COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 71/LM/Sep02

In the large merger between:

Afgri Operations Ltd

and

Laeveld Korporatiewe Beleggings Beperk

Reasons

Approval

The Competition Tribunal issued a Merger Clearance Certificate on 4 December 2002 approving the merger without conditions. The reasons are set out below.

The merger

The transaction

Afgri Operations Ltd ("Afgri") is acquiring all the shares in the issued share capital of Laeveld Korporatiewe Beleggings Beperk ("Laeveld"), resulting in Laeveld becoming a fully owned subsidiary of Afgri.

The parties to the transaction

Afgri, the primary acquiring firm, is a wholly owned subsidiary of Agri Limited, a public company listed on the JSE Securities Exchange South Africa. Afgri has four operating divisions, namely Afgri Products, Afgri Requisites, Afgri Capital and Afgri Services. Afgri also has a 50% interest in Early Bird Farms (Pty) Ltd.[1]

The primary target firm is Laeveld, a public company with limited liability in which no one shareholder holds more than 5% of the shares in the issued share capital.

[1] This subsidiary is consolidated into the Afgri Products division.

Laeveld's subsidiaries are *Beta Kilo (Pty) Ltd*[2] selling tractors, implements, spares, fuel, tyres, *Golden Macadamias (Pty) Ltd*[3], selling macadamia nuts, *Global Nuts SA (Pty) Ltd*[4] selling pecan nuts and *Profert Laeveld (Pty) Ltd*[5] selling fertiliser and *Trimco (Pty) Ltd* its timber operation.[6]

Rationale for the transaction

According to the parties the area where Laeveld operates is one of the most stable agricultural areas in South Africa and the products that are produced are different to the products in OTK'S current area which will be advantageous for the overall spread of OTK'S risk. Major rationalisation and cost savings are possible. The implementation of OTK's business initiatives will also be profit enhancing.

Evaluating the merger

The relevant market

Afgri owns 59 retail branches and supplies producers with various agricultural input commodities and services. Afgri's four divisions focus on the following areas:

1. *Afgri Capital* provides business and risk management solutions, which include finance, short term and crop insurance and advisory services, to farmers, traders and agricultural processors.
2. *Afgri Products* manages the grading, handling, storage and trading of agricultural products through its logistics, trading and risk management business. It also provides farmers and agri-processors with hedging facilities and services. This division manages all the secondary agricultural processing businesses of Afgri, namely Seed marketing, Animal feeds, Clark cotton and its broiler interest in Earlybird Farm.
3. *Afgri Requisites* markets and distributes an extensive range of products and farming requisites produced by third parties, including mechanization equipment such as tractors and farm equipment and services.
4. *Afgri Services* sells agricultural science and technology to producers.

The kinds of crop produced in Afgri's service area, the so-called highveld area of Mpumalanga, are mainly sunflower, dry beans, maize, wheat and cotton.

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[2] Wholly owned subsidiary
[3] 25% of the shares held by Laeveld
[4] Laeveld holds 58% of the shares
[5] Laeveld holds 51% of the shares
[6] This subsidiary was sold on 29 August 2002 and is not relevant to this deal.

Laeveld owns 13 retail branches that offer various agricultural inputs to farmers for the cultivation and processing of tropical and sub-tropical fruit in the southern Lowveld region of Mpumulanga, as well as Limpopo. It consists of 4 divisions:

1. *Product division* – responsible for the marketing of dry-bean seed and lemon oil
2. *Retail division* – sells various farming requisites
3. *Insurance division*
4. *Finance division* – responsible for the financing of crop

Laeveld trades in the lowveld area of Mpumalanga that mainly produces sugar cane, dry beans, citrus, bananas, macadamia and pecan nuts.

The only agricultural product that both Afgri and Laeveld are involved in, is dry bean seed. However, the two parties are involved in different stages of the vertical production chain. Laeveld's primary business is the multiplication and processing of dry beans on contract[7], the first stages of the process, whereas Afgri Seed acts as agent for Dry Bean Seed ("DBS") in selling the dry bean seed to commercial farmers, the final stage of marketing the beans for commercial farming.[8] There is thus no overlap in the marketing of beans.

Both parties supply farming requisites such as fertiliser, agricultural chemicals, packaging materials, tyres and batteries, fuel and lubricants, cattle feed, hardware, veterinary medicine, tractors, spare parts, farming implements and services such as finance and insurance.

As stated earlier Afgri operates in the Free State, Mpumulanga (more specifically the Mpumalanga Highveld area), Gauteng, Limpopo and KwaZulu Natal, while Laeveld operates in Limpopo and the lowveld area of Mpumalanga.

Thus, if one defines the geographic market broadly, the parties' geographic markets overlap in Limpopo and Mpumalanga provinces. On a narrow definition, it overlaps in Burgersfort, Carolina and Ohrigstad in the Mpumalanga Province and in Letsetele in the Limpopo Province.[9] Moreover, the Commission argues that the merging parties attract only farmers within a 40 km radius from each town to purchase their farming requisites. So, they conclude, on a very narrow definition there is no geographic overlap. However, the Commission decided not to define the relevant geographic market because they found that on neither a

[7] This contract is awarded annually to Laeveld or any other player by Dry Bean Seeds and Pannar, which own the beans.
[8] Laeveld does not own the dry bean seed but has contracts with leading bean seed trading companies, DBS and Pannar, to supply those companies with dry bean seeds. Farmers, with whom Laeveld have contracts, produce and multiply the dry bean seeds on its behalf. Laeveld then delivers the processed dry bean seeds to the seed trading companies. DBS then uses Afgri Seed as its agent to sell its dry bean seed to farmers while Pennar markets its own seeds for farming purposes.
[9] In Mpumalanga Afgri has 29 trading facilities in various towns and in Limpopo it has trading facilities in 2 towns. Laeveld has trading facilities in 11 towns in Mpumalanga and 2 facilities in Limpopo.

narrow definition, nor on a broad definition is the transaction likely to affect competition substantially. We agree with this finding.

<u>Market shares and concentration</u>

The parties were not able to supply the Commission with market share figures for those towns where their markets overlap, i.e. for a narrowly defined geographic market, because such data is not available. However, we were supplied with market shares for the two separate, non-overlapping, regional markets, i.e. the highveld area of Mpumalanga and the lowveld area of Mpumalanga. However, since the merger will not affect the market shares post the merger we need not consider them.

<u>Effect on Competition</u>

According to the parties the fact that, post the merger, Afgri will be involved in both ends of the bean seed production chain will not influence the price of beans at all because the multiplication contract and the marketing contract are negotiated separately. Moreover, the bean multiplication contract is only awarded for a period of one year.

In light of the surge in domestic food prices we asked the parties to comment on the prices that consumers have to pay for beans. The parties informed us that from a farming perspective, maize was the biggest competitor for beans because in a good rain season farmers would rather plant maize, for which they get a higher market price, than beans. In times of drought farmers will switch to beans to recover their cost.

Afgri and Laeveld provide financing to farmers for the acquisiton of agricultural inputs. However, the farmers that purchase agricultural inputs from the parties are free to apply for financing at other financial institutions. Afgri competes with other financial institution, such as banks, by offering farmers a package deal consisting of certain inputs, finance and the selling of their final the produce.

There are at least 3-4 competitors, including hardware stores, supplying farming requisites in the areas where the merging parties trade. Moreover, the Competition Commission found that in some product markets such as fuel, fertilizer and packaging the merging parties compete directly with the manufacturers who supply their product, in that the farmers will order stock directly from them.

In light of the above we agree with the Competition Commission's recommendation and find that the merger will not substantially prevent or lessen competition in any of the relevant markets.

Public Interest Issues

The transaction does not raise any public interest grounds.

______________ 13 January 2003

D. Lewis **Date**

Concurring: N. Manoim and U. Bhoola

For the merging parties: Brink Cohen Le Roux and Roodt

For the Competition Commission: J Mokwana, Legal Services Division