COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM097Oct23

In the matter between:

3 Sisters Proprietary Limited **Primary Acquiring Firm**

And

Capespan Group Proprietary Limited **Primary Target Firm**

Panel	:	L Mncube (Presiding Member)
	:	A Wessels (Tribunal Member)
	:	G Budlender (Tribunal Member)
Heard on	:	11 December 2023
Order issued on	:	12 December 2023
Reasons issued on	:	15 January 2024

REASONS FOR DECISION

Introduction

[1] On 12 December 2023, the Competition Tribunal ("Tribunal") conditionally approved the large merger whereby 3 Sisters (Pty) Ltd ("3 Sisters") intends to acquire the entire shareholding interest in Capespan Group (Pty) Ltd ("Capespan").

The parties and their activities

Acquiring Group

[2] 3 Sisters is a company incorporated in South Africa. It is 100% controlled by Agrarius Agri Value Chain RF (Pty) Ltd ("Agrarius OpCo")[1], a ring-fenced private company. 3 Sisters does not control any firm.

[3] Agrarius OpCo is held by the trustees for the time being of the Agrarius Agri Value Chain Owner Trust ("Agrarius Agri Trust")[2] and managed by 27four Investment Managers Proprietary Limited ("27four") ("the Acquiring Group").

[4] Agrarius OpCo is dedicated to advancing sustainability in the agriculture industry through innovative Shari'ah compliant funding models. It is intended that Agrarius will, in time, exit and transfer its beneficial ownership of 3 Sisters to the Transaction Principals.

[5] The Acquiring Group is an investment vehicle and has investments in several firms active in vegetable and fruit farming, livestock farming, and fruit export. The Acquiring Group does not have any shareholding in its investments (or in the firms it invests in), and the arrangement is limited to the provision of working capital finance in the context of funding transactions except its 50% interest in a potato farming business, Groenplaats Farming Proprietary Limited ("Groenplaats").

Target Group

[6] Capespan is controlled by Zeder Financial Services Limited ("ZFS"),[3] which is in turn controlled by Zeder Investments Limited ("Zeder"), a public company trading on the Johannesburg Securities Exchange. Capespan controls several firms worldwide[4] ("the Target Group").

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[1]Agrarius OpCo is fully funded through Agrarius Sustainability Engineered RF Limited ("Agrarius ListCo"), a JSE-listed special purpose investment vehicle, classified as a ring-fenced public company. Agrarius ListCo is held by the trustees for the time being of the Agrarius Sustainability Engineered Asset backed note programme owner trust. The trustee of this trust is a corporate trustee service provider, TMF Group B.V.

[2] The trustees of Agrarius Agri Trust are Messrs Werner Opperman and Vic du Preez.

[3]With a 92.98% shareholding. The balance of the shareholding in Capespan are held by several minority shareholders including the following shareholders who are HDPs: [Mr Y] as to 0.07% and The [X] Trust (the beneficiaries of which are HDPs) as to 0.33%.

[4] In South Africa, Capespan controls the following firms: Capespan (Pty) Ltd (100%), Capespan South Africa (Pty) Ltd (100%), Capespan Farms (Pty) Ltd (100%), Valam (Pty) Ltd (100%), Capespan Izithelo (Pty) Ltd (49%).

[7] The Target Group is a vertically integrated fruit producer with global marketing capabilities servicing growers and customers in key international markets. It focuses on grapes and citrus. It operates through a primary agriculture farming division consisting of several primary production units as well as a sales and marketing division, with a global footprint in sourcing and marketing fruit.

[8] Approximately [redacted]% of the Capespan's sales are exports and approximately [redacted]% is sold locally.[5]

Transaction and rationale

[9] In terms of the proposed transaction, 3 Sisters intends to acquire 100% of the issued ordinary shares in Capespan. On implementation of the proposed transaction, 3 Sisters will have sole control over Capespan.

[10] The Acquiring Group's rationale is to provide the funding required by the Transaction Principals to facilitate their sustainable acquisition of the primary target firm.

[11] The rationale for the Target Group is indicated as the disposal is in line with Zeder Investment's (the controlling shareholder of Capespan) strategic review of its various portfolio of assets and is pursuant to the evaluation of approaches received. The proposed transaction is part of a value unlock initiative to Zeder shareholders.

Competition Assessment

[5] Revenue generated from the Capespan's own farms (including the Pome farms) is approximately [redacted]%.

[12] We considered the activities of the merging parties and found that the proposed transaction does not result in any horizontal overlap as the Acquiring Group does not control any firms that are active in the production and distribution of citrus fruits and grapes, the market wherein the Target Group is active. While the Acquiring Group holds 50% shareholding in Groenplaats, it is a producer of potatoes and not citrus and grapes.

[13] Accordingly, on the basis of the evidence before us, we find that the proposed transaction does not give rise to a likely prospect of significantly lessening competition in the relevant markets.

Public Interest

Effect on employment

[14] Building Wood and Allied Workers Union of South Africa ("BWAWUSA") raised concerns of behalf of the Target Group's employees that the proposed transaction will result in possible changes to the employees' terms and conditions of employment, and a loss of the employees' benefits including their right to be members of the union that will be based on threshold.

[15] In response to the concerns, the merging parties indicated that there will be no merger-specific changes to the existing terms and conditions of employment and no loss of benefits such as the right to be members of BWAWUSA based on threshold. Furthermore, that there is no expected duplication of jobs as there is no overlap between the activities of the merging parties, the Acquiring Group is an investment firm and is not in the same day-to-day operational business as the Target Group.

[16] The Commission and merging parties proposed the approval of the proposed transaction subject to a Condition that for a period of 3 (three) years from date of implementation of the transaction, the merged entity shall not retrench any permanent or fixed-term employees.

[17] We have imposed the tendered proposal as a Condition to the approval of the proposed transaction.

Effect on the spread of ownership

[18] In considering the effect of the proposed transaction on the greater spread of ownership by HDPs, we noted the Commission and merging parties' proposal that the proposed transaction be approved subject to a Condition that:

> *On an annual basis for the next 2 (two) financial years, commencing 1 July 2024, Capespan shall provide Capespan's South African based export and marketing services to at least 4 (four) Emerging HDP-owned Farmers at Capespan's cost of service (which represents at least a [redacted]% [redacted] percent) discount to what Capespan charges any of its third-party commercial farmers). The 'commitment is subject to sufficient Emerging HDP-owned Farmers being available and willing to accept Capespan's services. (**the proviso**)*

[19] In our view, there needs to be greater efforts made to assist in the development of emerging farmers. For this reason, we imposed a condition without the proviso, requiring the merged entity to make a concerted effort to identify emerging farmers to whom the training would be offered.

[20] The Acquiring Group does not have any shareholding held by HDPs. The primary target firm (Capespan) has 0.4% shareholding held by HDPs. Thus, the proposed merger will result in a dilution of shareholding held by HDPs in the primary target firm from 0.4% to 0%.

[21] We note that the parties indicated during the investigation that due to the potential need to raise additional capital to refinance the transaction, there may thereafter be a potential dilution of all the Transaction Principals shareholding,

including the HDP shareholding. However, at worst, the shareholdings by HDPs in Capespan (if such dilution is required) will be 24%.

[13] Having considered the merging parties' views on the dilution, the Commission and merging parties proposed the approval of the transaction subject to a condition *that 3 Sisters and the Transaction Principals are willing to commit to achieving HDP shareholding in 3 Sisters of 24% within 24 months of implementing this proposed merger*.

[14] We have imposed the tendered proposal as a Condition to the approval of the proposed transaction.

Conclusion

[15] We conclude that the proposed transaction is unlikely to lessen or prevent competition in any relevant market and does not raise any public interest concerns.

[16] We therefore approve the proposed transaction subject to the conditions attached hereto as "**Annexure A**".

Signed by:Liberty Mncube
Signed at:2024-01-15 16:09:00 +02:00
Reason:Witnessing Liberty Mncube

L-Mncube

	15 January 2024
Presiding Member **Professor Liberty Mncube**	**Date**

Concurring: Mr Andreas Wessels and Adv. Geoff Budlender SC

Tribunal Case Manager:	Princess Ka-Siboto
For the Merger Parties:	Susan Meyer and Robin Henney of Cliffe Dekker Hofmeyr Attorneys
For the Competition Commission:	Billy Mabatamela and Themba Mahlangu