



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM116Jul18

In the matter between

Kaap Agri Bedryf Ltd

Primary Acquiring Firm

And

Patridge Building Supplies (Pty) Ltd t/a Underberg  
Forge

Primary Target Firm

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Panel	: Mr E Daniels (Presiding Member)
	: Mr A Roskam (Tribunal Member)
	: Prof. F Tregenna (Tribunal Member)
Heard on	: 22 August 2018
Order Issued on	: 22 August 2018
Reasons Issued on	: 19 September 2018

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### REASONS FOR DECISION

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#### Approval

- [1] On 22 August 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction in terms of which Kaap Agri Bedryf Ltd ("Kaap Agri Bedryf") will acquire control over Patridge Building Supplies (Pty) Ltd t/a Underberg Forge ("PBS").
- [2] The reasons for the approval of the proposed transaction follow.

## Parties to the transaction

### *Primary Acquiring Firm*

- [3] Kaap Agri Bedryf is a wholly-owned subsidiary of Kaap Agri Ltd (“Kaap Agri”). Kaap Agri Bedryf owns TFC Strand (Pty) Ltd, Ventures (Pty) Ltd, TFC Properties (Pty) Ltd, TFC Operations (Pty) Ltd and Agriplas (Pty) Ltd. Kaap Agri Bedryf and its subsidiaries are a retail services group that supplies a variety of products and services mainly to customers operating in the agricultural sector, and also to the general public.
- [4] Kaap Agri Bedryf’s product and services offering consists of retail stores which sell, *inter alia*, farming requisites, building materials, packaging materials and grain handling. Kaap Agri Bedryf started out as an agriculture co-operative in the Western Cape, but has extended its business operations and opened branches in the Eastern Cape, Gauteng, and Mpumalanga, among other provinces (excluding KZN).

### *Primary Target Firm*

- [5] PBS is not controlled by any single firm. Its shareholders are Richard Arthur Jardine, Patrick James Spence Reid, Matthews Robertson and Tertia Reid (the sellers).<sup>1</sup> PBS does not directly or indirectly control any other firm(s). PBS is a supplier of products mainly to customers operating in the agricultural sector, but also to the general public.
- [6] PBS operates through three divisions: Forge Agri, Forge Build and Forge Trans. Of relevance for the competition analysis in this proposed transaction is PBS’ operations through Forge Agri and Forge Build.

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<sup>1</sup> See Merger Record, page 57.

- [7] Forge Agri offers retail and bulk trade of, *inter alia*, farming requisites, animal health, handling products, dairy consumables and seeds. Forge Build supplies a full range of hardware products and building materials. Forge Trans is the logistics division which, owns and operates trucks which deliver varied loaded sizes to customers of the former divisions, mostly within a 100km radius. PBS supplies its products and services in KZN.

#### **Proposed transaction and rationale**

- [8] In terms of the *Sale of Shares Agreement*, Kaap Agri Bedryf intends to acquire 60% of PBS' issued share capital. Upon implementation of the proposed transaction, Kaap Agri Bedryf will exercise control over PBS.

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

- [9] The Competition Commission ("Commission") found that the proposed transaction presents two horizontal overlaps. The first is in respect of the retailing of agricultural input products and services; and the second is in the market for the supply of building materials.
- [10] The merging parties submitted that the geographic market is local, or regional and that customers travel (or have their products transported) up to 50km to acquire their agricultural input products or building supplies (and have it transported up to 100km). The merging parties further submitted that the closest Kaap Agri retail store is situated at the Nelspruit Agrimark, which is more than 400km away from the nearest store of PBS in Mooi River.<sup>2</sup> Upon embarking on their own competition analysis, the Commission was satisfied with the merging parties' submissions.
- [11] The Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in the abovementioned markets as even in the worst case provincial market, there is no geographic overlap

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<sup>2</sup> See Merger Record, page 65.

between the business activities of the merging parties. We find no reason to disagree with the Commission.

### **Public interest**

- [12] The merging parties submitted, and this was confirmed by the Commission, that the proposed transaction will not result in job losses. Despite this submission, the Tribunal sought further assurances that the proposed transaction would not negatively affect employment. This was because SACTWU<sup>3</sup> raised concerns regarding the proposed transaction.
- [13] The Commission communicated with SACTWU which confirmed that their concerns had been addressed and that they had no further concerns regarding the proposed transaction. After considering SACTWU's concerns, the Commission's view and the undertakings from the merging parties, we are satisfied that there will not be any job losses.
- [14] The proposed transaction raises no other public interest concern.

### **Conclusion**

- [15] 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 approved the proposed transaction unconditionally.



**Mr Enver Daniels**

**19 September 2018**

**Date**

**Mr Anton Roskam and Prof. Fiona Tregenna concurring.**

<sup>3</sup> The Southern African Clothing and Textile Workers Union.

Tribunal Case Manager : Kgothatso Kgobe  
For the Merging Parties : I Gouws of Werksmans  
For the Commission : R Ncheche