



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM212Nov18

In the matter between

VKB Agri Processors (Pty) Ltd

Primary Acquiring Firms

Oxfordstraat Beleggings Bethlehem (Pty) Ltd

And

Nu-Pro Feeds (Pty) Ltd

Primary Target Firms

Nu-Pro Commodities (Pty) Ltd

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Panel	: N Manoim (Presiding Member)
	: M Mazwai (Tribunal Member)
	: I Valodia (Tribunal Member)
Heard on	: 6 March 2019
Order Issued on	: 6 March 2019
Reasons Issued on	: 2 April 2019

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### REASONS FOR DECISION

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#### Approval

[1] On 6 March 2019, the Tribunal unconditionally approved the large merger in terms of which VKB Agri Processors (Pty) Ltd ("VKB Agri") and Oxfordstraat Beleggings Bethlehem (Pty) Ltd ("Oxfordstraat") are respectively acquiring 50% interests and sole control of Nu-Pro Feeds (Pty) Ltd ("Nu-Pro Feeds) and Nu-Pro Commodities (Pty) Ltd ("Nu-Pro Commodities"). Pre-merger, both Nu-Pro Feeds and Nu-Pro Commodities are jointly controlled by VKB Agri and Oxfordstraat.

[2] The reasons for approval of the proposed transaction follow.

## Parties to the transaction

### *Primary Acquiring Firms*

- [3] VKB Agri is a wholly-owned subsidiary of VKB Beleggings (Pty) Ltd (VKB Beleggings). VKB Beleggings is not controlled by any firm or shareholder.<sup>1</sup> VKB Beleggings and the firms under its control will be referred to as the VKB group.
- [4] VKB Agri is a holding company and is involved in a variety of agricultural activities in South Africa through its various subsidiaries. The subsidiaries relevant to the proposed transaction are Triple V Animal Feeds (Pty) Ltd (Triple V), Nu-Pro Feeds and Nu-Pro Commodities. Triple V is involved in the manufacture and supply of monogastric feeds.<sup>2</sup> 90% of Triple V's feed is supplied within the VKB group.
- [5] Oxfordstraat is controlled by Mr Daniel Ungerer. Oxfordstraat is a holding company and does not undertake any activities itself. Apart from its interests in Nu-Pro Feeds and Nu-Pro Commodities, no other firm under its control is of relevance to the proposed transaction.

### *Primary Target Firms*

- [6] Nu-Pro Feeds is a manufacturer and supplier of animal feed in the Northern Gauteng, Eastern Free State, Northern Limpopo, Northern Eastern Cape and Western KwaZulu-Natal regions. It manufactures and supplies various types of animal feed including feed for cows (Ruminant feed), pigs and chicken. Nu-Pro Feeds is situated in Bethlehem, in the Free State.

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<sup>1</sup> VKB Beleggings' shares are widely held by approximately 4100 individual shareholders, none of which hold a controlling interest.

<sup>2</sup> Monogastric feeds are for animals that have a simple single-chambered stomach (i.e dogs and pigs).

- [7] Nu-Pro Commodities trades in various agricultural commodities across South Africa. Its trading comprises the purchasing and selling of raw materials/soft commodities and the delivery of these commodities to end-users.

### **Proposed transaction**

- [8] The proposed transaction entails two legs. In terms of the first leg of the proposed transaction, Mr Ungerer will sell Oxfordstraat's 50% shareholding in Nu-Pro Feeds to VKB Agri. Post-merger, VKB Agri will become the sole controller of Nu-Pro Feeds. In terms of the second leg of the proposed transaction, VKB Agri will sell its 50% shareholding in Nu-Pro Commodities to Oxfordstraat. Post-merger, Mr Ungerer (in his own right and through Oxfordstraat) will become the sole controller of Nu-Pro Commodities.

### **Relevant market and impact on competition**

- [9] The Competition Commission ("Commission") found that the proposed transaction will result in a horizontal overlap. The horizontal overlaps occur in the following markets: **(i)** the manufacture and supply of animal feeds; and **(ii)** the trading of agricultural commodities.

#### *Horizontal overlap in the manufacture and supply of animal feeds*

- [10] The first horizontal overlap occurs in that within the VKB group there are two firms (Triple V and Nu-Pro Feeds) which currently manufacture and supply animal feeds. The Commission did not definitively conclude on the relevant markets. However, the Commission assessed the effects of the proposed transaction in the animal feed segments where Triple V and Nu-Pro Feeds' activities overlap in the broader national market for the manufacture and supply of animal feeds, and the narrower market which includes different types of animal feeds supplied in the Free State. The overlap is in respect to monogastric feeds, layer and broiler feeds (poultry) in particular.

[11] The Commission found that in the national market for the manufacture and supply of animal feeds, the merged entity will have a market share of less than 5% with an accretion of less than 2%. In the narrower geographic market in the Free State, the Commission found that the merged entity will have higher market shares ranging between 3%-35% in the different animal feed markets with accretions of less than 5% in the respective animal feed segments. The Commission further found that the higher market shares in the narrower markets are not cause for concern because 90% of Triple V's animal feeds supply stays within the VKB group, while 10% is supplied in the open market. The Commission therefore does not consider Triple V an effective competitor in the open market. Further, the Commission found that the merged entity will be constrained by, *inter alia*, Sernick Voere and Nutri Feeds in all the relevant narrower markets in the Free State.

*Horizontal overlap in the trading of agricultural commodities*

[12] The Commission found that neither Oxfordstraat or Mr Ungerer in his personal capacity have interests in any firm that operates in the trading of agricultural commodities in competition with Nu-Pro Commodities. The merger thus creates no horizontal issues in the agricultural trading market.

*Vertical overlap assessment*

[13] The vertical overlap occurs in that the VKB group's retail stores currently purchase some of their animal feed requirements from Nu-Pro Feeds. Given that the VKB group will post-merger solely control Nu-Pro Feeds, the Commission considered whether the VKB group will have the ability or incentive to foreclose competitors and customers. The Commission concluded that the VKB group will not have the ability to foreclose competitors because Nu-pro Feeds is a small player in the market with a market share of less than 5%. Thus, should Nu-Pro Feeds decide to stop supplying its customers, such customers will have other alternative input suppliers of products.

[14] The Commission further found that the proposed transaction will unlikely result in customer foreclosure due to VKB group's insignificant presence in the downstream market. In view of the above, the Commission concluded that the proposed transaction will unlikely result in a substantial prevention or lessening of competition in any relevant market. Further, the Commission is of the view that the proposed transaction will unlikely change the structure of the market because the acquiring firms control the target firms post-merger. We find no reason to disagree with the Commission's findings.

### **Public interest**

[15] The proposed transaction raises no public interest concerns.

### **Conclusion**

[16] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no adverse public interest issues arise from the proposed transaction. Accordingly, we unconditionally approved the proposed transaction.

  
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**Mr Norman Manoim.**

**2 April 2019**

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**Date**

**Ms. Mondo Mazwai and Prof. Imraan Valodia concurring.**

Tribunal Case Manager : Kgothatso Kgobe

For the Merging Parties : D Dingley and C du Plessis of Webber Wentzel

For the Commission : T Mahlangu and B Mabatamela