

SOUTH AFRICA / JUDGMENT

STANLIB Infrastructure Yield Fund v AFGRI Grain Silo Company (Pty) Ltd (LM160Feb20) [2020] ZACT 21 (30 April 2020) [2020] ZACT 21

COURT

Competition Tribunal

BEFORE

E Daniels, A Wessels, I Valodia

CASE / FILE NUMBER

LM160Feb20

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM160Feb20

In the matter between

STANLIB Infrastructure Yield Fund

represented by its general partner

STANLIB Infrastructure GP 2 (Pty) Ltd Primary Acquiring Firm

And

AFGRI Grain Silo Company (Pty) Ltd Primary Target Firm

Panel: Mr E Daniels (Presiding Member)

: Mr. A Wessels (Tribunal Member)

: Prof. I Valodia (Tribunal Member)

Heard on: 31 March 2020

Order Issued on: 31 March 2020

Reasons

Issued on: 30 April 2020

REASONS

FOR DECISION

APPROVAL

- [1] On 31 March 2020, the Competition Tribunal (“Tribunal”) unconditionally approved a large merger between STANLIB

Infrastructure Yield Fund represented by its general partner STANLIB Infrastructure GP 2 (Pty) Ltd and AFGRI Grain Silo Company (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 STANLIB Infrastructure Yield Fund (“Stanlib IYF”), being represented by its general partner STANLIB Infrastructure GP 2 (Pty) Ltd (“Stanlib GP 2”). Stanlib IYF is ultimately controlled by the Standard Bank Group Ltd (“Standard Bank”) which is listed on the JSE, but is not controlled by any firm.
- [4] Stanlib IYF is a private equity investment fund that acquires infrastructure assets with long-term potential.

Primary target firm

- [5] The primary target firm is AFGRI Grain Silo Company (Pty) Ltd (“AGS”), a private company incorporated in South Africa.

AGS does not control any firms, and is not controlled by any firm.

- [6] AGS is a grain storage business, comprised of 79 grain silo and bunker storage facilities located in six provinces[1] that service

farmers and other customers. These facilities store grains such as maize, wheat, sunflower, soya beans, barley and sorghum.

BACKGROUND

TO THE PROPOSED TRANSACTION

- [7] AFGRI Group Holdings (Pty) Ltd (“AGH”) formerly operated its grain storage business through AFGRI Operations (Pty) Ltd (“AFGRI Operations”), which it controls. AGH then sought to raise capital by selling its grain storage business. In order to effect this sale, AGH transferred its grain storage business from AFGRI Operations to AGS (a special purpose vehicle).[2]

- [8] Various firms subsequently purchased shares in AGS, including Stanlib IYF whose shareholding prior to the proposed transaction was 24.95%. As per the AGS memorandum of incorporation (“MOI”), a firm’s shareholding in AGS is essentially equivalent to the percentage of general voting rights it possesses.
- [9] Of relevance to the proposed transaction is another term in the AGS MOI which states that 75% of the general voting rights are required to pass a reserved matter. Reserved matters include the approval and amendment of AGS’s business plan as well as the appointment of the CEO.
- [10] Therefore, any firm whose shareholding in AGS is 25% or more would possess negative control due to its ability to influence AGS policy by a veto vote on reserved matters.[3]

PROPOSED TRANSACTION AND RATIONALE

- [11] Stanlib IYF (represented by Stanlib GP 2) will acquire an additional 5.05% in AGS from the sellers, AGH and Izitsalo Employee Investments (Pty) Ltd (“Izitsalo”).[4] Post-merger, Stanlib IYF will have negative control over AGS through its 30% shareholding.
- [12] Stanlib IYF submits that AGS aligns with its investment mandate and acquiring negative control over AGS provides Stanlib IYF with governance protection. AGS submits that a potential investor withdrew before the conclusion of a prior transaction. AGH and Izitsalo retained these shares, which were earmarked for future sale by a replacement buyer. Stanlib IYF elected to exercise its pre-emptive right to acquire additional shares in AGS.

RELEVANT MARKET AND IMPACT ON COMPETITION

- [13] The Competition Commission (“Commission”) assessed the activities of the merging parties and found no horizontal overlaps. This is because neither Standard Bank nor any of the firms that it controls are involved in the market for the provision of grain storage.
- [14] The Commission found a pre-existing business relationship between Standard Bank and AGS, with Standard Bank providing financial

services to AGS as a corporate client. The Commission found that this relationship had no bearing on its assessment of the proposed

transaction as the financial services were far removed from Stanlib IYF.

- [15] Due to the above, the Commission concluded that the proposed transaction was unlikely to substantially lessen or prevent competition in any market. We found no reason to disagree.

PUBLIC INTEREST

- [16] The Commission found that negative employment effects were unlikely as the merging parties gave an undertaking that no retrenchments

would occur as a result of the proposed transaction.

[17] The Commission noted Izitsalo's intention to sell a portion of its shares to Stanlib IYF. As a result, the Commission assessed the proposed transaction's effect on promoting a greater spread of ownership by historically disadvantaged persons and workers in firms in the market as per section 12A(3)(e) of the Competition Act.[5]

[18] The Commission found that the shares being sold by both AGH and Izitsalo to Stanlib IYF were, at all relevant times, held temporarily

until a buyer was found. The proposed transaction is in line with that arrangement.

[19] The Commission, therefore, found that the proposed transaction does not result in a substantially negative effect on the promotion of a greater spread of ownership by workers.

[20] The Commission found that the proposed transaction was unlikely to raise any other public interests concerns.

CONCLUSION

[21] 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, we are of the view that no public interest concerns arise from the proposed transaction.

[22] Accordingly, we approved the transaction without conditions.

30 April 2020

Date

Mr Enver Daniels

Mr A Wessels and Prof. I Valodia concurring

Tribunal Case Manager: P Kumbirai

For the Merging Parties: D Rudman and B Phillips of Webber Wentzel

For the Commission: R Darji

[1] Gauteng, Free State, KwaZulu-Natal, Limpopo, Mpumalanga & the Western Cape.

[2] AGS contracted with AFGRI Operations to manage its storage business.

[3] See *Caxton and CTP Publishers and Printers v Media 24 (Pty) Ltd and others* (136/CAC/March2015) paras 46-48.

[4] Izitsalo is an employee share scheme which is not controlled by AGH.

[5] No. 89 of 1998.

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