NOTICE 245 OF 2012

COMPETITION COMMISSION

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

SENWES LIMITED

AND

BUNGE SENWES AFRICA (PTY) LIMITED

CASE NUMBER: 2011JUN0080

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission, that it has approved the transaction involving the above mentioned firms subject to conditions as set out below:

The primary acquiring firms are Senwes Limited ("Senwes") and Bunge S.A. ("Bunge"). Senwes and Bunge have concluded a joint venture agreement in terms of which a separate legal entity, Bunge Senwes Africa Proprietary Limited ("Bunge Senwes") has been formed. Senwes is an agri-business whose majority shareholders are Senwesbel Limited ("Senwesbel") (41.1%) and The Royal Bafokeng Consortium ("RBC") (34.7%). Senwesbel's shareholders are predominantly the producers and the company is the de facto controlling shareholder of Senwes.

On the other hand Bunge is controlled by Koninklijke Bunge BV (NL) and is part of a multinational agro-foods and commodities trading business which is registered in Switzerland. Bunge is controlled by Bunge Limited (Europe) which operates hundreds of agribusiness facilities around the world including grain elevators, oilseed processing plants, port terminals and marketing offices. Notably, Bunge does not have any operational presence in South Africa and is not involved in the direct trading of grain, oilseeds and by-products with millers and processors in South Africa.

The primary acquiring firm is Bunge Senwes Africa (Proprietary) Limited ("Bunge Senwes"), which is a joint venture that has recently been formed by virtue of the joint venture agreement between Bunge and Senwes. Either party will be controlling 50% of the joint venture.

As both parties are agri-businesses involved in the trading of grain and oilseeds, there is an overlap in terms of the activities of the parties. However, Bunge has no operations in South Africa as it only operates in global markets, particularly in South, North America and Europe whilst Senwes does not have any significant global trading operations as it has only sold very negligible volumes of grain in international markets. As such, there is no direct overlap in terms of the geographic markets in which the partners to the joint venture operate.

For the purposes of analysing the proposed transaction, the Commission defined the relevant market as that of grain and oilseed trading in South Africa. In particular, the grain and oilseeds included in the joint venture are wheat, yellow maize and soybean. In this market, only Senwes is active in South Africa as Bunge has no operational presence, hence, there is no direct overlap between the joint venture partners. However, Bunge has sold some grains and oilseeds from international markets that have found destination in South Africa. The Commission thus analysed the proposed transaction in the context of such trades by Bunge, to the extent that they could play any influence in the South African market.

Even if Bunge has sold grains and oilseeds that have found destination in South Africa, these only comprise only a very small proportion of the South African market and would unlikely confer any market power to the joint venture. Senwes' market share is less than 10% in any of the three grains and oilseed concerned in South Africa. Thus, there are no major competition concerns of a horizontal nature arising from the joint venture, chiefly because there is no direct overlap. As Bunge has sold some grains and oilseed that have found destination in South Africa, there is however a vertical dimension arising from the transaction. Still, the volumes traded this way are relatively small to warrant major competition concerns.

For instance, the wheat originated from Bunge only comprise 0.46% for 2010 and 10.89% in 2011 (4 months) of the total South African demand. As such, it is evident that Bunge is not a significant supplier of wheat in South Africa, although it is relatively sizeable in soybean meal (a soybean by-product for animal feeds) wherein the market share is estimated at 14.07% for 2010 and 21.8% (4 months) for 2011. Nevertheless, there are no major quasi-input or output foreclosure concerns arising. There are several alternative supplier options for local trading offices of global trading companies such as Cargill, Noble, Louis Dreyfus, Seaboard and Atlas will remain unchanged as they can source products from their global operations and are not reliant on Bunge for supply. Even if Bunge is a leading soybean trader globally, there are several soybean originating traders such as Cargill, Louis Dreyfus, Noble, and Atlas from whom local traders can source soybean from. Senwes does not directly source any grain or oilseed from international markets.

However, there is a potential competitive concern arising from the overall relationship between related markets in which the joint venture partners are involved. Senwes is the leading grain and oilseed storage operator in South Africa, and is linking up with one of the leading grain traders worldwide. Hence, there are potential issues that could arise from the combination of these joint venture partners who have significant positions in the related markets of storage and trading of grain and oilseed. In particular, Senwes may leverage its position in the storage market into the trading market.

The Commission considered this issue and noted that, Senwes' incentives to engage in exclusionary conduct to the detriment of its rivals (traders) increases by virtue of this joint venture. In particular, Senwes will be incentivised to exclude rival traders from its storage facilities, particularly in Senwes catchment area where it enjoys a dominant position in storage. Such exclusionary conduct could be in the form of raising rival costs, refusal or frustrating access to storage or margin squeeze strategies. Senwes has already been the subject of prosecution by the Commission on such conduct, particularly margin squeeze, the case of which is still the subject of litigation. Whilst Senwes has submitted that it has since ceased engaging in the margin squeeze conduct, there is no existing mechanism to prevent such conduct from occurring in future. Further, its ability to engage in such strategies still exists.

Taken as a whole, it is the Commission view that the proposed transaction is unlikely to lead to a significant lessening of competition in the grain and oilseed trading market, however considering the existing litigation between the Commission and Senwes relating to the differential pricing imposed by Senwes to its trading arm and its competitors for storage services, the Commission found that it would be appropriate to impose conditions on Senwes obliging them to provide the same terms and conditions to its customers and competitors as it provides to the joint venture.

The conditions imposed are:

1. Senwes Limited ("Senwes") shall ensure that all services which are offered for purposes of the storage and handling of grain and oilseed ("storage services") to Bunge Senwes Africa (Pty) Ltd ("Bunge Senwes Africa") are made available on the same terms and conditions, including but not limited to storage and handling costs, to all other storage services customers, taking into consideration that different storage and handling options

may be offered by Senwes, based, inter alia, on volume of grain stored, duration or time of storage or location of the relevant silo, to all clients (including Bunge Senwes Africa). These terms and conditions shall be reduced to writing and must be available to all storage services customers.

2. Paragraph 1 above of these conditions shall remain in force for as long as the joint venture agreement ("JV Agreement") between Senwes Limited and Bunge Senwes Africa is in existence.
3. Senwes shall monitor that it is in compliance with the above condition. In the event that the Commission requests Senwes to confirm that it is compliance with the condition, Senwes shall provide written confirmation to the Commission to this effect.
4. Senwes shall notify its clients in its next circular dealing with its storage and handling tariffs that the Bunge Senwes Africa joint venture was approved subject to the above condition.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298, or Facsimile: (012) 394 4298.