



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM054Jun19

In the matter between:

**Zaad Holdings Limited**

Primary Acquiring Firm

and

**GAP Chemicals Proprietary Limited**

Primary Target Firm

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Panel	: Yasmin Carrim (Presiding Member)
	: Enver Daniels (Tribunal Member)
	: Andreas Wessels (Tribunal Member)
Heard on	: 21 August 2019
Order Issued on	: 21 August 2019
Reasons Issued on	: 20 September 2019

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### Reasons for Decision

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#### Approval

- [1] On 21 August 2019, the Competition Tribunal ("Tribunal") approved the proposed transaction involving Zaad Holdings Limited and GAP Chemicals Proprietary Limited.
- [2] The reasons for approving the proposed transaction follow.

#### Parties to proposed transaction

##### *Primary acquiring firm*

- [3] The primary acquiring firm is Zaad Holdings Limited ("Zaad"), a public company duly incorporated in South Africa. Zaad is controlled by Zeder Investment Limited ("Zeder") as to 95.3% of its entire issued share capital. Zeder is in turn publicly listed on the Johannesburg Stock Exchange (JSE) and is not directly controlled by any single firm.

- [4] Zeder also controls Zeder Financial Services Limited, Capes Group Limited and The Logistics Group (Pty) Limited. Zaad and its subsidiaries will henceforth be collectively referred to as Zaad or the Acquiring Group.
- [5] Zaad is a holding company and therefore not active in any market. Through its subsidiaries, Zaad operates in the specialised agri-inputs industry by breeding, producing, processing and distributing a broad range of agricultural seeds and chemicals. Zaad is also active in the development and distribution of hard and soft agrochemicals. Of relevance to the proposed transaction is Zaad's activities through Hygrotech Properties (Pty) Ltd, which supplies agrochemicals, including fungicides, adjuvants and plant nutrition products.

*Primary target firm*

- [6] The primary target firm is GAP Chemicals (Pty) Limited ("GAP"), a private company duly incorporated in South Africa. GAP is not controlled by any single firm, but for the sake of completeness, Zaad is the largest shareholder in GAP with a pre-merger shareholding of 49.69%.
- [7] GAP controls Cedar Falls Properties 130 (Pty) Ltd and Farm-Arg International (Pty) Ltd which is relevant for the proposed transaction. Outside South Africa, GAP controls ATS Agrochemicals Limited, based in Zambia.

**Proposed transaction and rationale**

- [8] Zaad currently owns a non-controlling 49.69% interest in the issued shares of GAP. The remaining 50.31% is collectively owned by seven other minority shareholders. In terms of the proposed transaction, Zaad intends to acquire the remaining shares in GAP, either in terms of the right it has acquired to call upon the Original Shareholders to sell the remaining shares in GAP to Zaad ("Call Option") and/or in terms of the Original Shareholder's right to put the remaining shares in GAP to Zaad ("Put Option").
- [9] Upon the exercise of the Call Option by Zaad or the exercise of the Put Option by the Original Shareholders, Zaad will acquire the remaining 50.13% in the issued share capital of GAP from the Original Shareholders, such that GAP will be a wholly owned subsidiary of Zaad.

### **Impact on competition**

- [12] The Commission found that there is horizontal overlap with respect to the manufacture and supply of agrochemicals, specifically fungicides, adjuvants and plant nutrition products.<sup>1</sup>
- [13] The Commission's investigation revealed the following:
- [13.1] In the national market for the manufacture and supply of fungicides, the merged entity will account for 5.3% of the market with an accretion share of 3.7%.<sup>2</sup>
- [13.2] In the national market for the manufacture and supply of adjuvants, the merged entity will account for 10.4% of the market, with a market share accretion of 2.1%.<sup>3</sup>
- [13.3] In the national market for the manufacture and supply of plant nutrition products, the merged entity will account for 4.1% of the market, with a market share accretion of 1.3%.<sup>4</sup>
- [14] The Commission submits that the merged entity will continue to face competition from its competitors which include Nulandis, Nutrico (Pty) Limited, Rolfes Agri (Pty) Limited

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<sup>1</sup> The Commission submits that it did not assess the downstream markets for the distribution of agrochemicals any further because the distributors utilised by the merging parties are independent, carry competing products and can switch between suppliers and they have no exclusive agreements with the suppliers.

<sup>2</sup> Please see Table 4 and Table 5 page 22

<sup>3</sup> Please see Table 6 page 23 and Table 7 page 24

<sup>4</sup> Please see Table 8 page 25 and Table 9 page 26

and Monsanto South Africa (Pty) Limited. Further the Commission submits that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in the markets defined due to low market shares and low market share accretion.

- [15] Given the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

#### **Public interest**

- [16] The proposed transaction will not give rise to any public interest concerns.<sup>5</sup>

#### **Conclusion**

- [17] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.



**Ms Yasmin Carrim**

20 September 2019  
DATE

**Mr Enver Daniels and Mr Andreas Wessels concurring**

Tribunal Case Manager:	Busisiwe Masina
For the merging parties:	Ms Susan Meyer and Ms Preanka Gouden of Cliffe Dekker Homeyr Inc.
For the Commission:	Mr Rakgole Mokolo

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<sup>5</sup> The proposed transaction will not result in any job losses or retrenchment