

**COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)**

Case No: 81/AM/DEC10

In the matter between:

**AFRICAN CENTRE FOR BIOSAFETY
BIOWATCH SOUTH AFRICA**

Applicant
Second Applicant

and

**THE COMPETITION COMMISSION
PIONEER HI-BRED INTERNATIONAL INC
PANNAR SEED (PTY) LTD**

First Respondent
Second Respondent
Third Respondent

In re: the intermediate merger between:

**PIONNER HI-BRED INTERNATIONAL INC
and
PANNAR SEED (PTY) LTD**

Primary Acquiring Firm

Primary Target Firm

Panel : Yasmin Carrim (Presiding Member);
Andreas Wessels (Tribunal Member); and
Lawrence Reyburn (Tribunal Member)

Heard on : 12 August 2011

Decided on : 19 August 2011

ORDER

- 1 Further to the Applicants' submissions to intervene, the Tribunal hereby orders that the Applicants are granted leave to intervene, in terms of section 53(1)(c)(v) of the Competition Act (No. 89 of 1998), as amended, in the merger proceedings before the Tribunal in relation to the acquisition by Pioneer Hi-Bred International

Incorporated of Pannar Seed (Pty) Ltd under case No: 81/AM/Dec10, on the following grounds:

- 1.1 The effect of the proposed merger on pricing and the availability of alternative products if the merger is approved – particularly in light of the smallholder and rural market's need for open and pollinated varieties of maize seed (and not just high-yielding or genetically modified varieties);
 - 1.2 The effect of the proposed merger on smallholder farmers, small-scale commercial black farmers and consumer choice (and, in turn, the effect on food production and food security);
 - 1.3 The barriers to entry that will result from the proposed merger and, in particular, the adverse effects on smallholder farmers and small-scale commercial black farmers;
 - 1.4 The public interest effect of the proposed merger, particularly in light of Pannar's extensive maize germplasm inventory and the opportunities that it presents for development.
- 2 The Applicants are required to file detailed witness statements by 24 August 2011. The merging parties may supplement their witness statements by 2 September 2011.
- 3 The Applicants must co-ordinate their interventions in order to avoid duplication of both submissions and participation and communicate their arrangements to the Presiding Member at the pre-hearing on 5 September 2011. The Presiding Member may give further directions on the Applicants' participation at the pre-hearing scheduled for 5 September.
- 4 The scope of the Applicants' participation in the hearing shall include, without limitation, the right:
 - 4.1 to attend pre-hearing conferences;
 - 4.2 to adduce oral and documentary evidence;
 - 4.3 to present argument;

- 4.4 to request the Tribunal to direct, summon and/or order any person to appear at the hearing;
- 4.5 to cross-examine the merging parties' witnesses;
- 4.6 to inspect any books, documents and other items filed by any of the other participants in the merger proceedings, including inspection by the Applicants' legal representatives, subject to appropriate confidentiality undertakings, of any information filed by any participants subject to a claim of confidentiality; and
- 4.7 to have access to the Commission's record that has been referred to the Tribunal in this matter, including access by the Applicants' legal representatives, subject to appropriate confidentiality undertakings, to any information contained in the record which is subject to a claim of confidentiality.

5 There is no order as to costs.

A handwritten signature in black ink, appearing to read 'Y. Carrim', written over a horizontal line.

Yasmin Carrim
Presiding member

Concurring: Andreas Wessels and Lawrence Reyburn