



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM298Mar18

In the matter between

Zaad Holdings Limited

Primary Acquiring Firm

And

Hygrotech Properties (Pty) Ltd

Primary Target Firm

Panel	: Mr Norman Manoim (Presiding Member)
	: Ms Andiswa Ndoni (Tribunal Member)
	: Ms Fiona Tregenna (Tribunal Member)
Heard on	: 25 July 2018
Order Issued on	: 26 July 2018
Reasons Issued on	: 8 August 2018

REASONS FOR DECISION

Approval

- [1] On 25 July 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Zaad Holdings Limited ("Zaad") and Hygrotech Properties (Pty) Ltd ("Hygrotech"), hereinafter collectively referred to as the merging parties.
- [2] The reasons for approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Zaad is controlled by Zeder Investments Limited ("Zeder"), a public entity listed on the Johannesburg Stock Exchange. The shares in Zeder are widely dispersed and as such no single shareholder controls Zeder. Zaad controls nine firms in South Africa including Agricol (Pty) Ltd ("Agricol") and Klein Karoo Saad Bemarking (Pty) Ltd ("KKSB").
- [4] Zaad is a holding company and is therefore not active in any market. Through its subsidiaries, Zaad operates in the specialised agri-inputs industry by breeding, producing, processing and distributing a broad range of agricultural seeds. Zaad is also active in the development and distribution of hard agro-chemicals.¹

Primary Target Firm

- [5] Roodesen Beleggings (Pty) Ltd ("Roodesen") and Agri-Vie both exercise negative control over Hygrotech. Roodesen is wholly owned by the Habe Roode Family Trust. Agri-Vie is ultimately controlled by the SPFM Shareholders Trust. Hygrotech controls seven firms and two of those firms are situated outside of South Africa. Hygrotech and its subsidiaries are hereinafter collectively referred to as the 'Target Group'.
- [6] The Target Group is active in the breeding, production, processing and distribution of agricultural seeds. It is also involved in the production and distribution of soft agro-chemicals and fertilisers.²

Proposed transaction

- [7] In terms of the *Sale of Shares Agreement*, Zaad will acquire 100% of the issued share capital in Hygrotech from its shareholders. Zaad will therefore exercise sole control over Hygrotech post-merger.

¹ An agro-chemical (also known as a crop protection product), is used for the application in agricultural production in order to protect a seed or plant crop from biological organisms that can negatively affect the crop development. There are hard agro-chemicals such as pesticides and soft agro-chemicals.

² Soft agro-chemicals refer to plant manipulates such as foliar nutrition, adjuvants and chemical growth agents.

Relevant market and impact on competition

- [8] The proposed transaction gave rise to potential overlaps in three markets namely (i) the seed breeding market, (ii) the agro-chemical market, and (iii) the fertiliser market.
- [9] In terms of the seed breeding market, the Competition Commission ("Commission") found that the merging parties breed different seeds. In the agro-chemical market, the merging parties do not produce substitutable products. Zaad is focused on hard chemicals whereas the Target Group specialises in soft chemicals. In terms of the fertiliser market, the Commission found that the Target Group's fertiliser products are plant nutrient/growth stimulant type products used for vegetables. Zaad on the other hand offers commodity type fertilisers (for example, the type of fertiliser that goes on grass).
- [10] The Commission concluded that no horizontal overlap exist between the activities of the merging parties in the aforementioned markets, as the products offered are sufficiently differentiated from one another.
- [11] Notwithstanding the above, the Commission found a horizontal overlap in the distribution of 53 types of agricultural crop seeds, which are categorised either as vegetable crop seeds or pasture/forage crop seeds.
- [12] The Commission assessed the broader markets for the distribution of vegetable crop seeds and pasture/forage crop seeds.
- [13] The Commission found that in the market for the distribution of vegetable crop seeds the merged entity will have post-merger market share of 13.3% with an accretion of 8%. For the pasture/forage crop seed market, the Commission found the merged entity will have a combined post-merger market share of 46% with an accretion of 4.6%.
- [14] In terms of the sub-markets within the vegetable crop seeds market, the Commission found that a majority of the post-merger market shares in those markets were less than 25%, with low market share accretions.

- [15] There were two markets, the markets for leek and squash, which had post-merger market shares of 62.85 and 32.58% respectively. Albeit those market shares are significantly high, the Commission was of the view that they are unlikely to raise competition concerns, as the market share accretions are less than 3%.
- [16] There were certain markets for vegetable crop seeds which required further analysis. The Commission was particularly concerned about the broad bean market where the post-merger market share would amount to 95%. However, during the investigation, the Commission found that it was a small market and as consumers were substituting other protein sources for broad beans.³ At the hearing the merging parties confirmed this. They indicated that there was no longer much demand for this product and that sales of the product were low, and went to only one customer. This explains why no other firms supply this product into the market.⁴
- [17] In terms of the sub-markets within the pasture/forage crop seeds market, the Commission found that post-merger market shares ranged from 30%-65%. Although these post-merger market shares are high, the market share accretions are less than 4%. Only in a few markets did the accretion exceed 10%, but here the total market shares were low and did not exceed 25%.
- [18] Similarly to the vegetable crop seeds markets, there were only a few markets for pasture/forage crop seeds which required further analysis. One of those markets which did, was the lucerne market, where the merged entity would have a combined post-merger market share of 72.2%, with an accretion of 5.2%. At the hearing the Tribunal queried the disparity in the merging parties' market shares for this specific market over the last three years; Zaad has increased its market share from 55.2% in 2014 to 66% in 2017, whereas Hygrotech has not increased its market share beyond 5.2%.⁵
- [19] Mr Roselt (the director of Agricol Zaad subsidiary), explained that lucerne is one of Zaad's focus products, whereas it is not for the target firm. Zaad has acquired its

³ Transcript, page 10.

⁴ Transcript, pages 13 and 14.

⁵ Transcript, pages 15 and 16.

position through promoting a variety of different lucerne products and its superior distribution network.⁶

[20] The Commission found that entry barriers in these markets are not insurmountable. The Commission therefore concluded that the proposed transaction will not substantially prevent or lessen competition in any relevant market. We concur with the Commission's conclusion.

Public interest

[21] The merging parties submitted that the proposed transaction will not result in any job losses. However, Hygrotech had dismissed approximately five employees at its Stellenbosch plant during 2017. After investigating the matter, the Commission found that the retrenchments were not merger specific, as the job losses were the result of financial difficulties faced by that plant. Further, the Commission was of the view that the negative effects on employment flowing from the retrenchments are insubstantial as the retrenched employees account for less than 1% of the merged entity's workforce.

[22] The Commission therefore concluded that the proposed transaction is unlikely to raise any other employment concerns or other public interest concerns.

Conclusion

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



Mr Norman Manoim

Ms Andiswa Ndoni and Prof Fiona Tregenna concurring.

8 August 2018

Date

⁶ Transcript, page 19.

Tribunal Researcher: Hlumelo Vazi

For the merging parties: S Meyer of Cliffe Dekker Hofmeyr

For the Commission R Mokolo and R Maphwanya