



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM186Oct18

In the matter between:

ETG Inputs Holdco Ltd

Primary Acquiring Firm

and

Sidi Parani (Pty) Ltd

Primary Target Firm

Panel	: Enver Daniels (Presiding Member)
	: Mondo Mazwai (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 26 February 2019
Order Issued on	: 26 February 2019
Reasons Issued on	: 22 March 2019

Reasons for Decision

Approval

[1] On 26 February 2019, the Competition Tribunal ("Tribunal") approved the proposed transaction between ETG Inputs Holdco Ltd ("ETG Inputs") and Sidi Parani (Pty) Ltd ("Sidi Parani").

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

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firm is ETG Inputs, a public company incorporated in accordance with the laws of the United Arab Emirates, which forms part of the ETC Group. The ETC Group is ultimately controlled by Export Marketing BVI Limited, a company incorporated in Mauritius.
- [4] ETG Inputs operates through a number of entities and is involved in agricultural trading and processing. However, relevant for the assessment of the proposed transaction is its subsidiary, Kynoch's activities as an importer, manufacturer, blender and distributor of fertiliser in South Africa and in other South African Development Community (SADC) territories.
- [5] Kynoch manufactures liquid NPK blended fertilisers and it blends and bags dry granular NPK blended fertiliser products, which it sells in the northern regions of South Africa including Gauteng, Mpumalanga, Limpopo, North West, Free State and KwaZulu Natal.
- [6] Kynoch's granular NPK blended fertiliser operations are in Durban, Richards Bay, Springs and Viljoenskroon. It's liquid NPK blended fertiliser operations are in Endicotte.

Primary target firm

- [7] The primary target firm is Sidi Parani, a company incorporated in accordance with the laws of South Africa. Sidi Parani is jointly controlled by Curions (Pty) Ltd ("Curions") as to 51% and ETG Inputs as to 49%. Curions is controlled by Griekwaland Wes Korporatief ("GWK"), a corporative incorporated in South Africa. Sidi Parani controls Vaal Wes Landboudienste (Pty) Ltd.
- [8] Sidi Parani supplies an extended range of plant nutrition products in South Africa, and has operations in the Northern Cape, North West and Namibia. The products supplied by Sidi Parani include liquid fertiliser, dry fertiliser and micro element nutrients.

Proposed transaction and rationale

- [9] As noted above, Curions and ETG Inputs jointly control the business of Sidi Parani.¹ The proposed transaction entails a change from joint to sole control in that Curions will sell its 51% share of Sidi Parani to ETG Inputs. Following this, ETG Inputs will own 100% of the entire issued share capital of Sidi Parani.
- [10] In terms of the rationale, the acquisition of the Target Firm will allow the ETC Group to sustain and ensure its continuous presence in the northern irrigation regions of South Africa and allow the ETC Group to achieve economies of scale at its granular and liquid NPK fertiliser plants in South Africa.
- [11] According to the Target Firm, GWK, as the controller of Curions, wishes to exit the business of producing liquid and granular fertiliser.

Relevant markets and impact on competition

- [12] The Commission found that the proposed transaction results in both horizontal and vertical overlaps in the activities of the merging parties. The Commission identified a horizontal overlap with respect to liquid and granular NPK blended fertilisers (at the blending level of the fertiliser chain) and a vertical overlap in that Kynoch supplies fertiliser straights, such as Urea, to Sidi Parani on an *ad hoc* basis (in the upstream market for the supply of fertiliser straights).
- [13] The Commission therefore assessed the unilateral and coordinated effects of the proposed transaction, as well as input and customer foreclosure. The Commission assessed the aforementioned theories of harm within the following markets:
- the national downstream market for the supply of granular NPK blended fertilizer;
 - the provincial downstream market for the supply of liquid NPK blended fertilizer:

¹ ETG Input's joint control over Sidi Parani was approved by this Tribunal in March 2016, see (LM181Nov15).

- the market for liquid blended fertilizer in the Northern Cape;
- the market for liquid blended fertilizer in the Free State;
- the market for liquid blended fertilizer in the North West; and
- the national upstream market for the supply of fertiliser straights.

Unilateral effects

- [14] The Commission, in its unilateral effects assessment found that the merged entity will have low market shares in all the aforementioned downstream fertiliser markets, except for the Northern Cape where the merged entity's post-merger market shares are high at approximately 72.2% in relation to liquid blended fertiliser.
- [15] The Commission concluded that this was not a concern as ETG Inputs had already exercised joint control over Sidi Parani. Accordingly, the proposed transaction is merely an increase in shareholding, resulting in no change to the market structure.
- [16] Furthermore, the Commission found that, while there are barriers to entry in the market, these are surmountable.² Anticompetitive conduct on the part of the merged entity would therefore be unsustainable as it may be defeated by entry into the market, sales from other provinces into the Northern Cape or by the other existing smaller players in the market.³
- [17] Additionally, the Commission found that customers in the Northern Cape appear to have a certain degree of countervailing power due to the absence of supply contracts in the market and their ability to purchase fertiliser from outside their province.⁴
- [18] In light of the above, the Commission concluded that the proposed transaction does not alter the structure of the market significantly. Furthermore, the merged

² It appears that capital outlay differs depending on the scale of the entry suggesting that a small firm can enter and grow in the market.

³ The Commission found that competitors of the merging parties, namely Ekor and Gavilon, sell fertiliser into the Northern Cape from Durban.

⁴ CC Recommendations page 27.

entity will continue to face competition post-merger from its rivals as well as its customers. The proposed transaction is therefore unlikely to result in a substantial prevention or lessening of Competition in any of the aforementioned markets.

Vertical assessment

- [19] With respect to the vertical overlap, the Commission conducted a detailed assessment of the size of the ETC Group in the upstream market for the supply of fertiliser straights.⁵
- [20] The Commission based its findings on an assessment conducted during its investigation of another proposed merger (the “Profert transaction”),⁶ which is separate but related to the current proposed transaction.
- [21] The Commission found that the ETC Group holds approximately 1% of the market share in the aforesaid upstream market.⁷ Post the Profert merger, the ETC Group will have a combined market share not exceeding 3.6% in this market. The merger between ETG Inputs and Sidi Parani will not increase the estimated market shares as Sidi Parani does not supply fertiliser straights.
- [22] In light of the low market shares, the Commission concluded that the proposed transaction is unlikely to result in any significant foreclosure concerns as they face competition from multiple players in this market. Furthermore, there are a number of downstream customers who are accessible to upstream competitors.

Third party concerns

- [23] During its investigation, the Commission received concerns from a third party, a competitor of the merging parties. According to this third party, GWK provides

⁵ These fertiliser straights include the upstream market for the supply of Urea, CAN, MAP and KCL/MOP.

⁶ *Farmisco (Pty) Ltd T/A Kynoch Fertilisers and The Profert Cluster* (LM176Sep18). In terms of the Profert transaction, ETG Inputs will be acquiring control of the business of Profert.

⁷ Note that these market shares, according to the merging parties are overstated, a fact that was acknowledged by the Commission.

finance to farmers who purchase fertilisers and may use its position to incentivize the farmers to only purchase fertilisers from Sidi Parani.

- [24] The Commission considered the concern as unwarranted in relation to the proposed transaction because Sidi Parani is currently indirectly controlled by GWK through Curions. Post-merger, Curions will have divested of its 51% shareholding in Sidi Parani and GWK will no longer have an interest in Sidi Parani and nothing to gain by engaging in such conduct.

Public interest analysis

- [25] The merging parties submit that the proposed transaction will have no adverse effect on employment as no retrenchments are envisaged.
- [26] They further submitted that while they intend on consolidating Sidi Parani's head office in Douglas with that of the ETC Group's head office in Sandton,⁸ the consolidation will only take place after a period of 24 (twenty-four) months after the implementation of the proposed transaction and that no job losses will arise for a period of 24 (twenty-four) months after the implementation of the proposed transaction.

Conclusion

- [27] 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 other public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.



Mr Enver Daniels

22 March 2019

DATE

Ms Mondo Mazwai and Prof Fiona Tregenna concurring

⁸ The merging parties submit that certain financial and administrative operations of Sidi Parani will be moved from its head office in Douglas to the ETG Groups head office in Sandton.

Case Manager: Helena Graham
For the merging parties: Ahmore Burger-Smidt and Alain van der Westhuizen
For the Commission: Busisiwe Ntshingila and Thabelo Masithulela