

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 5810

31 January 2025

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

DYNAMIC BRANDS MANUFACTURING PROPRIETARY LIMITED

AND

DYNAMIC BRANDS MANUFACTURING PROPRIETARY LIMITED THE INTELLECTUAL
PROPERTY, EQUIPMENT AND STOCK RELATED TO THE DILUTABLE NON-
ALCOHOLIC BEVERAGE BRANDS DALY'S, CARIBBEAN, JUNGLE YUM AND WILD
ISLAND

CASE NUMBER: 2024JUL0029

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:

Background

1. On 18 July 2024, the Competition Commission ("Commission") received notice of an intermediate merger whereby Dynamic Brands Manufacturing Proprietary Limited ("Dynamic Brands") wishes to acquire the intellectual property, equipment and stock related to the dilutable non-alcoholic beverage brands *Daly's*, *Caribbean*, *Jungle Yum* and *Wild Island* ("Target Brands") from Pioneer Foods Groceries Proprietary Limited ("PFG"). Following the implementation of the proposed transaction, Dynamic Brands will solely control the Target Brands.
2. The primary acquiring firm is Dynamic Brands which is registered in South Africa. Dynamic Brands is controlled by Dynamic Hold 01 Proprietary Limited ("Dynamic Hold") and KLT Dynamic Proprietary Limited ("KLT Dynamic"). Dynamic Hold is controlled by the [CONFIDENTIAL]. KLT Dynamic is ultimately controlled by the trustees of the [CONFIDENTIAL]. The Commission understands that Dynamic Brands does not control any entities.
3. Dynamic Brand is active in the manufacturing and supply of non-alcoholic dilutable concentrated and ready to drink ("RTD") beverages sold under various brands. The

concentrates manufactured and sold by Dynamic Brands include: (i) Dairy-blend concentrates sold under the *Fusion* and *Delicious* brands; and (ii) Fruit-based concentrates sold under the *Slimsy*, *Yello*, *Rascals*, *Mr Orange*, and *Burtens* brands. Dynamic Brands also manufactures and sells RTD beverages under its *Rascals*, *Mr Orange*, *Mr Berry*, *Slimsy* and *Burtens* brands.

4. Dynamic Brands and the firms controlling Dynamic Brands will be referred to as the “Acquiring Group”.
5. The primary target firm comprises of the Target Brands currently owned by PFG. PFG is registered in South Africa and is ultimately controlled by PepsiCo Inc, a firm incorporated in the United States of America.
6. The Target Brands comprise of the following: (i) *Wild Island* and *Caribbean*, both of which are dairy-blend concentrate brands; (ii) *Daly’s*, a fruit-based squash concentrate brand; and (iii) *Jungle Yum*, a fruit-based cordial brand. The *Jungle Yum* products were discontinued and have not been sold by PFG since 2022.

Areas of overlap

7. The Commission found that there is a horizontal overlap between the activities of the merger parties. This is because the merger parties are both active in the market for the production and distribution of non-alcoholic beverages, specifically concentrates, in South Africa. The Commission found that there is no vertical relationship between the merger parties.

Competition Analysis

8. With regard to the market definition, the Commission considered (i) the broad market for the manufacturing and supply of concentrates in South Africa and (ii) the narrow market for the manufacture and supply for dairy-blend concentrates in South Africa.
9. The Commission found that the merged entity will have an estimated market share of approximately **[CONFIDENTIAL]** in the broad market for the manufacturing and supply of concentrates in South Africa. In this broad market, the merged entity would continue to face competition from other players including Tiger Brands which is the largest player in the market.
10. However, in the narrow market for the manufacture and supply for dairy-blend concentrates in South Africa, the Commission found that the merged entity will have an estimated market share of more than **[CONFIDENTIAL]**. The Commission found that the merged entity would be the dominant player in this narrow market.

11. The Commission also received concerns from several customers regarding the likely impact of the merger on competition in the narrow market for the manufacture and supply for dairy-blend concentrates in South Africa. Customers were particularly concerned about the reduction in the number of credible alternatives in the market and the ability of the merged entity to unilaterally increase prices post-merger, particularly with respect to smaller customers or those owned and operated by historically disadvantaged persons.
12. However, the Commission engaged the merger parties regarding potential remedies that may address the substantial lessening of competition likely to arise due to the proposed merger. This was largely because the Commission found that the Target Brands have been loss-making and that absent the merger, it is likely that the Target Brands may have exited the market. In this regard, the Commission and the merger parties have agreed to a non-discriminatory pricing condition which would ensure that they do not discriminate against any of its customers, particularly small and medium sized business and firms owned by HDPs, in respect of any of its supply and pricing agreements and continue to provide products to all its customers in the ordinary course of business on commercially reasonable and practical terms.
13. The conditions are contained in **Annexure A**.

Public Interest considerations

14. The Commission assessed the merger's effect on each of the public interests, consistent with the framework set out in the *Revised Public Interest Guidelines Relating to Merger Control*. The most relevant aspects of that assessment are set out below.
15. The Commission found that there are currently **[CONFIDENTIAL]** employees employed under the Target Brands and none of them will be transferred to Dynamic Brands ("Target Brands employees"). The merger parties submitted that of the **[CONFIDENTIAL]** employees employed by the Target Brands:
 - 15.1. **[CONFIDENTIAL]** employees elected to take voluntary severance packages ("VSPs").
 - 15.2. **[CONFIDENTIAL]** employees have been redeployed. This redeployment has been finalised and confirmed.
 - 15.3. **[CONFIDENTIAL]** employees indicated that they were not willing to be relocated outside of the Free State (where the Target Brands are based). The Commission understands that these employees have been earmarked for vacancies within the Free State and appointment letters are to be finalised; and

- 15.4. **[CONFIDENTIAL]** employees will be re-deployed to vacancies nationally within the seller's business. The Commission understands that these appointments are yet to be finalised.
16. In light of the above, the merger parties submit that the Proposed Transaction will have no negative effect on employment.
17. However, due to (i) the Target Brand's employees not transferring to the Acquiring Group, (ii) some of the above-mentioned redeployments not yet being finalised, and (iii) the retrenchment notices that have already been issued to the Target Brand's employees, the Commission was concerned that the employees of the Target Brands may still be retrenched as a result of the Proposed Transaction. The Commission requested the merger parties to agree to a moratorium on merger-specific retrenchments for two years following the implementation of the Proposed Transaction. The merger parties have agreed to the above, as contained in **Annexure A**.
18. In addition to the above, the Commission and the merger parties have agreed to a condition which will result in the Acquiring Firm making an aggregate contribution of R2 000 000.00 over a period of 2 (two) years towards supplier development and enterprise and skills development initiatives.
19. The Commission therefore conditionally approves the proposed transaction.

ANNEXURE A: CONDITIONS**DYNAMIC BRANDS MANUFACTURING PROPRIETARY LIMITED****AND****THE INTELLECTUAL PROPERTY, EQUIPMENT AND STOCK RELATED TO THE
DILUTABLE NON-ALCOHOLIC BEVERAGE BRANDS DALY'S, CARRIBEAN, JUNGLE
YUM AND WILD ISLAND****CASE NUMBER: 2024JUL0029**

CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings -

1.1.1 **"Approval Date"** means the date referred to in the Commission's merger clearance certificate;

1.1.2 **"Acquiring Firm"** means Dynamic Brands Manufacturing Proprietary Limited;

1.1.3 **"Act"** means the Competition Act 89 of 1998, as amended;

1.1.4 **"Affected Employees"** the 86 employees of PFG who worked under the Target Brands;

1.1.5 **"Commission"** means the Competition Commission of South Africa;

1.1.6 **"Commission Rules"** mean the Rules for the Conduct of Proceedings in the Commission;

1.1.7 **"Conditions"** means these conditions contained in this "Annexure A", agreed to by the Merged Entity and the Commission;

1.1.8 **"Days"** mean business days, being any day other than a Saturday, Sunday, or official public holiday in the Republic of South Africa;

- 1.1.9 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merger Parties;
- 1.1.10 **"LRA"** means the Labour Relations Act No. 66 of 1995 (as amended);
- 1.1.11 **"Merged Entity"** means the combined firm resulting from the Merger between the Acquiring Firm and the Target Brands;
- 1.1.12 **"Merger"** means the acquisition of the Target Brands by the Acquiring Firm;
- 1.1.13 **"Merger Parties"** means the Acquiring Firm and the Target Brands;
- 1.1.14 **"Moratorium Period"** means a period of 2 (two) years from the Implementation Date as well as the period between the Approval Date and the Implementation Date;
- 1.1.15 **"PFG"** means Pioneer Foods Groceries Proprietary Limited;
- 1.1.16 **"Pioneer Food Group"** means Pioneer Food Group Proprietary Limited;
- 1.1.17 **"South Africa"** means the Republic of South Africa;
- 1.1.18 **"Target Brands"** means certain assets owned by PFG including the intellectual property, plant equipment, and stock related to the dilutable non-alcoholic beverage brands *Daly's*, *Caribbean*, *Wild Island* and *Jungle Yum*; and
- 1.1.19 **"Tribunal"** means the Competition Tribunal of South Africa.

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

2.1 **EMPLOYMENT**

- 2.1.1 The Merged Entity and PFG shall not retrench any employees, including the Affected Employees, as a result of the Merger, for the duration of the Moratorium Period.
- 2.1.2 For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (ii) voluntary early retirement packages,

(iii) 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; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; (vii) any decision not to renew or extend a contract of a contract order; and (viii) any transfer of employees to the employment of a third party as a result of any sale of business operations, including related assets and liabilities, or any joint venture or similar business arrangements.

3. SUPPLIER DEVELOPMENT, ENTERPRISE DEVELOPMENT AND SKILLS DEVELOPMENT

- 3.1 The Acquiring Firm shall make an aggregate contribution of R2 000 000.00 over a period of 2 (two) years with a minimum average contribution of R500 000 per annum towards supplier development initiatives and a minimum average contribution of R500 000 per annum towards enterprise and skills development initiatives.

4. NON-PRICE DISCRIMINATION

- 4.1 For a period of 5 (five) years from the Implementation Date, the Merger Parties shall:

4.1.1 not engage in prohibited price discrimination as defined in section 9 of the Act against any of its customers in respect of any of its supply and pricing agreements. In particular, the Merged Entity shall not engage in prohibited price discrimination against small and medium sized businesses (as defined in the Act) or firms controlled or owned by historically disadvantaged persons (as contemplated in section 3(2) of the Act);

4.1.2 continue to provide products to its customers in the ordinary course of business and on commercially reasonable and practical terms

5. MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 5.1 The Merged Entity shall inform the Commission in writing of the Implementation Date of the Merger within 5 (five) Days of its occurrence.

- 5.2 The Merged Entity and PFG shall circulate a copy of the Conditions to all their employees and/or their employee representatives and/or relevant trade unions within 5 (five) Days of the Approval Date.
- 5.3 As proof of compliance thereof, the Merged Entity and PFG shall within 5 (five) Days of circulating the Conditions to all the employees and/or the employee representatives and/or relevant trade unions, provide the Commission with an affidavit by a senior official of each of the Merged Entity and PFG attesting to the circulation of the Conditions and attaching a copy of the notice sent.
- 5.4 The Merged Entity shall submit a report to the Commission on each anniversary of the Implementation Date:
- 5.4.1 For a period of 2 (two) years from the Implementation Date, setting out the following in compliance with clause 3 of the Conditions:
- 5.4.1.1 The names of the HDP employees that were part of the training initiatives for the year;
- 5.4.1.2 Whether the training initiatives were completed;
- 5.4.1.3 The amount in rands spent on the training initiatives;
- 5.4.1.4 The amount in rands spent on social responsibility and supplier development initiatives for that year;
- 5.4.1.5 The list of HDP suppliers from which the Acquiring Firm procured products or services for that year and proof that the suppliers are HDPs; and
- 5.4.1.6 A description of the nature of the supplier and enterprise development initiatives for that year.
- 5.4.2 For a period of 5 (five) years from the Implementation Date, setting out confirmation of its compliance with clause 4 of the Conditions. In particular that the Merged Entity has supplied all its customers in the ordinary course of business and on commercially reasonable and practical terms.
- 5.4.3 For a period of 2 (two) years from the Implementation Date, setting out its compliance with clause 2 of the Conditions.
- 5.5 This report shall be accompanied by an affidavit, attested to by a director or other suitable person of the Merged Entity, confirming the accuracy of the contents of the report.
- 5.6 Within a period of 10 (ten) days from the Implementation Date, PFG shall provide the Commission with a detailed list of the Affected Employees who are redeployed within

the broader Pioneer Food Group and the final number of Affected Employees who accepted voluntary severance packages.

- 5.7 Any employee of the Merged Entity who believes that the Merged Entity has not complied with or has acted in breach of the Conditions may approach the Commission.
- 5.8 The Commission may request such additional information from the Merged Entity or PFG which the Commission from time to time regards as necessary for the monitoring of compliance with these Conditions.

6. APPARENT BREACH

- 6.1 An apparent breach by the Merger Parties of any of the Conditions shall be dealt with in terms of Rule 39 of the Commission Rules read together with Rule 37 of the Tribunal Rules.

7. VARIATION OF CONDITIONS

- 7.1 The Merger 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 Merger 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.

8. GENERAL

- 8.1 All correspondence in relation to these Conditions must be submitted to the following email address: mergerconditions@compcom.co.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