

SOUTH AFRICA / JUDGMENT

KLK Landbou Limited v Carpe Diem Raisins (Pty) Ltd (LM059Jul20) [2020] ZACT 27; [2020] 2 CPLR 775 (CT) (24 August 2020)

[2020] ZACT 27

COURT
Competition Tribunal

BEFORE
Y Carrim, A Ndoni, F Tregenna

CASE / FILE NUMBER
LM059Jul20

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COMPETITION TRIBUNAL OF SOUTH AFRICA Case No: LM059Jul20 In the matter between KLK Landbou Limited Primary Acquiring Firm And Carpe Diem Raisins (Pty) Ltd Primary Target Firm Panel : Ms Y Carrim (Presiding Member) : Ms A Ndoni (Tribunal Member) : Prof. F Tregenna (Tribunal Member) Heard on : 28 July 2020 Order Issued on : 28 July 2020

Reasons

Issued on : 24 August 2020

REASONS

FOR DECISION

APPROVAL

- [1] On 28 July 2020, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger between KLK Landbou Limited and Carpe Diem Raisins (Pty) Ltd.
- [2] The reasons for the approval of the proposed transaction follow.

PARTIES TO THE PROPOSED TRANSACTION

Primary acquiring firm

- [3] The primary acquiring firm is KLK Landbou Limited (“KLK”), a public company that controls numerous firms. KLK is controlled by Senwes Limited (“Senwes”). Senwes also controls numerous firms. KLK and Senwes and all the firms they control shall be referred to as the acquiring group.

- [4] The acquiring group is involved in inter alia, the supply of agricultural produce, building supplies, livestock and moveable goods auctions, and the processing and packaging of raisins through the primary target firm, which it jointly controls pre-merger.

Primary target firm

- [5] The primary target firm is Carpe Diem Raisins (Pty) Ltd (“Carpe Diem Raisins”), a private company that controls one firm, its subsidiary Cool Raisins (Pty) Ltd. Carpe Diem Raisins is jointly controlled by KLK (50%) and van der Colff Beleggings (Pty) Ltd (50%) (“van der Colff Beleggings”).
- [6] Carpe Diem Raisins is involved in the procurement, processing, packaging, sale and export of raisins that are mainly produced in the Orange River region.

PROPOSED TRANSACTION AND RATIONALE

- [7] The acquiring group, through KLK, intends to acquire an additional [30%] of Carpe Diem Raisins’ issued share capital. KLK’s shareholding in Carpe Diem Raisins would thus be increased to 80%. Post-merger, KLK will have sole control of Carpe Diem Raisins.

RELEVANT MARKET AND IMPACT ON COMPETITION

- [8] The Competition Commission (“Commission”) assessed the activities of the merging parties and found no horizontal overlaps in their activities, as the acquiring group does not compete with Carpe Diem Raisins in the market for the processing and packaging of raisins in South Africa.
- [9] The Commission found that none of the firms within the acquiring group provide any products or services that could be considered as interchangeable or substitutable with the products or services offered by Carpe Diem Raisins.
- [10] The Commission also found no vertical overlaps between the activities of the merging parties, as none provide a product or service that could be considered as an input in the business activities of another.
- [11] The Commission found that the proposed transaction results in the acquiring group moving from joint to sole control over Carpe Diem Raisins. Hence the structure of the market was unlikely to change as the acquiring group already exercises control and would continue to operate Carpe Diem Raisins as is.
- [12] The Commission noted that Senwes had acquired several firms[1] in the five years prior to this proposed transaction. The Commission found that the proposed transaction was unlikely to raise any creeping merger concerns in this market, as its merger assessment had accounted for these acquisitions in the acquiring group’s activities.[2]
- [13] In light of the above, the Commission concluded that the proposed transaction was unlikely to substantially lessen or prevent

competition in any market in South Africa.

PUBLIC INTEREST

- [14] The merging parties submitted that the proposed transaction would not have a negative effect on employment or any other public interest considerations. The merging parties also stated unequivocally that the proposed transaction would not result in any retrenchments or job losses.
- [15] The Commission engaged Carpe Diem Raisins' employee representative, who confirmed that the employees were notified of the proposed transaction and that no concerns were raised by any employees.[3]
- [16] The Commission also engaged the unions representing the acquiring group's employees, as well as the employee representative for the non-unionised employees. The Commission found that none of these engagements raised any public interest concerns.
- [17] The Commission found that the proposed transaction does not raise any other public interest concerns.

CONCLUSION

- [18] In light of the above, we concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest concerns arise from the proposed transaction.
- [19] Accordingly, we approved the transaction without conditions.

24 August 2020

Date

Ms Y Carrim Ms A Ndoni and Prof. F Tregenna concurring Tribunal Case Manager: P Kumbirai
For the Merging Parties: A Le Grange of Cliffe Dekker Hofmeyr Inc For the Commission: R
Ncheche, R Maphwanya and A Mfuphi

- [1] Senwes acquired KLK, Grainovation (Pty) Ltd, and Suidwes Holdings (Ring Fenced) (Pty) Ltd – which was recently conditionally

approved by the Tribunal.

- [2] As discussed in paragraph four.

- [3] The Commission found that van der Colff Beleggings' only business in South Africa was to hold shares in Carpe Diem Raisins

and a farm, and that it did not qualify as small or medium sized enterprise.

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