

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION****NO. 1831****4 March 2022****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****RHODES FOOD GROUP FOODS PROPRIETARY LIMITED****AND****THE FROZEN FOOD BUSINESS OF PIONEER FOODS WELLINGTONS PROPRIETARY  
LIMITED****CASE NUMBER: 2021JUL0009**

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 conditions set out below:

1. On 5 July 2021, the Competition Commission ("Commission") received a notice of an intermediate merger whereby RFG Foods Proprietary Limited ("RFG") intends to acquire the frozen food business of Pioneer Foods Wellingtons Proprietary Limited ("Pioneer Foods Wellingtons") comprising the business of manufacturing, producing, and selling frozen foods ("Frozen Food Business"). Upon implementation of the proposed transaction, RFG will control the Frozen Food Business.
  2. The primary acquiring firm is RFG. RFG is controlled by RFG Holdings Limited ("RFGH") (100%). RFGH is a public company listed on the Johannesburg Stock Exchange, South Africa, and is not controlled by any firm. RFGH and all its subsidiaries including RFG will collectively be referred to as the "Acquiring Group." RFG is a diversified food producing company specialising in the production of fresh, frozen, and long-life products. Relevant for the assessment of the proposed transaction are the activities of the fresh food division of RFG
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which produces, distributes, and markets a wide range of products such as pies, pastries, and sausage rolls. The pies, pastries and sausage rolls are sold through various food retailers under the brands Magpie and Ma Baker, as well as some dealer own brands (DOB).

3. The primary target firm is the Frozen Food Business. The Frozen Food Business is controlled by Pioneer Foods Wellingtons which is in turn controlled by Pioneer Foods Proprietary Limited ("Pioneer Foods"). The Frozen Food Business produces, distributes and markets a wide range of frozen products such as pies, pastries and sausage rolls. The pies, pastries and sausage rolls are sold through various food retailers under the brands Today's, Mama's, Big Jack, and Man's Meal.
  4. The Commission assessed the activities of the merging parties and found that the proposed transaction results in a horizontal overlap. The merging parties are both active in manufacture of frozen and bake-off pies and related products. The pies and related products market are primarily segmented into two broad categories, bake-off pies and frozen pies. The distinction between the two is based on the format in which pie items are sold to the end consumer (e.g., "bake off" pies are sold as an "on-the-go" meal from the hot foods section of a supermarket while frozen pies are a grocery item intended for home preparation and consumption). The bake-off and frozen pies are further split into subcategories based on whether the pie items are distributed to customers (stores and forecourts, etc.) in an "unbaked" or "pre-baked" form.
  5. The Commission did not definitively conclude on product and geographic markets but assessed the competitive effects of the proposed transaction in the following markets:
    - 5.1. The national market for the manufacture of bake-off pies (including sausage rolls);
    - 5.2. The national market for the manufacture of frozen pies (including sausage rolls);
    - 5.3. The national market for the manufacture of frozen pastry;
    - 5.4. The national market for the retail of bake-off pies (including sausage rolls);
    - 5.5. The national market for the retail of frozen pastry; and
    - 5.6. The national market for the retail of frozen pies (including sausage rolls);
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6. In determining the market shares, the Commission relied on Nielsen data, IRI data, third parties' revenue data and merging parties' data. The merging parties' combined post-merger market share relating to the manufacturing and the retail of bake-off pies (including sausage rolls) remains low, at less than 20%. The Commission is thus of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the market for the manufacture of bake-off pies (including sausage rolls) and the market for the retail of bake-off pies (including sausage rolls).
7. With respect to the other markets (manufacture of frozen pies, retail of frozen pies and retail of frozen pastry), the Commission is cognisant of the merging parties' high combined post-merger market shares. However, the market share accretion in these markets is less than 5% and as such the Commission is of the view that the proposed merger is unlikely to substantially change the structure of these markets.

### ***Counterfactual***

8. The merging parties indicated that if the proposed transaction does not proceed and in the absence of a significant amount of capital being invested into the Frozen Food Business, the Pioneer Food Group would most likely have to consider rationalising or restructuring the Frozen Food Business or the potential closure of the Frozen Food Business. The financial statements of the merging parties, and specifically the Frozen Food Business, show that the Frozen Food Business has been loss-making for a few years. The Commission conducted an assessment of the Frozen Food Business's financial statements in order to satisfy itself about its financial position. The Commission also notes that Pioneer Food Group also took a number of measures to turn the Frozen Food Business around.
  9. Further, the financial difficulties were discussed in a number of board meetings and various options to reduce losses were discussed, however the results remained negative. As a result, the Pioneer Food Group decided to dispose of the business.
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10. Considering the above, the Commission is of the view that the proposed merger is unlikely to substantially prevent or lessen competition in any market.

***Effect on employment***

***Pre-merger retrenchments***

11. In its investigation, the Commission found that there were pre-merger retrenchments at RFG.

The Commission sought to establish whether the pre-merger retrenchments at RFG are merger specific and whether the decision to retrench employees was influenced by the proposed transaction. From the information submitted by the merging parties, the Commission found that discussions on the purchase of the frozen food business started in September 2019 when RFG was first approached by Pioneer Foods Group. The merging parties submit that RFG only received high-level information on the sale in April 2020. RFG made a non-binding offer to Pioneer Foods on 14 May 2020. On 22 July 2020, RFG subsequently made a binding offer to Pioneer Foods for the purchase of the frozen food business. On the other hand, the retrenchments at RFG took place between May 2020 and October 2020. As such, the Commission found that the retrenchments at RFG were contemplated after the discussions about the merger commenced with the target firm.

12. Although the Commission was of the view that the timeline of events appears to suggest that there is a possible link between the proposed merger and the retrenchments, the Commission is also cognisant of the negative impact of the Covid-19 pandemic on businesses in South Africa. On balance, and based on all the evidence available to the Commission, the Commission is of the view that the pre-merger retrenchment at RFG were for operational reasons and are unlikely to be merger specific.

***Possible post-merger retrenchments***

13. The Commission also found that RFG is considering the viability of the Frozen Food Business, in particular, the viability of continuing to operate the Frozen Food Business's factory. At this
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point in time, and subject to RFG undertaking a final assessment and consulting with affected employees and their representatives, RFG considers that the Frozen Food Business in its current form is not a viable business. RFG is thus exploring various options and would have to engage with the affected employees and their representatives in this regard, but it is highly unlikely that RFG will continue to operate the factory owned by the Pioneer Food Group and will potentially shift the production volumes to its other existing sites.

14. The Frozen Food Business currently employs a total of 250 employees. Of this, 191 are permanent employees and 59 are temporary employees. The Acquiring Group indicates that according to its initial assessment, the current employment levels in the Frozen Food Business are not sustainable given the size of the operations and any turnaround of the Primary Target Business is, therefore, likely to result in significant job losses. The Commission found that the Frozen Food Business has been loss-making for a few years, despite initiatives employed by Pioneer Food Group to turn this around in the past two years.
  15. The Commission also received concerns from SACTWU and the Department of Trade, Industry and Competition (DTIC). SACTWU is concerned about the possible retrenchments of 250 employees and indicates that the merger should not result in any retrenchment. The DTIC also raised concerns about the anticipated retrenchments.
  16. In response to the DTIC's and SACTWU's concerns and potential remedies proposed, specifically that a 24-month moratorium be imposed on retrenchments, the merging parties submitted that RFG considers that the Frozen Food Business in its current form is not a viable business. As such, the parties submitted that from a commercial standpoint, RFG is not in a position to accept a moratorium on retrenchments. The parties offered a number of other commitments.
  17. Prior to extensive engagements with the Commission, the merging parties were willing to redeploy 105 employees who are likely to be retrenched at the Frozen Food Business into RFG's Gauteng and Cape Town factories. In addition, the Acquiring Firm was willing to fund
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the reskilling of employees who cannot be redeployed up to R5 000 per employee. Following extensive engagements with the Commission on this issue, the acquiring firm is willing to create 50 new positions within RFG's Bakery Business in Gauteng and to accommodate another 50 employees at RFG's Groot Drakenstein site in the Western Cape in its various production facilities. In addition, Pioneer Food Group will accommodate 80 affected employees who opt to be redeployed at various sites within the greater Atlantis, Malmesbury and Cape Town region where the Pioneer Food Group operates. Furthermore, the Acquiring Firm agreed to increase the reskilling fund from the R5 000 to R15 000.

18. The Commission found that that given the circumstances of this case, the conditions tendered by the merging parties are sufficient to address the public interest concerns arising as a result of the proposed merger. The merging parties have agreed to the conditions.

***Effect on greater spread of ownership***

19. The Commission found that the proposed transaction will result in an increase in the Frozen Food Business's BEE level from level 8 to level 3. As such, the Commission is of the view that proposed transaction will have no negative effect on the promotion of a greater spread of ownership, or on historically disadvantaged persons and workers in firms in the market.

20. The Commission also notes that the employees of the Frozen Food Business were part of the workers trust established as a result of the Tribunal conditions in a matter involving Simba (Pty) Ltd and Pioneer Food Group limited in March 2020 (LM108Sep19). With respect to the workers Trust, Pioneer Food Group indicated the following:

*"the employees of Pioneer Foods who may be transferred to a different employer after the closing date of the PepsiCo / Pioneer Foods transaction as a result of any of the disposals identified in the PepsiCo Conditions (which includes the Proposed Transaction) will participate in the Workers Trust to be established pursuant to clause 2.1.1 of PepsiCo Conditions..."*

21. The proposed transaction does not raise any other public interest concerns.
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22. The Commission therefore approves the proposed transaction subject to the conditions set out in **Annexure A** hereto.

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**ANNEXURE A****RHODES FOOD GROUP FOODS PROPRIETARY LIMITED****AND****THE FROZEN FOOD BUSINESS OF PIONEER FOODS WELLINGTONS PROPRIETARY  
LIMITED****CASE NUMBER: 2021JUL0009**

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**CONDITION**

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**1. DEFINITIONS**

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings –

1.1.1. **"Acquiring Firm"** means RFG Foods Proprietary Limited;

1.1.2. **"Affected Employees"** means no more than 250 (two hundred and fifty) employees employed by the Target Firm;

1.1.3. **"Approval Date"** means the date referred to on the Commission's Merger Clearance Certificate (Form CC 15);

1.1.4. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;

1.1.5. **"Competition Act"** means the Competition Act, No. 89 of 1998, as amended;

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- 1.1.6. **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Competition Commission;
- 1.1.7. **"Conditions"** mean these conditions;
- 1.1.8. **"CV"** means Curriculum Vitae;
- 1.1.9. **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.10. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.11. **"LRA"** means the Labour Relations Act 66 of 1995, as amended;
- 1.1.12. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Firm;
- 1.1.13. **"Merging Parties"** mean collectively the Acquiring Firm and the Target Firm;
- 1.1.14. **"PepsiCo"** means PepsiCo, Inc.;
- 1.1.15. **"PepsiCo Conditions"** means the conditions imposed by the Tribunal in the acquisition by PepsiCo, Inc. of Pioneer Food Group under case number LM108SEP19;
- 1.1.16. **"Pioneer Food Group"** means Pioneer Food Group Proprietary Limited;
- 1.1.17. **"Pioneer Foods Wellingtons"** means Pioneer Foods Wellingtons Proprietary Limited;
- 1.1.18. **"Target Firm"** means the frozen food business of Pioneer Foods Wellingtons;
- 1.1.19. **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 1.1.20. **"VSPs"** means voluntary separation packages; and
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1.1.21. **“Workers Trust”** means a trust established pursuant to clause 1.1.15 of PepsiCo Conditions, under case Tribunal No.: LM108Sep19.

## 2. RECORDAL

- 2.1. While the Acquiring Firm still needs to undertake a final assessment and consult with any Affected Employees and their representatives, the Acquiring Firm holds a preliminary view that the Target Firm in its current form is not a viable business.
- 2.2. Accordingly, as a last resort and after alternative solutions have been exhausted (including VSPs as detailed below), it may become necessary for the Acquiring Firm to engage in a retrenchment process insofar as the Affected Employees are concerned. In light of the foregoing, the Acquiring Firm and Pioneer Food Group agree to the Conditions as set out in Paragraph 3 below.
- 2.3. The parties wish to record that, in terms of the PepsiCo Conditions, the employees of Pioneer Food Group who may be transferred to a different employer after the closing date of the PepsiCo / Pioneer Food Group transaction as a result of any of the disposals identified in the PepsiCo Conditions (which includes the Merger) will be entitled to participate in the Workers Trust. Therefore, since the employees of the Target Firm will be transferred to the Acquiring Firm in terms of section 197 of the LRA pursuant to a disposal contemplated in the PepsiCo Conditions, the Affected Employees will accordingly be entitled to receive the benefits of the Workers Trust.

## 3. CONDITIONS TO THE APPROVAL OF THE MERGER

### Retrenchments

- 3.1. The Merging Parties shall not retrench any employees as a result of the Merger, save for the Affected Employees who (i) cannot be redeployed by the Acquiring Firm or the Pioneer Food Group or (ii) do not wish to take up the redeployment opportunities as contemplated in these Conditions or (iii) do not accept VSPs.
- 3.2. For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii)
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unreasonable refusals to be redeployed in accordance with the provisions of the LRA; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; and (vi) terminations in the ordinary course of business, including but not limited to dismissals as a result of misconduct or poor performance.

### **Redeployment**

3.3. The Acquiring Firm undertakes the following:

3.3.1. 50 new positions will be created within the Acquiring Firm's bakery business in Gauteng to accommodate the Affected Employees who opt to be redeployed. Affected Employees who opt to be redeployed to Gauteng will qualify to receive benefits in accordance with the Acquiring Firm's relocation policy. For the avoidance of doubt, the Acquiring Firm will seek to fill such positions within 2 years from the Implementation Date irrespective of whether any of the Affected Employees opt to be redeployed to Gauteng; and

3.3.2. the Acquiring Firm will accommodate another 50 Affected Employees who opt to be redeployed at its Groot Drakenstein site in the Western Cape in its various production facilities. Affected Employees who opt to be redeployed to the Acquiring Firm's Groot Drakenstein site will qualify to be paid a traveling allowance in the amount of R1,200 (one thousand two hundred rand) per month for a period of two years.

3.4. Pioneer Food Group undertakes the following:

3.4.1. Pioneer Food Group will accommodate 80 Affected Employees who opt to be redeployed at various sites within the greater Atlantis, Malmesbury and Cape Town region where the Pioneer Food Group operates.

### **Training / Skills Development Award**

3.5. The Acquiring Firm will source a reputable third-party reskilling service provider and is willing to fund the reskilling of Affected Employees, who cannot or elect not to be

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redeployed, up to a maximum amount equal to R15,000 (fifteen thousand rand) per employee.

**Favourable packages**

- 3.6. Where any Affected Employees chooses to enter into VSPs, the Acquiring Firm will pay favourable severance packages of 3 months' severance pay over and above the statutory severance of one week for every year of service and the standard one month's notice pay.

**Preferential employment**

- 3.7. The Acquiring Firm will assist any Affected Employees who may be retrenched with offers of preferential employment, for a period of two years from the Implementation Date to the extent that job opportunities become available and provided that the applicants are suitably qualified and experienced for such roles.
- 3.8. The Pioneer Food Group will assist any Affected Employees who may be retrenched with offers of preferential employment, for a period of two years from the Implementation Date to the extent that job opportunities become available and provided that the applicants are suitably qualified and experienced for such roles.

**Counselling and wellness**

- 3.9. Affected Employees will be provided with group as well as individual counselling sessions through the Acquiring Firm's employee wellness program.

**Distribution of CVs**

- 3.10. The Acquiring Firm will distribute the CVs of retrenched Affected Employees to appropriate customers, suppliers, third parties and facilitate assistance for such employees through recruitment agencies.

#### **4. MONITORING**

- 4.1. A copy of the Conditions shall be circulated to all employees, the employee representatives and trade unions of the Merging Parties within 5 (five) Days following the Approval Date.
- 4.2. As proof of compliance thereof, the Merging Parties shall within 5 (five) Days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merging Parties attesting to the circulation of the Conditions and attach a copy of the notice sent. For the sake of clarity, the aforementioned senior official for the Target Firm may also be a senior official of Pioneer Foods Wellingtons.
- 4.3. The Acquiring Firm shall inform the Commission in writing of the Implementation Date, within 5 (five) Days of it becoming effective.
- 4.4. The Acquiring Firm and Pioneer Food Group shall submit separate reports to the Commission indicating their compliance with respect to the Conditions. These reports must be lodged 5 (five) Days after each anniversary of the Implementation Date for a period of 3 (three) years.
- 4.5. In the event that the Commission receives a complaint regarding non-compliance by the Merging Parties and Pioneer Food Group with these Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties or the
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Pioneer Food Group of the Conditions, the matter shall be dealt with in terms of Rule 39 of the Commission Rules.

## **5. VARIATION**

- 5.1. The Acquiring Firm, Pioneer Food Group and the Commission may at any time, and on good cause shown, apply to the Tribunal for any of the Conditions to be waived, relaxed, modified and/or substituted.

## **6. GENERAL**

- 6.1. All correspondence in relation to the Conditions must be submitted to the following e-mail addresses: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za) and [Ministry@thedtic.gov.za](mailto:Ministry@thedtic.gov.za).

Enquiries in this regard may be addressed to the Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298