COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM289Feb18

In the matter between

Philafrica Foods (Pty) Ltd	Primary Acquiring Firm
And	
Zutco (Pty) Ltd – Heilbron – Free State, Pakworks (Pty) Ltd – Heilbron – Free State	Primary Target Firms

Panel	: Ms Mondo Mazwai (Presiding Member) : Mrs Medi Mokuena(Tribunal Member) : Prof Fiona Tregenna (Tribunal Member)
Heard on	: 13 June 2018
Order Issued on	: 13 June 2018
Reasons Issued on	: 10 July 2018

REASONS FOR DECISION

Approval

[1] On 7 February 2018, the Competition Tribunal ("the Tribunal") unconditionally approved the acquisition of two companies, Zutco (Pty) Ltd – Heilbron – Free State ("Zutco") and Pakworks (Pty) Ltd – Heilbron – Free State ("Pakworks"), by Philafrica Foods (Pty) Ltd ("Philafrica").

[2] The reasons for the approval follow.

Parties to the transaction and their activities

Primary acquiring firm

[3] The primary acquiring firm is Philafrica, an investment company involved in the food processing industry. Philafrica owns and operates a number of wheat and maize mills, oil extraction plants and animal feed manufacturing facilities. Philafrica is owned and controlled by AFGRI Holdings (Pty) Ltd ("AFGRI Holdings"), which holds a large number of agriculture commodity trading companies. AFGRI Holdings and its subsidiaries are hereafter referred to as the AFGRI Group.

Primary target firms

[4] The primary target firms are Zutco and Pakworks. The target firms operate together as a single economic entity that manufactures savoury snacks on behalf of Simba (Pty) Ltd ("Simba").

Proposed transaction and rationale

[5] In terms of the proposed transaction, Philafrica is purchasing a majority interest in both of the target firms, as well as the immovable property on which they operate. This majority shareholding will grant Philafrica sole control over the target firms. However, the current owners will still retain a minority shareholding in the target group post-merger.

Analysis of Indivisibility

[6] The proposed transaction includes a Put Option in favour of the sellers, in terms of which they may compel Philafrica to purchase the remaining minority interest in the target group at a later date.

[7] The Commission was of the view that it was unnecessary to conclude whether the initial acquisition and subsequent Put Option can be considered one indivisible transaction. This is because the initial acquisition of shareholding constitutes a 'crossing of the bright line' subsequent to which Philafrica can unilaterally influence the board decisions of the target group, thus exercising

sole control, since the current shareholders who will retain a minority shareholding will not have any negative control.

[8] It is therefore not necessary to conclude on the divisibility of the Put Option since the exercise of the Put Option will not result in a change of control.

Relevant market and impact on competition

Vertical assessment

[9] The Competition Commission ("The Commission") assessed potential foreclosure concerns that may arise out of the proposed transaction due to an existing vertical relationship between the merging parties. With regards to this vertical relationship, AFGRI Group is active in the upstream market for the processing of yellow maize, which it supplies to the target group in the downstream market for the production of savoury snacks.

[10] Post-transaction, the target group will be unable to foreclose yellow maize as an input to downstream competitors as the target group's maize requirements make up a small percentage of the AFGRI Group's annual production. Further, there are a number of alternate suppliers of yellow maize available.

[11] Customer foreclosure post-merger is also unlikely as the AFGRI Group will not make unilateral decisions regarding the target group's suppliers. Instead it is Simba who contracts for the supply of the yellow maize that the target group uses to produce the savoury snacks. In this regard, Simba appoints more than one supplier of yellow maize to mitigate supply risks and decides on volumes to be procured from each of the approved suppliers.

[12] We agree that the proposed transaction is unlikely to raise any foreclosure concerns.

Information Sharing

[13] A competitor of the AFGRI Group in the upstream market also raised concerns of potential information sharing arising from the transaction. According to the competitor, the AFGRI Group will gain access to sensitive pricing information

through ownership of the target group, to whom the competitor also supplies yellow maize.

[14] The Commission evaluated the nature of the pricing information that is received by the target group and found that it is only a net price that is shared - incorporating a range of components and discounts. The Commission is satisfied that the prices are not an accurate representation of actual prices negotiated with Simba and that the AFGRI Group would be unable to accurately determine pricing strategies of the competitor in order to undercut them. Accordingly the transaction is unlikely to lead to anti-competitive information sharing in the relevant markets.

Public interest

[15] The Commission was satisfied that the proposed transaction was unlikely to adversely impact employment or any other public interest concern.

Conclusion

[16] In light of the above, we agreed with the Commission's analysis that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market or to raise any public interest issues.

[17] Accordingly, we approve the proposed transaction unconditionally.

Mazwai

Ms Mondo Mazwai — **10 July 2018**
Date

Mrs Medi Mokuena and Prof Fiona Tregenna

Tribunal Researcher:	J Thomson
For the merging parties	W Rysbergen and D Rudmond of Webber Wentzel
For the Commission:	R Molotsi and T Masithulela