



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM260Feb19

In the matter between:

Senwesbel Limited

Senwes Limited

Primary Acquiring Firms

and

KLK Landbou Limited

Primary Target Firm

Panel : Yasmin Carrim (Presiding Member)
: Andiswa Ndoni (Tribunal Member)
: Medi Mokuena (Tribunal Member)
Heard on : 24 April 2019
Last Submission Received : 29 April 2019
Order Issued on : 29 April 2019
Reasons Issued on : 28 May 2019

Reasons for Decision

Conditional Approval

- [1] On 29 April 2019, the Competition Tribunal ("Tribunal") conditionally approved the proposed transaction between Senwesbel Limited, Senwes Limited and KLK Landbou Limited.
- [2] The reasons for conditionally approving the proposed transaction follow.

Parties to proposed transaction

Primary acquiring firm

- [3] The primary acquiring firms are Senwesbel Limited (“Senwesbel”) and its subsidiary Senwes Limited (“Senwes”). Senwesbel is a public company listed on the ZAR X and is not controlled by any single or group of firms.
- [4] Senwesbel does not control any other firm other than Senwes. In turn, Senwes controls 22 firms in South Africa.¹ Senwesbel, Senwes and its subsidiaries will jointly be referred to as the Senwes Group.
- [5] Senwesbel is an investment holding firm and does not have any activities. However, Senwes’ products and services include financing, equipment, agricultural services, grain handling and marketing, grain trading, grain transport, retail outlets, insurance, lime mining and wholesale distribution.

Primary target firms

- [6] The primary target firm is KLK Landbou Limited (“KLK”), a public company incorporated in accordance with the laws of the Republic of South Africa. KLK is not controlled by any single firm or group of firms. KLK’s largest shareholder, Subtropico Limited (“Subtropico”) is relevant for the assessment of the proposed transaction
- [7] KLK operates through the following six business sectors: Trade and building stores, petroleum and retail fuel stations, meat trade and abattoirs, motor vehicles, livestock and auctioneering; processing and value-added services, and financial services.

Proposed transaction and rationale

Primary acquiring firm

- [8] The Senwes Group believes that the strategic fit between Senwes and KLK in terms of diversification is highly appropriate. The Senwes Group also foresees a long-term sustainable future by joining forces with KLK by protecting the interests of farmers, diversifying the investments of Senwes and KLK and unlocking potential synergies for growth.

¹ Senwes’ control in the following firms are important for the purposes of this transaction: Senwes Capital (Pty) Ltd (“Senwes Capital”) – 100%; Tradevantage (Pty) Ltd (“Tradevantage”) – 100%; Hinterland Holdings (Pty) Ltd – 50%; Hinterland SA (Pty) Ltd (“Hinterland SA”) – 100%; Hinterland Fuels (Pty) Ltd (“Hinterland Fuels”) – 90%; and JD Implemente (Pty) Ltd (“JD Implemente”) – 50%.

Primary target firm

- [9] KLK submitted that the proposed transaction presents an opportunity for the shareholders in KLK to realise their investment in KLK. The Senwes Group will support KLK in its growth and strategic expansion and its initiatives to invest in other agricultural value added and agri-related businesses.
- [10] Subtropico, as the largest shareholder in KLK filed a merger notification to acquire the remaining shareholding in KLK on 20 December 2018. KLK was opposed to the takeover as it was of the view that Subtropico would not have the best interests of KLK and its members (farmers) in mind.
- [11] Subsequent to this, KLK approached Senwes to determine the possibility of it making an offer to the current shareholders of KLK. On 14 December 2018, Senwesbel and Senwes issued a letter of intention to acquire the entire issued share capital of KLK. Alternatively, KLK shareholders will be offered 1.4 Senwes shares and/or 1.8 Senwesbel shares for a KLK share. The shareholders of KLK may also choose a combination of cash, Senwes or Senwesbel shares.
- [12] Following the completion of the current transaction and upon acceptance by enough shareholders, Senwes will control KLK. It is this shareholder acceptance that led to concerns for the Tribunal.
- [13] The Tribunal questioned the merging parties as to what percentage of the shareholders had accepted the Senwes offer and was informed the merging parties were not in a position to give a firm answer given that the Subtropico offer was still open to the KLK shareholders at the time of the hearing.²
- [14] Senwes' intention was to acquire all the shares in KLK and thus obtain sole control, however the Tribunal was concerned that if it only acquired a portion of the shares through shareholder acceptance, Senwes could potentially only acquire joint-control now and then perhaps acquire sole control in the future when the competitive landscape in the affected markets could have changed.

² Transcript pages 5 & 6.

- [15] To mitigate against the above scenario occurring in the future, the Tribunal suggested a condition.³ The merging parties and the Commission readily agreed to the imposition of such condition and further agreed that the condition should state that the approval given would remain valid provided that Senwes acquires 50%+1 of the issued share capital of KLK or a majority of the votes of shareholders in attendance at a shareholders meeting within 2 years of the date of implementation of the Senwes offer.⁴
- [16] Should Senwes only obtain this control after the 2-year period, it would be required to re-notify the transaction to the Commission.

Impact on competition

- [17] The Commission found that the proposed transaction results in two potential horizontal overlaps in the supply of petroleum products through retail service stations and in farming requisite stores.
- [18] However, the Commission concluded there is no geographic overlap as Senwes does not operate in the Northern Cape where KLK operates its farming requisite stores and its 11 petroleum retail stations. Even where Senwes does have retail fuel stations in the Northern Cape, such stations are over 400km away from KLK's stations
- [19] The Commission, in its investigation, considered the views of the merging parties' customers and competitors and ultimately concluded that they do not consider the merging parties to be competitors.
- [20] Based on the above, the Commission concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any market.

Public interest

- [21] The merging parties submitted that the proposed merger is unlikely to have any employment effects in South Africa and it will not cause any job losses or retrenchments.

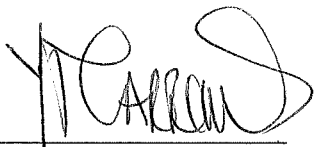
³ Transcript pages 8-10.

⁴ Transcript pages 10 & 11.

[22] The Commission, after engagements with the relevant unions, concluded that the proposed transaction is unlikely to result in any job losses or retrenchments.

Conclusion

[23] In light of the above, we approved the proposed transaction subject to the set of agreed conditions, attached hereto marked as “**Annexure A**”. In our view these conditions adequately address any concerns relating to the approval of the type of control arising from the proposed transaction.



Ms Yasmin Carrim

28 May 2019
DATE

Ms Andiswa Ndoni and Mrs Medi Mokuena concurring

Case Manager: Kameel Pancham
For the merging parties: Andries Le Grange of CDH
For the Commission: Hlumani Mandla