



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 019927

In the matter between:

Applethwaite Farm (Pty) Ltd

Acquiring Firms

Sikisa Trading Corporation (Pty) Ltd

and

Theewaterskloof Holdings (Pty) Ltd

Target Firms

Boskloof Fruit & Timber Industries (Pty) Ltd

Novo Packhouse (Pty) Ltd

Panel	:	Andreas Wessels (Presiding Member) Mondo Mazwai (Tribunal Member) Imraan Valodia (Tribunal Member)
Heard on	:	10 December 2014
Order issued on	:	10 December 2014
Reasons issued on	:	06 January 2015

Reasons for Decision

Approval

1. On 10 December 2014 the Competition Tribunal ("Tribunal") unconditionally approved an acquisition by Applethwaite Farm (Pty) Ltd ("Applethwaite") and Sikisa Trading Corporation (Pty) Ltd ("Sikisa") of the following three primary target firms: Theewaterskloof Holdings (Pty) Ltd

("TWK"); Boskloof Fruit & Timber Industries (Pty) Ltd ("Boskloof"); and Novo Packhouse (Pty) Ltd ("Novo").

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

Parties and their activities

Acquiring firms

3. The primary acquiring firms are Applethwaite and Sikisa, firms incorporated in terms of the laws of the Republic of South Africa.
4. Applethwaite is a wholly-owned subsidiary of Capespan Farms (Pty) Ltd ("Capespan Farms"). Capespan Farms is controlled by Capespan (Pty) Ltd ("Capespan"), which is ultimately controlled by Capespan Group Ltd ("Capespan Group"). Capespan Group is controlled by Zeder Financial Services Ltd ("Zeder Financial Services"), which is a wholly-owned subsidiary of Zeder Investments Ltd ("Zeder Investments"). Applethwaite is a farm located in Grabouw in the Western Cape. It produces pome fruit (i.e. apples and pears) that are supplied throughout the country as well as internationally.
5. Sikisa is controlled by Fruit Exporters of South Africa (Pty) Ltd ("Fruit Exporters"), which is a wholly-owned subsidiary of Capespan. Sikisa used to operate a mango packhouse in Tzaneen in the Limpopo Province. According to the merging parties, this packhouse has been moth-balled for a number of years.
6. Applethwaite and Sikisa do not control any firms, but the Capespan group controls a number of firms in South Africa as well as in Mozambique, Germany, the United Kingdom, Japan, Hong Kong and the United States of America. Through its subsidiaries, the Capespan group is involved in the sale and marketing of fresh fruit produce to the international market as well as the provision of logistics services.

Target firms

7. The primary target firms are TWK, Boskloof and Novo, firms incorporated in terms of the laws of the Republic of South Africa.
8. TWK, Boskloof and Novo are controlled by Farmsecure Finance (Pty) Ltd ("Farmsecure Finance"). Farmsecure Finance is controlled by Farmsecure Holdings (Pty) Ltd ("Farmsecure Holdings").
9. TWK wholly-owns Boskloof. Neither Boskloof nor Novo controls any firms.
10. TWK and Boskloof own farms located in the Western Cape which produce pome fruit and plums. Novo operates a fruit cold storage and packing business which focuses on pome fruit, nectarines, peaches and plums. Novo's facilities are located in Paarl in the Western Cape.

Proposed transaction and rationale

11. In terms of the proposed transaction, Applethwaite intends to acquire 100% of the issued share capital of TWK and Boskloof. Further, Sikisa intends to acquire 100% of the issued share capital of Novo. Post-merger, TWK and Boskloof will be 100% owned by Applethwaite and Novo will be 100% owned by Sikisa.
12. The Capespan group submitted that this transaction fits into its growth strategy.
13. The target firms submitted that they see the proposed transaction as an opportunity to obtain funding for their business operations.

Competition analysis

14. The Commission identified horizontal overlaps between the activities of the merging parties in respect of (i) the market for the production and sale of

pome fruit; and (ii) the market for fruit cold storage and packaging services.

15. The Commission further identified a vertical relationship between the activities of the merging parties since Capespan provides TWK and Boskloof with export marketing services in international markets, i.e. the marketing and distribution of goods in international markets.
16. In relation to the market for the production and sale of pome fruit, although the merging parties supply the fruit both locally and internationally, the Commission did not deem it necessary to conclude on the relevant geographic market. The Commission assessed this market on a national basis and found that the merging parties would account for less than 5% of this market post-merger. The merging parties indicated that Applethwaite, TWK and Boskloof primarily sell fruit in the export market. We further note that competitors and customers confirmed that TWK and Boskloof are small players in the production and sale of pome fruit in South Africa. We take no view as to the exact parameters of the relevant geographic market since the proposed merger raises no concerns regardless of the scope of the geographic market.
17. In relation to the market for fruit cold storage and packaging services, the Commission noted that Sikisa has stopped operating. The Tribunal however posed questions about potential overlaps in the activities of the acquiring group and the target firms in this/these market(s), but was satisfied with the answers provided by the merging parties in relation to the proposed transaction. We have no reason to believe that the proposed merger will substantially prevent or lessen competition in the market(s) for fruit cold storage and packaging services, however defined.
18. In relation to the above-mentioned vertical relationship, the Commission found that Capespan already markets the majority of TWK and Boskloof's pome fruit destined for the export market. The Commission further found that competitors will continue to have access to a sufficient number of

customers since TWK and Boskloof are small players in the market for the production and sale of pome fruit. The Commission also found that the merged entity is unlikely to sustain an input foreclosure strategy since there are several other export marketing firms that can serve as alternatives to local fruit producers. Based on this, the Commission concluded that the proposed transaction is unlikely to result in any foreclosure concerns. We concur with the Commission's finding.

Public interest

19. 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.¹

20. The proposed transaction raises no other public interest concerns.

Conclusion

21. For the reasons mentioned above, we approve the proposed transaction unconditionally.



Andreas Wessels

06 January 2015

Date

Mondo Mazwai and Imraan Valodia concurring

Tribunal Researcher	: Ipeleng Selaledi
For the merging parties	: Paul Cleland of Werksmans
For the Commission	: Zanele Hadebe

¹ See *inter alia* merger record, page 13.