COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM181Nov15

In the matter between:

ETG INPUTS HOLDCO LTD	Primary Acquiring Firm
and	
SIDI PARANI (Pty) Ltd	Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Anton A. Roskam (Tribunal Member)
	: Andiswa Ndoni (Tribunal Member)
Heard on	: 22 March 2016
Order Issued on	: 22 March 2016
Reasons Issued on	: 20 April 2016

Reasons for Decision

Approval

[1] On 22 March 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between ETG Inputs Holdco Ltd and Sidi Parani (Pty) Ltd.

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

Parties to proposed transaction

Primary acquiring firm

[3] The primary acquiring firm is ETG Inputs Holdco Limited ("ETG Inputs"), a company incorporated in accordance with the company laws of the United Arab Emirates, which forms part of the ETG Group. ETG Inputs is a wholly owned subsidiary of ETC Group (Mauritius) a company incorporated in accordance with the company laws of Mauritius.

[4] ETG Inputs operates through a number of entities and is involved in commodity trading and logistics. However, relevant for the assessment of the proposed transaction is its subsidiary Kynoch's activities as an importer, manufacturer, blender and distributor of fertilizer in South Africa and in other South African Development Community (SADC) territories. Kynoch manufactures liquid fertilizer and blends and bags dry fertilizer. Its liquid fertilizer is produced in Endicotte and Kimberly. Kynoch also sells satellite blenders with its NPK blended fertilizer operation located in Durban, Richards Bay, Endicotte and Viljoenskroon

Primary target firm

[5] The primary target firm is Sidi Parani (Pty) Ltd ("Sidi Parani"), a company incorporated in terms of the company laws of South Africa and which is controlled by Curions (Pty) Ltd ("Curions").

[6] Sidi Parani supplies an extended range of plant nutrition products in South Africa, and has operations in the Northern Cape, North West, Free State, Eastern Cape, Kwa-Zulu Natal and Mpumalanga. It also currently has operations in Namibia.

Proposed transaction and rationale

[7] ETG intends to acquire 49% of the issued share capital of Sidi Parani. Post transaction, Sidi Parani will be jointly controlled by ETG Inputs and Curions. ETG Inputs also has an entitlement to a call option to acquire a further 2% of the issued share capital under certain conditions.

[8] The ETG Group recognizes that Sidi Parani is an established and well recognized brand with a product range and distribution network which they believe will assist them in leveraging their business in the market.

[9] Sidi Parani submits that the proposed transaction will create a more synergetic and efficient competitor in the South African agricultural sector, given that the ETG Group is an international, multi-dimensional agricultural supply chain group which trades in a wide variety of agricultural commodities, including fertilizers, mainly outside of South Africa.

Impact on competition

[10] During its investigation the Commission found that the activities of the merging parties overlapped, in that Kynoch and Sidi Parani manufacture and distribute dry (granular) fertilizer and liquid fertilizer.

[11] The Commission identified a horizontal overlap with respect to liquid and granular NPG blended fertilizer and a vertical overlap in that Kynoch supplies fertilizer to such as Urea on an *ad hoc* basis to Sidi Parani in the manufacture of NPK fertilizers.

[12] The Commission therefore assessed the following theories of harm, unilateral effects, coordinated effects, input and customer foreclosure. The Commission further assessed the competition effects of the proposed transaction in the following markets:

- the national market for the sale of liquid fertilizer;
- the national market for the sale of granular fertilizer;
- the market for liquid blended fertilizer in the Northern Cape;
- the market for liquid blended fertilizer in the Free State;
- the market for liquid blended fertilizer in the North West;

- the market for granular fertilizer in the Northern Cape;
- the market for granular fertilizer in the Eastern Cape;
- the market for granular fertilizer in Kwa-Zulu Natal;
- the market for granular fertilizer in the Free State;
- the market for granular fertilizer in Mpumalanga;
- the market for granular fertilizer in the North West.

[13] With respect to unilateral effects, the Commission found that the merged entity will have low market shares in all fertilizer markets except the Northern Cape market where the merged entities will have a post-merger market share of 72.2% for liquid fertilizers and approximately 40% for granular fertilizers. The Commission is of the view that the proposed transaction would not alter these markets and the merged entity will continue to face competition. The Commission finds that a substantial lessening of competition is unlikely and is therefore of the view that these markets do not need to be analysed further.

[14] In its analysis of the Northern Cape market, the Commission found that the merged entity will still face competition due to relatively low barriers to entry. The high market shares in both the liquid and granular market is attributable to Sidi Parani with ETG Inputs holding less than 5% in the liquid market and less than 10% in the granular market. Therefore the Commission was of the view that despite the high market shares the structure of the market was not altered significantly post-merger. The Commission also found that fertilizer suppliers from other provinces do supply granular and liquid fertilizer in the Northern Cape. The Commission also found that customers have countervailing power. Therefore the Commission concluded that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in the Northern Cape.

[15] With respect to the vertical overlap, the Commission found that the merged entity will not have the ability to engage in input foreclosure due to low market shares in the national markets for potassium chloride and urea which are the fertilizers used in the manufacture of NPK blended fertilizers. With respect to customer foreclosure, the Commission found that the merged entities will not have the ability to engage in customer foreclosure due to low market shares in the NPK blended fertilizer market.

[16] With respect to coordinated effects, the Commission found that the proposed transaction does not significantly alter the structure of the market in the Northern Cape. Further the merging parties do not compete in any other market except in the fertilizer market. The Commission further found that the merging parties have not been implicated in any collusive conduct in the past. The Commission concludes that the proposed transaction is unlikely to lead to any coordinated effects post-transaction.

[17] In the absence of facts to the contrary the Tribunal concurs with the Commission and finds that the proposed transaction would not result in a substantial lessening of competition.

Public Interest

[18] The merging parties submit that there would be a minimal impact on employment as it would affect two positions at Sidi Parani namely the supply chain manager and the administration/finance positions. In relation to the supply chain manager the position would post-transaction require less responsibility and may accordingly require a decrease in salary. [The person employed has 15 years senior management experience and has worked for many years in the fertilizer industry]. The administration/finance position will be redundant post transaction as the merging parties intend to combine the finance and administration management functions into a financial manager position. They submit that the person whose position is made redundant will be able to apply for the financial manager position.

[19] The Commission finds that employees notified of the merger raised no objections. The Commission enquired whether the supply chain manager was consulted and has not yet been but that they intend to comply fully with relevant labour legislation. The Commission also found that the administration manager resigned voluntarily as he obtained alternative employment. The Commission enquired whether there would be further restructuring or consolidation and found in the negative therefore concluding that the proposed transaction would not negatively affect public interest. The employees managing the target properties will remain unchanged.

[20] The proposed transaction further raised no other public interest concerns.

Conclusion

[21] 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 other public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

Ms Yasmin Carrim

20 April 2016

DATE

Mr Anton A. Roskam and Ms Andiswa Ndoni concurring

Tribunal Researcher:	Aneesa Ravat
For the merging parties:	Willem de Villiers of Glen Marais, Cas Prinsloo of Sidi Parani and Eugene Muller of ETG.
For the Commission:	Gilberto Biachana