

SOUTH AFRICA / JUDGMENT

Griekwaland-Wes Korporatief Ltd v Trio Trade Gauteng (Pty) Ltd (019141) [2014] ZACT 67 (4 November 2014) [2014] ZACT 67

COURT
Competition Tribunal

BEFORE
Norman Manoim, Medi Mokuena, Andiswa Ndoni

CASE / FILE NUMBER
019141

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019141

In the matter between:

Griekwaland-Wes Korporatief Ltd.....Acquiring
Firm

And

Trio Trade Gauteng (Pty) Ltd.....Target Firm

Panel: Norman Manoim (Presiding Member)

Medi Mokuena (Tribunal Member)

Andiswa Ndoni (Tribunal Member)

Heard on: 08 October 2014

Order issued on: 08 October 2014

Reasons issued on : 04 November 2014

Reasons for Decision

Approval

1. On 08 October 2014 the Competition Tribunal (the “Tribunal”) unconditionally approved an acquisition by Griekwaiand-Wes

Korporatief Ltd (“GWK”) of Trio Trade Gauteng (Pty) Ltd (“Trio Trade”).

2. The reasons for the approval of the proposed transaction follow.

The Parties and their activities

3. The primary acquiring firm is GWK, a firm incorporated in accordance with the laws of the Republic of South Africa. GWK is not controlled by any single shareholder. It controls firms in excess of 10.1
4. GWK's main business is the storage, marketing and processing of agricultural and related products, the provision of financial

services within the agricultural sector as well as the retail sale of various products, including inter alia clothing, animal feed, tools and farming equipment. GWK also owns a raw groundnuts processing plant in Douglas, Northern Cape Province.

5. The primary target firm is Trio Trade, a firm incorporated in accordance with the laws of the Republic of South Africa. It controls Country Nuts (Pty) Ltd, HKFT Properties (Pty) Ltd, Kaya Grain (Pty) Ltd and Zodar Properties 12 (Pty) Ltd.
6. Trio Trade is active in the processing and marketing of groundnuts through its two subsidiaries, namely Country Nuts and Kaya Grain. Country Nuts and Kaya Grain have processing factories in Schweizer-Reneke, North West Province and Bela-Bela, Limpopo Province respectively. Trio Trade also processes and markets popcorn, raisins, rice, bird food maize brown lentils, samp, beans and peas.

Proposed transaction and rationale

7. In this proposed transaction GWK intends to acquire 51% of the issued share capital of Trio Trade. The remaining 49% shares will be held by the existing shareholders of GWK. Post-merger, GWK will have sole control over the business of Trio Trade.
8. GWK submitted that it is an established agricultural business in South Africa and has the capital to develop and reposition the Trio Trade business, so as to allow it to become an effective competitor, specifically in the peanut processing market and subsequent markets for the marketing of peanut and dry beans products.
9. Trio Trade submitted that this transaction will enable it to properly compete with other firms involved in the peanut processing market.

Competition

Analysis

10. The Commission identified horizontal overlaps between the activities of the merging parties in respect of the following four markets: (i) the procurement and processing of raw groundnuts (ii) the marketing of processed groundnuts, (iii) the marketing of dry beans and (iv) the marketing of popcorn.

Procurement and processing of raw groundnuts

11. In this market raw groundnuts are procured from farmers who, as customers, enter into pre-season planting contracts based on the agreed guaranteed minimum prices they are promised by processors after harvest. In relation to the geographic market the Commission found that the merging parties procure raw groundnuts from farmers located in Northern Cape, North West and the Free State Provinces. The distance between these farmers and the merging parties' respective processing factories range from between 20 km - 450 kms.

12. The Commission however found that groundnuts processors have a historical practice of entering into memorandum of understanding ("MOU") agreements involving toll processing with each other and that this has the effects of broadening the geographic market. For instance GWK may enter into a MOU with a processor based in Mokopane which is next to Bela Bela in Limpopo Province.² In this instance GWK would be procuring groundnuts from farmers around Bela Bela and in turn these farmers would be delivering the groundnuts to the processor who would then toll process on behalf of GWK. In this way GWK will be competing with Trio Trade for the procurement of raw groundnuts from farmers in the Bela Bela area. The Commission did not however find it necessary to conclude on the relevant geographic market and assessed the effects of this transaction on a national level and regional level i.e. North West, Northern Cape and the Free State Provinces. The post-merger market shares of the merging parties are approximately 11.6% nationally and approximately 15.42% in the three relevant provinces.

Marketing of processed groundnuts

13. This market entails establishing relationships with local and overseas-based customers, monitoring local and global trends, harvest volumes as well as the quality of groundnuts. In relation to the geographic market, the Commission was informed by bulk customers of the merging parties that they source groundnuts from anywhere in South Africa. Groundnuts are also imported into the country, although some customers informed the Commission that that this is not a norm and it's only done during seasons where defective groundnuts are experienced or when there is a shortfall in the local market.

14. In order to determine the relevant geographic market, the Commission considered whether imported groundnuts constrain the South African processors of groundnuts. The Commission found that imports place a limited constraint on domestically produced groundnuts because import are typically only resorted to when there is a shortfall in local production. The Commission therefore concluded that the relevant geographic market is national. In this market the post-merger market share of the merging parties is approximately 24%.

Marketing of dry beans

15. The Commission found that this market operates the same way as that of groundnuts with the only difference being that the merging parties do not process them further as is the case with groundnuts. In relation to the geographic market the Commission found that dry beans are

produced mostly in Mpumalanga, the Free State and Limpopo Provinces. The Commission further found that for the past three years South Africa registered an average production of 55 000 tons of dry beans and that consumption of the beans has been in excess of local production with most of the shortfall being met by imports (currently imports account for approximately 129 000).

16. The Commission did not conclude on the geographic market but analysed the effect of the proposed transaction on a national level, with imports included (due to the role they play in the local market). The merging parties' market share in this market is approximately 6.19 %.

Marketing of popcorn

17. The Commission found that this market is small because farmers are not keen to plant popcorn anymore as there is insufficient demand in South Africa and the export market is not profitable, due to competition by farmers in other regions such as the United States. In this market the Commission also decided to leave the geographic market open because the merging parties will remain small players with a share of approximately 1.78% post-merger.

Conclusion on the relevant markets

18. In all the above markets the Commission found that the merging parties would still be constrained by other players such as Safrinut, Golden Peanut, Rhys Evans, Roba Nuts, VGM, Olam, Lemacor, Advanced Seed and many others.

19. The Commission therefore concluded that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in all four relevant markets.

History of collusion

20. An investigation against several local raw groundnuts processors, including the merging parties, was initiated by the Commission in 2009. It was alleged that the respondents had colluded in relation to the purchase price of groundnuts in contravention of section 4(i)(b)(i) of the Act. According to the Commission, the primary acquiring firm in this transaction, i.e. GWK, was the corporate leniency policy applicant in the 2009 investigation. The Commission however decided not to refer the case to the Tribunal for determination due to lack of evidence.

21. In view of this history of collusion, the Commission assessed whether the proposed transaction will strengthen or facilitate collusion, specifically in the market for the procurement and processing of groundnuts. This assessment included inter alia, the evaluation of pre-season planting agreements (from four different processors) entered into between the processors and farmers.

According to the Commission, the guaranteed minimum prices of the evaluated agreements showed a substantial price differential between the processors.

22. The Commission also found that compared to the 2009 agreements, the current agreements were significantly different which suggests that continued collusion is unlikely. Further, the Commission found that the enforcement and/or punishment of collusion will not be easy as there

are many small and medium sized competitors who collectively account for more than two-thirds of the market. In addition, since the collusion allegations, a large company based in the United States has entered the South African groundnuts market by acquiring one of the local firms. The Commission has established that this entry has been a big game changer in the industry and that competition between the firms has been fierce. The Commission concluded that although the existence of coordination in the market cannot be completely ruled out, the proposed transaction seems unlikely to strengthen such conduct, if it does exist.

23. The Commission therefore concluded that the proposed transaction is unlikely to lead to a substantial lessening or prevention of competition in the market for the procurement and processing of groundnuts.

Public interest

24. The merging parties confirmed that the proposed transaction will have no adverse effect on employment and will not result in any retrenchments in South Africa.³ The proposed transaction raises no other public interest concerns.

Conclusion

25. We agree with the conclusions that the Commission has come to on both the competition and public interest issues. We accordingly approved the proposed transaction unconditionally.

04 November 2014

Date

Mr. Norman Manoim

Ms. Andiswa Ndoni and Mrs Medi Mokuena concurring

Tribunal Researcher : Ipeleng Selaledi

For the Merging Parties : Malcolm Ratz of Roestoff & Krause Attorneys

For the Commission : Rakgole Mokolo

¹See page 347 of the record for a complete list of these firms.

²The merging parties have confirmed that they currently do not have such MOU.

³See merger record, pages 333. Also see paragraph 12.1 of the Commission's merger report.

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