
GENERAL NOTICES

NOTICE 237 OF 2012

COMPETITION COMMISSION

NOTIFICATION TO CONDITIONALLY APPROVE THE TRANSACTION INVOLVING:

FRUIT AND VEG CITY HOLDINGS (PTY) LTD

AND

**THE DISTRIBUTION CENTRE OF EVERFRESH WHOLESALE (PTY) LTD AND THE
EVERFRESH STORES**

CASE NUMBER: 2011JUN0084

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 transaction involved Fruit and Veg City Holdings (Pty) Ltd ("Fruit and Veg") acquiring the distribution centre of Everfresh Wholesale (Pty) Ltd ("Everfresh Wholesale") and establishing control over the Everfresh stores. The Everfresh stores consist of 10 retail stores that were previously operated under the Everfresh banner and that were independently owned from Everfresh Wholesale.

The transaction presented a horizontal dimension.

Horizontally, the merging parties are active in the market for supermarket stores for the selling of food including fresh produce, butchery, bakery, deli and dairy products, with an emphasis on quality and specialist foods to middle and higher income customers on a daily/weekly basis. There is a further horizontal overlap between the activities of the parties in that the respective

retail stores of the parties compete for retail space within a shopping centre in the retail property market.

The Commission identified Hillcrest is an area of concern. The Commission's investigation and analysis showed that within the Hillcrest market, the merged entity has a strong market position with respect to certain product ranges, which include fresh produce. It must be noted that the merged entity holds this market position, despite the fact that the major retail chains also have a presence within this market.

The Commission's investigation also showed that the lease agreement of Everfresh Hillcrest has an exclusivity provision, which in effect limits competitors to enter Heritage Market, being the shopping centre where the Everfresh store is located.

It is the view of the Commission that the market position of the merged entity, together with the exclusivity provision has the effect of substantially lessening competition within this market and that it especially has a detrimental effect of small businesses to become competitive.

In addition to the competition concerns described above, the transaction will also raise significant public interest concerns in that the exclusive lease agreement prohibits the entry of small businesses into Heritage Market, being the shopping centre where the Everfresh store is located.

Accordingly, the Commission approved the transaction subject to the following condition:

- (a) *The merged entity shall with immediate effect terminate the exclusivity provision contained in the Everfresh Hillcrest lease agreement, which limits or prohibits the landlord from entering into an agreement of lease with a competitor of the merged entity. A competitor of the merging parties will not only include an established retail chain, but will also include independent butcheries, bakeries or fruit and vegetable traders. This condition shall also apply to the renewal of the discussed lease agreement or any future lease agreement Fruit and Veg or any of its franchisees intends to enter into with the landlord of the Heritage Market shopping centre.*
- (b) *The merging parties is required to provide the Commission with proof of cancellation of the exclusivity clause within 20 business days from receiving the clearance certificate in this transaction.*

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.