COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM150Nov22

In the matter between:

SABIC Agri-Nutrients Company	Acquiring Firm
and	
ETG Inputs Holdco Limited	Target Firm

Panel	:	Andreas Wessels (Presiding Member)
	:	Andiswa Ndoni (Tribunal Panel Member)
	:	Thando Vilakazi (Tribunal Panel Member)
Heard on	:	13 March 2023
Order issued on	:	13 March 2023
Reasons issued on	:	05 May 2023

REASONS FOR DECISION

Approval

[1] On 13 March 2023, the Competition Tribunal ("Tribunal") unconditionally approved the large merger in terms of which SABIC Agri-Nutrients Company ("SABIC AN") intends to acquire 49% of the issued shares of ETG Inputs Holdco Limited ("EIHL") from ETG World together with certain governance rights.

Parties to the proposed transaction and their activities

Primary acquiring firm

[2] The primary acquiring firm is SABIC AN, a company incorporated in accordance with the laws of the Kingdom of Saudi Arabia. SABIC AN is controlled by Saudi Basic Industries Corporation ("SABIC"). SABIC is in turn controlled by Saudi Arabian Oil Company ("Saudi Aramco"). In South Africa, Saudi Aramco controls SABIC South Africa Proprietary Limited ("SABIC SA").

[3] SABIC AN and all the firms that directly or indirectly control it will be collectively referred to as "the Acquiring Group".

[4] The Acquiring Group is active in the production and supply of urea, which is used as an input into the production of fertiliser.

Primary target firm

[5] The primary target firm is EIHL, a company incorporated in accordance with the laws of the United Arab Emirates. EIHL is controlled by ETG World. In South Africa, EIHL controls the following firms: Kynoch Fertilizer (Pty) Ltd; Sidi Parani Proprietary Limited; Fermentech Proprietary Limited; Profert Methven Road Proprietary Limited and Double Flash Investments Proprietary Limited.

[6] EIHL and all the firms that it controls shall be referred to as "the Target Group".

[7] The Target Group imports, blends, and distributes fertiliser products in SADC, including in South Africa. The Target Group does not produce urea but uses urea as an input in the production and supply of blended urea fertiliser.

Proposed transaction and rationale

[8] In terms of the proposed transaction, SABIC AN will purchase from ETG World 49% of the shares in EIHL together with certain governance rights. Post-merger, EIHL will be jointly controlled by ETG World and SABIC AN. In this regard, SABIC AN will hold 49% of EIHL and ETG World will hold the remaining 51%.

[9] We note that the proposed transaction is subject to several pre-merger steps including the acquisition by ETG World of the 49% shareholding in EIHL from the Public Investment Corporation ("PIC") ("the PIC Transaction"). As a first step of the proposed transaction, ETG World will acquire 49% of the shares in EIHL from the PIC for immediate (back-to-back) on-sale to SABIC AN.

[10] The Acquiring Group submitted that the proposed transaction would allow SABIC AN to benefit from EIHL's presence across Africa, thereby moving closer

to farmers and end-customers, in particular, through the expansion of its presence further downstream via EIHL's distribution and blending activities. By developing its capabilities throughout the entire fertiliser value chain, SABIC AN will be better placed to meet customer demand in the most efficient way.

[11] From the Target Group's view, the proposed transaction combines SABIC AN (as a strategic partner) with EIHL's distribution network to create a vertically integrated player capable of enhancing its market offering.

Relevant markets and impact on competition

[12] The Competition Commission ("Commission") considered the activities of the merging parties and found that the proposed transaction results in a vertical overlap since the Acquiring Group and the Target Group are active at different levels of the agricultural fertiliser value chain. The Acquiring Group produces and supplies urea which is used by the Target Group as an input in the production of blended urea fertiliser.

[13] The Commission assessed the vertical relationship in the upstream global market for the supply of urea (noting that there is no local production of urea in South Africa) and the downstream national market for the supply of blended urea fertiliser.

Input foreclosure

[14] The Commission noted that in South Africa, the Acquiring Group supplies urea to three customers, namely the Target Group, [redacted] and [redacted] and [redacted] are competitors of the Target Group in the downstream market for the supply of blended urea fertiliser. Thus, in assessing input foreclosure, the Commission assessed whether the merger is likely to result in these competitors being foreclosed access to urea.

[15] The Commission found that the Acquiring Group has an estimated global market share of less than [0-10]% in the production and supply of urea. Other players active in the global supply of urea are Yara, Qatar Fertiliser Company, Eurochem Group, Fertiglobe, and Nutrien, amongst others.

[16] In addition, the Commission's Concentration Report (2021) found that of all the fertiliser input markets, urea is the only segment in which the market is balanced with no substantial difference between the sizes of the firms in the market.

[17] Furthermore, the Commission calculated the Acquiring Group's market share in terms of the total urea imports into South Africa based on South African Revenue Service data. The Commission found that the Acquiring Group supplies approximately [20-30]% of the urea imported by South African firms.

[18] The Commission concluded that the merged entity will not have the ability to foreclose competitors of the Target Group. It is also unlikely that the merged entity will be a dominant supplier of urea in South Africa.

[19] Considering the above, the Commission was of the view that the proposed transaction is unlikely to result in input foreclosure concerns.

Customer foreclosure

[20] In assessing customer foreclosure, the Commission found that the merged entity will have a national market share of less than 20% in the downstream market for the supply of blended urea fertiliser. The Commission further found that competitors such as Yara Africa, Qatar Fertilizers, Eurochem Group, Fertiglobe and Nutrien are large international players that supply customers globally and in South Africa.

[21] Considering the above the Commission was of the view that the proposed transaction is unlikely to result in customer foreclosure concerns.

[22] We concur with the Commission that the proposed transaction is unlikely to result in foreclosure concerns and therefore will not substantially prevent or lessen competition in any relevant market.

Public interest

Employment

[23] The merging parties provided an unequivocal statement that the proposed transaction will not give rise to any job losses in South Africa.

[24] The South African employees of the Acquiring Group are represented by an employee representative, Mr. Tjaart Johannes Booyens ("Mr. Booyens"). The Commission contacted Mr. Booyens and no concerns were raised.

[25] The employees of the Target Group are represented by the South African Chemical Workers Union, the National Security Commercial & General Workers Union and Solidarity. The Commission contacted these unions, and no concerns were raised.

Spread of ownership

[26] The Acquiring Group does not have any shareholding by historically disadvantaged persons (HDPs).

[27] In assessing the post-merger ownership, the Commission noted that the proposed transaction is subject to several pre-merger steps including the acquisition by ETG World of a 49% shareholding in EIHL from the PIC. As a first step of the proposed transaction, ETG World will acquire 49% of the shares in EIHL from the PIC for immediate (back-to-back) on-sale to SABIC AN. The Commission further noted that the PIC, an institutional investor, will swap its 49% (HDP) shareholding in EIHL (the primary target firm) for a 13.89% shareholding in ETG World (the holding company of EIHL). This is the second step of the transaction.

[28] Given the above, the Commission engaged the merging parties on whether the proposed transaction promotes a greater spread of ownership, in particular, by increasing the levels of ownership by HDPs and workers, within the meaning of section 12A(3)(e) of the Competition Act 89 of 1998, as amended.

[29] The merging parties indicated that the proposed transaction would result in the promotion of a greater spread of ownership by HDPs since the PIC will now be invested in a bigger entity. They submitted that the PIC will be exchanging its shareholding in a smaller company (EIHL) for a shareholding in a larger group of companies (ETG World, which includes EIHL), with significantly greater global revenue. As such, there is an anticipated value benefit to be derived by the PIC through holding shares in a wider group.

[30] The Commission assessed the above and found that in terms of revenue, ETG World is larger than the target firm (EIHL) and that ETG World will be a holding company of the target firm post-merger. In the financial year ending 31 March 2022, EIHL generated revenues of USD [redacted] versus the USD [redacted] generated by ETG World. Thus, the shareholding of 13.89% in ETG World as opposed to 49% in EIHL represents an increase of approximately USD [redacted] in value for the PIC.

[31] The Commission also assessed if the value of shares in ETG World are higher than those in EIHL and found that 13.89% of shares in ETG World are much higher in value compared to a 49% share in EIHL. The Commission calculated the value of the increase in shares held by the PIC post-merger to be approximately USD [redacted]

[32] The Commission furthermore engaged the PIC and the PIC confirmed that it is in support of the transaction and that the proposed transaction is beneficial for it

and its beneficiaries. The PIC furthermore submitted that taking equity in ETG World provides the Government Employee Pension Fund with an opportunity to own a material interest in a specialist trading operator in the agricultural sector. This exposure allows the PIC to play a meaningful role in food security in the continent and abroad.[1]

[33] We have no reason to disagree with the Commission's above assessment.

Other public interest

[34] The proposed transaction does not raise any other public interest concerns.

Conclusion

[35] We conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction is not likely to give rise to any negative public interest effects. Accordingly, we approve the proposed transaction unconditionally.

05 May 2023

Mr. Andreas Wessels | **Date**

Concurring: Dr. Thando Vilakazi and Ms. Andiswa Ndoni

Tribunal case manager	:	Baneng Naape
For the merging parties	:	Judd Lurie of Bowmans Law
For the Commission	:	Yolanda Okharedia and Themba Mahlangu

[1] See letter from the PIC to the Commission dated 31 January 2023.