

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: 04/LM/Jan03**

**In the large merger between:**

**1. Compagnie Gervais Danone and Clover Beverages**

**AND**

**2. Clover SA (Pty) Ltd and Danone-Clover (Pty) Ltd**

---

**Reasons for Decision**

---

**APPROVAL**

On 3 March 2003 the Competition Tribunal issued a Merger Clearance Certificate approving the merger between Compagnie Gervais Danone, Clover SA (Pty) Ltd, Clover Beverages and Danone-Clover (Pty) Ltd in terms of section 16(2)(a). The reasons for the approval of the merger appear below.

**The Merger Transaction**

1. This transaction is essentially a restructuring of the Clover Group which is being effected by means of a two stage transaction. In the first stage, Danone (a French firm) will cease to be a shareholder in Clover Holdings, disposing of this shareholding to Clover Holdings and to NCD. Danone is in turn acquiring a stake in Clover Beverages (South African firm). In the second stage, Clover is acquiring *an element of control* of Danone-Clover, Danone's South African subsidiary, namely the rights of appointment and termination of certain managers.
2. Accordingly, post-merger, Clover will control 55% of the share capital in Clover Beverages and Danone will hold a 37.6% interest (together with rights relating to appointment and termination of managers<sup>1</sup>). The shareholdings in Danone-Clover will remain unchanged.

---

<sup>1</sup> And the right to acquire 7.4% of shares in Clover Beverages from the minority shareholders, which will take its total shareholding in Clover Beverages to 45%.

## The Parties

2. In Stage 1 of the transaction, the acquiring firm is Compagnie Gervais Danone (“Danone”), a subsidiary of Groupe Danone and incorporated under the laws of France. Clover SA (Pty) Ltd (“Clover”), the (acquiring firm in Stage 2), is controlled by Clover Holdings , which is in turn controlled by National Co-operative Dairies (“NCD”). Clover has a host of subsidiaries, none of which are relevant for the purpose of this analysis.
3. The target firm in stage 1 is Clover Beverages Ltd (“CB”), which is directly controlled by Clover SA. Danone-Clover (Pty) Ltd, the target firm in stage 2, is controlled by Danone. Danone is the French company’s only South African subsidiary and entity through which Danone’s activities are conducted in RSA.

## Rationale for the Transaction

4. Danone, the French firm, is contributing its marketing skills and expertise in the global food industry to Clover Beverages, whilst Clover is contributing its insight and knowledge of the South African market.

## The Relevant Market

5. The Commission finds there are no product overlaps between the products of Clover Beverages and the Danone group on the one hand, or between Danone-Clover and Clover Group on the other.
6. There is furthermore no geographical overlap because most of Danone’s sales are concluded in Western Europe.

	<i><b>Clover</b></i>	<i><b>Clover Beverages</b></i>	<i><b>Danone</b></i>	<i><b>Danone - Clover</b></i>
<i><b>Activity</b></i>	Processing, marketing, selling, distributing dairy, dairy-related products, beverages and other food products.		Manufacture and sale of dairy and related products.	
<i><b>Products</b></i>	Fresh milk, UHT milk, condensed	Fruit juices, dairy fruit mixes,	Fresh dairy products, packaged	Maas, yoghurt, drinking

	milk, cream, cheese, butter, milk power under Clover, Ultramel, Tropica brands	flavoured milk, long-life custard.	water, biscuits and cereal snacks.	yoghurt, cottage cheese
--	--	------------------------------------	------------------------------------	-------------------------

### Impact on competition

7. This is merely an internal restructuring within the Clover Group. This, together with the lack of product overlap, ensures that there will be no fundamental change to the existing structure of the market, nor will any existing competitor be removed.
8. The Commission highlighted the existence of the non-compete clause in the Shareholders' Agreement between Danone, Clover and Clover Beverages. In terms of this provision, Danone and Clover will not compete with Clover Beverages in the manufacture and marketing of their products while they are shareholders in Clover Beverages and for a period of 5 years after. Similarly, Danone and Clover will not compete with Danone Clover in respect of the marketing and distribution of its product range. We accept the parties' contentions that such a restraint is commercially reasonable for parties entering into a joint venture in order to protect their investment.
9. There is no history of Clover and Danone competing against one another in the South African market. When Danone entered the SA market in 1996 it did so in a joint venture with Clover and this has been the way it has operated since. Clover has no relationship with any other foreign firm that competes in these markets. The merger is just a re-alignment of the co-operative relationship that has existed between Clover and Danone since Danone entered South Africa.

### Conclusion

This is an internal restructuring and there is no significant competitive change from the status quo. We conclude that the merger will not lead to a substantial lessening of competition. There are no public interest concerns which would alter this conclusion. The merger is therefore approved unconditionally.

