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**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION****NO. 1829****4 March 2022****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****LADISMITH CHEESE COMPANY PROPRIETARY LIMITED****AND****MOOIVALLEI SUIWEL PROPRIETARY LIMITED****CASE NUMBER: 2021MAY0062**

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 abovementioned firms subject to the conditions set out below:

1. On 31 May 2021, the Competition Commission ("Commission") received notice of an intermediate merger wherein Ladismith Cheese Company Proprietary Limited ("Ladismith Cheese") intends to acquire the entire issued share capital and share claims of Mooivallei Suiwel Proprietary Limited ("Mooivallei") from its current shareholders. Post-merger, Mooivallei will be solely controlled by Ladismith Cheese.
2. Ladismith Cheese is a private company incorporated in accordance with the laws of the Republic of South Africa. Ladismith Cheese is wholly owned and controlled by Sea Harvest Group Limited ("Sea Harvest"), Sea Harvest is directly controlled by Brimstone Investment Corporation Limited ("Brimstone"). Brimstone is a Level 1 B-BBEE contributor. Ladismith Cheese and all the other firms that are controlled by Brimstone are hereafter referred to as the Acquiring Group.

3. The Acquiring Group is a producer and supplier of dairy products in South Africa. Its main products are cheese, butter and powdered dairy products.
4. The primary target firm is Mooivallei. Mooivallei is a private company incorporated in accordance with the laws of the Republic of South Africa. Mooivallei is not controlled by any single firm. Mooivallei is a producer and supplier of dairy products in South Africa. Its main products are cheese and butter sold to customers in South Africa.
5. The Commission considered the activities of the merging parties and found that the proposed transaction presents both a horizontal overlap and vertical overlap. The horizontal overlap arises because the merging parties are both active in the manufacture and supply of cheese and butter in South Africa. The vertical overlap occurs in that Mooivallei sells whey, a cheese by-product derived from the manufacturing of cheese, to competitors of the Acquiring Group. The Acquiring Group and some of its competitors use whey to produce powdered dairy products including milk powder.
6. The Commission did not assess the vertical overlap arising from the supply of whey. This is because whey accounts for a minimal portion of Mooivallei's business. Its customers indicated that the merger is unlikely to result in any foreclosure concerns as they procure whey from several other suppliers. In addition, the merging parties have also indicated that Ladismith Cheese intends to continue to supply Mooivallei's whey customers as Ladismith Cheese will not be able to process all the whey produced by Mooivallei. Thus, it is unlikely that any significant input foreclosure concerns might arise should the Acquiring Group start using the whey product internally.
7. In light of the above, the Commission therefore assessed the effect of the proposed transaction in the following markets:

7.1. The market for the manufacture and supply of butter in South Africa

7.2. The market for the manufacture and supply of cheese in South Africa

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*Market shares assessment for the manufacture and supply of butter*

8. In the national market for the manufacture and supply of butter, the Commission found that the merged entity will have an estimated market share of less than 20%, with a minimal accretion in the market for the manufacture and supply of butter in South Africa. These market shares are based on the revenue figures submitted by the merging parties and their competitors relating to the supply of butter in South Africa. The market share estimates are overstated as they do not include all the players in the market. These market shares are corroborated by submissions from competitors. The Commission is of the view that the proposed transaction is unlikely to change the structure of the market given the small market share accretion. Further, there are alternative players such as Clover Milkyway (Pty) Ltd, Coega Dairy (Pty) Ltd, Lancewood, Crystal Valley and Lactalis, amongst others that will continue to compete with the merged entity post-merger.
9. The Commission is therefore of the view that the proposed merger is unlikely to substantially prevent or lessen competition in the market for the supply of butter.

*Market shares assessment for the manufacture and supply of cheese*

10. In the national market for the manufacture and supply of cheese, the Commission found that the merged entity will have an estimated market share of less than 20% with a small accretion. These market shares are based on the revenue figures submitted by the merging parties and their competitors relating to the supply of cheese in South Africa. The market shares are likely overstated not all the players in the market are included. These market shares are corroborated by submissions from competitors. The Commission is of the view that the proposed transaction is unlikely to substantially change the structure of this market. This is because the estimated post-merger market share of the merging parties' remains low. Further, the Commission found that the merged entity will continue to face competition from players such as retail house brands (including Checkers, Pick 'n Pay and Spar), Clover, Lancewood Holdings (Pty) Ltd (Lancewood), and Lactalis amongst others.
11. The proposed transaction raised public interest concerns in that the merging parties anticipated that because of the financial difficulties faced by Mooivallei, nine employees
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employed at Mooivallei as non-operations employees were likely to be retrenched. In this regard, the Commission found that the target firm has been facing financial difficulties since 2019.

12. The Commission was also mindful of the fact that absent the merger it was likely that all employees of Mooivallei would have been retrenched. However, the merging parties indicated that they may still need to retrench some of the non-operations employees, post-merger. The Commission engaged the merging parties about the employees that are likely to be retrenched even if the proposed merger goes ahead as the retrenchment of these employees was not in line with the parties' submissions relating to the intention of the proposed merger, which is to save the company from being liquidated and prevent employees from being retrenched.
  13. The Commission also received a notice of intention to participate from the department of Trade Industry and Competition ("DTIC"). In its submission, the DTIC indicated that the acquiring firm has stated in the merger filing documents that it anticipates the need for further restructuring of the target firm, post implementation of the merger, which may necessitate a retrenchment of some employees. In this regard, the DTIC requested the Commission to consider the effects of the merger on employment, with a view to instituting a commitment/condition that retrenched workers, to the extent possible, will be absorbed within the acquiring group of firms (Ladismith Cheese Company / Sea Harvest), or offered suitable employment opportunities, should these become available at the target firm, for a period of 24 months post the merger implementation. The Commission shared the DTIC's concerns with the merging parties.
  14. In this regard, the Commission requested the merging parties to endeavour to accommodate the non-operations employees within the Acquiring Group. The merging parties agreed to retain some of the affected employees indicating that they will offer comparable employment on similar terms to the affected unskilled or semiskilled employees but may alter/revise the terms of employment of skilled employees. Given the financial position of the target firm and the likely counterfactual, the Commission accepts the conditions proposed by the merging parties.
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15. The Commission is of the view that the proposed transaction and the conditions proposed by the merging parties will have positive public interests benefits in that it will assist in keeping Mooivallei in the market and preserve several jobs that could have been lost if Mooivallei was liquidated.
16. The proposed merger does not raise any other public interest concerns.
17. For the above reasons, the Commission approved the proposed transaction subject to employment-related conditions set out in **Annexure A** hereto.