



## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: 48/LM/APR12  
(015008)**

In the matter between:

**8115222 CANADA INC.**

Acquiring Firm

And

**VITERRA INC. (CORPORATION NO. 449717-1)**

Target Firm

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Panel	:	Andreas Wessels (Presiding Member) Takalani Madima (Tribunal Member) Medi Mokuena (Tribunal Member)
Heard on	:	30 May 2012
Order issued on	:	30 May 2012
Reasons issued on	:	11 July 2012

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### Reasons for Decision

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#### Approval

[1] On 30 May 2012 the Competition Tribunal ("Tribunal") unconditionally approved the large merger between 8115222 Canada Inc. and Viterro Inc. The reasons for approving the proposed transaction follow below.

#### Parties to transaction

[2] The primary acquiring firm is 8115222 Canada Inc. ("Canada Inc."), a company incorporated in terms of the company laws of Canada. Canada Inc. is a special purpose vehicle created by Glencore International plc.

(“Glencore”) for the purpose of acquiring sole ownership of Viterra Inc. Glencore is a public company with a primary listing on the London Stock Exchange and a secondary listing on the Hong Kong Stock Exchange. Glencore is not controlled by any shareholder. Glencore, through its 100% subsidiary Glencore International AG, controls a number of subsidiaries worldwide.

- [3] The primary target firm is Viterra Inc (“Viterra”), a public company with a primary listing on the Toronto Stock Exchange and a secondary listing on the Australian Stock Exchange.

### **Activities of merging parties**

- [4] Glencore is a global producer and marketer of commodities. Its worldwide activities include the production, sourcing, processing, refining, transporting, storage, financing and supply of metals and minerals, energy products and agricultural products. In South Africa, Glencore trades specific metals and metal products, oil-based fuel products and coal, and sells imported wheat. For the purposes of this transaction, Glencore’s relevant activity is its sale of wheat in South Africa.

- [5] Viterra’s activities involve grain handling and marketing, the sale of agricultural products and food processing. Its current activities in South Africa are confined to the sale of grain products such as barley, peas and wheat.

### **Proposed transaction and rationale for transaction**

- [6] The proposed transaction entails Glencore acquiring, through Canada Inc, 100% of the total issued and outstanding common shares of Viterra by way of a court approved plan of arrangement.
- [7] According to Glencore the proposed transaction will allow it to expand and develop the business of Viterra in a manner that is consistent with its strategy of strengthening its position in grain and oil seeds marketing. The integration of Viterra’s grain handling and marketing business with

Glencore's larger international distribution and marketing network will enable Glencore to achieve greater economies of scale, and capture the associated benefits.

[8] From Viterro's perspective, their shareholders will be able to realise their investment.

### **Relevant market(s) and impact on competition**

[9] The Commission found that there is a horizontal overlap in the activities of the merging parties in respect of the sale and marketing of wheat in South Africa, since the merging parties are both grain trading firms importing wheat into South Africa. More specifically, they both sell wheat through other traders or local agencies in South Africa. They thus operate as grain traders in the grain value chain, where grain trading includes the procurement and sale of grain.

[10] In South Africa grain trading occurs either on SAFEX, the futures market which is predominately used for hedging purposes, or in the physical market. Participants in the grain market informed the Commission that the majority of grain trading in South Africa occurs in the physical market, and that the SAFEX quoted price is used as a reference price for the transactions. The Commission thus defined the relevant product market as the market for the trading of physical grain, which includes wheat, but assessed the competitive effects of the transaction based on the narrowest possible market, i.e. the trading of wheat.

[11] Viterro has no local presence in South Africa and Glencore uses local agencies to sell wheat on its behalf in South Africa. We need not decide the exact parameters of the relevant geographic market for the trading of physical grain/wheat since it does not alter our decision in this case.

[12] As stated above, in assessing the impact on competition, the Commission analysed the narrower market for the sale or trading of wheat in South Africa. In this market the merging parties' combined post-merger market share is below 5%, and it will continue to face competition from other

wheat traders such as Senwes Ltd, Afgri Ltd, Seaboard and Kaap Agri. Furthermore no customers of the merging parties raised any concerns or objected to the merger. We thus agree with the Commission that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

### **Public Interest**

[13] The merging parties submitted that the proposed transaction will have no adverse effects on employment since they do not foresee any retrenchments as a result of the merger.<sup>1</sup> No other public interest issues arise due to this transaction.

### **Conclusion**

[14] Having regard to the facts above, we find that the proposed merger is unlikely to substantially prevent or lessen competition in any relevant market. Furthermore, the proposed transaction raises no public interest concerns. Accordingly, we approve the merger unconditionally.

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**A Wessels**

11 July 2012  
**DATE**

**T Madima and M Mokuena concurring**

Tribunal researcher: Elizabeth Preston-Whyte  
For the merging parties: Paul Coetser of Werksmans Attorneys  
For the Commission: Zanele Hadebe and Lindiwe Khumalo

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<sup>1</sup> Teleconference between the Commission and an employee representative at Glencore on 10 May 2012, see page 14 of the Commission's Report. Also see merger record page 11.