



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM214Nov18

In the matter between

K2018414696 (South Africa) Proprietary Limited
(To be renamed "Karan Beef Proprietary Limited")

Primary Acquiring Firm

And

Karan Beef Proprietary Limited

Primary Target Firms

And

The cattle farming business conducted by I.M farming
t/a Karan Beef Feedlot

Panel	: Mr Norman Manoim (Presiding Member)
	: Mr Enver Daniels (Tribunal Member)
	: Ms Andiswa Ndoni (Tribunal Member)
Heard on	: 16 January 2019
Order Issued on	: 16 January 2019
Reasons Issued on	: 29 January 2019
Public version	: 5 February 2019
Issued on	

REASONS FOR DECISION (PUBLIC VERSION)

Approval

- [1] On 16 January 2019, the Tribunal conditionally approved the proposed transaction in terms of which K2018414696 (to be renamed Karan Beef Holdings (Pty) Ltd "Karan Beef Holdings") is acquiring control over Karan Beef (Pty) Ltd (Karan beef) and the Karan Beef Feedlot.

- [2] The reasons for the approval of the proposed transaction follow.

Parties to the transaction

- [3] The acquiring firm, Karan Beef Holdings is a newly incorporated company established for the purpose of the proposed transaction. Karan Beef Holdings is controlled by Pelo Capital Holdings (Pty) Ltd [...], which is in turn controlled by the Public Investment Corporation SOC Ltd (PIC) as to a [...] shareholding, and Pelo Agricultural Ventures (Pty) Ltd ("Pelo Ventures") as to [...] shareholding. The remaining [...] non-controlling interest in Pelo Capital Holdings is held by Polanosol (Pty) Ltd.
- [4] The PIC represents the Government Employees Pension Fund, Unemployment Insurance Fund (UIF) and the Compensation Fund.
- [5] Karan Beef Holdings has no activities as it is a newly incorporated special purpose entity. Of interest in this transaction is the UIF's [...] controlling interest in Berlin Beef. Berlin Beef is a black-owned feedlot operator located in the Eastern Cape. Its activities include a cattle feedlot, beef back-grounding and meat processing plants.¹
- [6] The target firms are (i) Karan Beef and (ii) Karan Beef Feedlot. Karan Beef is wholly-owned and controlled by the Ivor Karan Trust and its trustees are: [...], [...], [...] and [...]. Karan Beef Feedlot is wholly owned and controlled by Mr Karan. Karan Beef Feedlot wholly owns and controls Manjoh Ranch (Pty) Ltd (Manjoh) and M&J Da Costa Brothers (M&J).²

¹ Berlin Beef is a start-up business and to date has not sold any cattle. Further, Berlin Beef has not constructed its abattoir, and as such has also not processed any meat.

² The activities of Manjoh and M&J include backgrounding of cattle and silage production which is the production of a type of cattle feed and crop farming.

- [7] Karan Beef is involved in (i) the slaughtering of cattle in an abattoir, (ii) deboning of beef carcasses and the packaging of primal cuts of beef and (iii) the sale of beef carcasses and deboned/primalised beef cuts. Karan Beef Feedlot is involved in the business of feedlotting which involves the purchasing of calves from breeders, which are then fed a special feed until maturity.

Proposed transaction and rationale

- [8] Karan Beef Holdings intends to acquire the entire issued share capital of Karan Beef. Further, Karan Beef Holdings intends to acquire the Karan Beef Feedlot. The transaction includes a 3-step process which will effectively result in Karan Beef Holdings acquiring sole control over Karan Beef and indirect control of Karan Beef Feedlot post-merger.

Relevant market and impact on competition

- [9] The Commission found a horizontal overlap in the upstream market for cattle/beef feedlotting in South Africa. The overlap occurs insofar as both Berlin Beef and Karan Beef are involved in the production of cattle through feedlotting.³ The Commission further found that Berlin Beef has not commenced operations, thus there will not be an immediate market share accretion. If there is an accretion it is unlikely to increase Karan Beef's current market share of [**<5%**] by [**<5%**].
- [10] Further, the Commission found that there are various alternative feedlots that will constrain the merged entity post-merger. Lastly, the Commission is of the view that Berlin Beef and Karan Beef are less likely to be close competitors as there is no geographic overlap between the two firms.
- [11] In view of the above, the Commission concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in any

³ The horizontal overlap occurs indirectly through the shareholding held by the UIF in Berlin Beef (which will not be integrated into Karan Beef).

relevant market. We have no reason to disagree with the Commission's findings.

Public interest

- [12] The proposed transaction does not raise any public interest concerns. However, it is important to note that the proposed transaction has public interest benefits. This is because the proposed transaction is likely to result in the acquisition of shareholding by a firm (Pelo Ventures) that is owned by previously disadvantaged individuals in a firm (Karan Beef) that is well established in the beef and commercial farming industry.
- [13] Further, the merging parties submitted that Pelo Ventures is in negotiations with the Department of Rural Development and Land Reform for implementing a Black Emerging Beef Farmers Development Programme (the Programme) and a Development Fund (the Fund), which will focus on providing existing black cattle farmers with market access, technical support and tailored funding support. Ultimately, the Programme and the Fund will integrate existing black cattle farmers into mainstream beef production in South Africa.
- [14] The Commission acknowledged that the above submissions by the merging parties are likely to benefit black farmers who are currently marginalised in the beef industry. However, in order to ensure that the aforementioned benefits are realised by the intended black farmers, the Commission proposed that the creation of the Programme and the Fund be imposed as merger conditions. The merging parties were amenable to the Commission's request.
- [15] According to the said conditions the merged entity is required to (i) develop the Programme that will facilitate market access for black cattle farmers, provide technical support and facilitate the creation of a development fund; (ii) establish

the Fund that will be dedicated to providing working capital funding for black farmers; and (iii) increase its procurement of weaners from black farmers.

- [16] We are satisfied that the above conditions will adequately remedy the exclusion of black cattle farmers in the mainstream beef production industry in South Africa.

Conclusion

- [17] In light of the above, we concluded that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approved the proposed transaction subject to the agreed conditions marked as 'Annexure A'.



Mr Norman Manoim

29 January 2019
Date

Mr Enver Daniels and Ms Andiswa Ndoni concurring.

Tribunal Case Manager	: Kgothatso Kgobe
For the Merging Parties	: L Granville of Cliffe Dekker R Goodman of ENS N Mahlangu of ENS
For the Commission	: H Mandla and R Maphwanya

ANNEXURE A

NON-CONFIDENTIAL

K2018414696 (SOUTH AFRICA) PROPRIETARY LIMITED (TO BE RENAMED "KARAN BEEF HOLDINGS PROPRIETARY LIMITED")

And

**KARAN BEEF PROPRIETARY LIMITED AND THE FARMING BUSINESS CONDUCTED
BY I.M KARAN FARMING T/A KARAN BEEF FEEDLOT**

CASE NUMBER: 2018NOV0027

CONDITIONS (PUBLIC VERSION)

1. DEFINITIONS

The following terms shall have the meaning assigned to them below and cognate expressions have corresponding meanings—

- 1.1 **"Acquiring Firm"** means K2018414696 (South Africa) Proprietary Limited (to be renamed "Karan Beef Holdings Proprietary Limited")
- 1.2 **"Acquiring Group"** means the Acquiring Firm, together with Pelo Ventures and GEPF, UIF and CF (represented by the PIC and duly authorised agent)
- 1.3 **"CF"** means the Compensation Fund
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Competition Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"Days"** means business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.8 **"Development Fund"** means the development fund established in terms of paragraph 4;
- 1.9 **"GEPF"** means the Government Employees Pension Fund;

- 1.10 **"Implementation Date"** means the date on which the Merger is implemented;
- 1.11 **"Merger"** means the acquisition of control of the Target Firms by the Acquiring Firm;
- 1.12 **"Merging Parties"** means the Acquiring Firm and the Target Firms;
- 1.13 **"Merged Entity"** means the Acquiring Firm and the Target Firms following the Merger;
- 1.14 **"PIC"** means the Public Investment Corporation (SOC) Limited;
- 1.15 **"Programme"** means the Black Emerging Farmers Development Programme to be developed in terms of clause 3;
- 1.16 **"Target Firms"** means Karan Beef Proprietary Limited and Karan Beef Feedlot
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa; and
- 1.18 **"UIF"** means the Unemployment Insurance Fund.

2. **RECORDAL**

- 2.1 On 6 November 2018, the Commission received notice of a large merger in terms of which the Acquiring Firm will acquire control of the Target Firms. The Acquiring Firm is controlled by Pelo Ventures and by the GEPP, UIF and CF (with the PIC acting as duly authorised agent of each of those entities). Following its investigation of the Merger, the Commission is of the view that it is unlikely to substantially prevent or lessen competition in any market.
- 2.2 The Commission's investigation also revealed that the proposed transaction has the potential to improve transformation in the agricultural sector as it relates to beef production. In particular, the Acquiring Group, as part of its existing plans for the Target Firm, intends to be an off-taker of supply from Black cattle farmers, as well as a provider of skills and know-how to Black emerging cattle farmers. According to the Merging Parties, Pelo Ventures has already begun engagements with governmental and development finance institutions to conceptualise the development of a programme designed to support black emerging cattle farmers.
- 2.3 In order to ensure that Black farmers receive maximum benefit from the development programme and the fund attested to by the merging parties, the Commission engaged the merging parties and recommended that these initiatives be made conditions on

the approval of the merger. The merging parties have agreed to the proposed conditions.

2.4 The Merging Parties have agreed to the Conditions set out below.

3. BLACK EMERGING FARMERS DEVELOPMENT PROGRAMME

3.1 Pelo Ventures shall develop a Black Emerging Farmers Development Programme, including seeking input of governmental and development institutions such as Department of Rural Development and Land Affairs; the Department of Forestry, the Agricultural Research Council and third-party funders.

3.2 The Programme will articulate the following objectives and ways in which to achieve those objectives:

3.2.1 Facilitating and maximising market access for black cattle farmers, in particular the role of the Target Firms in entering into off-take agreements to purchase supply from black cattle farmers on commercially reasonable and practical terms. The Programme will include a procurement scoring mechanism that meets the minimum requirements for Enterprise and Supply Development as defined in the BEE Codes from time to time;

3.2.2 Providing technical support to emerging cattle farmers in order to facilitate their ability to become commercial cattle farmers, including to be able to supply cattle that meet the quality and volume requirements of commercial feedlots and beef producers, including those requirements of the Merged Entity; and

3.2.3 Facilitating the creation of the Development Fund.

4. DEVELOPMENT FUND

4.1 The Acquiring Group will, subject to obtaining the relevant investment committee approvals of each member of the Acquiring Group, establish a development fund dedicated to providing working capital funding on commercial terms.

4.2 The Development Fund will be funded by third parties, and the Acquiring Group will be responsible for raising funds. The Acquiring Group shall raise the funds from third parties (with a particular focus on development finance institutions and various government departments, including without limitation the Department of Agriculture, Forestry and Fisheries, the Department of Rural Development and Land Reform and

the Department of Trade and Industry, the Land Bank, the Industrial Development Corporation Limited, the Jobs Fund and the Development Bank of South Africa Limited) in the form of a combination of grant/donor funding, equity funding and debt funding, subject to the credit committee and investment committee approvals of the relevant financiers which the Acquiring Group approaches to provide such funding.

- 4.3 The amount which the Acquiring Group will, subject to paragraph 4.2 above, raise from such third-party funders for the purposes of the Development Fund is an aggregate amount of at least [...], which target should be met on or before the [...] anniversary of the Implementation Date. The interim goal of the Acquiring Group is to raise an amount of at least [...] on or before the [...] anniversary of the Implementation Date.

5. MARKET ACCESS

- 5.1 The Merged Entity shall, subject to the ability of black cattle farmers' to supply weaners at market related prices on a sustainable and efficient basis that meet the quality and volume requirements of the Merged Entity, increase its procurement of weaners from black cattle farmers from the current [...] to at least [...] of its total annual weaner requirements within [...] months of the Implementation Date.
- 5.2 The Merged Entity will revise the procurement target after conducting a detail market assessment during the initial [...] month period, taking into account various interventions by Government as well as the Programme.

6. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 6.1 The Acquiring Firm shall inform the Commission of the Implementation Date within 5 (five) Days of the Implementation Date.
- 6.2 The Merged Entity shall submit to the Competition Commission within 30 days of the Implementation Date details of its level of procurement of weaners from black cattle farmers as at the Implementation Date and in the previous calendar year.
- 6.3 Pelo Ventures will, within 30 days of each anniversary of the Implementation Date, up until the 6th anniversary, provide a suitable and appropriately detailed annual report to the Commission regarding its measures to comply with these Conditions. The report is to, in relation to the year to which the report relates:
- 6.3.1 Include a copy of the Programme (or a draft of the Programme if it has not yet

been finalised);

- 6.3.2 Note any amendments to the Programme that have been made;
 - 6.3.3 Describe all steps that have been taken to implement the Programme;
 - 6.3.4 Report on progress of the establishment of the Development Fund;
 - 6.3.5 Report on funding that has been secured for the Development Fund; and
 - 6.3.6 Report on the level of procurement of weaners by the Merged Entity from black cattle farmers.
- 6.4 The report referred to in 6.3 shall be accompanied by an affidavit attested to by the Chief Operations Officer or Chief Executive Officer or Managing Director of Pelo Ventures confirming accuracy of the annual report and compliance with these Conditions in the year to which the report relates.

7. GENERAL

- 7.1 In the event that the Commission receives any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, this shall be dealt with in terms of Rule 39 or the Rules for the Conduct of Proceedings in the Competition Commission.
- 7.2 The Merging Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.
- 7.3 All correspondence in relation to this Condition should be forwarded to: mergerconditions@compcom.co.za.