



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:58/LM/Jul11

In the matter between:

Senwesbel Limited

Acquiring Firm

And

Senwes Limited

Target Firm

Panel : Norman Manoim (Presiding Member),
Yasmin Carrim (Tribunal Member)
Andreas Wessels (Tribunal Member)
Heard on : 07 September 2011
Order issued on : 07 September 2011
Reasons issued on : 03 October 2011

Reasons for Decision

Approval

- 1] On 07 September 2011 the Competition Tribunal (“Tribunal”) approved the large merger between Senwesbel Limited (“acquiring firm”) and Senwes Limited (“target firm”). The Tribunal’s reasons for approving the transaction are set out below.

The Parties to the transaction

- 2] The acquiring firm is Sewesbel Limited (“Senwesbel”), a firm incorporated under the laws of the Republic of South Africa. Senwesbel is not controlled by a single entity and its shares are held by various individual farmers. Senwesbel was established in 1996 with the sole purpose of holding shares in Senwes Limited.
- 3] The target firm is Senwes Limited (“Senwes”),¹ a company incorporated under the laws of the Republic of South Africa. The current shareholders in Senwes include Senwesbel, Producer Shareholders, Royal Bafokeng Consortium (the “RBC”) (34.7%)² and public shareholders.

Description and rationale for the transaction

- 4] The proposed transaction is a large merger in terms of which Senwesbel is increasing its shareholding in Senwes from the present 41% to 58% by acquiring 17% of the RBC shares from Royal Bafokeng Agri Investments (Pty) Ltd.³
- 5] When the shares were acquired by RBC in 2006 as part of a Black Economic Empowerment deal, the Sale of Share Agreement included a pre-emptive right in favour of Senwesbel and the proposed transaction is a result of Senwesbel exercising such right.
- 6] Senwesbel sees this transaction as means of maintaining its majority shareholding in Senwes while Royal Bafokeng finds it limiting that they cannot increase their shareholding in Senwes and thereby increase their influence and have hence opted for realising their return on investment through the above divestiture.

The activities of the parties

1 <http://www.senwes.co.za/Korporatief/Default.aspx?sflang=en-ZA>

2 This Consortium consists of three separate entities collectively owning a total shareholding of 34.7% in Senwes.

3 This is a wholly owned subsidiary of Royal Bafokeng Holding (Pty) Ltd.

- 7] Senwesbel was established with the sole purpose of holding shares in Senwes and conducts no other business other than holding such shares.
- 8] Founded over 100 years ago, Senwes is a diversified agricultural business supplying production inputs; market access and value added services to its customers in the agricultural sector through retail stores, grain and oilseed silo operations. Senwes also supplies credit to farmers for input financing and long- to medium-term financing through its divisions Senwes Grainlink, Senwes Village, Senwes Credit and Senwes Agricultural Services.
- 9] The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition due to there being no overlap in any of the activities of the activities of the parties.
- 10] Treacle Fund II Trust ("Treacle"), a shareholder and a RBC member entity, raised concerns relating to the cross directorship between Senwesbel and Senwes and stated that the majority of board members being farm producers, could, through their control over Senwesbel, change incentives in the operations of Senwes favouring their own interests. The Commission concluded that this concern was not merger specific and pre-existed the proposed transaction.
- 11] Treacle further stated that the time limit within which Senwesbel could exercise the pre-emptive right was not adhered to by the merging parties. The Commission's response to this averment was that it did not have jurisdiction over contractual conditions between parties
- 12] The merging parties submitted that the proposed transaction does not raise any significant public interest concerns and has no adverse effect on employment.

Conclusion

13] In light of the above factors and the Commission's analysis, the Tribunal concludes that the proposed transaction is unlikely to substantially prevent or lessen competition.

14] Accordingly, the above merger is approved without conditions.

N Manoim

03 October 2011
Date

Y Carrim and A Wessels concurring.

Tribunal Researcher: Songezo Ralarala

For the merging parties: Advocate Greta Engelbrecht instructed by Andries
Le Grange of Cliffe Dekker Hofmeyr

For the Commission: Dineo Mashego and Lindiwe Khumalo