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## GENERAL NOTICES

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### NOTICE 871 OF 2012

### COMPETITION COMMISSION

#### NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

**CLOVER S.A. PROPRIETARY LIMITED**

**AND**

**REAL JUICE CO HOLDINGS PROPRIETARY LIMITED**

**2012JUN0352**

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 firm is Clover S.A. (Pty) Ltd ("Clover"), a company incorporated in accordance with the laws of the Republic of South Africa. Clover is wholly owned by Clover Industries Limited ("CIL"), a public company listed on the Johannesburg Securities Exchange. CIL is not controlled by any firm. Clover controls about 8 firms.

The primary target firm is Real Juice Co Holdings (Pty) Ltd ("RJC"), a company incorporated in accordance with the laws of the Republic of South Africa. RJC is controlled by AVI Limited ("AVI"). AVI is not controlled by any firm.

The proposed transaction entails the acquisition by Clover of all ordinary shares in the issued share capital of, and shareholder claims on loan accounts against, RJC from AVI and Pleiad. On completion of the transaction, Clover will control RJC.

The Commission finds that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the manufacturing and distribution of fruit juices, as there are alternative players in the market that compete with the merging parties who will be in a position to constrain any potential anti-competitive behaviour by the merged entity. Further, the customers of the merging parties have sufficient countervailing power to counter any potential anti-competitive behaviour of the parties post-merger.

With respect to public interest concerns, the Commission is of the view that the proposed merger is likely to have a negative impact on employment since there is likely to be a duplication of jobs in the merged entity, in particular in the distribution of fruit juices. Initially, the merging parties made an undertaking to preserve jobs of the employees of RJC for a period of 12 months only following the implementation of the proposed merger. In order to address this concern, the Commission imposed a condition on the merged entity to preserve jobs for a period of 24 months from the date of the merger clearance and the merging parties agreed to the condition.

Further, since Clover has its own distribution network, the Commission is of the view that the proposed transaction is likely to result in job losses for the employees of independent distributors that are currently used by RJC as post-merger, Clover is likely to use its own distribution network to distribute fruit juices to its customers. In order to address this concern, the Commission approved the merger on condition that Clover extends the notice period for the termination of distribution agreements with independent distributors of RJC.

The Commission accordingly approves the proposed merger subject to the following 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 Clover S.A. Proprietary Limited;
- 1.2. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.3. **"Clover"** means Clover S.A. Proprietary Limited, the primary acquiring firm;
- 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. **"Independent Distributors"** means third party distributors of fruit juice currently used by Real Juice Co Holdings Proprietary Limited and "Independent Distributor" means any one of them;
- 1.8. **"Merger"** means the acquisition of control over Real Juice Co Holdings Proprietary Limited by Clover S.A. Proprietary Limited;
- 1.9. **"Merging Parties"** means Clover S.A. Proprietary Limited and Real Juice Co Holdings Proprietary Limited;
- 1.10. **"RJC"** means Real Juice Co Holdings Proprietary Limited, the primary target firm.

## 2. Recordal

- 2.1 The proposed transaction is unlikely to raise significant competition concerns as customers have countervailing power to counter any potential anti-competitive behaviour of the parties post-merger. Further, there are other players in the market that compete with the Merging Parties who will be in a position to constrain any potential anti-competitive behaviour by the Merging Parties.
- 2.2 However, the proposed transaction is likely to have a negative impact on employment since there is likely to be a duplication of jobs at the merged entity, particularly in the distribution level of fruit juices. Further, as Clover has its own distribution network, the Commission is of the view that the proposed transaction is likely to result in job losses of the employees of the Independent Distributors that are currently used by RJC as post-merger, Clover is likely to use its own distribution network to distribute fruit juice to its customers.

## 3. Conditions to the approval of the Merger

- 3.1. No employees of RJC and Clover shall be retrenched as a result of this Merger within twenty four (24) months after the Approval Date. Retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; and (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act, 1995, as amended.

- 3.2. The notice period for the termination of the distribution agreements which RJC has with Independent Distributors shall be extended.

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

- 4.1. The Merging Parties shall circulate a copy of the condition in clause 3.1 above to their employees within seven (7) days of receipt of the merger clearance in any manner, including electronically, by uploading the condition onto their respective intranets, or by posting the condition on notice boards at their respective head offices and regional offices.
- 4.2. As proof of compliance hereof, Clover or RJC shall within five (5) days of circulating the condition, submit an affidavit to the Commission by a senior official attesting to the circulation of the condition.
- 4.3. The Merging Parties shall submit a report to the Commission on a twelve (12) month basis from the Approval Date confirming compliance with respect to 3.1. The first report will be submitted on 1 September 2013.
- 4.4. Clover or RJC shall submit an affidavit to the Commission within one (1) month after the Approval Date confirming that the notice period for the termination of the distribution agreements with affected Independent Distributors of RJC has been extended. In each instance, the amendment has been communicated with the affected Independent Distributor of RJC.
- 4.5. The reports and/or documents referred to in paragraph 4.2, 4.3 and 4.4 must be submitted to the following e-mail address [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).
- 4.6. An apparent breach by Clover or RJC 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.
- 4.7. The Commission may on good cause shown by Clover, lift, revise or amend these Conditions.

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.