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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM216Nov18

In the matter between:

VKB Landbou (Pty) Ltd

Primary Acquiring Firm

and

Multi Green (Pty) Ltd

Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Andiswa Ndoni (Tribunal Member)
	: Imraan Valodia (Tribunal Member)
Heard on	: 13 March 2019
Last Submission Received on	: 20 March 2019
Order Issued on	: 26 March 2019
Reasons Issued on	: 24 April 2019

Reasons for Decision (Non-Confidential)

Conditional Approval

[1] On 26 March 2019, the Competition Tribunal (“Tribunal”) conditionally approved the proposed transaction between VKB Landbou (Pty) Ltd (“VKB Landbou”) and Multi Green (Pty) Ltd (“Multi Green”).

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

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Parties to proposed transaction and their activities

Primary acquiring firm

- [3] The primary acquiring firm is VKB Landbou, a wholly-owned subsidiary of VKB Beleggings (Pty) Ltd ("VKB Beleggings"), a private company incorporated in accordance with the laws of South Africa.
- [4] VKB Landbou controls several firms including, amongst others, VKB Seed (Pty) Ltd, Wolwas Hydro (Pty) Ltd and NTK Limpopo Agri.
- [5] VKB Beleggings also controls VKB Agri Processors (Pty) Ltd ("VKB Agri"). VKB Beleggings is, itself, not controlled by a single firm and no single shareholder holds more than 5% of the issued shares in VKB Beleggings. VKB Beleggings, VKB Landbou and VKB Agri shall be collectively referred to as the VKB Group.
- [6] Through its subsidiaries, the VKB Group is involved in a variety of agricultural activities in South Africa. The VKB Group's focus is on progressively managing solutions for the changing and various needs of agricultural producers and related stakeholders.¹
- [7] Furthermore, as a former farmer' co-operative, the group focused on economic inputs, mechanisation, handling and marketing of grain, financing and investing. For purposes of the proposed transaction, the VKB Group's financing activities are of particular importance.
- [8] The Commission noted, for purposes of the proposed transaction, that some of the shareholders of the VKB Group are farmers active in the farming of plants such as maize, soya bean, sugar beans, grass and grain.

Primary target firm

- [9] The primary target firm is Multi Green, a private company incorporated in accordance with the laws of South Africa.

¹ Record, page 1.

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- [10] Multi Green is controlled by several shareholders and does not, itself, control any firms.
- [11] Multi Green specialises in precision blending and distribution of granular and liquid fertiliser.² Multi Green's fertilisers are sold to farmers throughout the Free State, Mpumalanga, Gauteng, North West and the Northern Cape. The customers of Multi Green therefore include the farmers who are shareholders of VKB.

Proposed transaction and rationale

- [12] In terms of the Sale of Shares Agreement, VKB Landbou will acquire 53% of the issued share capital in Multi Green and will thus exercise sole control of Multi Green upon the completion of the proposed transaction.
- [13] VKB Landbou submitted that the proposed transaction furthers the VKB Group's strategy to expand into the agricultural supply chain.
- [14] According to Multi Green, the proposed transaction will enable their business to develop and expand as it will afford them access to better management skills and finances.

Impact on competition

Commission's market assessment

- [15] The Commission considered the activities of the merging parties and found that the proposed transaction does not result in a horizontal overlap as the VKB Group is not involved in the blending and distribution of liquid and granular fertiliser.³ The proposed transaction does, however, result in a vertical overlap as Multi Green supplies its granular and liquid fertiliser to some of the shareholders of the VKB Group, the farmers as mentioned above.

² Granular fertilisers are dry fertilisers which are produced by mixing together a number of raw materials and are usually distributed in bags. Liquid fertilisers, on the other hand, are produced using both dry and liquid raw materials which are dissolved in water and stored in a tank.

³ Transcript p3 lines 10-20.

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- [16] The Commission assessed the vertical relationship between the activities of the merging parties in the upstream market for the blending and distribution of liquid fertilisers and the upstream market for the blending and distribution of granular fertilisers to farmers. The Commission specifically considered whether the proposed transaction is likely to raise input foreclosure and customer foreclosure concerns.
- [17] The Commission did not conclude on the geographic market but nevertheless assessed the impact of the merger in the Free State.
- [18] In relation to the input foreclosure concerns, the Commission found that with Multi Green's low market share of 15% in both of the above-mentioned markets, the vertical relationship between the parties is unlikely to result in significant input foreclosure concerns.
- [19] In further support of this view, the Commission established that Multi Green competes against numerous competitors in the upstream market, such as Omnia, Sonskyn and VS Agri Standerton (Sonskyn). In this regard, farmers will continue to have access to other fertiliser suppliers in the event that the merging parties engage in an input foreclosure strategy.⁴
- [20] In respect of the customer foreclosure concerns, the Commission found that the VKB farmers purchase approximately 10% of their total products from Multi Green, while the remaining 90% is sourced from other suppliers, such as Omnia, Kynoch, and VS Fertiliser. Additionally, the VKB farmers who currently purchase fertiliser from Multi Green make up a small percentage of the thousands of farmers in South Africa.⁵
- [21] Finally, the merging parties submitted that Multi Green does not have the capacity to supply all of the VKB farmer's fertiliser needs. Multi Green currently supplies approximately [...] tons of fertiliser per year, while the VKB farmers require approximately [...] to [...] tons per year.

⁴ CC Recommendations, page 14.

⁵ CC Recommendations, page 14.

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[22] The Commission therefore concluded that post-merger, the VKB farmers will continue to purchase from other suppliers.

Concerns from industry participants

[23] The Commission received a concern from a competitor of Multi Green, who is also an accredited VKB supplier, in the market for the blending and distribution of granular fertilisers. This concern related to the information that is required by the VKB Group from suppliers to become accredited for VKB financing.⁶

[24] As alluded to above, VKB Landbou offers a credit facility to farmers whereby a farmer who is granted credit is free to purchase their farming needs, including fertilisers, from the supplier of their choice, such supplier being accredited by VKB.⁷ According to the competitor, the information required by VKB Landbou includes, amongst other things, basic FICA information, the suppliers list of products and the supplier's price list.

[25] This concern was summarised as follows:

- i. Post-merger, Multi Green will have access to sensitive competitor information through VKB's approval process with regard to financing; and
- ii. Post-merger, the VKB group will have the ability to steer farmers away from the competing firm and direct them to Multi Green.

[26] In response to these concerns, the merging parties contended that the information submitted by competitors to VKB is available in the public domain. Furthermore, they assert that the VKB credit facility does not have the ability to

⁶ This information includes, *inter alia*, basic FICA information, the supplier list of products and the supplier's price list.

⁷ Transcript p5 lines 1- 10.

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direct farmers where to buy their inputs as VKB simply facilitates the payment after the transaction has been finalised between the farmers and suppliers.⁸

- [27] In support of the merging parties' submissions, the Commission found that the credit approval process is a once-off process. Accordingly, once a farmer has been granted credit, the farmer is free to purchase fertiliser from the supplier (listed on the VKB list) of their choice.⁹
- [28] In light of the above, the Commission recommended the Tribunal approve the proposed transaction without conditions.
- [29] Despite the abovementioned recommendation, the Tribunal was not satisfied that the concerns raised by competitors were adequately addressed, and therefore differed in its view with the Commission regarding the unconditional approval of this transaction.
- [30] The Tribunal rejected the contention that the information submitted to VKB, by Multi Green and its competitors, is available in the public domain.¹⁰ This information, particularly the pricing lists submitted by competitors, constitutes sensitive competitor information in the hands of VKB and would give them an opportunity to observe pricing patterns in a particular region.¹¹
- [31] In addition to the issue of information sharing, the Tribunal considered the possibility of non-pricing behaviour, on the part of VKB Landbou, with the view of shifting customers from a competitor to their own downstream-controlled firm (Multi Green), as a potential theory of harm that may arise as a result of the proposed transaction.
- [32] In consideration of the above, the Tribunal, with the agreement of the merging parties and the Commission, imposed conditions aimed at preventing the dissemination of sensitively competitive information.

⁸ Transcript p4 lines 10 – 21.

⁹ Transcript p5 lines 10-12.

¹⁰ Transcript p15 lines 1 – 7.

¹¹ Transcript p15 lines 3 – 7.

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Public interest

[33] The merging parties submitted that the proposed transaction will have no adverse effect on employment.¹² Specifically, no retrenchments will arise as a result of the proposed transaction.

[34] The Commission received no concerns from the trade unions representing the employees of both the merging parties after having engaged with them.¹³

Conclusion

[35] In light of the above, we approved the proposed transaction subject to a set of conditions relating to information sharing, attached hereto marked as “Annexure A”. In our view these conditions adequately address any information sharing concerns arising from the proposed transaction.



Ms Yasmin Carrim

24 April 2019
DATE

Ms Andiswa Ndoni and Prof. Imraan Valodia concurring

Case Manager: Helena Graham
For the merging parties: Daryl Dingley and Cara Du Plessis
For the Commission: Rethabile Ncheche and Themba Mahlangu

¹² *Inter alia* Commission’s Recommendation page 20.

¹³ The trade unions include, Food and Allied Workers Union; South African Commercial, Catering and Allied Workers Union; Solidariteit South Africa; National Union of Food Beverage Wine Spirits and Allied Workers and National Union of Metalworkers of South Africa.