ECONOMIC DEVELOPMENT DEPARTMENT

NOTICE 153 OF 2017

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

IFFCO AFRICA HOLDINGS PTE. LTD
MIDDLE EAST OILS AND GRAINS FZC
AND
FR WARING HOLDINGS PROPRIETARY LIMITED
AND
AGVESTCO PROPRIETARY LIMITED
AND
THE ASOR GROUP

CASE NUMBER: 2016JUL0359

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 19 July 2016, the Competition Commission (Commission) was notified of a two-step transaction, which the Commission assessed as a single indivisible transaction.

2. In terms of the first step of the transaction, the primary acquiring firm, IFFCO Africa Holdings Pte. Ltd (IAH) and Middle East Oils and Grains FZC (Grains) (collectively the IFFCO Group), will acquire shares in FR Waring Holdings (Pty) Ltd (FR Waring), respectively.

3. FR Waring wholly controls, amongst others, Agvestco (Pty) Ltd (Agvestco), collectively the “FR Waring Group”.

4. In terms of the second step of the transaction, the primary acquiring firm Agvestco (a wholly owned subsidiary of FR Waring) will acquire some of the issued shares in Africa Sun Oil Refineries (Pty) Ltd (African Sun Oil), Gauteng Oil and Cake Mills (Pty) Ltd (GOCM), Budget Soap Industries (Pty) Ltd (BSI), Marston Investments (Pty) Ltd (Marston) and Ingoby Investments (Pty) Ltd (Ingoby), collectively the "ASOR Group".

5. For purposes of assessing the proposed transaction, the Commission analysed the following relevant markets:

- The national upstream market for the bulk trading of hard oils (and narrowly into palm oils).
- The national upstream market for the bulk trading of soft oils (and narrowly into sunflower oil and soyabean oil).
- The national upstream market for the bulk trading of oilmeal.
- The national downstream market for the supply of baking fats (margarine and shortenings).

6. From a horizontal perspective, the FR Waring Group and the ASOR Group are active in the upstream markets for the bulk trading of soft oils, hard oils and oilmeals.

7. The Commission found that traders import and source soft oils from local producers to trade in the market. The Commission further found that the overlap in relation to the bulk trading of soft oils is minimal as the ASOR Group is not a specialist trader but rather sells ex-tank bulk soft oils to the market where available (from its crushing facility) and in large sum to the FR Waring Group.

8. For the bulk trading of hard oils, the Commission found that the primary supply of hard oils is through the primary traders. The Commission found that the ASOR Group only sells the ex-tank volumes to the market that it would have purchased from traders (such as the FR Waring Group) which was not consumed internally.

9. Therefore, the Commission found that the ASOR Group does not directly compete with the FR Waring Group as it is not a specialist trader and there is therefore no market accretion in the upstream market for the bulk trading of soft oils and hard oils.

10. With respect to the market for the bulk trading of oilmeals, the Commission found that the merged entity's has estimated market shares not exceeding 5%. The merged entity would continue to face competition from numerous players such as the Wilmar Group, Russell Stone Protein, the Willowton Group, Nedan, Free State Oil, Drak Oil, GOCM and Majesty Oil.

11. The proposed transaction also presents a minimal horizontal overlap in the market for the supply of baking fats (margarine and shortenings). In this regard, the Commission found that the merged entity would have a combined estimated market shares not exceeding 10%.

12. The Commission also found that the proposed transaction presents a vertical relationship in that the FR Waring Group is active in the upstream markets for the bulk trading of sunflower, soyabean and palm oils which are used by the ASOR Group in the downstream market for the manufacture of sunflower, soyabean and palm based products.

13. Accordingly, the Commission considered input foreclosure effects in the upstream national markets for the bulk trading of hard oils and soft oils.

14. With regards to the upstream national market for the bulk trading of hard oils, the Commission found that the FR Waring Group would have estimated market shares not exceeding 20%. As such, the FR Waring Group will be constrained by other players in the market, namely the Wilmar Group, Olam and LDCA from exerting market power. Therefore, the merged entity is unlikely to have market power in the relevant upstream market to allow it to engage in an input foreclosure strategy to the detriment of other downstream players as there are alternatives suppliers in the market that would continue to constrain the merged entity post-merger.

15. With regards to the upstream national market for the bulk trading of soft oils, the Commission found that the FR Waring Group has estimated market share not exceeding 30%. The Commission found that other players in the market would include the Wilmar Group, Olam, LDCA and Cargill.

16. More narrowly, the Commission estimates that the FR Waring Group would have combined market shares not exceeding 25% in the upstream market for the bulk trading of sunflower oils and approximately 35% in the upstream market for the bulk trading of soyabean oils. The larger players in the sunflower oils and soyabean markets include the Wilmar Group and Olam. The FR Waring Group therefore does not have market power in the upstream market for the bulk trading of soft oils.

17. From a customer foreclosure perspective, the Commission found that the proposed transaction is unlikely to raise any concerns. With respect to hard oils, the ASOR Group already purchases the majority of its requirements from the FR Waring Group. On the soft oils, the ASOR Group is vertically integrated in that it can self-supply soft oils. In addition, the majority of its requirements are sourced from the FR Waring Group.

18. The Commission also considered the possibility of co-ordination post-merger and found that the proposed transaction is unlikely to enhance or facilitate coordination as it is unlikely to significantly alter the structure of the market.

19. The Commission is therefore of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the identified markets.

20. In order to prevent any negative public interest concerns arising due to possible relocation, the Commission imposed a condition that requires the merging parties to not relocate any of their plants for a period of 3 years following the implementation of the merger. The merging parties are amenable to this condition.

21. The proposed transaction does not impact on any other public interest considerations.

22. The Commission therefore approves the proposed transaction subject to the conditions as set out in **Annexure A**.

ANNEXURE A: CONDITIONS

IFFCO AFRICA HOLDINGS PTE. LTD
MIDDLE EAST OILS AND GRAINS FZC
AND
FR WARING HOLDINGS PROPRIETARY LIMITED
AND
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CONDITIONS

1. **Definitions**

The following expressions shall bear the meanings assigned below and cognate expressions bear corresponding meanings -

1.1 **"Acquiring firm"** means IFFCO in the First Transaction Step and Agvestco in the Second Transaction Step;

1.2 **"Act"** means the Competition Act 89 of 1998, as amended;

1.3 **"Agvestco"** means Agvestco Proprietary Limited;

1.4 **"Approval Date"** means the date referred to in the Merger Clearance Certificate (Form CC15);

1.5 **“ASOR Group”** means collectively, Africa Sun Oil Refineries Proprietary Limited, Gauteng Oil and Cake Mills Proprietary Limited, Budget Soap Industries Proprietary Limited, Marston Investments Proprietary Limited and Ingoby Investments Proprietary Limited;

1.6 **“Call Option”**; [Confidential]

1.7 **“Commission”** means the Competition Commission of South Africa;

1.8 **“Conditions”** mean these conditions;

1.9 **“Days”** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;

1.10 **“First Transaction Step”** means a transaction wherein IFFCO will subscribe for an effective percentage of the issued share capital of FR Waring.

1.11 **“FR Waring”** means FR Waring Holdings Proprietary Limited;

1.12 **“IFFCO”** means collectively, IFFCO Africa Holdings Pte. Ltd and Middle East Oils and Grains FZC;

1.13 **“Implementation Date”** means the date occurring after the Approval Date when the Merging Parties implement the Merger;

1.14 **“Manufacturing Facilities”** mean the facilities of the ASOR Group namely, Mobeni (located in Durban), Verulam (located in Durban), Nasrec (located in Gauteng), Spartan (located in Gauteng) and Prospecton (located in Durban);

1.15 **“Merger”** means, the First Transaction Step and the Second Transaction Step;

1.16 **"Merging Parties"** means the Acquiring Firm and the Target Firm;

1.17 **"Second Transaction Step"** means a transaction wherein Agvestco will acquire a percentage of the issued share capital in the ASOR Group.

1.18 **"Target firm"** means FR Waring in the First Transaction Step and the ASOR Group in the Second Transaction Step; and

1.19 **"Tribunal"** means the Competition Tribunal of South Africa.

2. Recordal

2.1 On 19 July 2016, the Merging Parties applied to the Commission for approval of the Merger.

2.2 The Commission assessed the Merger and identified a public interest concern arising from the possible consolidation of the ASOR Group's five manufacturing locations across South Africa. The Commission found that any relocation could result in job losses.

2.3 In order to remedy the abovementioned negative impact on a particular industrial sector, the Commission hereby imposes the Conditions as set out below.

3. Conditions

3.1 Exercise of Call Option

[Confidential]

3.2 **Relocation of the Manufacturing Facilities**

3.2.1 For a period of three (3) years following the Implementation Date, the Manufacturing Facilities shall not be relocated from their current locations.

4. **Monitoring of compliance with the Conditions**

4.1 The Merging Parties shall notify the Commission of the Implementation Date within 5 Days of its occurrence.

4.2 The Merging Parties shall submit an affidavit prepared by a senior official confirming compliance with the Conditions as set out in clause 3.2.1 on the anniversary of the Implementation Date for the duration of the Conditions.

4.3 All correspondence in relation these Conditions should be forwarded to mergerconditions@compcom.co.za.

4.4 An apparent breach by the Merging Parties 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.

5. **General**

The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be lifted, revised or amended. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown, for the Conditions to be lifted, revised or amended.

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