



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case no: LM109Sep22

VKB Beleggings (Pty) Ltd (Primary Acquiring Firm)

and

Griekwaland Wes Korporatief Limited (Primary Target Firm)

Heard on:	21 December 2022
Order Issued on:	21 December 2022
Reasons Issued on:	09 January 2023

REASONS FOR DECISION

1. On 21 December 2022, the Competition Tribunal conditionally approved a large merger between VKB Beleggings (Pty) Ltd ("VKB"), and Griekwaland Wes Korporatief Limited ("GWK").
2. The primary acquiring entity is VKB, a private company incorporated in South Africa. VKB's interests are held by various shareholders, however, none of these shareholders have a controlling interest in VKB.
3. VKB controls VKB Landbou Proprietary Limited ("VKB Landbou") and VKB Agri Processors Proprietary Limited ("VKB Agri Processors") with an 85% shareholding. The balance of the shares (15%) in each of VKB Landbou and VKB Agri Processors is ultimately held by a B-BBEE trust established for the benefit of their respective employees.
4. The businesses of VKB which are relevant to the Proposed Transaction are the grain storage and handling, grain trade and procurement, grain milling, retail trade and the agricultural finance businesses of VKB.

5. The primary target firm is GWK, a public company registered in South Africa. Since GWK is a public company, its interests are held by various shareholders. None of these shareholders have a controlling interest in GWK. GWK controls various other firms within the GWK Group.
6. GWK has a diversified range of activities related to the agriculture industry, and operates, mainly in the Northern Cape province, in four main divisions: GWK Agri, GWK Farm Foods, GWK Trading and Professional Services. In terms of the Proposed Transaction, the relevant activities of GWK are the grain storage and handling, grain trade and procurement, grain milling, trade retail and agricultural finance businesses of GWK.
7. In terms of this transaction, VKB will acquire the GWK Shareholder Equity held by GWK shareholders (excluding the treasury shares and the GWK Mechanisation Shares) by way of a Scheme of Arrangement, and subject to the terms and conditions set out in the Implementation Agreement. Post-implementation of the Proposed Transaction, GWK will become a wholly owned subsidiary of VKB and form part of the VKB group.
8. There are various structural processes within the GWK business that to occur prior to the implementation of the Proposed Transaction. The GWK Group will undergo an internal restructuring, in order to allow for the proper implementation of the Proposed Transaction. After the pre-transaction internal steps have been implemented, the Scheme of Arrangement will be implemented. These steps will all form one indivisible transaction as the pre-implementation steps would not be necessary absent the Proposed Transaction.
9. The Competition Commission ("the Commission") found that the Proposed Transaction results in a horizontal overlap in the markets for grain storage and handling, grain trade and procurement, grain milling, trade retail and agricultural finance.
10. In respect of the grain storage and handling market, the Commission noted that GWK's grain storage facilities are mainly situated in the Northern Cape (with 8 storage facilities), with one grain storage facility in the Northwest province and two grain storage facilities in the Free State. VKB has grain storage facilities in the Free State, 7 in Limpopo and three grain storage facilities in each of the Western Cape and Mpumalanga.
11. With regard to grain trade and procurement nationally, the Commission found that VKB and GWK has market shares of 5% and 3.5%, respectively. Post-merger, they will have an 8.5% share in this market. Given the low post-merger market shares, the Commission

was of the view that the Proposed Transaction is unlikely to raise any competition concerns in the national market for grain storage and procurement.

12. In relation to the market for grain milling, the Commission noted that the merging parties will have a combined post-merger market share of 8.5%, which is negligible. When considering the submarkets for the manufacture and supply of maize meal, samp and chop, the Commission noted that VKB and GWK are minor players in the above market with a combined national market share of 6.6%.
13. With respect to the market for retail trade of farming requisite products, the Commission noted that there are a diverse range of players in the market. These include agricultural companies such as Hinterland SA, Afgri, OVK, Senwes and various other suppliers. The Commission further noted the merging parties' confirmation that their intention is to preserve the existing trade retail footprint and thus not to cease operations or close down these trade retail outlets due to the implementation of the Proposed Transaction.
14. With regard to the agricultural finance market, the Commission concluded that the merging parties combined post-merger market shares will amount to less than 1% based on all domestic credit extended, and less than 2,5% of all agricultural related debt. The Commission was of the view that market shares of the merging parties are negligible and post-merger there remains various other financial services providers in the agricultural finance market, in addition to the merger parties.
15. The merging parties submit that the Proposed Transaction will have no effect on employment. In particular, there will be no retrenchments or job losses in relation to the employees of VKB as a result of the Proposed Transaction. It is further submitted that no employee of GWK or its subsidiaries shall be retrenched pursuant to the Proposed Transaction for a period of 18 months post-merger.
16. The trade union, FAWU, submitted that the merger parties should consider tendering enhanced conditions including a 5-year moratorium as well as a headcount maintenance condition. The merging parties subsequently agreed to a 36-month moratorium on merger-related retrenchments of employees of any of the businesses of the VKB and GWK group. The Commission found that a 3-year moratorium would be sufficient to address any employment concerns that may arise post-merger.
17. The Commission and the Department for Trade, Industry and Competition ("DTIC") raised concerns regarding the promotion of the greater spread of ownership in the Proposed Transaction. This is because it was unclear whether the GWK employees would benefit

from the pre-existing employee share ownership structure of VKB post-merger. In response, the merging parties have committed that:

- 17.1. All qualifying employees of GWK will become beneficiaries of the VKB Landbou Trust or the VKB Agri Processing Trust. Qualifying employees are permanent employees who have been employed by VKB (or GWK) for a period of more than 12 months at the financial year end of VKB (end of March annually) but does not include any senior management members of either VKB or GWK, who are not entitled to share in the proceeds of the abovementioned employee share schemes.
- 17.2. The merging parties have further undertaken to facilitate the financing (in terms of the merging parties' applicable credit policies) to HDPs in the value chains and the geographical areas where the merging parties operate of at least [REDACTED] within a period of 36 months post implementation of the Proposed Transaction ("Finance Fund").
18. The Commission found that the absorption of the GWK employees into the employee ownership trusts of VKB will positively promote the greater spread of ownership. Furthermore, the Finance Fund shall enable HDP farmers and other HDP entities to enter into the various agricultural market(s) of which the merging parties form part of.
19. The merging parties have agreed to the commitments being made conditions to the approval of the Proposed Transaction, annexed hereto as **Annexure "A"**.
20. There are no other public interest concerns.
21. Based on the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market, or to have a negative impact on the public interest. In order to remedy the concerns regarding the greater spread of ownership and merger specific retrenchments, the proposed transaction is approved subject to the conditions annexed hereto as **Annexure "A"**.

Signed by: Imraan Valodia
Signed at: 2023-01-09 14:54:02 +02:00
Reason: Witnessing Imraan Valodia

Imraan Valodia

09 January 2023

Prof. Imraan Valodia

Date

Ms Andiswa Ndoni and Mr Andreas Wessels concurring

Tribunal Case Manager:

Kameel Pancham

For the Merging Parties:

Nelisiwe Khumalo of Cliffe Dekker Hofmeyr Inc.

For the Commission:

Mishkah Abdool Sattar and Thabelo Masithulela