others.

KLK operates in trade and building stores, petroleum and retail fuel stations, meat trade and abattoirs, motor vehicles, livestock and auctioneering and financial services, among others.