COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 11/LM/Feb02

In the large merger between:

OTK Agri Products Trading, a division of OTK Limited

and

Farm Feed Services, a division of Afribrand Trading (Pty) Limited

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Reasons

Approval

1. We approved without conditions the merger between OTK Agri Products Trading (OTK Agri) and Farm Feed Services, on 7 March 2002. Below are the reasons for our decision.

The Parties

2. The acquiring firm is OTK Agri, a division of OTK Limited. OTK Holdings Limited, a JSE listed public company, controls OTK Limited. OTK's core business is the provision of the following services:

   - Agri Finance – Providing financial and business solutions to farmers, traders, processors and users of agricultural products;
   - Agri Requisites – Providing agricultural inputs to primary producers through a network of outlets; and
   - Agri Products – Providing quality control, logistics and marketing

solutions to all participants in the provision of agricultural services and products. In this regard they have interests in the cotton, animal feed and broiler sectors.

3. The target firm is Farm Feed Services, a division of Afribrand Trading (Pty) Limited. Afribrand Trading (Pty) Limited is a subsidiary of Afribrand Holdings. Farm Feed Services's business is also in the broad agricultural sector. According to the Commission Farm Feed Services trades in about 38 agricultural products. These include products like soya oilcake, maize, wheat, soya beans, wheat bran, sorghum, cotton seed and fish meal.

The Transaction

4. The merger was initially notified as an acquisition by OTK Agri of the whole business of Farm Feed Services. At the hearing we were notified by the merging parties that the transaction would now involve the sale of assets only. The reason given for this change in the structure of the transaction was that the seller of the business had gone into liquidation and the liquidators had decided that the sale of the whole business of Farm Feed Services would not be for the benefit of shareholders. The transaction is now effectively a purchase by OTK Agri of the debtor's book of Farm Feed Services.

The Relevant Market

5. According to the parties, the relevant market is the market for the buying and selling of grain and oilseeds. On this definition OTK Agri and Farm Feed Services would post merger, have market shares of 15% and 35%, respectively.

6. The Commission, on the other hand, recognises 6 (six) relevant markets. These are the markets for the buying and selling of cotton oilcake; soya beans, sorghum; wheat; sunflower seed and maize. Based on this market definition, the market share of the parties would be as follows:

PRODUCTS m	OTK AGRI	FARM FEED SERVICES	POST-MERGER MARKET SHARE
Cotton Oilcake	21%	4,6%	25,6%
Soya Beans	17%	7,5%	24,5%
Sorghum	12,5%	0,6%	13,1%
Wheat	1,25%	9%	10,25%
Sunflower seed	5%	2,4%	7,4%
Maize	19%	0,7%	19,7%

Impact on Competition

7. The Commission found that this merger is unlikely to result in the prevention or lessening of competition and recommended that it be approved without conditions. The Commission considers that, on either of the above market definitions, the post merger market shares of the parties are moderate and the concentration levels do not indicate that the merger is likely to raise any competition concerns. Furthermore, the Commission found that there are no major barriers to entry into identified markets. As evidence of this it points out that about 11 competitors have entered the market in the past three years. The Commission also found that the market consists of a multitude of suppliers with few purchasers who wield significant countervailing power. A combination of these factors, according to the Commission, will ensure that the merger is unlikely to result in the acquisition or exercise of market power by the merged entity.

8. We agree with the Commission's finding that the merger is unlikely to have a negative impact on competition either on the narrow market definition adopted by it, or the wider market definition proposed by

the merging parties. We point out, however, that no evidence whatsoever is presented by the merging parties to support the assertion that there exists a market for the trading in grains and oil seeds and why, in the instant matter, this is the relevant market. At the very least, the merging parties had to show the existence of demand-side and/or supply-side substitutability between the products classified as grains or oilseeds. A mere assertion is not enough.

9. The shortcomings in the parties submission do not, however, condemn the merger because, as already stated, no competition concerns arise even with the narrower market definition adopted by the Commission. In our view the market identified by the Commission is, for the purposes of this transaction, the narrowest market classification possible. Since the merger raises no competition concerns on this classification, it will obviously not raise any concerns on any (wider) market definition.

Public Interest Considerations

10. The only public interest issue arising from the merger was its potential effect on employment. The Commission received no representations from the employees of the merging parties. In their submissions to the Commission, the merging parties had anticipated that out of the target firm's staff compliment of 21 (twenty-one), 7 (seven) white-collar employees would lose their jobs directly as a result of the merger. At the hearing, we were informed that only one of the employees who had lost his job as a consequence of the merger has not been able to find employment elsewhere. Since we are now advised that the target firm is in liquidation, the merger has meant that jobs will be saved and thus its net effect on employment is positive.

Finding

11. The merger between merger between OTK Agri Products Trading and Farm Feed Services is not likely to result in the substantial lessening or prevention of competition in any market. There are no significant public interest concerns resulting from the merger.

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N.M. Manoim **Date**

Concurring: S. Zilwa; D.H. Lewis