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	Legal Services Competition Commission		44283
ref	51/LM/Jul11	***date***	16 January 2012
from	Lerato Motaung	***pages***	8 (including this page)
re	Reasons		

Attached please find the Tribunal's reasons for decision in the above matter.

Regards

Lerato Motaung

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M : Memory
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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 51/LM/Jul11

In the matter between:

Afgri Operations Limited Acquiring Firm

And

Pride Milling Company (Pty) Ltd Target Firm

Panel	:	Andreas Wessels (Presiding Member) Andiswa Ndoni (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	09 November 2011
Order issued on	:	09 November 2011
Reasons issued on	:	16 January 2012

Reasons for Decision

Approval

[1] On 09 November 2011 the Competition Tribunal ("Tribunal") approved the acquisition by Afgri Operations Limited of the yellow maize milling business of Pride Milling Company (Pty) Ltd. The Tribunal's reasons for approving this transaction are set out below.

Parties to the transaction

[2] The primary acquiring firm is Afgri Operations Limited[1] ("Afgri"), a public company incorporated in terms of the laws of the Republic of South Africa. Afgri is directly controlled by Afgri Limited. The shares of Afgri Limited are listed on the JSE Limited and are widely held. Its largest shareholders include Allan Gray (10.53%); Old Mutual (9.33%); Sanlam (8.67%); Trustees of the Afgri Share Incentive Trust (7.98%); the Government Employees Pension Fund (7.1%) and OTK Investment House (5.08%).[2]

[3] The Afgri group provides a diverse and integrated range of products and services through three operating divisions namely (i) Afgri Agri Services which provides farming inputs, retail and mechanisation services; (ii) Afgri Financial Services which offers tailor-made financial solutions for farmers, processor and consumers of agricultural products; and (iii) Afgri Foods which is involved in the production and sale of animal feed, plant oils and soya-based products and frozen poultry products.

[4] The primary target firm is Pride Milling Company (Pty) Ltd[3] ("Pride"), a private company incorporated in terms of the laws of the Republic of South Africa. Pride does not directly or indirectly control any other firm.

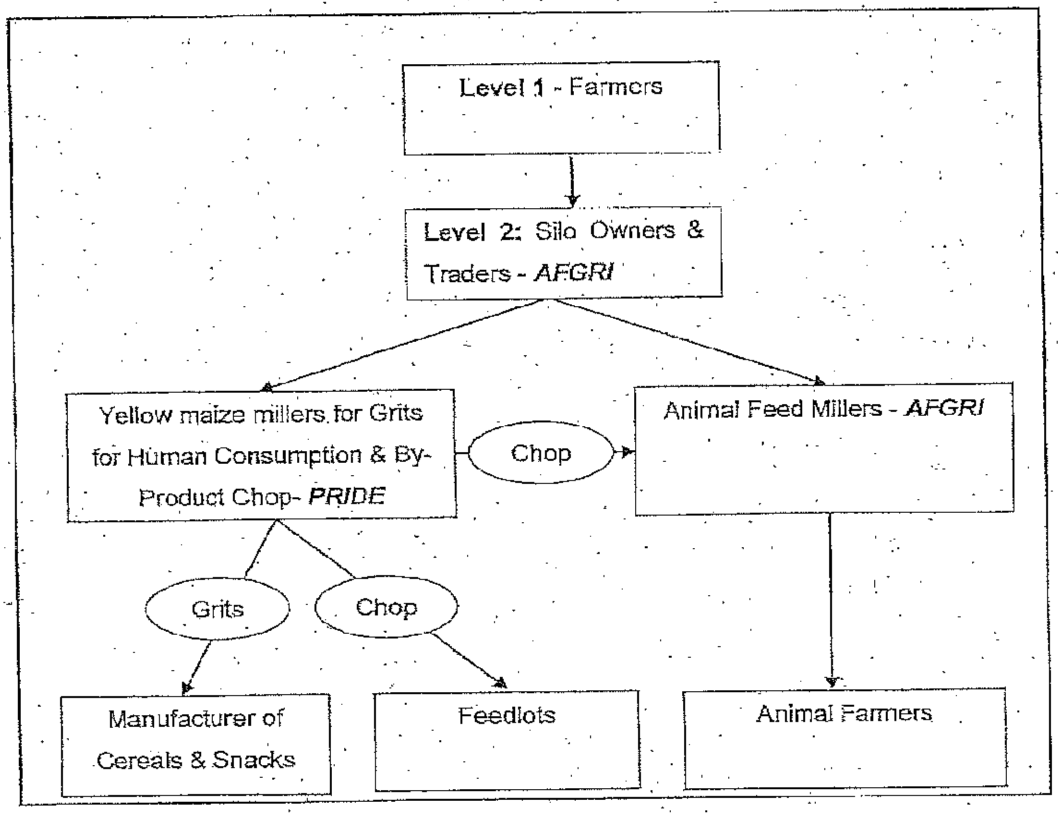
[5] For purposes of the current transaction only the yellow maize milling activities of Pride are relevant to the competition assessment. The milled yellow maize products, known as grits, are used as intermediate input products for various food products and are of grades and quality specified for human consumption. Different sizes and grades of grits are used in the manufacture of products such as maize-based snacks, starch products, beer and other alcohol products, breakfast cereals, porridges, soups and baking products.

[1] http://www.afgri.co.za/. Page 7 of the record.
[2] http://www.afgri.co.za/ir_shareholders_info.php
[3] http://www.pridemilling.co.za/

[6] As a result of the maize milling process a by-product known as "chop" is also produced. Chop is sold to third party manufacturers and is mainly used in the production of animal feed and as a feed supplement at feedlots.

[7] The supply chain for yellow maize is shown in Diagram 1 below.

Diagram 1: Yellow Maize Supply Chain



Description and rationale for transaction

[8] The proposed transaction constitutes a large merger in terms of the Competition Act, 1998 (Act No. 89 of 1998, as amended) ("the Act").

[9] In terms of the proposed transaction Afgri will acquire Pride's yellow maize milling business as a going concern giving Afgri sole control of the target business on completion of the proposed transaction.

[10] Pride's yellow maize milling business is comprised of three mills in Mpumalanga situated at Ermelo, Bethal and Kinross. These three mills are

located within Afgri's geographic area of operations and near Afgri's silo complexes. Afgri previously owned the above three mills but sold them to Pride in 2001 when Pride was established. Through the proposed transaction Afgri seeks to re-enter the downstream processing sector for the milling of yellow maize into grit. This is in line with Afgri's strategy of increasing its industrial processing capacity.

[11] Pride's rationale for entering into the proposed transaction is that it will unlock value for Pride to enable it to concentrate on the expansion of its product range.

Restraint of trade

[12] The sale of business agreement contains a restraint of trade which prohibits Pride from entering the South African market for the milling of yellow maize into grit for a period of three years, which was later reduced by agreement between the parties, to only two years.

[13] The Competition Commission ("Commission") concluded that this restraint is not in contravention of section 4(1)(b)(ii) of the Act due to it being limited in duration, i.e. limited to a total duration of two years, as well as being restricted in terms of scope, i.e. limited to Pride's milling of yellow maize into grit activities in South Africa.

Competition analysis

Vertical assessment

[14] There is no horizontal overlap between the activities of the merging parties. The activities of the merging parties however overlap vertically in three broad product categories:

(i) financial services: Afgri provides various financial services, predominantly credit facilities, to Pride in order for Pride to effectively manage its cash flow and debtor's book;

(ii) chop: Afgri has in the past occasionally purchased chop from Pride which it utilises as an input into its animal feed production processes; and

(iii) unprocessed yellow maize: Afgri is an upstream supplier of unprocessed yellow maize to Pride.

Financial services

[15] In relation to the provision of financial services, the Commission found that Pride is not a significant financial services customer of Afgri. Further, there are many other financial service providers in this market that the financial services customers of Afri could turn to, for example the Land Bank, ABSA, First National Bank, Standard Bank, Senwes, TWK and VKB. From a customer foreclosure perspective, there are a vast number of other agribusinesses in South Africa which suppliers of financial services and competitors of Afgri could still supply after this merger.

Chop

[16] In relation to chop, Pride has in the past occasionally supplied "high energy" chop products to Afgri on an *ad hoc* basis. The Commission's market investigation found that chop can be bought from a number of white and yellow maize mills in the Mpumalanga and surrounding areas such as Alledlox and Hendrina (yellow maize) and Pride, Blinkwater, TWK, Carolina Mills and Progress Milling (white maize).

Yellow maize

[17] In relation to the upstream supply of unprocessed yellow maize, the Commission found that Pride purchases the majority of its unprocessed yellow maize requirements from Afgri. The three yellow maize mills to be acquired are situated on or immediately adjacent to Afgri's maize storage facilities (silos) and are supplied directly from Afgri's silos via conveyor systems.

[18] The Commission concluded that the proposed merger is unlikely to raise foreclosure concerns given that (i) Pride has always sourced most of its

unprocessed yellow maize requirements from Afgri (which it sources from farmers in the Mpumalanga region) and that this is unlikely to change after the proposed merger; (ii) Pride's competitors do not source their maize from Afgri and when they do it relates to small quantities and therefore they are not reliant on Afgri for their unprocessed yellow maize input requirements; (iii) most millers source their maize directly from farmers or from the large trading companies such as Maize and More, Primankus and Farmwise.

[19] Furthermore, from a potential customer foreclosure perspective, there are a number of other customers and mills situated in the region that require unprocessed yellow maize, for example Alledlox, Botselo Mills and Hendrina Mills.

[20] We therefore conclude that the proposed deal is unlikely to result in input or customer foreclosure concerns in any vertically affected market.

Coordinated effects assessment

[21] As highlighted above the proposed merger is vertical in nature with no horizontal overlap occurring between the activities of the merging parties. No evidence exists that the likelihood of post-merger coordination in any of the vertically affected markets would be enhanced as a result of this transaction.

Public interest

[22] The merging parties submitted that the proposed transaction would have no adverse effect on employment since Afgri is purchasing Pride's business as a going concern.[4] The proposed transaction does not raise any other public interest concerns.

[4] See *inter alia* pages 9 and 54 of the record.

Conclusion

[23] In light of the above we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed merger raises no public interest concerns. Accordingly, we approve the proposed merger unconditionally.

A Wessels

16 January 2012
Date

A Ndoni and M Mokuena concurring

Tribunal researcher:	Songezo Ralarala
For the merging parties:	Desmond Rudman of Webber Wentzel Attorneys
For the Commission:	Lameez Vania and Mfundo Ngobese