

**DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION****NO. 5666****13 December 2024****COMPETITION COMMISSION****NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:****ALLIANCE FOOS (PTY) LTD****AND****AKM FOODS (PTY) LTD****CASE NUMBER: 2024APR0045**

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 24 April 2024, the Competition Commission (the "Commission") received notice of an intermediate merger whereby Alliance Foods SA (Pty) Ltd ("Alliance Foods SA") intends to purchase the business of AKM Foods (Pty) Ltd ("AKM Foods"), being 45 Kentucky Fried Chicken ("KFC") outlets in the Eastern Cape, South Africa (the "Target Business"). Upon conclusion of the proposed transaction, Alliance Foods SA will exercise sole control over the Target Business.

**Parties**

2. The primary acquiring firm is Alliance Foods SA, a private company incorporated in terms of the laws of South Africa. Alliance Foods SA is wholly owned and controlled by Alliance Foods (Pty) Ltd which is based in Eswatini ("Alliance Foods Eswatini"). Alliance Foods Eswatini is controlled by Greystone Partners Limited (Eswatini) ("Greystone Partners") as to 72.73%. The remaining interest in Alliance Foods Eswatini is held by Inala Capital Limited (Eswatini) ("Inala Capital") as to 27.27%.
3. Greystone Partners is a public listed company on the Eswatini Stock Exchange and it is not controlled by any firm. Apart from Alliance Eswatini, Greystone Partners also has a controlling interest in General Africa Foods Eswatini (Pty) Ltd and non-controlling interests in Lojaf (Pty) Ltd and Promco (Pty) Ltd.



4. For completeness, Inala Capital is a public company in Eswatini and it is not controlled by any firm. Inala Capital in turn does not control any firm.
5. Alliance Foods SA does not directly or indirectly control any firm.
6. Alliance Foods SA, its controlling firm and all the other firms controlled by its controlling firm are collectively referred to as the “Acquiring Group”.
7. Alliance Foods SA has no shareholding by historically disadvantaged persons (“HDPs”).
8. The Target Business is currently controlled by AKM Foods, a private company incorporated in terms of the laws of South Africa. AKM Foods is in turn controlled by Eswift Investments (RF) Proprietary Limited (“Eswift Investments”), a company incorporated in terms of the laws of South Africa. Eswift Investments is ultimately controlled by HDP owned family trusts.
9. The Target Business is ultimately wholly owned and controlled by HDPs, comprising of HDP-owned family trusts.

### **Activities**

10. The Acquiring Group comprises of various companies active in the operation of investment holding companies, butcheries, home and storage goods stores and 11 KFC outlets in Eswatini. Relevant to the proposed transaction are the Acquiring Group’s activities relating to the operation and ownership of KFC outlets.
11. The Target Business comprises of 45 quick service restaurants (“QSRs”), namely KFC outlets located in the Eastern Cape, South Africa.

### **Areas of overlap**

12. The proposed transaction presents a horizontal overlap in the market for QSRs. This is because the Acquiring Group (through Alliance Foods Eswatini) operates 11 KFC outlets. On the other hand, the Target Business comprises of 45 KFC outlets. The Commission found that there is no geographic overlap in the activities of the merging parties.



13. Given the above, the Commission is of the view that the proposed transaction is unlikely to result in a substantial prevention or lessening of competition in any relevant market.

**Public interest**

14. There are no employment concerns arising as a result of the proposed transaction.
15. In order to promote a greater spread of ownership, the merging parties have made commitments in relation to the imposition of an HDP transaction or Employee Share Ownership Program as well as procurement commitments.

**Conclusion**

16. The Commission approves the proposed transaction in accordance with the conditions set out in **Annexure A**.



**ANNEXURE A****ALLIANCE FOODS SA (PTY) LTD****AND****AKM FOODS (PTY) LTD****COMMISSION CASE NUMBER: 2024APR0045**

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**CONDITIONS**

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**1. DEFINITIONS**

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings: -

- 1.1. **"Acquiring Firm"** means Alliance Foods SA Proprietary Limited;
- 1.2. **"Approval Date"** means the date referred to in the Competition Commission's merger clearance certificate (Form CC15);
- 1.3. **"Business Days"** means any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.4. **"Commission"** means the Competition Commission of South Africa, duly established under the Competition Act;
- 1.5. **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;
- 1.6. **"Competition Act"** means the Competition Act, No. 89 of 1998, (as amended);
- 1.7. **"Conditions"** mean, collectively, the conditions referred to in this document;
- 1.8. **"ESOP"** means the employee share ownership programme to be established for the benefit of Qualifying Workers as contemplated in paragraph 2.2 below;
- 1.9. **"ESOP Establishment Period"** means 36 months from the Implementation Date;
- 1.10. **"Franchisor"** means KFC (Pty) Ltd, registration number 1994/003839/07, a limited liability company organised and existing under the laws of South Africa and a wholly-owned subsidiary of Yum! Brands Inc, an American multi-national



fast-food corporation on the Fortune 1000, operating brands such as KFC and Pizza Hut;

- 1.11. **"HDPs"** means a historically disadvantaged person/s as contemplated in section 3(2) of the Competition Act;
- 1.12. **"HDP-Owned"** means owns as to at least, 50% plus 1 share by HDP(s);
- 1.13. **"HDP Transaction"** means the Merging Parties' commitment to establish a 9% HDP shareholder of the Merged Entity, chosen at the sole discretion of the Merged Entity;
- 1.14. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties, being the date on which the Sale of Business becomes unconditional;
- 1.15. **"KFC"** means Kentucky Fried Chicken;
- 1.16. **"LRA"** means the Labour Relations Act, No. 66 of 1995, (as amended);
- 1.17. **"Merger"** means the acquisition of control by the Acquiring Firm over the Target Business;
- 1.18. **"Merged Entity"** means the Acquiring Firm's acquisition of the Target Business following the Merger;
- 1.19. **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 1.20. **"Qualifying Workers"** means Workers employed by the Merged Entity;
- 1.21. **"Sale of Business"** means the sale of business agreement concluded on or about 5 February 2024, between, *inter alios*, the Acquiring Firm, the Target Firm and Alliance Foods Proprietary Limited;
- 1.22. **"South Africa"** means the Republic of South Africa;
- 1.23. **"Target Business"** means the business of conducting a chain of 45 KFC quick service restaurant outlets;
- 1.24. **"Target Firm"** means AKM Foods Proprietary Limited in respect of the business of conducting a chain of 45 KFC quick service restaurant outlets;
- 1.25. **"Tribunal"** means the Competition Tribunal of South Africa;



- 1.26. **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal; and
- 1.27. **"Worker"** means an employee as defined in the Labour Relations Act 66 of 1995 (as amended) and, in the context of ownership, refers to ownership by a broad base of Workers.

## **2. CONDITIONS TO THE APPROVAL OF THE MERGER**

### **2.1. PROCUREMENT**

- 2.1.1. In the 12 months preceding the merger filing date, the merging parties spent approximately [Confidential] on the procurement of goods and services such as raw materials, equipment, construction, management fees and cash in transit services from HDP-Owned Firms. The Merged Entity undertakes to use its reasonable endeavors, having regard to the requirements of the Franchisor, to retain the HDP-Owned Firms currently engaged as suppliers to the merging parties for a period of [Confidential] years after the Implementation Date.
- 2.1.2. The Merged Entity undertakes to use its reasonable endeavors, having regard to the requirements of the Franchisor, to increase the annual spend on HDPs set out in clause 2.1.1 above by a [Confidential]% annually for a period of [Confidential] years after the Implementation Date.

### **2.2. ESOP or HDP Transaction**

- 2.2.1. The Merged Entity shall within the ESOP Establishment Period, at its election, and on written notice to the Commission, establish HDP shareholder participation in the Merged Entity in terms of which 9% ("the minimum HDP shareholding") of the shares in the Merged Entity will be held by HDPs, whether by way of the establishment of an ESOP or a sale or subscription for shares in the Merged Entity.
- 2.2.2. In the event that the Merged Entity elects to establish an ESOP, the ESOP will be implemented in accordance with the design principles set out in **Annexure B** hereto.
- 2.2.3. Prior to the implementation of the HDP Transaction, the Merging Parties will provide the Commission with details of the HDP Transaction in writing.



These details shall include, but not be limited to, the structure of the HDP Transaction, identities of prospective HDPs, evidence that prospective participants to the HDP Transaction are HDPs, the proportion of shareholding in the Merged Entity that each prospective HDP shareholder will receive and confirmation of whether the HDP Transaction constitutes a merger for the purposes of the Act.

- 2.2.4. Within 60 days of receipt of the details of the HDP Transaction, the Commission shall provide its written approval or any comments or queries to the HDP transaction in writing.
- 2.2.5. For the avoidance of doubt, the HDP Transaction may not be implemented without the Commission's written approval.
- 2.2.6. For the avoidance of further doubt, to the extent that the HDP Transaction approved by the Commission in writing also constitutes a merger as defined in the Act (and the thresholds for mandatory notification are met), the HDP Transaction can then only be implemented once same has been notified to the Commission as a merger and approved with or without conditions.

### **3. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 3.1. Within 10 (ten) Days of the Implementation Date, the Merged Entity shall circulate a non-confidential version of the Conditions to its employees, their employee representatives and trade unions. As proof of compliance herewith, the Merged Entity shall within 5 (five) Days of circulating the Conditions, submit to the Commission an affidavit by a senior official, attesting to such compliance.
- 3.2. Within 5 (five) days after the Implementation Date, the Merged Entity shall notify the Commission in writing of the Implementation Date.
- 3.3. The Merged Entity shall submit a compliance report (including a trust deed for the registration of the ESOP) within 5 (five) Days after the establishment of the ESOP. The report shall be accompanied by an affidavit from a director of the Acquiring Group confirming the accuracy of the information contained in the report,
- 3.4. The Merged Entity shall provide the Commission with a report detailing the extent of its progress and compliance with paragraphs 2.1 to 2.2 of the Conditions on each anniversary of the Implementation Date for the duration of the Conditions.



This report shall be accompanied by an affidavit, duly signed by the Director of the Merged Entity, attesting to the accuracy of the contents of the report.

- 3.5. The Commission may request any additional information from the Merging Parties, which the Commission may, from time to time, deem necessary for purposes of monitoring the extent of compliance with these Conditions.

#### **4. APPARENT BREACH**

- 4.1. Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determines that there has been an apparent breach by the Merging Parties of these Conditions, the breach shall be dealt with in terms of Rule 39 of the Commission Rules.

#### **5. VARIATION**

- 5.1. The Merging Parties may at any time, on good cause shown, apply to the Commission for the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the variation of the Conditions, the Merging Parties shall apply to the Tribunal, on good cause shown and on notice to the Commission, for the Conditions to be waived, relaxed, modified and/or substituted.

#### **6. GENERAL**

- 6.1. All correspondence in relation these Conditions must be submitted to the following email address: [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