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GENERAL NOTICE

NOTICE 328 OF 2015

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

FAMOUS BRANDS MANAGEMENT COMPANY PROPRIETARY LIMITED

AND

**CITY DEEP COLD STORAGE PROPRIETARY LIMITED AND CATER CHAIN FOOD
SERVICES PROPRIETARY LIMITED**

2014DEC0741

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:

1. On 15 December 2014, the Competition Commission (the Commission) received a notice of an intermediate merger whereby Famous Brands Management Company Proprietary Limited (FBMC) intends to acquire City Deep Storage Proprietary Limited (City Deep) and Cater Chain Food Services Proprietary Limited (Cater Chain), collectively referred to as the "Target Firms." On completion of the proposed transaction, FBMC will have sole control over the Target Firms.
2. The primary acquiring firm is FBMC, a company incorporated in accordance with the laws of the Republic of South Africa. FBMC is a wholly owned subsidiary of Famous Brands Limited (Famous Brands).
3. FBMC is a franchisor to a number of franchisees across a range of well-known restaurants. Of particular importance to the proposed transaction, is that the Acquiring Group supplies meat products to its various franchisee operations that have meat products on their menu. These meat products include hamburger patties, boerewors, beef steaks, chicken, lamb, pork products and others. In Gauteng, the Acquiring Group owns a meat processing facility located in Midrand that is used to process meat and supply to its franchisees.

4. The primary target firms are City Deep and Cater Chain, firms incorporated in terms of the laws of the Republic of South Africa. Cater Chain is a commercial scale butchery. It receives animal carcasses and parts and then processes these into meat products for resale or reprocessing. City Deep operates a very large freezer facility that is capable of blast-freezing meat products in bulk quantities to ultra-cold temperatures as low as minus twenty-six degrees Celsius.
5. The proposed transaction presents a horizontal overlap in the activities of the merging parties in the processing of meat and the provision of cold storage facilities. There is also a vertical overlap between the activities of the merging parties as the Acquiring Group owns a meat processing facility and City Deep is a cold storage facility that is used to store meat. Further, the Acquiring Group is involved in the procurement of processed meat products that it supplies to its franchise outlets. Cater Chain is a meat processing facility which the acquiring firm intends to use for the in-house processing of its meat products.
6. With respect to horizontal overlap, the Commission found that the proposed transaction is unlikely to alter the structure of the market as the Acquiring Group is only processing meat for its internal use and does not process and supply meat to any third party. Further, the Acquiring Group is acquiring Cater Chain for its own internal use.
7. With respect to vertical overlap, the Commission investigated whether the proposed transaction is likely to result in customer foreclosure concerns with respect to the suppliers of cold storage facilities, processed Halaal meat and processed pork meat products.
8. With respect to the suppliers of cold storage facilities, the Commission found that the proposed transaction is unlikely to result in any foreclosure concerns as there are alternative customers in the market that could use the cold storage facilities currently used by the Acquiring Group.
9. The Acquiring Group sources processed Halaal and pork meat from third party suppliers. The Commission investigated whether the proposed transaction is likely to

result in customer foreclosure concerns should the Acquiring Group stop sourcing processed Halaal and pork meat from third suppliers and self-supply the products.

10. The Commission found that such a strategy is unlikely to result in substantial anti-competitive effects as the suppliers of Halaal and pork meat will remain in business post-merger.
11. With respect to public interest, the Commission found that the proposed transaction is likely to result in job losses arising from the scaling down of the current suppliers operations. These suppliers are likely to scale down their operations post-merger should the Acquiring Group stop sourcing processed Halaal and pork meat from them. The number of employees that are likely to be affected is 215 out of a total of 1 518 employees. Therefore the transaction is likely to have a substantial negative effect on the public interest.
12. The Commission therefore imposes conditions relating to the continuation of the supply arrangements between the Acquiring Group and its current suppliers of processed pork and Halaal meat. These conditions are detailed in Annexure A.

ANNEXURE A**Famous Brands Management Company Proprietary Limited and City Deep Cold Storage Proprietary Limited / Cater Chain Food Services Proprietary Limited****CC CASE NUMBER: 2014Dec0741**

CONDITIONS**1. Definitions**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

- 1.1. **"Acquiring Firm"** means Famous Brands Management Company Proprietary Limited;
- 1.2. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.3. **"Base Average"** means the annual volume of pork products supplied by the Existing Suppliers to the Acquiring Firm in the preceding financial year 1 March 2014 to 28 February 2015 divided by two;
- 1.4. **"Commission"** means the Competition Commission of South Africa;
- 1.5. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6. **"Conditions"** means these conditions;
- 1.7. **"Existing Halaal Suppliers"** means third party suppliers of processed Halaal meat to the Acquiring Firm;
- 1.8. **"Existing Pork Suppliers"** means third party suppliers of processed pork meat to the Acquiring Firm;
- 1.9. **"Implementation Date"** means 1 April 2015, as agreed to with the Merging parties;
- 1.10. **"Merger"** means the acquisition of control over City Deep Cold Storage Proprietary Limited and Cater Chain Food Services Proprietary Limited by Famous Brands Management Company Proprietary Limited;

1.11. **"Merging Parties"** means Famous Brands Management Company Proprietary Limited and City Deep Cold Storage Proprietary Limited and Cater Chain Food Services Proprietary Limited; and

1.12. **"Target firms"** means Cater Chain and City Deep business.

2. Recordal

The Commission found that there is a horizontal overlap in the activities of the merging parties in the processing of meat. The Commission however, found that this overlap is unlikely to alter the structure of the market as the Acquiring Group is only processing meat for its internal use and does not process and supply meat to any third party. Further, the vertical overlap between the activities of the merging parties is unlikely to result in any significant foreclosure concerns. However, the intention of the Acquiring Firm to self-supply post-merger is likely to result in the Existing Halaal Suppliers and the Existing Pork Suppliers scaling down their processing operations. This is likely to result in significant public interest concerns, in particular job losses.

In order to address the public interest concerns arising from the proposed transaction, the merging parties have agreed to the conditions posed below.

3. Conditions to the approval of the Merger

A. Conditions relating to the supply of Halaal processed meat products

- 3.1. The Acquiring Firm undertakes that for a period of 12 months from the Implementation Date it will continue to procure Halaal processed meat products from its Existing Halaal Suppliers in the ordinary course of business. This does not prevent the Acquiring Firm from terminating this supply arrangement if a supplier is unable to supply the requisite quality, quantity or seeks to impose prices that are unacceptable to the Acquiring Firm, or otherwise breaches the provisions of the current supply undertakings.
- 3.2. The condition set out in paragraph 3.1 above will not operate to the extent that any Existing Halaal Supplier declines to supply products in the relevant period to the Acquiring Firm.

B. Conditions in relation to the supply of pork processed meat products

- 3.3. The Acquiring Firm undertakes to do the following from the Implementation Date of the Merger:
- 3.3.1. To continue sourcing products as it ordinarily would from its Existing Pork Suppliers for a period of 6 months.

- 3.3.2. Following the 6 month period and for a further 6 months (the 7th to 12th month after the Implementation Date) to source within that period not less than 70% of the Base Average by volume from each Existing Pork Supplier.
- 3.3.3. Following the 12 month period and for a further six month (the 13th to 18th month after the Implementation Date) to source within that period not less than 40% of the Base Average by volume from each Existing Pork Supplier.
- 3.3.4. Following the 18 month period and for a further six month (the 18th to 24th month after the Implementation Date), to source not less than 10% of the Base Average in volume from each Existing Pork Supplier.
- 3.4. For the avoidance of any doubt, the Acquiring Firm shall as far as is reasonably practicable, during the periods described in paragraphs 3.3.1 to 3.3.4 above, source pork products from the Existing Pork Suppliers in the same ratios of supply between the Existing Pork Suppliers that exist as at the Approval Date.
- 3.5. The condition set out in paragraph 3.3 above:
- 3.5.1. does not prevent the Acquiring Firm from terminating its supply arrangement if a supplier is unable to supply the requisite quality, quantity or seeks to impose prices that are unacceptable to the Acquiring Firm, or otherwise breaches the provisions of the current supply undertakings; and
- 3.5.2. will not operate to the extent that any Existing Pork Supplier declines itself to supply products in the relevant period to the Acquiring Firm.

4. Monitoring of compliance with the Conditions

- 4.1. The Acquiring Firm shall report to the Commission on a six monthly basis indicating the volumes sourced from each Existing Pork and Halaal Supplier. This report shall be accompanied by an affidavit from a senior official attesting to the accuracy of the information contained in the report. The affidavit must comply with South African legal standards.
- 4.2. The reports and accompanying affidavit must be submitted to the following e-mail address mercerconditions@compcom.co.za.
- 4.3. An apparent breach by the merged entity of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.