



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM288Feb18

In the matter between

Overberg Agri Limited

Primary Acquiring Firm

And

Acorn Agri (Pty) Ltd

Primary Target Firm

Panel	: Yasmin Carrim (Presiding Member)
	: Medi Mokuena (Tribunal Member)
	: Fiona Tregenna (Tribunal Member)
Heard on	: 14 March 2018
Order Issued on	: 14 March 2018
Reasons Issued on	: 28 March 2018

NON-CONFIDENTIAL REASONS FOR DECISION

Approval

- [1] On 14 March 2018, the Competition Tribunal ("Tribunal") unconditionally approved the proposed transaction involving Overberg Agri Limited ("Overberg") and Acorn Agri (Pty) Ltd ("Acorn"), hereinafter collectively referred to as the merging parties.
- [2] The reasons for approval of the proposed transaction follow.

Parties to the transaction

Primary Acquiring Firm

- [3] Overberg is an investment holding company that focuses on investments in agricultural and related sectors in South Africa. Its shares are widely dispersed and as such no single shareholder controls Overberg. Overberg controls six firms in South Africa including Overberg Agri Bedrywe (Pty) Ltd ("OA Bedrywe"), through which it conducts most of its business.¹ Overberg and all the firms directly and indirectly controlled by it are hereinafter collectively referred to as the 'Overberg Group'.
- [4] The Overberg Group supplies agricultural products and services primarily in the Western and Eastern Cape Province. The Overberg Group operates through four divisions namely grain services, mechanisation, retail services, and financial and insurance services. The retail division sells and distributes packaging material, animal feed and fertilisers through their retail stores. Agricultural equipment (machinery and parts) is sold through their mechanisation division. The Overberg Group also provides financial and insurance services to farmers, which includes the provision of credit.

Primary Target Firm

- [5] Acorn is an investment holding company that invests in unlisted companies operating in the food and agricultural sector in Southern Africa. No single shareholder controls Acorn. Acorn directly and indirectly controls Montagu Dried Fruit and Nuts (Pty) Ltd, Acorn Agri Services Ltd, Grassroots Group Holdings (Pty) Ltd ("Grassroots"), and ACG Fruit (Pty) Ltd, hereinafter collectively referred to as the 'Acorn Group'.
- [6] The Acorn Group farms table grapes and citrus crops. It also sources and distributes dried fruits, nuts and dried fruit products.

¹ As Overberg is an investment firm, it does not trade directly.

Proposed transaction

- [7] In terms of the *Amalgamation Agreement*,² the proposed transaction entails Overberg and Acorn merging their businesses with Overberg being the surviving entity thereafter. Effectively, Overberg would be in control of Acorn's subsidiaries and operations.
- [8] The envisaged process entails Overberg acquiring all of Acorn's assets, hereinafter referred to as the 'Sale Assets'.³ As consideration for the Sale Assets, Overberg: (i) will assume Acorn's liabilities; and (ii) will issue two sets of shares to Acorn shareholders and Acorn respectively.
- [9] The first set of shares to be issued by Overberg will account for approximately 99% of the consideration shares Overberg undertook to issue. The shares will be issued directly to the Acorn shareholders on the date of implementation of the merger with the objective that the Acorn shareholders will become direct shareholders in Overberg.
- [10] The second set of consideration shares which are approximately 10 000 shares, will be issued after implementation of the merger. These shares will not be issued directly to the Acorn shareholders, but to Acorn. They will in turn, be distributed by Acorn to its shareholders.
- [11] In terms of the agreement, Overberg may be obliged to issue additional shares in the event that (1) Grassroots achieves certain performance targets; or (2) Overberg is in breach of any warranties given by it in terms of the agreement.

² The proposed transaction is an amalgamation in terms of section 44 of the Income Tax Act 58 of 1962. Generally, the amalgamation takes place over a period of time and through various steps. However, this particular transaction will take place over one day, save for a few further steps in the future. On the day it takes place, most of Acorn's assets and liabilities will be delivered to Overberg, hence why it constitutes a merger for purposes of the Competition Act 89 of 1998.

³ The Sale Assets are the business operations of Acorn. Meaning its subsidiaries, its interests in other firms, contracts etc.

Relevant market and impact on competition

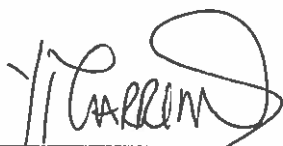
- [12] The Competition Commission ("Commission") found no horizontal overlap between activities of the merging parties since the Overberg Group is not active in the market for the farming of citrus and table grapes nor the market for the sale of dried fruits, nuts and ancillary products thereof.
- [13] The Commission therefore concluded that the proposed transaction was unlikely to substantially prevent or lessen competition in any relevant market. We agreed with the Commission's conclusion.

Public interest

- [14] The merging parties confirmed that the proposed transaction would not result in any retrenchments or job losses.⁴ The proposed transaction raised no other public interest concerns.

Conclusion

- [15] In light of the above, we concluded that the proposed transaction was unlikely to prevent or lessen competition in any relevant market. In addition, no other public interest concerns arose from the proposed transaction. Accordingly, we approved the proposed transaction unconditionally.



Ms Yasmin Carrim

28 March 2018

Date

Mrs Medi Mokuena and Fiona Tregenna concurring.

Tribunal Researcher: Hlumelo Vazi

For the Merging Parties: P Neethling of Van der Spuy and Partners Inc

For the Commission: T Loate

⁴ Merger Record, pages 13,149 and 150.