

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM083Aug20

In the matter between:

Afgri Agri Services (Pty) Ltd

Primary Acquiring Firm

And

Certain Assets and Businesses Owned by
Hinterland Holding (Pty) Ltd and its Subsidiaries

Primary Target Firm

Panel : Mondo Mazwai (Presiding Member)
: Enver Daniels (Tribunal Panel Member)
: Anton Roskam (Tribunal Panel Member)
Heard on : 16 September 2020
Decided on : 17 September 2020

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
Ms Mondo Mazwai

17 September 2020

Date

Concurring: Mr Enver Daniels and Mr Anton Roskam

Case No.: LM083Aug20

In the matter between:

AFGRI AGRI Services Proprietary Limited /
Senwes Limited

Primary Acquiring Firm

And

Certain assets and businesses owned by Hinterland
Holdings Proprietary Limited and its Subsidiaries

Primary Target Firm

CONDITIONS

1. **DEFINITIONS**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings: –

- 1.1 **"Acquiring Firms"** means AFGRI Agri Services Proprietary Limited and Senwes Limited;
- 1.2 **"AFGRI"** means AFGRI Agri Services Proprietary Limited;
- 1.3 **"Approval Date"** means the date referred to in the Competition Tribunal's merger clearance certificate (Form CT10);
- 1.4 **"Bargaining Council"** means the Bargaining Council for the Grain Industry;
- 1.5 **"Business Day"** means any calendar day which is not a Saturday, Sunday or public holiday in South Africa;
- 1.6 **"CC5(1)"** means the Notice of Intention to Participate filed in this Merger by NUFBWSAW;
- 1.7 **"Commission"** means the Competition Commission of South Africa;
- 1.8 **"Competition Act"** means the Competition Act, No. 89 of 1998, (as amended);

- 1.9 **"Conditions"** mean these conditions;
- 1.10 **"Employees"** means employees of Hinterland to be transferred to AFGRI with the Target firm in terms of section 197 of the LRA and the employees of Hinterland as at the Approval Date of the proposed transaction;
- 1.11 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.12 **"Hinterland"** means Hinterland Holdings Proprietary Limited, the erstwhile joint venture between AFGRI and Senwes;
- 1.13 **"LRA"** means the Labour Relations Act, No. 66 of 1995, (as amended);
- 1.14 **"Merger"** means the acquisition of the Target Firms by the Acquiring Firms;
- 1.15 **"Merging Parties"** means the Acquiring Firms and the Target Firm;
- 1.16 **"Minister"** means the Minister for the Department of Trade, Industry and Competition;
- 1.17 **"Moratorium"** means a period of 2 years from the Approval Date;
- 1.18 **"NUFBWSAW"** means the National Union of Food Beverages Wines and Spirits Allied Workers;
- 1.19 **"Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission and the Rules for the Conduct of Proceedings in the Competition Tribunal;
- 1.20 **"Target Firm"** in respect of AFGRI means, all the agricultural requisites retail stores and the retail fuel outlets that AFGRI had initially contributed to Hinterland and is re-acquiring from Hinterland pursuant to the Merger. In respect of Senwes, the target firm is AFGRI's 50% shareholding in Hinterland;
- 1.21 **"Tribunal"** means the Competition Tribunal of South Africa.

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1 The Merging Parties shall not retrench any Employees for the period of the Moratorium.

2.2 For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) retrenchments as a result of unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

3.1 The Merging Parties shall circulate a copy of the Conditions to all their employees within 5 (five) Business Days of the Approval Date.

3.2 As proof of compliance with 3.1 above, a director of each Merging Party shall within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees in that regard.

3.3 The Acquiring Firms shall inform the Commission in writing of the Implementation Date within 5 (five) Business Days of its occurrence.

3.4 The Acquiring Firms shall, on each anniversary of the Implementation Date, during the period referred to in 2.1 above submit an affidavit confirming compliance with the condition 2.1 above for the duration of the Moratorium.

3.5 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, the breach shall be dealt with in terms of Rule 39 of the Rules read together with Rule 37 of the Competition Tribunal Rules.

4. VARIATION

- 4.1 The Commission or the Merging Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

5. GENERAL

- 5.1 All correspondence in relation these conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.