



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM207Jan17

In the matter between

TWK Agri Proprietary Limited

Primary Acquiring Firm

And

BedRock Mining Support Proprietary Limited

Primary Target Firm

Panel	: Mrs Medi Mokuena (Presiding Member)
	: Ms Andiswa Ndoni (Tribunal Member)
	: Prof Fiona Tregenna (Tribunal Member)
Heard on	: 26 April 2017
Order Issued on	: 26 April 2017
Reasons Issued on	: 25 May 2017

REASONS FOR DECISION

Approval

[1] On 26 April 2017, the Competition Tribunal ("the Tribunal") unconditionally approved the large merger between TWK Agri Proprietary Limited ("TWK Agri") and BedRock Mining Support Proprietary Limited ("BedRock"), hereinafter referred to as the merging parties.

[2] The reasons for the approval are as follows.

Parties to the transaction

Primary Acquiring Firm

- [3] TWK Agri is a private company incorporated in terms of the law of the Republic of South Africa. It is ultimately controlled by TWK Agriculture Holdings Proprietary Limited. TWK Agri and its controlling firms and subsidiaries will collectively be referred to as the TWK Group.
- [4] The TWK Group engages in the supply of agriculture and related services such as woodchip production, forestry seedlings and fertilised and organic supplements amongst others. Its range of products include timber, grain, trade mechanisation, financing, insurance and vehicles and tyres. TWK Agri conducts its lumber and mining timber sawmill in Swaziland. Relevant for this transaction is TWK Agri's business activities relating to timber.

Primary Target Firm

- [5] BedRock is a private company incorporated in terms of the law of the Republic of South Africa that is ultimately controlled by Platau Investment Holdings Proprietary Limited ("Platau").
- [6] BedRock is a mining support company, which uses timber to manufacture underground mine and stope support products and dunnage in its mills located in Mpumalanga. These timber products are sold to its customers (which are mines). BedRock does not supply its milled hardwood to any third party, but uses it internally as an input into its dunnage and timber-based mining support products. BedRock primarily sources its timber from MTO Forestry (Pty) Ltd ("MTO Forestry") with which it has a long-term supply agreement.

Proposed transaction and rational

- [7] In this transaction, TWK Agri is acquiring shareholding of more than 50% in BedRock from Platau. Following the implementation of this acquisition, TWK

Agri and Platau will have joint control over Bedrock. Furthermore, TWK Agri will have an irrevocable option to acquire additional shares over a period of three years.¹

[8] TWK Agri submitted that the proposed transaction will enable it to increase its business value in South Africa. Furthermore, the proposed transaction will make TWK Agri more sustainable and thus allowing it to effectively compete with large competitors in the market.

[9] Platau submitted that the proposed transaction will ensure the sustainability of the company post-realisation of the current shareholders' investment.

Relevant market and impact on competition

[10] This is a vertical transaction. TWK Agri is active in the supply of hardwood timber whilst BedRock is active in the business of manufacturing timber-based mining support products. The Commission found two other vertical overlaps, however these were not investigated further as they did not raise any competition concerns.²

[11] As such, the Commission considered the proposed transaction within the following markets:

[10.1] The upstream market for the supply of timber in the Mpumalanga region, including parts of Swaziland.

[10.2] The downstream market for the manufacture and supply of timber based mining support products within Swaziland.

[12] In analysing vertical integration, competition authorities consider market foreclosure i.e. upstream and downstream. The Commission, in determining

¹ The details of this transaction are confidential.

² The second overlap concerned the supply of roundwood poles. The third overlap concerned TWK Group's lumber and timber sawmill operations in Mpumalanga and BedRock's timber sawmills in Mpumalanga.

the possibility of input foreclosure, considered whether, post-merger, TWK Agri would have the ability and incentive to deal exclusively with BedRock thus, denying other customers access to TWK Agri as a supplier of hardwood timber. In this regard, the Commission established that TWK Agri is relatively a small player as it accounts for an insignificant percentage of the upstream market unlike other players such as Sappi, Mondi and Peak Timbers. Consequently, TWK Agri is not in a position to exercise market power to the detriment of its customers. In addition, the Commission found that should TWK Agri implement an input foreclosure strategy, it would be highly unlikely to recoup (its) lost revenue.

- [13] Accordingly, the Commission found that the proposed transaction is unlikely to raise input foreclosure concerns.
- [14] With regard to customer foreclosure, the Commission examined whether, post-merger the merging parties would be in a position to and be incentivised to deny TWK Agri's competitors the ability to supply BedRock hardwood timber thus, denying competitors an adequate customer base. It is worth bearing in mind, that BedRock, has a long-term supply agreement with MTO Forestry.
- [15] Given this, the Commission concluded that the proposed transaction is unlikely to raise input foreclosure concerns.
- [16] The Commission did receive concerns regarding the proposed transaction from a market participant. These included possible negative effects arising from input and customer foreclosure. However, the Commission maintained its findings as expressed above.
- [17] In view of the above, we concur with the Commission's conclusion that the proposed transaction is unlikely to result in input foreclosure or customer foreclosure, and that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

Public interest

- [18] The merging parties submitted that the proposed transaction will not have any substantial negative effects on the employees of TWK Agri or Bedrock. No retrenchments are envisaged as a result of the proposed transaction.
- [19] Based on the above, the Commission was of the view that the proposed transaction does not have an effect on employment and does not raise any other public interest concerns.

Conclusion

- [20] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa or raise any adverse public interest issues. Accordingly, we approve the proposed transaction unconditionally.



Mrs Medi Mokuena

25 May 2017

Date

Ms Andiswa Ndoni and Prof Fiona Tregenna concurring

Tribunal Researcher: Ndumiso Ndlovu

For the merging parties: Candice Upfold of Norton Rose Fulbright

For the Commission Reabetswe Molotsi and Ratshidaho Maphwanya