



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM153Dec23

In the large merger between:

ETG Inputs Holdco Limited

Primary Acquiring Firms

And

Certain Assets of JPB Beleggings Proprietary Limited

Primary Target Firm

Panel:	A Wessels (Presiding Member) I Valodia (Tribunal Member) A Kessery (Tribunal Member)
Heard on:	26 March 2024
Date of last submission:	28 March 2024
Order issued on:	2 April 2024
Reasons Issued on:	26 April 2024

REASONS FOR DECISION

Introduction

- [1] On 2 April 2024, the Competition Tribunal (“Tribunal”) conditionally approved the large merger whereby ETG Inputs Holdco Limited (“**EIHL**”) intends to purchase 100% of the shares held by JPB Beleggings Proprietary Limited (“**JPB**”) in Consolidated Limeworks Proprietary Limited (“**Consolidated Limeworks**”), which includes all of the assets of Nitrophoska Proprietary Limited (“**Nitrophoska**”).
- [2] Post merger, EIHL will hold 100% of the shares in Consolidated Limeworks.

Parties to the transaction and their activities

Primary acquiring firm

- [3] The primary acquiring firm is EIHL, a firm based in the United Arab Emirates. EIHL's shareholding is held by ETC Group ("**ETG World**") (51%) and SABIC Agri-Nutrients Company (49%). Of relevance to the proposed transaction are EIHL's wholly owned subsidiaries Kynoch Fertilizer (Pty) Ltd ("**Kynoch**")¹ and Sidi Parani (Pty) Ltd ("**Sidi Parani**")² (collectively referred to as "**the Acquiring Group**").
- [4] The Acquiring Group is active in the blending and distribution of fertilizers to the retail market (farmers) in South Africa and globally through Kynoch and Sidi Parani. The Acquiring Group is an importer of Nitrogen (**N**), Phosphorus (**P**) and Potassium (**K**) based granular fertilizers into South Africa. The fertilizer is imported, and blended and packaged for distribution in South Africa.

Primary target firm

- [5] The primary target firm is 100% of the shares held by JPB in Consolidated Limeworks including all of the assets of Nitrophoska. JPB is wholly owned by the Beyers Trust which does not control any other firms in South Africa.
- [6] JPB controls Consolidated Limeworks which in turn controls Jupu Investments (Pty) Limited and Nitrophoska.
- [7] Nitrophoska's activities are relevant to the proposed transaction. Nitrophoska is largely a blender and distributor of granular fertilizer to farmers in South Africa.

Description of the transaction and rationale

- [8] The proposed transaction involves three steps which includes the transfer of Nitrophoska's assets to Consolidated Limeworks, distribution of Nitrophoska's

¹ Kynoch imports, blends, and distributes fertilizer products. The [REDACTED] of products sold by Kynoch are imported, blended, packaged and then sold to wholesalers / blenders and/or directly to farmers.

² Sidi Parani supplies plant nutrition products in South Africa. In particular, it provides dry (granular) fertilizers.

ordinary shares in Consolidated Limeworks to JPB, and EIHL's acquisition of the shares in Consolidated Limeworks from JPB.

- [9] The transaction presents the Acquiring Group with an opportunity to expand its [REDACTED] capabilities. Insofar as the target firm is concerned, the remaining trustees and the beneficiaries of the Beyers Trust wish to sell the business following the [REDACTED]

Competition assessment

- [10] There are horizontal overlaps arising from the proposed transaction.
- [11] Both merging parties are active in the sale of liquid fertilizers in South Africa. Nitrophoska's sales are however negligible in this market (less than [REDACTED]% of its revenue). Further there are sufficient alternate suppliers of liquid fertilizer.
- [12] Both merging parties are also active in the blending and distribution of granular fertilizers. After investigating the merger, the Competition Commission ("**Commission**") confirmed that the Acquiring Group has an estimated market share of [20-30]% of the total volume of N, P and K based granular fertilizers imported for sales in South Africa, whereas Nitrophoska has a [0-10]% market share.
- [13] In addition, there are numerous other competitors active in the distribution of granular fertilizers and approximately 40 to 50 distributors nationally.
- [14] Even though there is no overlap between the merging parties in the upstream market for importing individual straights of N, P and K based granular fertilizer products, the Commission noted that the Acquiring Group has been involved in at least three transactions involving the sale of fertilizer products since 2019. After considering the market shares of the Acquiring Group³ as well as the

³ The Acquiring Group had a market share of [20-30]% for the importation of N based granular fertilizers, [10-20]% for P based granular fertilizers, and [20-30]% for K based granular fertilizers.

number of alternate suppliers in each individual straight of granular fertilizer, the Commission found that there were no competition concerns.

[15] We note that the merging parties have occasionally sold granular fertilizer to each other for wholesale purposes, on an *ad hoc* and spot sale basis. They did not sell to each other [REDACTED]. Given the limited quantities of granular fertilizer purchased and the *ad hoc* supply, the proposed transaction does not give rise to any foreclosure concerns.

[16] On this basis, we are of the view that the proposed transaction is unlikely to substantially lessen or prevent competition in any market in South Africa.

Public interest

Employment

[17] The merging parties submitted that the proposed transaction will not result in any adverse effect on employment and there will be no job losses as a result of the proposed transaction.

[18] We are of the view that the proposed transaction is unlikely to raise employment concerns.

Spread of ownership

[19] Consolidated Limeworks, Jupu and Nitrophoska do not have any ownership by historically disadvantaged persons (“**HDPs**”).

[20] The merging parties submitted that post-merger, the target firm will form part of the Acquiring Group, where the Public Investment Corporation Ltd (“**PIC**”) holds [REDACTED]% in ETG World on behalf of the Government Employees Pension Fund (“**GEPF**”). Consequently, the merging parties relied on the indirect GEPF shareholding as the basis for submitting that the proposed transaction promotes a greater spread of ownership and that the target firm will have a [REDACTED]% ownership by HDPs. The Commission disagreed with the merging parties.

[21] The merging parties nevertheless committed (as reflected in the conditions attached hereto as **Annexure A**) to spending the following amounts over a period of three years after the implementation date of the merger:

21.1 targeted spend on enterprise and supplier development, by way of monetary contributions in favour of HDPs in the agricultural sector in the Western Cape and surrounding areas, of at least ZAR [REDACTED] per annum;

21.2 targeted spend on socio-economic development, comprising initiatives with the objective of facilitating sustainable access to the economy in the Western Cape and surrounding areas and specifically for HDPs in the agricultural sector, of at least ZAR [REDACTED] per annum; and

21.3 spend on skills development of at least ZAR [REDACTED] per annum. These initiatives will be directed towards skills development in the agricultural sector and be applied for the benefit of HDPs in the Western Cape and surrounding areas.

[22] Based on the above, we do not find it necessary to conclude on whether the merger promotes a greater spread of ownership.

Conclusion on public interest

[23] We are not aware of any other public interest concerns arising in this case. Based on the above, we are of the view that the proposed transaction does not raise any public interest concerns.

Third party views

[24] No third parties expressed concerns about the proposed merger to the Tribunal.⁴

⁴ Fertiva (Pty) Ltd (Fertiva), a wholesale supplier of granular fertilizers to the merging parties, did not express concerns regarding the proposed transaction but submitted to the Commission that in order to ensure consistency in the industry, remedies imposed on the merging parties must be the same as the public interest remedies which were imposed in the merger involving Fertiva (under Commission case number 2023Jan0034). The remedies in this case was considered against the facts and circumstances of the proposed transaction.

Conclusion

- [25] For the reasons set out above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market and does not raise any significant competition or public interest concerns.
- [26] We therefore approve the proposed transaction subject to the conditions attached hereto as **Annexure A**.

Signed by: Anisa Kessery
Signed at: 2024-04-26 18:57:13 +02:00
Reason: Witnessing Anisa Kessery

[REDACTED]

Adv. Anisa Kessery

26 April 2024

Date

Mr Andreas Wessels and Prof. Imraan Valodia concurring

Tribunal Case Manager:	Sinethemba Mbeki
For the Merging Parties:	Katherine McLean and Judd Lurie of Bowmans Attorneys
For the Commission:	Raksha Darji, Grashum Mutizwa, Wiri Gumbie