Case No. CCC/RFA/08/06/2018

Decision\(^1\) of the Forty Seventh Committee Responsible for Initial Determination Regarding the Application for Authorisation of the Distribution Agreement between John Deere (Proprietary) Limited and AFGRI Zimbabwe Private Limited

ECONOMIC SECTOR: Distribution of Agriculture Equipment

6\(^{th}\) October, 2018 – Johannesburg, South Africa

\(^1\) In the published version of this decision, some information has been omitted pursuant to Rule 73 of the COMESA Competition Rules concerning non-disclosure of business secrets and other confidential information. Where possible the information omitted has been replaced by ranges of figures or a general description.
Information and Relevant Background

1. On 18th January, 2018, the COMESA Competition Commission (hereinafter referred to as “the Commission”) received an application for authorisation of a distribution agreement between John Deere (Proprietary) Limited (“Deere”) and AFGRI Zimbabwe Private Limited (“AFGRI”).

2. The application for authorisation was submitted to the Commission under Article 20 of the COMESA Competition Regulations (hereinafter referred to as the “Regulations”). The Commission’s concern was to determine, under Article 16 whether or not the Agreement may affect trade between Member States and had as its object or effect the prevention, restriction, or distortion of competition within the Common Market.

3. The Committee Responsible for Initial Determination (hereinafter referred to as the “CID”) established that the Agreement affected more than one COMESA Member State and therefore had a regional. This therefore meant that the Commission had jurisdiction to assess the Agreement.

The Parties

Deere

4. The parties submitted that Deere was a company founded in 1950 which incorporated in South Africa. Deere was ultimately owned by Deere & Company, a USA incorporated company. Deere & Company is listed on the New York Stock Exchange and is not controlled by any firm. The Deere Group manufactures agriculture, construction and forestry machinery, industrial diesel engines and lawn care equipment.

AFGRI

5. The parties submitted that AFGRI was an agricultural trading company which mainly supplied agricultural equipment. It distributes leading equipment brands in tractors, combines, TLB’s, telehandlers, wheel loaders, planters, balers, sprayers, mowers, spreaders, graders, loaders, post hole diggers, utility vehicles, and GPS based precision agricultural equipment.

The Agreement

6. The parties submitted that Deere had appointed AFGRI to exclusively market the Deere products as an independent distributor in the territory of Zimbabwe. The Agreement contained provisions which stated that:
“the exclusivity of the territory shall be subject to AFGRI having uninterrupted marketing, servicing, and supporting of goods” and “in the event of any dispute, litigation, interdict or any other action or activity that results in a break or an interruption of the AFGRI’s business operations for a period of 90 days or more, AFGRI’s territory shall become non-exclusive territory”.

7. The Agreement further stated that:

“Deere shall have no obligation to offer its marketing and programs or other support for activities of AFGRI outside its area of responsibility. AFGRI shall request and obtain written approval from Deere prior to discussing (directly or indirectly) with any third party a possible purchase or sale of a dealership that would add to or detract from the AFGRI’s area of responsibility or constitute a new area of responsibility for AFGRI. Deere in its sole discretion shall have the right to reject such a request to disapprove additions to AFGRI’s area of responsibility and to refuse assignment of a new area of responsibility to AFGRI. AFGRI will maintain dealership operations at each Authorised Location whose primary function is to enable AFGRI to more effectively serve its areas of responsibility. AFGRI will not open any new location, relocate or discontinue an Authorised location or change the purposes of an Authorised Location without obtaining Deere’s prior, written approval. Further, AFGRI will not either directly or indirectly establish, maintain, or operate at any location a place of business of any kind where (or from which) any goods, new or used are displayed, sold, leased, rented or serviced”.

**Competition Analysis**

8. The CID defined the relevant markets as the distribution of agricultural equipment in Zimbabwe.

9. The CID observed that the relevant market was not highly concentrated since it was characterised by the presence of numerous suppliers of agricultural equipment. It was also observed that in most Member States, national governments continue to play a role in the supply of agricultural equipment under various mechanisation schemes. The CID further observed that import competition was present as the market was characterised by global competitors such as Mitsubishi Agricultural Machinery Co. Ltd., AGCO Corp., Iseki & Co., Ltd., Kubota Corporation, and Mahindra & Mahindra Limited. The CID also considered that national governments in the Common Market were a major player in the agricultural sector and were involved in the direct importation of agricultural equipment thereby enhancing competition in the sector.
Determination

10. While the CID was generally concerned with the prevalence of anti-competitive agreements in the Common Market. The assessment of the Agreement established that it was not likely to have an appreciable effect on trade between Member States. The CID therefore authorised the Agreement.

11. This decision is adopted in accordance with Article 20 of the Regulations.

Dated this 6th Day of October, 2018

Commissioner Patrick O. Okilangole
(Chairperson)

Commissioner Brian M. Lingela
(Member)

Commissioner Thembelihle P. Dube
(Member)