

SOUTH AFRICA / JUDGMENT

Zeder Financial Services Ltd v Agrico Machinery (Pty) Ltd (09/LM/Jan12) [2012] ZACT 45; [2012] 2 CPLR 554 (CT) (29 June 2012) [2012] ZACT 45

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Andiswa Ndoni, Takalani Madima

CASE / FILE NUMBER

09/LM/Jan12

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:09/LM/Jan12

[013912]

In the matter between:

Zeder Financial Services LtdAcquiring Firm

And

Agrico Machinery (Pty) Ltd in

Respect of Agricol Holdings LtdTarget Firm

Panel : Yasmin Carrim (Presiding Member) Andiswa Ndoni (Tribunal Member)

Takalani Madima (Tribunal Member)

Heard on : 28 March 2012

Order issued on : 28 March 2012

Reasons

issued on : 29 June 2012

Reasons for Decision

Approval

On 28 March 2012 the Competition Tribunal (“Tribunal”) conditionally approved the acquisition by Zeder Financial Services Ltd of Agricol Holdings Ltd. The Tribunal’s reasons for approving this transaction are set out below.

Parties and their activities

The primary acquiring firm is Zeder Financial Services Ltd (“ZFS”), a public company incorporated in accordance with the laws of the Republic of South Africa. ZFS is controlled by Zeder Investments Ltd (“Zeder”) which is ultimately controlled by PSG Group Ltd (“PSG”). Zeder does not control any firm.¹ ZFS controls Zeder Investments Corporate Services.

ZFS is an investment holding company and does not sell any products or provide any services. Zeder is a holding company and does not sell any products or provide any service. It has investments in companies that are active in agricultural, food, beverages and related sectors. PSG is an investment company that invests in companies that provide a wide selection of financial services and products.

The primary target firm is Agricol Holdings Ltd (“Agricol”), a public company incorporated in accordance with the laws of the Republic of South Africa. Agricol is 65.9% controlled by Agrico Machinery (Pty) Ltd (“AM”). The remaining shares in Agricol are held by ZFS (25.1%) and Individuals and Trusts (9%). Agricol wholly owns Salok (Pty) Ltd (“Salok”) and Agricol (Pty) Ltd (“Agricol Company”).

Agricol is a holding company and does not provide any products or services. Through Salok and Agricol Company, it is involved in plant breeding, production, international trade, processing and distribution of seeds.

Description of the transaction

This transaction entails an increase in shareholding by ZFS in Agricol from 25.1% to 90%. On completion of the proposed transaction ZFS will have sole control over Agricol.

Rationale for the transaction

ZFS submitted that Agricol is a sound investment and will complement the other Agri investments in the Zeder portfolio. AM submitted that this transaction will enable it to focus on its core business (irrigation and mechanisation) and further facilitate a simplification of the AM Group structure.

The relevant market and impact on competition

The Commission found that there is no overlap between the activities of the merging parties because the acquiring group does not have a controlling interest in companies that are involved in activities similar to those of the target firm. Although there is no overlap in the activities of the merging parties, the Commission investigated whether this transaction is likely to give rise to some form of anti-competitive behaviour as the parties have entered into a restraint of trade in the merger agreement which restrains AM from re-entering the seeds market for a period of six

years.

The Commission's investigation revealed that entry barriers in the seeds market are high and that there are a few market participants in this market with relatively high market shares. Based on these findings the Commission proposed that the period of the restraint be reduced to three years instead of the six year period initially entered into by the merging parties, which the Commission found to be too long, unjustified and likely to frustrate re-entry by AM. The merging parties agreed to the Commission's proposal and submitted a signed agreement reflecting the reduction of the restraint period to three years.

Public interest

The merging parties submitted to the Commission that the proposed transaction will not have any significant effect on employment.

Conclusion

The proposed transaction is unlikely to result in a substantial prevention or lessening of competition as there is no overlap in the activities of the merging parties. With respect to the restraint of trade period, we agree with the Commission that a three year period is an acceptable period for the restraint. Accordingly, we approve the transaction subject to the attached Annexure "A" conditions.

29 June 2012

Yasmin Carrim Date

Andiswa Ndoni and Takalani Madima concurring.

Tribunal researcher: Ipeleng Selaledi

For the merging parties: Susan Meyer of Cliffe Dekker Hofmeyr Inc.

For the Commission: Xolela Nokele

1Zeder has non-controlling interest in the following firms: Kaap Agri Ltd, Capevin Holdings Ltd, MGK Business Investments Ltd, Overberg Agri Ltd, Capespan Group Ltd, Tuinroete Agri, Suidewes Beleggings Ltd, NWK Ltd, OVK Bedryf Ltd and Thembeke OVB Holdings.

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