



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM251Feb19

In the matter between:

2667980 ONTARIO INC

Primary Acquiring Firm

and

AGT FOOD AND INGREDIENTS INC

Primary Target Firm

Panel	:	AW Wessels (Presiding Member)
	:	Andiswa Ndoni (Tribunal Member)
	:	Medi Mokuena (Tribunal Member)
Heard on	:	03 April 2019
Last submission received on:	:	04 April 2019
Order Issued on	:	08 April 2019
Reasons Issued on	:	27 May 2019

Reasons for Decision

Approval

- [1] On 08 April 2019, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving 2667980 Ontario Inc ("Ontario") and AGT Food and Ingredients Inc ("AGT").
- [2] The reasons for approving the proposed transaction follow.

Parties to the proposed transaction

Primary acquiring firms

- [3] The primary acquiring firm is Ontario, a special purpose vehicle incorporated for the purposes of the proposed transaction.
- [4] Prior to Ontario acquiring all of the issued and outstanding common shares in AGT not already held by Fairfax Financial Holdings Limited (“FFH”), certain affiliates of PointNorth Capital Inc (“PointNorth”) and various Management Participants (“the Management Participants”), Ontario will be controlled by FFH. FFH is a public company listed on the Toronto Stock Exchange and is not controlled by any single firm.
- [5] FFH controls Bryte Insurance Company Limited and Fairfax Africa Holdings Corporation (“FAH”). FAH in turn controls *inter alia* Fairfax Africa Holdings Limited (“FMA”). FMA in turn controls Joseph Investment Holdings Limited (“JIH”). JIH was formed to hold FAH’s 60% interest in AFGRI Holdings (Pty) Ltd (“AHL”). AHL in turn owns 100% of AFGRI Group Holdings Proprietary Limited (“AFGRI”).
- [6] Ontario is a newly incorporated entity that currently has no activities. Ontario and its shareholders are not active in South Africa, other than through interest held by FFH and its controlled entity, FAH.
- [7] FFH is a holding company and FAH is an investment holding company. FAH holds a 43.8% indirect interest in AFGRI, which has activities in South Africa and various African countries. AFGRI provides services across the entire grain production and storage cycle, offering financial support and solutions as well as inputs and high-tech equipment through the John Deere brand.

Primary target firm

- [8] The primary target firm is AGT, a public company listed on the Toronto Stock Exchange. AGT is not controlled by any single firm. AGT controls the following firms in South Africa: AGT Foods Africa (Pty) Ltd; and AGT Foods (Pty) Ltd.

- [9] AGT is a supplier of value-added pulses, staple foods and food ingredients. AGT *inter alia* buys lentils, peas and chickpeas from farmers situated in Canada, the United States, Turkey, Australia, China and South Africa and ships its products to over 120 countries around the globe. Globally AGT operates within three segments: (i) pulse and grain processing; (ii) bulk handling and distribution; and (iii) food and ingredients and packaged foods.
- [10] In South Africa, the AGT group supplies seed for planting, as well as produces a number of crops for both planting and consumption purposes. It also supplies a range of seed for human consumption into the health food as well as bakery sectors. It is also a wholesaler and miller of spices, as well as flours for the health food sector. It also supplies pre-packaged grains and pulses as well as microwave popcorn to chain stores.

Proposed transaction and rationale

- [11] In terms of the proposed transaction FFH intends to acquire control of Ontario; and Ontario intends to acquire all of the issued and outstanding common shares in AGT not already held by FFH, PointNorth and the Management Participants. Pursuant to the implementation of the proposed transaction Ontario will control AGT.
- [12] The acquiring firm submitted that the proposed transaction will *inter alia* leverage the best of FFH's broader capabilities and expertise in strategic management in the pursuance of mutually beneficial opportunities for FFH and AGT globally.
- [13] AGT submitted that the transaction will provide an ideal partner given FFH's track record in global emerging markets.

Impact on competition

- [14] The Competition Commission ("Commission") considered the activities of the merging parties and found that both AFGRI and AGT are involved in the supply of grain commodities in South Africa.

- [15] The Commission however concluded that although the merging parties both are active in the supply of certain grain commodities, their products are distinguishable in that they are sold to different customers for different uses. The Commission said that AFGRI is mainly involved in the supply of raw materials to millers and traders for purposes of on-selling while AGT supplies processed grain / seeds for human consumption as well as for planting purposes. It further submitted that the merging parties' activities relating to raw and processed grain / seeds are distinguishable since they are intended for different customers and uses, and that switching between the two is unlikely. The Commission therefore concluded that the proposed transaction does not result in any horizontal overlaps.
- [16] The Tribunal questioned the Commission and the merging parties regarding potential overlaps in their various grain related activities and requested further written submissions from both parties to further motivate why there is no horizontal overlap between their activities.
- [17] The Commission consequently submitted a document highlighting the different processes / stages that each of the merging parties' relevant products undergo to get to the end-product stage. The Commission submitted the following details of its findings on an individual product basis:

Barley

- [18] In relation to barley, the Commission found that AGT provides pearl barley to food manufactures for use in soup mixes whilst AFGRI sells malted barley to brewers.
- [19] The Commission explained that pearl barley is processed barley that has been put through a process to remove its fibrous outer hull and polished to remove some or all of the bran layer. It is the most common form of barley for human consumption because it cooks faster and is less chewy than other less-processed forms of the grain such as hulled barley or malted barley.

[20] The Commission submitted that malted barley undergoes a process known as “malting” which entails a conversion of a grain into malt by soaking it in water and allowing it to germinate. The grains germinate by soaking them in water and are then halted from germinating further by drying with hot air.

Beans

[21] In relation to beans, the Commission found that AGT supplies dry beans for packaging and canning - in essence raw beans which have not undergone any processes such as heating or chemical injections. The dry beans supplied by AGT are used for human consumption and are a vital source of protein and a staple food of many households. AFGRI, on the other hand, supplies only soybeans as an oil seed.

[22] The Commission submitted that in order to reach the oil seed stage, the soybean would need to be cracked, adjusted for moisture content, heated, rolled into flakes and solvent-extracted with a chemical called hexanes. The oil is then refined and blended for different applications. Soybean oils are sold as “vegetable” oil or ingredients in a variety of processed foods; dry beans are not subjected to any of these processes.

[23] Furthermore the Commission, from a supply-side perspective, submitted that switching between the supply of raw materials and processed products would be costly and would require the setting up of a processing plant.

Corn

[24] In relation to corn, the Commission found that AGT sells corn for planting and popcorn, whilst AFGRI sells the raw material to millers for milling and traders for on-selling.

[25] The Commission further found that the production of popcorn differs significantly from normal maize production. The Commission submitted that the corn which is intended for popcorn production is subjected to a number of preparation stages that normal corn is not subjected to. The Commission

therefore submitted that popcorn production is specialised and requires deep watering techniques which are not necessary for normal maize production.

Sorghum

- [26] In relation to Sorghum, the Commission found that AGT sells sorghum seeds for planting purposes whilst AFGRI sells the raw material to brewers for use in production and to traders for on-selling.
- [27] The Commission submitted that sorghum seeds are already in a processed form and can be planted or cooked as a grain. Sorghum seeds can also be popped like popcorn. This the Commission said is different from sorghum intended for brewing in that the sorghum intended for brewing, in its raw form, undergoes a unique process of malting. The malting process converts raw grain into malt which qualifies the sorghum for brewing. The malted sorghum is then used in the production of sorghum beer.

Wheat

- [28] In relation to wheat, the Commission found that AGT sells crushed wheat which is utilised to pack non-GI seed blends for bakeries. AFGRI, on the other hand, only sells raw material to millers for bread / cake milling and to traders for on-selling.
- [29] The Commission submitted that crushed wheat undergoes a processing / crushing process where the whole wheat grains are grounded, crushed or cut into smaller pieces. Following this process, the wheat is regarded as suitable for human consumption. Wheat intended for milling is in its raw form referred to as "hard wheat". During the milling stage the wheat undergoes a number of cleaning processes. At each step of purification the wheat is inspected and purified again if necessary.
- [30] The Commission ultimately submitted that it verified the merging parties' submissions that the grain products supplied by AGT and AFGRI are distinguishable. The Commission further indicated that it consulted both

competitors and customers of the merging parties including parties such as Cargill, Unigrain, Rand Agri, Tiger Brands, Pioneer Foods, Simply Garlic and Zinandi Trading and that none of these parties raised any concerns regarding the proposed transaction.

[31] Given the above submissions, we have no reason to doubt the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

[32] The merging parties confirmed that the proposed transaction will not give rise to any adverse effect on employment.¹

[33] Furthermore, the proposed transaction raises no other public interest concerns.

Conclusion

[34] 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 AW Wessels

27 May 2019
DATE

Ms Andiswa Ndoni and Mrs Medi Mokuena concurring

Tribunal Case Manager: Busisiwe Masina

For the merging parties: Mr Wade Graaff of ENSAfrica Inc

For the Commission: Ms Busisiwe Ntshingila

¹ Merger Record, pages 16 and 75.