

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM214Nov18

In the matter between:

K2018414696 (South Africa) Proprietary Limited
(To be renamed "Karan Beef Holdings Proprietary Limited")

Primary Acquiring Firm

And

Karan Beef Proprietary Limited

Primary Target Firms

And

The cattle farming business conducted by I.M Karan Farming t/a Karan Beef Feedlot

Panel : N Manoim (Presiding Member)
E Daniels (Tribunal Member)
A Ndoni (Tribunal Member)

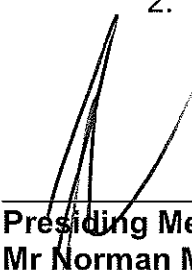
Heard on : 16 January 2019

Decided on : 16 January 2019

NON-CONFIDENTIAL ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that -

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



Presiding Member
Mr Norman Manoim

16 January 2019
Date

Concurring: Mr Enver Daniels and Ms Andiswa Ndoni

ANNEXURE A

NON-CONFIDENTIAL

K2018414696 (SOUTH AFRICA) PROPRIETARY LIMITED (TO BE RENAMED "KARAN BEEF HOLDINGS PROPRIETARY LIMITED")

And

KARAN BEEF PROPRIETARY LIMITED AND THE FARMING BUSINESS CONDUCTED BY I.M KARAN FARMING T/A KARAN BEEF FEEDLOT

CASE NUMBER: 2018NOV0027

CONDITIONS

1. DEFINITIONS

The following terms shall have the meaning assigned to them below and cognate expressions have corresponding meanings–

- 1.1 **"Acquiring Firm"** means K2018414696 (South Africa) Proprietary Limited (to be renamed "Karan Beef Holdings Proprietary Limited")
- 1.2 **"Acquiring Group"** means the Acquiring Firm, together with Pelo Ventures and GEPP, UIF and CF (represented by the PIC and duly authorised agent)
- 1.3 **"CF"** means the Compensation Fund
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Competition Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"Days"** means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.8 **"Development Fund"** means the development fund established in terms of paragraph 4;
- 1.9 **"GEPP"** means the Government Employees Pension Fund;

- 1.10 **"Implementation Date"** means the date on which the Merger is implemented;
- 1.11 **"Merger"** means the acquisition of control of the Target Firms by the Acquiring Firm;
- 1.12 **"Merging Parties"** means the Acquiring Firm and the Target Firms;
- 1.13 **"Merged Entity"** means the Acquiring Firm and the Target Firms following the Merger;
- 1.14 **"PIC"** means the Public Investment Corporation (SOC) Limited;
- 1.15 **"Programme"** means the Black Emerging Farmers Development Programme to be developed in terms of clause 3;
- 1.16 **"Target Firms"** means Karan Beef Proprietary Limited and Karan Beef Feedlot
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa; and
- 1.18 **"UIF"** means the Unemployment Insurance Fund.

2. **RECORDAL**

- 2.1 On 6 November 2018, the Commission received notice of a large merger in terms of which the Acquiring Firm will acquire control of the Target Firms. The Acquiring Firm is controlled by Pelo Ventures and by the GEPF, UIF and CF (with the PIC acting as duly authorised agent of each of those entities). Following its investigation of the Merger, the Commission is of the view that it is unlikely to substantially prevent or lessen competition in any market.
- 2.2 The Commission's investigation also revealed that the proposed transaction has the potential to improve transformation in the agricultural sector as it relates to beef production. In particular, the Acquiring Group, as part of its existing plans for the Target Firm, intends to be an off-taker of supply from Black cattle farmers, as well as a provider of skills and know-how to Black emerging cattle farmers. According to the Merging Parties, Pelo Ventures has already begun engagements with governmental and development finance institutions to conceptualise the development of a programme designed to support black emerging cattle farmers.
- 2.3 In order to ensure that Black farmers receive maximum benefit from the development programme and the fund attested to by the merging parties, the Commission engaged the merging parties and recommended that these initiatives be made conditions on

the approval of the merger. The merging parties have agreed to the proposed conditions.

2.4 The Merging Parties have agreed to the Conditions set out below.

3. **BLACK EMERGING FARMERS DEVELOPMENT PROGRAMME**

3.1 Pelo Ventures shall develop a Black Emerging Farmers Development Programme, including seeking input of governmental and development institutions such as Department of Rural Development and Land Affairs; the Department of Forestry, the Agricultural Research Council and third-party funders.

3.2 The Programme will articulate the following objectives and ways in which to achieve those objectives:

3.2.1 Facilitating and maximising market access for black cattle farmers, in particular the role of the Target Firms in entering into off-take agreements to purchase supply from black cattle farmers on commercially reasonable and practical terms. The Programme will include a procurement scoring mechanism that meets the minimum requirements for Enterprise and Supply Development as defined in the BEE Codes from time to time;

3.2.2 Providing technical support to emerging cattle farmers in order to facilitate their ability to become commercial cattle farmers, including to be able to supply cattle that meet the quality and volume requirements of commercial feedlots and beef producers, including those requirements of the Merged Entity; and

3.2.3 Facilitating the creation of the Development Fund.

4. **DEVELOPMENT FUND**

4.1 The Acquiring Group will, subject to obtaining the relevant investment committee approvals of each member of the Acquiring Group, establish a development fund dedicated to providing working capital funding on commercial terms.

4.2 The Development Fund will be funded by third parties, and the Acquiring Group will be responsible for raising funds. The Acquiring Group shall raise the funds from third parties (with a particular focus on development finance institutions and various government departments, including without limitation the Department of Agriculture, Forestry and Fisheries, the Department of Rural Development and Land Reform and

the Department of Trade and Industry, the Land Bank, the Industrial Development Corporation Limited, the Jobs Fund and the Development Bank of South Africa Limited) in the form of a combination of grant/donor funding, equity funding and debt funding, subject to the credit committee and investment committee approvals of the relevant financiers which the Acquiring Group approaches to provide such funding.

- 4.3 The amount which the Acquiring Group will, subject to paragraph 4.2 above, raise from such third-party funders for the purposes of the Development Fund is an aggregate amount of at least [...], which target should be met on or before the [...] anniversary of the Implementation Date. The interim goal of the Acquiring Group is to raise an amount of at least [...] on or before the [...] anniversary of the Implementation Date.

5. MARKET ACCESS

- 5.1 The Merged Entity shall, subject to the ability of black cattle farmers' to supply weaners at market related prices on a sustainable and efficient basis that meet the quality and volume requirements of the Merged Entity, increase its procurement of weaners from black cattle farmers from the current [...] to at least [...] of its total annual weaner requirements within [...] months of the Implementation Date.
- 5.2 The Merged Entity will revise the procurement target after conducting a detail market assessment during the initial [...] month period, taking into account various interventions by Government as well as the Programme.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 6.1 The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of the Implementation Date.
- 6.2 The Merged Entity shall submit to the Competition Commission within 30 days of the Implementation Date details of its level of procurement of weaners from black cattle farmers as at the Implementation Date and in the previous calendar year.
- 6.3 Pelo Ventures will, within 30 days of each anniversary of the Implementation Date, up until the 6th anniversary, provide a suitable and appropriately detailed annual report to the Commission regarding its measures to comply with these Conditions. The report is to, in relation to the year to which the report relates:
- 6.3.1 Include a copy of the Programme (or a draft of the Programme if it has not yet

been finalised);

- 6.3.2 Note any amendments to the Programme that have been made;
 - 6.3.3 Describe all steps that have been taken to implement the Programme;
 - 6.3.4 Report on progress of the establishment of the Development Fund;
 - 6.3.5 Report on funding that has been secured for the Development Fund; and
 - 6.3.6 Report on the level of procurement of weaners by the Merged Entity from black cattle farmers.
- 6.4 The report referred to in 6.3 shall be accompanied by an affidavit attested to by the Chief Operations Officer or Chief Executive Officer or Managing Director of Pelo Ventures confirming accuracy of the annual report and compliance with these Conditions in the year to which the report relates.

7. **GENERAL**

- 7.1 In the event that the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, this shall be dealt with in terms of Rule 39 or the Rules for the Conduct of Proceedings in the Competition Commission.
- 7.2 The Merging Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.
- 7.3 All correspondence in relation to this Condition should be forwarded to: mergerconditions@compcom.co.za.