

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION**NO. 48****29 JANUARY 2021****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****ROOS FOODS PROPRIETARY LIMITED****AND****THE BUSINESS OF 10 KFC FRANCHISED RESTAURANTS OWNED AND CARRIED ON BY
VAN EEDEN KITSKOS PROPRIETARY LIMITED****CASE NUMBER: 2020JUL0038**

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 17 July 2020, the Competition Commission ("Commission") received notice of an intermediate merger in terms of which Roos Foods Proprietary Limited ("Roos Foods") intends to acquire the business of the 10 KFC franchised restaurants ("10 Kitskos KFCs") owned and carried on by van Eeden Kitskos Proprietary Limited ("van Eeden Kitskos"), as a going concern. Following the implementation of the proposed transaction, Roos Foods will control the Kitskos KFCs

The parties and their activities

2. The primary acquiring firm is Roos Foods, a subsidiary of Roos Holdings Limited ("Roos Holdings"). Roos Holdings is controlled by Corvest 12 Proprietary Limited; Iron Bridge Capital Proprietary Limited; ("IBC") and Members of Management. Roos Foods and its controlling firms will collectively be referred to as the "Acquiring Group". Roos Foods operates KFC

franchises located in the Mpumalanga, Gauteng, North West and Limpopo. The KFC outlets primarily sell fried chicken pieces, chicken burgers, wraps, salads, sides, desserts, and beverages.

3. The primary target firm is the 10 Kitskos KFCs owned and carried on by van Eeden Kitskos Proprietary Limited ("van Eeden Kitskos"), trading as KFC Brits in various locations.

Market definition

4. The Commission found that the proposed transaction results in a horizontal overlap as both the merging parties own and operate KFC franchise stores. Furthermore, although the merging parties both have KFC franchise stores located in North West and Gauteng, their stores are located at the very least over 100km apart and at the furthest, over 250km apart.
5. In respect to vertical relationships, the Commission found that in the past, Universal, and Fidelity ADT, which are both investees of the RMB Corvest Group, have both provided products and services to the Kitskos KFCs. As such, the proposed transaction raises some vertical aspects which are considered below.
6. The Commission did not conclude on a relevant market but considered the proposed transaction in the Quick Service Restaurants ("QSR") market given that the merging parties are active therein.

Competition assessment

7. The Commission found that KFC, with approximately 877 stores, has an estimated national market share not exceeding 25% in the QSR market in South Africa. Roos Foods operates KFC franchised stores which amounts to an estimated market share of less than 5% while the Kitskos KFCs have an estimated market share not exceeding 5% nationally. Post-merger, Roos Foods will therefore have an estimated national market share of less than 10% with a market share accretion of less than 5%. The Commission found that the QSR market is highly competitive and that KFC faces competition from numerous market participants.
 8. On a narrower scale, the Commission found that given the lack of geographic overlap, the proposed transaction will not change the structure of the market. Although Roos Foods is
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increasing the number of KFCs it owns in Gauteng and North West, the KFC franchises it currently owns and those it intends to acquire through the proposed transaction are located far from each other. The Commission also found that KFC franchise stores operate in accordance with a franchise model which entails uniform pricing of products countrywide. It is thus the Commission's view that Roos Foods would not be able to exercise any market power in both the North West and Gauteng regions post-merger.

9. In terms of the vertical relationship, the Commission found that although Universal (an RMB Corvest Group investee) through its wholly owned subsidiary, Foodserv Solutions Proprietary Limited ("Foodserv"), is a supplier of oven and cooking equipment to the 10 Kitskos KFCs, the value of purchases made by the Kitskos KFCs is minimal.
10. For the reasons above, the Commission found that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any market.

Public Interest Considerations

Effect on employment

11. The Commission found that the proposed transaction would result in duplications in certain roles between the Roos Foods and van Eeden Kitskos. As such, the proposed transaction necessitated the consolidation of certain functions by eliminating duplicate functions. The elimination of the duplicate functions would inevitably result in the retrenchment of 9 head office employees of van Eeden Kitskos.
 12. On 29 July 2020, the Commission received notice from the office of the Minister of Trade, Industry and Competition (DTIC) of intention to participate in the merger proceedings in terms of Rule 29 of the Act. The DTIC was concerned that the merging parties submitted that the proposed transaction would result in the loss of 9 jobs. Accordingly, the proposed transaction could not be justified on public interest grounds as required by section 12A(3)(b) of the Competition Act. According to the DTIC, this is particularly concerning because the Acquiring Group owns a substantial number of KFC franchise stores, and has shareholding in a few other firms which produces food ingredients. As such, the Acquiring Group could easily absorb the 9 affected employees.
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13. The Commission too was concerned about the effect the proposed transaction would have on employment, in particular the loss of employment of 9 employees, due to the alleged duplication of roles at van Eeden Kitskos. In an effort to address these concerns, the Commission contacted the 9 affected employees individually and found that out of the 9 employees, 1 was of retirement age and 4 indicated that they were not interested in the offers made by Roos Foods for various reasons which include having found alternative employment, personal commitments and the unwillingness to move to the Roos Foods head office which is located in Woodmead, Johannesburg. The remaining 4 employees expressed an interest in joining Roos Foods.
14. Having communicated these concerns to the merging parties, the merging parties made a submission indicating that Roos Foods was amenable to offering the employees employment on a permanent basis.
15. The Commission found that although undertaking to offer the potentially affected employees employment would ordinarily be sufficient, the merging parties had only made verbal communications with the affected employees and no written offers have been made, the Commission considered it necessary to approve the proposed transaction subject to conditions in order to safeguard against any potential retrenchments. In addition, the Commission noted the merging parties' written submissions to the Commission that none of the employees located at the 10 KFC Kitskos stores will be retrenched as a result of the proposed transaction. Therefore, no conditions are necessary in relation to this category of employees. The Commission communicated its approach to the merging parties in relation to the potentially affected employees based at the target firm head office. The merging parties agreed to the Conditions. Further, the DTIC confirmed in writing that they are satisfied with the undertakings.

Conclusion

16. For the above reasons, the Commission approves the proposed transaction subject to the attached conditions
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CC Case Number: 2020Jul0038

In the Intermediate Merger between:

Roos Foods Proprietary Limited

and

10 KFC Franchise Restaurants Owned by Van Eeden Kitskos Proprietary Limited

CONDITIONS

1 DEFINITIONS

In this document, the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings –

- 1.1 **"Acquiring Firm"** means Roos Foods Proprietary Limited, a company incorporated in South Africa (Registration Number 2019/439837/07);
 - 1.2 **"Agreement of Sale of Going Concern"** means the agreement concluded between Roos Foods and Van Eeden Kitskos on 6 July 2020;
 - 1.3 **"Approval Date"** means the date on which the Merger is approved by the Commission as referred to in the Commission's merger clearance certificate (Notice CC15);
 - 1.4 **"Competition Act"** means the Competition Act, No. 89 of 1998 (as amended);
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- 1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.6 **"Conditions"** means these conditions;
- 1.7 **"Implementation Date"** means the date on which all the conditions precedent must be fulfilled as per the Agreement of Sale of Going Concern the Merger is subject to;
- 1.8 **"Merged Entity"** means the Acquiring Firm and Target Business together as operated pursuant to the successful implementation of the Merger;
- 1.9 **"Merger"** means the acquisition by the Acquiring Firm of control over the Target Business;
- 1.10 **"Merging Parties"** means, collectively, the Acquiring Firm and the Target Business;
- 1.11 **"Target Business"** means the 10 KFC franchise restaurants owned and operated by Van Eeden Kitskos as a going concern;
- 1.12 **"Van Eeden Kitskos"** means Van Eeden Kitskos Proprietary Limited a company incorporated in South Africa (Registration Number 2012/007512/07)

2 RECORDAL

- 2.1 On 17 July 2020, the Commission received a notice of an intermediate merger in terms of which the Acquiring Firm intends to acquire the Target Business. From a competition perspective, it is noted that the Merger is unlikely to substantially prevent or lessen competition.
- 2.2 The Commission appreciates the Merging Parties' written undertakings to the Commission that there will be no retrenchments of any employees of the Target Business as a result of the Merger. However, the Commission is concerned about the impact of the transaction on the following head office employees of Van Eeden Kitskos (**"Potentially Affected Employees"**):
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- 2.2.1 Cleaner;
 - 2.2.2 Junior Accountant;
 - 2.2.3 People Capability Manager;
 - 2.2.4 Area Coach;
 - 2.2.5 Area Coach;
 - 2.2.6 Accountant;
 - 2.2.7 Operations and Store Marketing
 - 2.2.8 Training Coach; and
 - 2.2.9 Payroll administrator.

2.3 It is specifically recorded that in respect of the employee identified in 2.2.1 above, it is not feasible to offer re-employment because of the constraints on her ability to travel to the Acquiring Firm. This employee is of retirement age, (69), and will be offered a retrenchment package by the Target Business and Van Eeden Kitskos.

2.4 It is further specifically recorded that the employees listed at paragraphs 2.2.2 – 2.2.5 have either received alternative employment elsewhere or have elected not to pursue employment with the Acquiring Firm despite invitations to do so.

2.5 In order to address the aforementioned public interest concerns, the Merging Parties have agreed to the following Conditions.

3 CONDITIONS TO THE APPROVAL OF THE MERGER

3.1 The impact of the transaction on the Potentially Affected Employees will be addressed as follows:

3.1.1 The Target Business and Van Eeden Kitskos shall, upon the Implementation Date, offer the employee identified in 2.2.1 above a retrenchment package in accordance

with the provisions of the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997 and any other applicable legislation.

- 3.1.2 The employee identified in paragraph 2.2.6 has already been offered, and has accepted, a permanent full time position by the Acquiring Firm.
- 3.1.3 The Acquiring Firm shall, on the Implementation Date or as soon as practicably possible thereafter, offer full time, permanent employment to the employees identified in 2.2.6 – 2.2.9. The offers of full time, permanent employment will be on terms and conditions which, when taken as a whole, are not materially less favourable than these employees' current terms and conditions of employment with Van Eeden Kitskos.

4 MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 4.1 The Merging Parties shall inform the Commission of the Implementation Date of the Merger within 5 (five) business days of its occurrence.
- 4.2 The Merging Parties shall circulate a copy of the Conditions to the Potentially Affected Employees and/or their respective trade unions within (5) business days of the Approval Date.
- 4.3 As proof of compliance thereof, the Merging Parties shall, within 10 (ten) business days of circulating the Conditions, provide the Commission with an affidavit by a senior representative attesting to the circulation of the Conditions and attach a copy of the notice sent.
- 4.4 As proof of compliance with paragraph 2.2.6, the Merged Entity shall, within 10 (ten) business days of the Implementation Date, provide the Commission with an affidavit by a senior representative attesting to the compliance thereof and attach a copy of the employment offers agreed to between the Merged Entity and the employees identified in paragraphs 2.2.6 – 2.2.9.
- 4.5 Any Potentially Affected Employee who believes that the Merging Parties have not complied with the Conditions may approach the Commission with his or her complaint.
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5 APPARENT BREACH

An apparent breach by the Merging Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules of the Conduct of Proceedings in the Commission.

6 VARIATION OF THE CONDITION

The Merging Parties shall be entitled to, on good cause shown, apply to the Commission for a waiver, relaxation, modification and/or substitution of any of these Conditions. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties may apply to the Tribunal, on good cause shown, for the Condition to be lifted, revised or amended.

7 GENERAL

All correspondence in relation to these conditions must be submitted to the following email address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

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