

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM109Sep22

In the matter between:

VKB Belegins Ltd (VKB)

Primary Acquiring Firm

And

Griekwaland Wes Korporatief Ltd (GWK)

Primary Target Firms

Panel : I Valodia (Presiding Member)
: AW Wessels (Tribunal Panel Member)
: A Ndoni (Tribunal Panel Member)
Heard on : 21 December 2022
Decided on : 21 December 2022

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 as Annexure A; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

Signed by Imraan Valodia
Signed at: 2022-12-21 11:49:07 +02:00
Reason: Witnessing Imraan Valodia



Presiding Member
Prof. Imraan Valodia

21 December 2022

Date

Concurring: Mr Andreas Wessels and Ms Andiswa Ndoni



competitiontribunal
SOUTH AFRICA

Merger Clearance Certificate

Date : 21 December 2022

To : Cliffe Dekker Attorneys

Case Number: LM109Sep22

VKB Beleggings Ltd (VKB) And Griekwaland Wes Korporatief Ltd (GWK)

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

You applied to the Competition Commission on **06 September 2022** for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- a) it was granted on the basis of incorrect information for which a party to the merger was responsible.
- b) the approval was obtained by deceit.
- c) a firm concerned has breached an obligation attached to this approval.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

The Registrar, Competition Tribunal

ANNEXURE A

CT Case No: LM109Sep22

In the Large Merger between:

VKB BELEGGINGS PROPRIETARY LIMITED

And

GRIEKWALAND WES KORPORATIEF LIMITED

CONDITIONS

1 DEFINITIONS

- 1.1 "**Acquiring Firm**" means VKB Beleggings Proprietary Limited ("**VKB Beleggings**" or "**VKB**"), a private company incorporated in accordance with the laws of South Africa, with registration number 2011/007000/07;
- 1.2 "**Approval Date**" means the date on which the Merger is approved by the Tribunal;
- 1.3 "**Commission**" means the Competition Commission of South Africa;
- 1.4 "**Commission Rules**" means the Rules for the Conduct of Proceedings in the Commission;
- 1.5 "**Competition Act**" means the Competition Act 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 "**HDP**" means historically disadvantaged persons within the meaning set out in section 3(2) of the Competition Act;
- 1.9 "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Parties.

- 1.10 **"Merged Entity"** means the Acquiring Firm and the Target Firm, after the implementation of the Merger.
- 1.11 **"Merger"** means the the Acquiring Firm's acquisition of control of the Target Firm, as contemplated in the transaction notified to the Commission under Commission Case Number 2022SEP0012;
- 1.12 **"Merging Parties"** means VKB and GWK;
- 1.13 **"Minister"** means the Minister of Trade, Industry and Competition of the Republic of South Africa;
- 1.14 **"Moratorium Period"** means a period of 36 months (thirty-six) months from the Implemented Date, and includes a period between the Approval Date and the Implementation Date;
- 1.15 **"Qualifying Workers"** means permanent employees who have been employed by VKB (or GWK) for a minimum period of 12 (twelve) months, however this does not include (in terms of the trust deeds) any executive directors of VKB Beleggings, VKB Landbou Proprietary Limited and VKB Agri Processors Proprietary Limited (who are not entitled to share in the proceeds of the abovementioned employee share schemes);
- 1.16 **"Target Firm"** means Griekwaland Wes Korporatief Limited ("**GWK**") a public company incorporated in accordance with the laws of South Africa, with registration number 1997/022252/06;
- 1.17 **"Tribunal"** means the Competition Tribunal of South Africa;
- 1.18 **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Commission; and
- 1.19 **"VKB ESOPS"** means the VKB Landbou Workers Trust and VKB Agri Processors Workers Trust.

2 EMPLOYMENT

- 2.1 The Merging Parties shall not retrench any of the employees of any of the businesses of the VKB group and GWK group as a result of the Merger during the Moratorium Period.
- 2.2 For the avoidance of doubt, retrenchments referred to in 2.1 above do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act 66 of 1995; (iv) resignations or retirements in the normal course; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the

normal course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

3 WORKERS TRUSTS

- 3.1 The Merging Parties shall ensure that all Qualifying Workers will become beneficiaries of the VKB ESOPS within a period of 3 (three) months from the Implementation Date, subject thereto that this does not limit non-HDP employees from becoming beneficiaries of the VKB ESOPS.

4 FACILITATION OF FINANCING TO HDP

- 4.1 The Merging Parties shall facilitate the provision of financing, in terms of the Merging Parties' applicable credit policies and relevant legislation, to HDPs in the value chains and the geographical areas where the Merging Parties operate (currently and in future) of at least R60 million (sixty million Rand) cumulatively over a period of 36 (thirty-six) months from the Implementation Date.
- 4.2 The financing to be facilitated as stated in paragraph 4.1 above may include the facilitation of production loans to provide credit for inputs, monthly accounts, financing for acquiring implements and whole goods, term loans, financing for contract growth, as well as the facilitation of financing to specific projects and/or communities.

5 MONITORING OF COMPLIANCE WITH CONDITIONS

- 5.1 The Merging Parties shall notify the Commission in writing of the Implementation Date within five (5) Business Days of it becoming effective.
- 5.2 The Merging Parties shall circulate a copy of the employment conditions as stated in paragraph 2 above to their employees, the trade union representatives and employee representatives within 5 (five) Business Days of the Approval Date.
- 5.3 As proof of compliance with paragraph 2, the respective Group Company Secretaries of GWK and VKB shall within 10 (ten) Business Days of circulating the Conditions, submit to the Commission an affidavit attesting to the circulation of the Conditions and provide copies of the notices that were circulated to the employees and the relevant employee representatives.
- 5.4 The Merging Parties shall, within the first month of the Implementation Date:
- 5.4.1 publish a non-confidential version of the Conditions on the Acquiring Firm and Target Firm's websites;

- 5.4.2 to ensure that potential HDP beneficiaries in the value chains and the geographical areas where the Merging Parties operate are aware of the HDP finance facilitation condition, the Merging Parties shall provide a non-confidential version of the conditions to African Farmers Association of South Africa, and request that the association announce the conditions and the potential benefits for the HDP beneficiaries they represent;
- 5.4.3 using local media within the Merging Parties' catchment area, publish an announcement relating to the conditions and requesting potential qualifying beneficiaries to contact any other designated employee of the Merging Parties; and
- 5.4.4 publish a non-confidential version of the Conditions at various stores at which the Acquiring Firm and Target Firm operates.
- 5.5 The Merging Parties shall submit a report on an annual basis to the Commission within 2 (two) calendar months after VKB's financial year end providing an update with regards to compliance with these Conditions, for the duration of each specific Condition.
- 5.6 Each report submitted in terms of paragraph 5.4 shall be accompanied by an affidavit of the Managing Director of VKB confirming the accuracy of the information contained in the report and attesting to the compliance with the Conditions.
- 5.7 The Commission may request any additional information from the Merging Parties, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.
- 5.8 Any person who believes or has reason to believe that the Merging Parties have acted in breach of these Conditions, may approach the Commission.

6 APPARENT BREACH OF CONDITIONS

- 6.1 In the event that the Commission receives a complaint regarding non-compliance by the Parties with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties, the matter shall be dealt with in terms of Rule 37 of the Tribunal Rules read with Rule 39 of the Commission Rules.

7 VARIATION OF CONDITIONS

- 7.1 The Merging Parties or the Commission shall be entitled, on good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of any of these Conditions at any time after the Approval Date.

- 7.2 The Commission, the Minister and/or any registered trade union (as contemplated by section 13A(2)(a) of the Competition Act) of the Merged Entity shall be entitled to support or oppose any variation of the Conditions.

8 CORRESPONDENCE

- 8.1 All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.