

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM067Aug21

In the matter between:

Sun Valley Estate (Pty) Ltd

Primary Acquiring Firm

And

Ascendis Vet (Pty) Ltd, Ascendis Animal Health (Pty) Ltd, Kyron Laboratories (Pty) Ltd, and Kyron Prescriptions (Pty) Ltd

Primary Target Firm

Panel: Y Carrim (Presiding Member)
E Daniels (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on: 09 November 2021

Order Issued on: 09 November 2021

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that—

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).

Yasmin Tayob Carrim

**Presiding Member
Ms Yasmin Carrim**

09 November 2021

Date

Concurring: Mr Enver Daniels and Prof. Fiona Tregenna



competitiontribunal
SOUTH AFRICA

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date : 09 November 2021

To : ENSafrica

Case Number: LM067Aug21

Sun Valley Estate (Pty) Ltd And Ascendis Vet (Pty) Ltd, Ascendis Animal Health (Pty) Ltd, Kyron Laboratories (Pty) Ltd, Kyron Prescriptions (Pty) Ltd

You applied to the Competition Commission on **23 August 2021** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal

Tebogo Mputle



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM067Aug21

Sun Valley Estates Proprietary Limited (Primary Acquiring Firm)

And

Ascendis Vet Proprietary Limited, Ascendis Animal Health Proprietary Limited, Kyron Laboratories Proprietary Limited, and Kyron Prescriptions Proprietary Limited (Primary Target Firm)

Heard on: 09 November 2021

Order Issued on: 09 November 2021

Reasons Issued on: 09 November 2021

REASONS FOR DECISION

- [1] On 09 November 2021, the Competition Tribunal conditionally approved a large merger whereby Sun Valley Estates Proprietary Limited (“Sun Valley”), intends to acquire Ascendis Vet Proprietary Limited (“Ascendis Vet”), Ascendis Animal Health Proprietary Limited (“Ascendis Animal”), Kyron Laboratories Proprietary Limited (“Kyron Laboratories”), and Kyron Prescriptions Proprietary Limited (“Kyron Prescriptions”).¹
- [2] Sun Valley is wholly owned by ACG Fruit Proprietary Limited (“ACG”), which is in turn controlled by AAF Invest Proprietary Limited (“AAF Invest”). AAF Invest is wholly owned by Acorn Agri and Food Limited (“AAF”). AAF is not controlled by any firm/s and its shares are widely held. Apart from Sun Valley, AAF directly and indirectly controls multiple firms, Overberg Agri Bedrywe Proprietary Limited (“Overberg Agri”) being the most relevant to this transaction. Sun Valley is a dormant company and does not control any firms.²
- [3] The Primary Target Firms are wholly controlled by Ascendis Health SA Holdings Proprietary Limited (“Ascendis Health SA Holdings”), which is in turn wholly owned by Ascendis Health Limited (“Ascendis”). Ascendis is not controlled by any firms and its share capital is widely held. The Primary Target Firms do not directly or indirectly control any firms.
- [4] The Acquiring Group is a vertically integrated agriculture and food group, focused on the following four business segments: agricultural inputs and services, fresh fruit, food processing, and health foods.
- [5] The Primary Target Firms comprise of the constituent businesses that form part of Ascendis’ Animal Health division. The activities of the Primary Target Firms include the development, importation, manufacturing, warehousing, distribution, and marketing, primarily of medication across both the production (cattle, pigs, sheep, etc.) and companion (cats, dogs, horses, etc.) animal health markets. The Primary Target

¹ Collectively referred to as the “Primary Target Firms.”

² Sun Valley, AAF and all its other subsidiaries will collectively be referred to as the “Acquiring Group”.

Firms' activities are conducted through four businesses: Ascendis Vet, Ascendis Animal (also known as Agrimed), Kyron Laboratories and Kyron Prescriptions.

Competition Assessment

- [6] When assessing the merging parties' activities, the Competition Commission ("Commission") identified a vertical overlap as Overberg Agri, a subsidiary of AAF, is an existing customer of Ascendis Animal in relation to medicines and production animal health products. Overberg Agri sells the products it procures from Ascendis Animal in its retail stores situated in the Western and Eastern Cape. Based on the vertical overlap identified, the Commission considered the upstream market for the manufacture and supply of medicines and production animal health products and the downstream market for the retail of medicines and production animal health products.

Vertical Assessment

- [7] Regarding input foreclosure, the Commission considered whether Ascendis Animal would have the ability and incentive to deal exclusively with Overberg Agri such that other customers are denied access to Ascendis Animal as a supplier of medicines and production animal health products and whether this would result in a substantial lessening of competition. The Commission noted that Ascendis Animal competes with several manufacturers who supply medicines and production animal health products.³ Additionally, market participants estimate Ascendis Animal's market share in the supply of production animal health products between 9%-15%. Given the availability of alternative suppliers in the market, the Commission is of the view that Ascendis Animal is unlikely to exercise market power in the manufacture and supply of medicines and production animal products. The Commission found that in 2021, Overberg Agri accounted for less than █████ of Ascendis Animal's revenue, whereas more than █████ of Ascendis Animal's revenue was generated from the sale of the relevant medicines and production animal health products to other customers. The Commission noted that as a manufacturer of medicines and production animal health products, Ascendis Animal relies on a network of retailers and/or distributors to ensure its ability to service a diverse range of customers. Hence, Ascendis Animal would still require other third-party retailers as a significant channel to market. Based on the above, the Commission found that the merged entity is unlikely to have an incentive to adopt an input foreclosure strategy.
- [8] In respect of customer foreclosure, the Commission noted that there are multiple other downstream retailers within the market that can serve as alternatives to Overberg Agri within the Western and Eastern Cape provinces.⁴ Regarding incentive, the Commission found that Ascendis Animal accounts for less than █████ of Overberg Agri's total spending on medicines and production animal product, while more than █████ of Overberg Agri's purchases of medicines and production animal products was accounted for by its other suppliers. This indicates that Overberg Agri is reliant on third-party upstream suppliers of medicines and production animal products. Given this, the Commission found that Overberg Agri is unlikely to have an incentive to foreclose its third-party upstream suppliers post-merger. Even if the merged entity were to attempt to foreclose these upstream suppliers post-merger, there are various alternative retailers active in the market. The Commission highlighted that Overberg Agri will continue to procure production animal medicines from all of its existing suppliers based on the best commercial price offered and in order to ensure that it continues to stock the widest possible range of products, which is something that its

³ These include Lionel's Vet Proprietary Limited, Zoetis South Africa Proprietary Limited ("Zoetis"), Swavet (RSA) Proprietary Limited ("Swavet"), Biotech Laboratories Proprietary Limited, and Virbac RSA Proprietary Limited ("Virbac").

⁴ These include Kaap Agri Bedryf ("Kaap Agri"), Die Humansdorpse Kooperasie Beperk, SSK, BKB and Klein karoo.

ANNEXURE A
COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM067Aug21

In the large merger between:

Sun Valley Estates Proprietary Limited

and

**Ascendis Vet Proprietary Limited, Ascendis Animal Health Proprietary Limited,
Kyron Laboratories Proprietary Limited, and Kyron Prescriptions Proprietary
Limited**

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1 **“AAF”** means Acorn Agri and Food Limited;
- 1.2 **“Act”** means the Competition Act 89 of 1998, as amended;
- 1.3 **“Acquiring Firm”** means Sun Valley;
- 1.4 **“Acquiring Group”** means AAF and all firms directly or indirectly controlled by AAF (including Sun Valley);
- 1.5 **“Approval Date”** means the date the Tribunal issues a Clearance Certificate (Notice CT10) in terms of the Competition Act;
- 1.6 **“Ascendis”** means Ascendis Health Limited;
- 1.7 **“Ascendis Animal”** means Ascendis Animal Health Proprietary Limited;

-
- 1.8 **“Ascendis Health SA Holdings”** means Ascendis Health SA Holdings Proprietary Limited;
- 1.9 **“Ascendis Vet”** means Ascendis Vet Proprietary Limited;
- 1.10 **“B-BBEE”** means broad-based black economic empowerment as defined in the B-BBEE Act;
- 1.11 **“B-BBEE Act”** means the Broad-Based Black Economic Empowerment Act, 53 of 2003, as amended, read with the Codes of Good Practice 2013 (as amended), and the Amended Financial Sector Code of 2017;
- 1.12 **“Commission”** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.13 **“Commission Rules”** means the Rules for the Conduct of Proceedings in the Commission;
- 1.14 **“Conditions”** means these conditions contained in this Annexure A, agreed to by the Acquiring Firm and the Commission;
- 1.15 **“Days”** means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.16 **“HDPs”** means historically disadvantaged persons, as defined in section 3(2) of the Act;
- 1.17 **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties, and all conditions precedent to the implementation of the Merger are fulfilled;
- 1.18 **“Kyron Laboratories”** means Kyron Laboratories Proprietary Limited;
- 1.19 **“Kyron Prescriptions”** means Kyron Prescriptions Proprietary Limited;
- 1.20 **“Merged Entity”** means the entity that will exist after the implementation of the Merger;
- 1.21 **“Merger”** means the acquisition of the Primary Target Firms by Sun Valley;
- 1.22 **“Merging Parties”** means Sun Valley and the Primary Target Firms;

-
- 1.23 **“Primary Target Firms”** means Ascendis Animal, Ascendis Vet, Kyron Laboratories, and Kyron Prescriptions;
- 1.24 **“Sun Valley”** means Sun Valley Estates Proprietary Limited;
- 1.25 **“Transformation Initiative”** means the Acquiring Group’s commitment to enter into a B-BBEE transaction after the implementation of the Merger, which will result in the Primary Target Firms qualifying as at least [REDACTED] black-owned in terms of the B-BBEE Act;
- 1.26 **“Tribunal”** means the Competition Tribunal of South Africa; and
- 1.27 **“Tribunal Rules”** mean the Rules for the Conduct of Proceedings in the Tribunal

2. CONDITIONS TO THE APPROVAL OF THE MERGER

2.1 Transformation Initiative

- 2.1.1 The Acquiring Group shall, within 12 (twelve) months of the Implementation Date implement the Transformation Initiative.
- 2.1.2 Prior to the implementation of the Transformation Initiative, the Acquiring Group will provide the Commission with details, in writing, of the Transformation Initiative. These details shall include at least the following information:
- 2.1.2.1 the proposed transaction structure and its mechanics;
 - 2.1.2.2 the identities of the parties involved in the Transformation Initiative and their proposed roles and shareholdings;
 - 2.1.2.3 a report prepared by a suitably qualified independent B-BBEE certification firm confirming that the Primary Target Firms qualify as at least [REDACTED] black-owned in terms of the B-BBEE Act;
 - 2.1.2.4 the number of appointments to the board of the Primary Target Firms’ holding company that HDPs participating in the Transformation Initiative will be entitled to;
 - 2.1.2.5 confirmation of whether the Transformation Initiative constitutes a merger for the purposes of the Act; and

-
- 2.1.2.6 submissions as to why the Transformation Initiative is unlikely to give rise to competition concerns (including, for instance, information exchange through common members, directors and/or shareholders).
- 2.1.3 Within 30 (thirty) Days of receipt by the Commission of all details required in terms of paragraph 2.1.2 above, the Commission shall consider whether the implementation of the Transformation Initiative results in the Primary Target Firms qualifying as at least ██████ black-owned in terms of the B-BBEE Act and/or gives rise to competition concerns, and indicate in writing whether:
- 2.1.3.1 the Transformation Initiative meets the requirements of the Conditions and can therefore be implemented; or
- 2.1.3.2 the Transformation Initiative does not meet the requirements of the Conditions, and if so, providing reasons therefore so that the Acquiring Group can formulate a revised Transformation Initiative that will meet the requirements of the Conditions.
- 2.1.4 For the avoidance of doubt, the Transformation Initiative may not be implemented without the Commission's written approval as per paragraph 2.1.3 above, which approval will not be unreasonably withheld.
- 2.1.5 To the extent that the Transformation Initiative approved by the Commission in writing also constitutes a merger (whether or not the thresholds for mandatory notification are met), the Transformation Initiative can then only be implemented once it has been notified to the Commission as a merger and approved with or without conditions.

3. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Acquiring Group shall inform the Commission of the Implementation Date within 5 (five) Days of its occurrence.
- 3.2 The Acquiring Group shall, upon implementation of the Transformation Initiative contemplated in clause 2.1, submit an affidavit confirming compliance with the Conditions.
- 3.3 An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

3.4 The affidavits and or documents referred to in the Conditions shall be and all correspondence in relation these Conditions must be submitted to the following email addresses: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

4. VARIATION

4.1 The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal for the Conditions to be waived, relaxed, modified and/or substituted.