

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: IM260Mar16

### In the request for consideration:

Coty Inc.

**First Applicant**

The Hair Care, Colouring and Styling,  
Colour Cosmetics and Fragrance businesses  
of the Proctor and Gamble Company

**Second Applicant**

And

The Competition Commission

**Respondent**

### In re the intermediate merger between:

Coty Inc.

**Primary Acquiring Firm**

And

The Hair Care, Colouring and Styling,  
Colour Cosmetics and Fragrance businesses  
of the Proctor and Gamble Company

**Primary Target Firm**

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Panel : AW Wessels (Presiding Member)  
M Mokuena (Tribunal Member)  
A Ndoni (Tribunal Member)

Heard on : 17 August 2016  
Last submission received on: 6 September 2016  
Decided on : 8 September 2016

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### ORDER

Further to the request for consideration brought in terms of section 16(1)(a) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that -

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

  
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**Presiding Member**  
**Mr AW Wessels**

**8 September 2016**  
**Date**

**Concurring: Ms Medi Mokuena and Ms Andiswa Ndoni**

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**Annexure A**

**Coty Inc.**

**And**

**Haircare, colour cosmetics and fragrance businesses of the Procter and Gamble Company  
Haircare, colour cosmetics and fragrance businesses of the Procter and Gamble Company  
Haircare, colour cosmetics and fragrance businesses of the Procter and Gamble Company  
and Gamble Company**

**CC Case Number: Im260Mar16**

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**Conditions**

**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 Coty Inc ("Coty");
- 1.1.2. **"Affected Employees"** mean those employees employed by the Third Party Service Providers who are likely to be retrenched as a result of the Merger;
- 1.1.3. **"African Sales"** means the African Sales Company (Pty) Ltd;
- 1.1.4. **"Approval Date"** means the date referred to on the Tribunal's Clearance Certificate (Form CT10);
- 1.1.5. **"Commission"** means the Competition Commission of South Africa;
- 1.1.6. **"Conditions"** mean these conditions;
- 1.1.7. **"Cosmetiques de France"** means Cosmetiques de France (Pty) Ltd;
- 1.1.8. **"Days"** mean any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.1.9. **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.1.10. **"Merger"** means the amalgamation of Coty and the Target Businesses;

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- 1.1.11. **“Merging Parties”** means Coty and the Target Businesses;
- 1.1.12. **“P&G”** means Procter and Gamble Company;
- 1.1.13. **“Pharmafrance”** means Pharmafrance CC;
- 1.1.14. **“Target Businesses”** mean the Haircare, colour cosmetics and fragrance businesses of P&G;
- 1.1.15. **“Third Party Service Providers”** mean African Sales, Pharmafrance and Cosmetiques de France; and
- 1.1.16. **“Tribunal”** means the Competition Tribunal of South Africa.

## 2. RECORDAL

- 2.1. On 15 December 2015, the Commission received notice of an intermediate merger whereby Coty intends acquiring control of the Target Businesses of P&G.
- 2.2. The Commission’s investigation of the proposed Merger found that it is unlikely to lead to a significant lessening or reduction of competition in the relevant markets. However, the Commission found that the Merger is likely to raise significant public interest concerns relating to employees belonging to Third Party Service Providers who, pre-merger, provide certain functions to the Merging Parties. The Commission found that these significant public interest concerns are likely to arise as a result of the Merging Parties potentially internalising certain functions currently performed by the Third Party Service Providers. The Commission found that a potential 238 Affected Employees are likely to be affected as a result of the Merger should the Merging Parties completely internalise the functions currently performed by Third Party Service Providers. To this end, on 8 March 2016 the Commission approved this Merger subject to conditions addressing this concern.
- 2.3. On 29 March 2016, the Merging Parties brought an application before the Tribunal for the consideration of the decision of the Commission in relation to the conditions imposed by the Commission. Following discussion between the Commission, the Merging Parties and the Third Party Service Providers, it is agreed and submitted that the Tribunal approves this Merger subject to the Conditions set out below.

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

- 3.1. From the Approval Date until [REDACTED], the Merging Parties shall continue utilising the services of the Third Parties Service Providers, on terms and conditions that are no less favourable than the terms and conditions as contained in the contracts currently in force between the Merging Parties and the Third Party Service Providers.
  
- 3.2. Should the Merging Parties internalise any of the functions currently undertaken by the Third Party Service Providers following the expiration of the period referred to in 3.1 above, the Merging Parties shall make offers of employment first to the retrenched Affected Employees for any vacant position which may arise as a result of the internalisation of the functions currently undertaken by the Third Party Service Providers. Such offers of employment to Affected Employees will be subject to each Affected Employee complying with the appointment procedures and standard requirements for the position at the Acquiring Firm. Such offers to Affected Employees will continue for a period of 1 (one) year following the termination of the period referred to in 3.1 above.

**4. MONITORING OF COMPLIANCE WITH THE CONDITIONS**

- 4.1. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) Days of it becoming effective.
- 4.2. The Merging Parties shall circulate a copy of the Conditions to the Third Party Service Providers within 5 (five) Days of the Approval Date.
- 4.3. The Merging Parties, through a senior official, must provide an affidavit attesting to the circulation referred to in paragraph 4.2 above and provide a copy of the notice to the Commission within 10 (ten) Days of the Approval Date for the purpose of the Conditions being provided to any Affected Employees.
- 4.4. The Merging Parties and the Third Party Service Providers shall have a formal engagement 6 (six) months prior to the termination of the period referred to in 3.1 above (or on date mutually agreed between the parties), to discuss a formal process and the procedures to be followed by the Merging Parties when making employment offers to Affected Employees.
- 4.5. Any employment offers made by the Merging Parties to any of the Affected Employees, shall be made through the human resources representatives of the Third Party Service Providers respectively.
- 4.6. The Merging Parties shall submit:

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- 4.6.1. An annual report from the Approval Date, accompanied by a duly commissioned affidavit from a senior official of the Merging Parties, detailing compliance with 3.1 above; and
- 4.6.2. A report, 6 (six) months following the termination of the period referred to in 3.1 and for the duration referred to in 3.2 above detailing:
  - 4.6.2.1. The functions which they have internalised, how they affect the Third Party Service Providers and when these functions were internalised;
  - 4.6.2.2. The number of vacant positions created as a result of the internalisation;
  - 4.6.2.3. The number of vacant positions offered to retrenched Affected Employees;
  - 4.6.2.4. The number of vacant positions filled by Affected Employees; and
  - 4.6.2.5. The reasons why the vacant positions were not filled by the Affected Employees.
- 4.7. The Merging Parties shall submit a second and final report 6 (six) months following the submission of the report referred to in 4.6.2 above setting the same details.

## 5. GENERAL

- 5.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).
- 5.2. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings before the Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Commission.
- 5.3. The Merging Parties shall be entitled, upon good cause shown, to apply to the Tribunal for a waiver, relaxation, modification and/or substitution of one or more of these Conditions.