

**NOTICE 872 OF 2012****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****RYMCO (PROPRIETARY) LIMITED****AND****YEASTPRO (PROPRIETARY) LIMITED****2012MAR0126**

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 Rymco (Pty) Ltd ("Rymco"), a private company incorporated in accordance with the laws of the Republic of South Africa. Rymco is a wholly owned subsidiary of Lallemand Incorporated ("Lallemand"), a company incorporated in accordance with the laws of Canada. Rymco *inter alia*, owns the SA Bio-Products ("SABP") yeast facility and 74.999% of the Yeastpro (Pty) Ltd ("Yeastpro") facility.

The primary target firm is Yeastpro, a private company incorporated in accordance with the laws of the Republic of South Africa. Yeastpro is controlled by Rymco as to 74.999%, and Bidvest Group Limited ("Bidvest") as to 25.001%.

Bidvest is selling its 25.001% stake in Yeastpro to Rymco. Post-transaction, Rymco will own 100% of Yeastpro. As part of the transaction Rymco and Bidvest will enter into a supply agreement.

The rationale for the transaction, in summary, is that Yeastpro is no longer producing efficiently and competitively as compared to modern plants elsewhere in the world. Rymco would rather

divert production to its lower cost plant, namely the SABP factory in Amanzimtoti. Bidvest would also like to exit Yeastpro and source its yeast products from SABP.

The acquiring group, including Rymco and Lallemand, are involved in the production (upstream, through Yeastpro and SABP) and distribution (downstream, through Anchor) of yeast in South Africa. The parent company Lallemand has global yeast operations. The target, Yeastpro, is a factory producing both wet and dry yeast, located in Johannesburg, for its shareholders Rymco and Bidvest. Bidvest is a conglomerate which is also involved in the production (upstream, through NCP Durban), and distribution (downstream, through NCP Yeast) yeast business akin to Rymco.

Pre-merger there is a horizontal relationship between Rymco and Bidvest in that each produces and distributes some type of yeast. In addition, there is a vertical relationship in that Yeastpro supplies Bidvest with yeast. Post-transaction, these horizontal and vertical dimensions are likely to change. The proposed supply agreement creates a new vertical dimension in that Bidvest will also have access to Rymco's SABP facility for supply of yeast.

In terms of defining the relevant market, for the purposes of the assessment the Commission defined the following markets:

- A national upstream market for the manufacturing of yeast;
- A broad downstream market for the distribution of yeast (at least national, but also with international dynamics);
- A narrow national market for the distribution of wet yeast; and
- A narrow international market for the distribution of dry yeast.

Barriers to entry in the upstream market for production of yeast are considered relatively high given the various permits/licences, and technical equipment required. Land with optimal water intake and effluent disposal sites is also a critical factor and does not appear to be readily and ubiquitously available.

In terms of the supply agreement, access to downstream distributors of wet yeast is considered a significant hindrance to entry upstream. In this regard, a new manufacturer of yeast may not enter the upstream market because it will not have the opportunity to sell to distributors of wet yeast.

In terms of downstream barriers, there is no direct access by third party distributors to locally produced wet yeast, which prohibits entry in the downstream distribution market. In this regard,

entry by third party distributors of wet yeast is not possible unless direct access to yeast is made available.

From a coordinated effects perspective, the *prima facie* concern is that Bidvest will have access to information from Rymco. However, information exchange took place pre-merger in the joint venture at Yeastpro. The fact that the transaction removes a point of contact in the joint venture at Yeastpro, allays the Commission's concerns that this transaction will serve to further enhance the possibility of coordination.

The Commission is of the view that any efficiencies claimed, are not merger specific or necessarily dependent on this transaction. The transfer of activities from Yeastpro to SABP as well as the capital investment by Rymco into SABP may take place regardless of this transaction. Therefore, the argued efficiencies cannot be balanced to outweigh and offset the likely anti-competitive effect of the merger.

From a public interest perspective, retrenchments were found to occur due to operational reasons given the transfer of production from Yeastpro to SABP. In terms of the effect on a particular industrial sector or region, the Commission finds that the current state of the supply agreement is likely to be in conflict with the broader national policy objective of the Industrial Policy Action Plan. It is also unlikely to be in the public interest to have a single yeast producer, in the event the SABP factory suffers a contamination which could cut off supply of wet yeast for any unknown period of time, giving rise to incalculable concomitant effects.

In conclusion, the proposed original supply agreement is likely to make upstream and downstream entry in the yeast industry more difficult. The outcome of the competitive process in the yeast industry depends largely on making entry as easy as possible for any interested competitor.

The transaction is approved on condition that the supply agreement will be amended to remove the exclusivity clause, to be transferrable, and where capacity is available, to provide access (at Rymco's wet yeast factories) by new entrants on rational terms to facilitate competition downstream. Commission therefor approves the proposed transaction 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. **"Amended Supply Agreement"** means the commercial term sheet submitted to the Commission by Cliffe Dekker Hofmeyr on 11 June 2012.
- 1.2. **"Anchor"** means the distribution arm of Rymco.
- 1.3. **"Approval Date"** means the date referred to in the Commission's merger clearance certificate (Form CC15);
- 1.4. **"Bidvest"** means the company Bidvest Group Limited;
- 1.5. **"Cliffe Dekker Hofmeyr"** means the South African law firm located at 1 Protea Place Sandown as at 12 June 2012;
- 1.6. **"Commission"** means the Competition Commission of South Africa;
- 1.7. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.8. **"Conditions"** means these conditions;
- 1.9. **"Downstream"** means the distribution level of the yeast value chain relating to the distribution of wet yeast;
- 1.10. **"NCP Yeast"** means the NCP yeast division of Bidvest;
- 1.11. **"Parties"** means Rymco and Bidvest;
- 1.12. **"Rymco"** means the company Rymco (Pty) Ltd;
- 1.13. **"Transaction"** means the transaction involving Rymco, Yeastpro and Bidvest in which Bidvest is selling its 25.001% interest in Yeastpro and entering into a Supply Agreement;
- 1.14. **"Supply Agreement"** means the commercial term sheet, dated 14 September 2011, filed as part of the original merger notification on 13 March 2012, for

merger case number 2012Mar0126;

- 1.15. **“Upstream”** means the manufacturing level of the yeast value chain relating to the manufacture of wet yeast;
- 1.16. **“Wet Yeast”** means compressed or liquid Yeast produced at Rymco’s yeast facilities;
- 1.17. **“Yeast”** means the yeast that is produced by yeast factories and is any of various one-celled fungi that reproduce by budding and can cause the fermentation of carbohydrates, producing carbon dioxide and ethanol; and
- 1.18. **“Yeastpro”** means Yeastpro (Pty) Ltd, the yeast producing factory located in Johannesburg.

## **2. Recordal**

- 2.1. The structure of this Transaction is as follows:
  - 2.1.1. Rymco currently holds 74.999% interest in Yeastpro, Bidvest holds the remaining 25.001% interest in Yeastpro.
  - 2.1.2. Bidvest is selling, and Rymco is acquiring, a further 25.001% stake in Yeastpro, resulting in a 100% shareholding by Rymco in Yeastpro.
  - 2.1.3. As part of the transaction, Rymco and Bidvest will enter into a Supply Agreement.
- 2.2. The Commission is concerned that the proposed Supply Agreement gives rise to competition concerns by way of raising barriers to entry Upstream and Downstream.

## **3. Conditions to the approval of the merger**

### **3.1. Amendments to the Supply Agreement**

- 3.1.1. The proposed amendments to the Supply Agreement submitted to the

Commission by Cliffe Dekker Hofmeyr on 11 June 2012, must be adopted in writing without any further amendments, within 10 business days of the Approval Date.

**3.2. Condition relating to exclusivity**

- 3.2.1. No exclusivity agreement or exclusivity arrangement of any form whether in writing or tacitly, is to exist between the Parties, Anchor, and NCP Yeast, including any successor of NCP Yeast, in relation to the procurement and supply of Wet Yeast in South Africa.

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

- 4.1. The Parties must supply the Commission, within 10 business days, upon signature, with a copy of the signed Amended Supply Agreement as proof of compliance with the conditions contained in paragraphs 3.1.
- 4.2. The Parties must supply the Commission with a signed copy of any new supply agreement concluded between the Parties, including any successor of NCP Yeast, in relation to the procurement and supply of Yeast in South Africa as proof of compliance with 3.2.1 above.
- 4.3. An apparent breach by the Parties of any of the Conditions shall be dealt with in terms of the Competition Act, Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 4.4. The Commission may on good cause shown, lift, revise or amend these Conditions.
- 4.5. The Parties shall submit the agreements referred to in 4.1 and 4.2 above by e-mail to [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).

**5. Duration**

- 5.1. The Conditions contained in 3.1 herein, shall exist for the duration of the Supply Agreement.
- 5.2. The Conditions contained in 3.2 herein, shall exist for the duration of the Supply Agreement.

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.