



TRIBUNAL ROLL DECISIONS RELEASED 30 NOVEMBER, 2017

Type of matter	Parties involved	Competition Commission's recommendation to Tribunal	Tribunal decision
Large merger	K2014202010 (Pty) Ltd And Noordfed (Pty) Ltd	Merger be prohibited	Merger approved with conditions
Large merger	K2014202010 And AM Alberts (Pty) Ltd (in business rescue) t/a Progress Milling	Merger be prohibited	Merger approved with conditions

Tribunal approves two mergers involving companies in the market for seed and wheat milling

The Tribunal has approved two mergers in the market for seed and wheat milling in which holding company K2014202010 intends to purchase Progress Milling (Pty) Ltd and Noordfed (Pty) Ltd.

K2014202010 is a joint venture between Louis Dreyfus Company Africa (Pty) Ltd (“LDCA”) and DH Brothers industries (Pty) Ltd t/a Willowton (“Willowton”).

The Tribunal has approved both mergers subject to conditions imposed to prevent information sharing, information flow between potential competitors and ameliorate potential job losses.

The Tribunal has additionally ordered that a skills development fund, tendered by the merging parties, of an amount not less than R1,5 million is set up to assist and uplift any affected employees who may face retrenchment post-merger.

The Commission had recommended to the Tribunal that the proposed mergers be prohibited because of competition concerns.

The primary acquiring firm is Holdco, a company owned by a Consortium comprising of Louis Dreyfus Company Africa (Pty) Ltd (LDCA) and DH Brothers Industries (Pty) Ltd t/a Willowton (Willowton) (the Consortium). LDCA is a global trader of commodities and a processor of agricultural goods. The key commodities traded by LDCA are white maize, wheat, beans, rice, edible oils, oilseeds (sunflower and soya) and sugar.

Willowton is a black owned South African sunflower seed crusher and refinery company. It sells a wide range of fast moving consumer goods including edible oils, products derived from edible oils, soaps, candles, beauty products and toiletries.

The target firms are AM Alberts (Pty) Ltd t/a Progress Milling (“Progress Milling”) and Noordfed.

Progress Milling is involved in white maize milling and the sale of maize meal. It operates a maize mill outside of Polokwane with 25 depots throughout the Limpopo province. It supplies certain other related products under the “Fox” brand at its depots and controls 11 silos located in Polokwane which are used for storage of only Progress Milling Product. Currently under business rescue, absent the merger being approved, the merging parties submitted during the merger hearing that Progress would close, resulting in the loss of 273 jobs.

Noordfed (Pty) Ltd (“Noordfed”) is involved in the milling of maize and the sale of white maize products. It operates a mill in North West Province and distributes products to primarily North West and KwaZulu Natal provinces. Having run at substantial losses for a number of years, the merging parties submitted that absent the merger, Noordfed would be liquidated, resulting in the loss of 133 jobs.

The Commission, in its reports recommending the prohibiting the mergers, submitted theories of harm pertaining to coordination in the market for white maize milling and the likelihood of coordinated effects arising in the white maize milling market in Limpopo.

It was also concerned about the mergers impact on the market for sunflower seed crushing, such as the likelihood that the merger may create a platform to enhance or further entrench coordination in the adjacent market of seed crushing where the consortium members are competitors.

The Tribunal, hearing the merger on an urgent basis owing to the 30 November drop dead dates of the transaction, approved the transaction with a number of conditions regulating cross directorship between the firms identified by the Commission as problematic.

Additionally the Tribunal imposed a moratorium on any retrenchments for a stipulated period and a condition requiring the establishment of a fund aimed at upskilling any employees facing retrenchment after the moratorium period has ended.

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