

**ECONOMIC DEVELOPMENT DEPARTMENT
NOTICE 1069 OF 2015**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

LIBSTAR OPERATIONS (PTY) LTD

AND

PATLEYS (PTY) LTD

CC CASE NO: 2015JUL0416

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:

Introduction

1. On 17 July 2015 the Competition Commission ("Commission") received notice of an intermediate merger whereby, the primary acquiring firm Libstar Operations (Pty) Ltd ("Libstar") intends to acquire all the issued share capital of Patleys (Pty) Ltd ("Patleys") as a going concern. Following the implementation of the proposed transaction, Libstar will solely control Patleys.

Details of the merging parties

2. The primary acquiring firm, Libstar, is a private company incorporated in accordance with the company laws of the Republic of South Africa. It is wholly-owned and controlled by Abraaj Holdings Limited ("Abraaj Holdings"), a company registered in accordance with the laws of Cayman Islands. Abraaj Holdings is wholly-owned and controlled by an individual Mr Arif Masood Naqvi ("AMN"). Hereinafter reference to the "Libstar Group,"

incorporates Libstar and all its subsidiaries in South Africa. The Libstar Group comprises of firms that manufacture and distribute consumer products in the food and beverages sector, household and personal care industries, as well as providing various food and beverages solutions. The activities of the Libstar Group relevant for purposes of the proposed transaction relate to the manufacture of condiments (wet cold sauces and wet hot sauces), honey, cheese, herbs and spices.

3. The primary target firm, Patleys, is a company incorporated in terms of the company laws of the Republic of South Africa. Patleys does not control any other firm and it is ultimately controlled by the Bidvest Group Limited ("Bidvest"), a public company listed on the Johannesburg Securities Exchange Limited. Patleys sources, imports, markets and distributes branded consumer food products for multi-national firms and national firms and for its own brands (GoldCrest, Cook & Bake and Antonios). Its activities include performing the administration, warehousing, distribution, account management, merchandising and marketing of consumer products to the retail, wholesale and food service distributor markets in Southern Africa.

Areas of overlap

4. The Commission considered the activities of the merging parties in the national markets for the supply of wet cold sauces, wet hot sauces, herbs and spices, cheese and honey. The Commission also considered vertical overlaps that occur in the market for the manufacture and supply of canned food products and the market for the bottling and packaging of honey.

Competitive assessment

5. The Commission found that the market shares of the merging parties remain low in all the identified markets and is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in these markets. Further, the merged entity will compete against other big firms such as Tiger Brand Limited, Parmalat (Pty) Ltd, Inna Parma (Pty) Ltd, Highveld Honey Farms CC and Unilever Limited that compete in most of the identified markets. The Commission assessed possible foreclosure in the identified vertical overlaps, and found that the proposed transaction does not result in

any foreclosure, as there are other alternative customers and competitors in the markets.

6. The Commission received concerns from competitors regarding possible foreclosure post-merger. The Commission found that the merged entity is unlikely to have the ability to foreclose post-merger given the merged entity's low market shares. Therefore the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition.

Public interest analysis

7. The Commission identified a possible public interest concern in terms of section 12A (3) (a) and (b) of the Act. The Commission is of the view that the merged entity is likely to have an incentive to reduce its purchases of honey from a supplier post-merger as it in the process of increasing its production and bottling capabilities. The possible reduction of supplies could potentially affect a number of unskilled employees in the honey sector. The Commission engaged the merging parties and has reached consensus on the conditions attached as Annexure A.
8. The proposed traction does not raise concerns on other public interest grounds.
9. The Commission approves the proposed transaction with conditions in terms of section 14(1)(b)(ii) of the Act.

Annexure A

Libstar Operations (Pty) Ltd

And

Patleys (Pty) Ltd

CC CASE NUMBER: 2015Jul0416

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 Libstar Operations (Pty) Ltd, a private company with share capital duly incorporated in terms of the laws of the Republic of South Africa;
- 1.2. **"Affected employees"** mean the individuals employed at Highveld Honey Farms CC comprising of 45 unskilled individuals dedicated to the honey bottling and packaging operations;
- 1.3. **"Approval Date"** means the date referred to in the Competition Commission's merger clearance certificate (Form CC 15);
- 1.4. **"Commission"** means the Competition Commission of South Africa as established in terms of the Competition Act 89 of 1998 as amended;
- 1.5. **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6. **"Competition Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.7. **"Conditions"** means these conditions;
- 1.8. **"Effective Date"** means the last business day of the month in which the last of the

suspensive conditions in the Share Buy Back Agreement, Transaction Agreement and Subscription Agreement, are fulfilled or waived;

- 1.9. **“Highveld Honey Farms”** means Highveld Honey Farms CC, a close corporation established in terms of the laws of the Republic of South Africa;
- 1.10. **“Implementation Date”** means the date occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11. **“Merger”** means the acquisition of control over Patleys (Pty) Ltd by Libstar Operations (Pty) Ltd;
- 1.12. **“Merged Entity”** means the merged business operations of Libstar Operations (Pty) Ltd and Patleys (Pty) Ltd;
- 1.13. **“Merging Parties”** mean Libstar Operations (Pty) Ltd and Patleys (Pty) Ltd;
- 1.14. **“Supply Agreement”** means the Supply and Purchase of Current Range of GoldCrest Branded Honey Agreement concluded between Patleys (Pty) Ltd and Highveld Honey Farms on 18 September 2015;
- 1.15. **“Target Firm”** means Patleys (Pty) Ltd, a private company incorporated in terms of the laws of the Republic of South Africa;
- 1.16. **“Tribunal”** means the Competition Tribunal of South Africa as established in terms of the Competition Act 89 of 1998 as amended;
- 1.17. **“Unskilled employees”** mean employees of the Highveld Honey Farms who do not have any post-matric qualifications;

2. Recordal

- 2.1. On 17 July 2015 the Commission received notice of an intermediate merger whereby, the Acquiring Firm intends to acquire all the issued share capital of the Target Firm, as a going concern. Following the implementation of the proposed transaction, the Acquiring Firm will solely control the Target Firm in terms of section 12(2)(a) of the Competition Act.

- 2.2. The Commission's investigation found that the proposed transaction is unlikely to substantially prevent or lessen competition in any of the markets that the Commission identified, as the Merged Entity's estimated post-merger market share in the markets assessed remain low post-merger.
- 2.3. The Commission finds that the proposed transaction is unlikely to result in any employment losses in the Merged Entity. However, the Commission considered the effects on employment at Highveld Honey Farms, which is a supplier of the Merging Parties. The employment concerns could result from a possible termination of the Supply Agreement that exists between Highveld Honey Farms and the Target Firm. The Commission finds that the termination of the Supply Agreement could affect approximately forty five (45) Unskilled Employees dedicated to the honey bottling operations of Highveld Honey Farms. The Commission is of the view that a condition is warranted to address possible negative effects that the merger may have on the Affected Employees at Highveld Honey Farms.

3. Conditions to the approval of the merger

- 3.1. For a predetermined from the Implementation Date, the Merged Entity shall not terminate the Supply Agreement with Highveld Honey Farms as a result of the merger.
- 3.2. For the avoidance of doubt, this Condition does not waive or alter the provisions of the Supply Agreement, such as the clauses relating to the termination of the Supply Agreement for breach, all of which remain in full force and effect.

4. Monitoring of compliance with the Conditions

- 4.1. The Merged Entity shall notify the Commission of the Implementation Date within five (5) business days of it becoming effective.
- 4.2. For predetermined period from the Implementation Date, the Merged Entity shall submit a report on each anniversary of the Implementation Date confirming

compliance with the Conditions which shall be attested to by an authorised senior official.

4.3. In the event that the Commission receives any complaint in relation to non-compliance with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach will be dealt with in terms of Rule 39 of the Competition Commission Rules.

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

The Merged Entity may at any time, on good cause shown, approach the Commission for the Conditions to be lifted, revised or amended.