

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM216Nov18

In the matter between:

VKB Landbou (Pty) Ltd

Primary Acquiring Firm

And

Multi Green (Pty) Ltd

Primary Target Firm

Panel : Y Carrim (Presiding Member)
A Ndoni (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 13 March 2019

Decided on : 26 March 2019

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that -

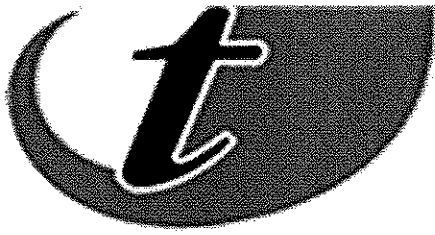
1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



Presiding Member
Ms Yasmin Carrim

26 March 2019
Date

Concurring: Ms Andiswa Ndoni and Prof. Imraan Valodia



competitiontribunal
south africa

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date: 26 March 2019

To: Webber Wentzel Attorneys

Case Number: LM216Nov18

VKB Landbou (Pty) Ltd And Multi Green (Pty) Ltd

You applied to the Competition Commission on **05 November 2018** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- ☐ no conditions.
- ☒ the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

The registrar, Competition Tribunal:

ANNEXURE A

CONDITIONS FOR THE LARGE MERGER BETWEEN:

VKB LANDBOU (PROPRIETARY) LIMITED

AND

MULTI GREEN (PROPRIETARY) LIMITED

CASE NUMBER: 2018NOV0021

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below:

- 1.1 **"Act"** means the Competition Act No. 89 of 1998 (as amended);
- 1.2 **"Approval Date"** means the date referred to in the Tribunal's Merger Clearance Certificate (Form CT10);
- 1.3 **"Commission"** means the Competition Commission of South Africa;
- 1.4 **"Conditions"** means these conditions;
- 1.5 **"Competitively Sensitive Information"** includes but is not limited to:
 - 1.5.1 Specifically, the orders, invoices and delivery notes submitted to VKB by farmers in respect of their fertilizer purchases from competitors of Multi Green;
 - 1.5.2 Pricing of competitors of Multi Green – including, but not limited to, prices / discounts / rebates offered to specific clients and planned reductions or increases; and

- 1.5.3 Volumes sold by competitors of Multi Green.
- 1.6 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.7 **"Days"** means calendar days;
- 1.8 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Proposed Transaction is implemented by the Merging Parties;
- 1.9 **"Merger"** means VKB Landbou's acquisition of sole control over Multi Green;
- 1.10 **"Merging Parties"** means VKB Landbou and Multi Green;
- 1.11 **"Multi Green"** means Multi Green (Proprietary) Limited;
- 1.12 **"Operational Involvement"** means any direct day-to-day management, involvement and/or oversight over the whole or part of the business in question
- 1.13 **"Tribunal"** means the Competition Tribunal of South Africa;
- 1.14 **"Tribunal Rules"** means the rules for the conduct of proceedings in the Competition Tribunal;
- 1.15 **"VKB"** means VKB Beleggings (Proprietary) Limited and all firms which it directly and indirectly controls, including VKB Landbou; and
- 1.16 **"VKB Landbou"** means VKB Landbou (Proprietary) Limited.

2. RECORDAL

- 2.1 On 5 November 2018, the Merging Parties filed a large merger notification in respect of the Merger with the Commission. The Commission found that the Proposed Transaction does not raise any competition or public interest concerns and recommended that the Tribunal approve the Merger without conditions.
- 2.2 However, during the hearing before the Tribunal, the Tribunal was concerned that the Merger could facilitate the exchange of Competitively Sensitive Information through VKB Landbou, as between Multi Green and other competing suppliers of fertilizer.
- 2.3 The Tribunal's concern was prompted by a complaint received from one of Multi Green's competitors during the Commission's investigation. The complaint alleged that VKB Landbou, which provides finance / credit to farmers to procure agricultural inputs such as fertilizer, has access to Competitively Sensitive Information of

competing suppliers of fertilizer. Post-Merger, Multi Green could have access to the Competitively Sensitive Information, by virtue of being part of VKB Landbou and thereby undermine competition in the supply of fertilizer to farmers.

- 2.4 In order to address the aforementioned concerns, the Tribunal required that the Merger be approved subject to the Conditions. The Merging Parties agreed to the Conditions.

3. CONDITIONS

- 3.1 For as long as VKB controls Multi Green for the purposes of the Act, the Merging Parties shall ensure that no individual with Operational Involvement at Multi Green shall have access to the Competitively Sensitive Information.
- 3.2 VKB shall design and implement a Confidentiality and Information Exchange Policy to the satisfaction of the Commission. The Confidentiality and Information Exchange Policy will stipulate, *inter alia*, that the relevant individuals at VKB with access to the Competitively Sensitive Information, shall not share or discuss any Competitively Sensitive Information with any individuals with Operational Involvement in Multi Green.

4. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 The Merging Parties shall inform the Commission of the Implementation Date in writing within 5 (five) Days of it becoming effective.
- 4.2 Within 60 (sixty) Days of the Approval Date, VKB shall develop and submit a Confidentiality and Information Exchange Policy to the Commission as set out in these Conditions.
- 4.3 The Commission shall provide VKB with written comments to the Confidentiality and Information Exchange Policy within 20 (twenty) Days of receipt thereof.
- 4.4 On each anniversary of the Implementation Date, VKB shall provide the Commission with an affidavit, attested to by a director of VKB, attesting to compliance with the requirements set out in clause 3 of the Conditions.
- 4.5 In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, this will be dealt with in terms of Rule 39 of Commission Rules read together with Rule 37 of the Tribunal Rules.

- 4.6 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties may apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.
- 4.7 All correspondence in relation to these Conditions shall be submitted to the Commission's email address: mergerconditions@compcom.co.za.