



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM260Feb19

In the matter between:

Senwesbel Limited

Primary Acquiring Firms

Senwes Limited

And

KLK Landbou Limited

Primary Target Firm

Panel : Y Carrim (Presiding Member)
A Ndoni (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 24 April 2019
Last submission received: 29 April 2019
Decided on : 29 April 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

29 April 2019
Date

Concurring: Ms Andiswa Ndoni and Mrs Medi Mokuena

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Annexure A

CC case number: 2019Feb0025

CT case number: LM260Feb19

In the large merger between:

Senwesbel Limited

Primary Acquiring Firms

Senwes Limited

and

KLK Landbou Limited

Primary Target Firm

CONDITIONS

1 DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1 **"Acquiring Firms"** means Senwesbel Limited, a public company incorporated in accordance with the laws of South Africa, with Registration Number 1996/017629/06 and its subsidiary, Senwes Limited, a public company incorporated in accordance with the laws of South Africa, with Registration Number 1997/005336/06. Both Senwesbel and Senwes' principal business address is at 1 Charel de Klerk Street, Klerksdorp, North West, 2571.
- 1.2 **"Acquiring Firms' offer"** means the offer made by the Acquiring Firms to purchase all of the issued shares in the Target Firm, from its shareholders;
- 1.3 **"Approval Date"** means the day the Form CT10 is issued by the Tribunal;
- 1.4 **"Approval Period"** means the period of not more than two years following the Implementation Date;
- 1.5 **"Commission"** means the Competition Commission of South Africa;

- 1.6 **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.7 **"Condition"** means these conditions;
- 1.8 **"Days"** means any business day being a day which is not a Saturday, Sunday or an official holiday in South Africa;
- 1.9 **"Implementation Date"** means 14 June 2019 or any such extended date as approved by the TRP;
- 1.10 **"Merging Parties"** means the Acquiring Firms and the Target Firm and their respective subsidiaries;
- 1.11 **"Proposed Transaction"** means the acquisition of control of the Target Firm by the Acquiring Firms, as set out in greater detail in the joint competitiveness report submitted to the Commission as part of the merger filing.
- 1.12 **"Target Firm"** means KLK Landbou Limited ("KLK"), a public company incorporated in accordance with the laws of South Africa, with Registration Number 1997/015589/06 and principal business address at 14 Karakoel Street, Uppington, 8801.
- 1.13 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act with its principal place of business at the DTI Campus, Block C, Mulayo Building, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.
- 1.14 **"TRP"** means the Takeover Regulation Panel established in terms of section 196 of the Companies Act, 2008.

2 CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1 The Tribunal hereby approves the Proposed Transaction subject to the Acquiring Firms establishing control (as contemplated in section 12 of the Competition Act) over the Target Firm by the Implementation Date.
- 2.2 In the event that the Acquiring Firms do not obtain control over the Target Firm by the Implementation Date in terms of clause 2.1 above, this approval will remain valid provided that the Acquiring Firms acquire control over the Target Firm (as contemplated in section 12 of the Competition Act) within the Approval Period.

- 2.3 To the extent that the Acquiring Firms only obtain control over the Target Firm (as contemplated in section 12 of the Competition Act) after the Approval Period, the Acquiring Firms shall be required to file a further merger notification to the Commission.

3 MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Acquiring Firms shall within 5 (five) Days of the Implementation Date advise the Commission in writing of whether it has acquired control over the Target Firm in terms of clause 2.1 above.
- 3.2 If applicable, during the Approval Period, the Acquiring Firms shall, within 5 Days of acquiring control of the Target Firms, advise the Commission in writing that it has acquired control over the Target Firm in terms of clause 2.2 above.
- 3.3 If applicable, the Acquiring Firms shall advise the Commission in writing within 5 (five) Days of the expiry of the Approval Period in the event that the Acquiring Firms are not able to acquire control over the Target Firm as contemplated in 2.3.
- 3.4 In the event that the Commission receives a complaint regarding non-compliance with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 3.5 All documents submitted in compliance with these conditions must be submitted to mergerconditions@compcom.co.za.

4 VARIATION

- 4.1 The Merging Parties may at any time, on good cause shown, apply to the Commission for the Condition to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Condition, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Condition to be lifted, revised or amended.