



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM017May15

In the matter between:

Pioneer Foods Proprietary Limited

Primary Acquiring Firm

And

Future Life Health Products Proprietary Limited

Primary Target Firm

Panel : N Manoim (Presiding Member)
Y Carrim (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on : 08 July 2015 & 01,02,04,10 September 2015 &
26 October 2015

Decided on : 09 November 2015

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 ("the Act") the Competition Tribunal orders that -

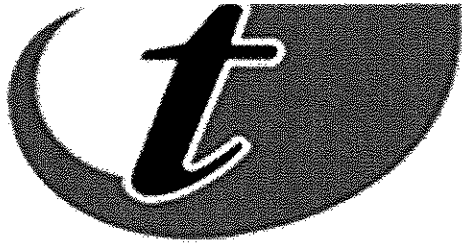
1. the merger between Pioneer Foods Proprietary Limited and Future Life Health Products Proprietary Limited be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto marked as **Annexure A**; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).



Presiding Member
Mr N Manoim

09 November 2015
Date

Concurring: Ms Y Carrim and Ms A Ndoni



competitiontribunal south africa

Notice CT 10

About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
Pretoria 0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Merger Clearance Certificate

Date: 9 November 2015

To: Cliffe Dekker Hofmeyr

Case Number: LM017May15

Pioneer Foods (Pty) Ltd & Future Life Health Products (Pty) Ltd

You applied to the Competition Commission on 24 April 2015 for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

The Registrar, Competition Tribunal:

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD AT PRETORIA)**

CT CASE NO: LM017May15

CC CASE NO: 2015Apr0205

In the large merger between:

PIONEER FOODS PROPRIETARY LIMITED

Primary Acquiring Firm

and

FUTURE LIFE HEALTH PRODUCTS PROPRIETARY LIMITED

Primary Target Firm

CONDITIONS: PUBLIC VERSION

1 DEFINITIONS

Unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings –

- 1.1 **"Acquiring Firm"** means Pioneer Foods Proprietary Limited;
- 1.2 **"Approval Date"** means the date referred to in the Competition Tribunal's clearance certificate (Form CT10);
- 1.3 **"Business Day"** means any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
- 1.4 **"CB Units"** means the Acquiring Firm's cereals manufacturing and/or processing and/or marketing business and/or operations;
- 1.5 **"Commission"** means the Competition Commission of South Africa;
- 1.6 **"Competition Act"** means the Competition Act, 89 of 1998, as amended;

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- 1.7 **"Competitively Sensitive Non-Public Information"** includes but is not limited to pricing information, rebates, discounts provided to customers, any planned price increase or price reduction, information on tendering, margin information, customer-specific information (including but not limited to sales volumes and sales value, service level agreements), investment strategies, advertising, marketing, promotional strategies, business plans and expansion plans;
- 1.8 **"Conditions"** mean the conditions set out herein;
- 1.9 **"Founder Shareholder"** means Paul Anthony Saad and, for the purposes of these Conditions, any successor in title as chief executive officer of the Target Firm;
- 1.10 **"Implementation Date"** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11 **"Merging Parties"** means the Acquiring Firm and the Target Firm;
- 1.12 **"Merger"** means the acquisition of joint control by the Acquiring Firm over the Target Firm through the acquisition of 50% of the issued share capital of the Target Firm;
- 1.13 **"Ordinary Course of Business"** means in respect of any transaction involving such entity, in the ordinary course of such entity's business, as conducted by such entity in a *bona fide* manner in accordance with applicable law, best practice and undertaking by such entity in good faith and not for the purpose of evading or avoiding any undertaking in terms of the Subscription and Share Purchase Agreement concluded between the Merging Parties to give effect to the Merger;
- 1.14 **"Pioneer Food Group Limited"** means a public company, duly incorporated in terms of the laws of the Republic of South Africa with registration number 1996/017676/06 and registered office at Glacier Place, 1 Sportica Crescent, Tygervalley, 7530, being the ultimate holding company of the Acquiring Firm;
- 1.15 **"Target Firm"** means Future Life Health Products Proprietary Limited; and
- 1.16 **"Tribunal"** means the Competition Tribunal of South Africa.

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2 CONDITIONS TO THE APPROVAL OF THE MERGER

2.1 Condition relating to day-to-day management and control of the Target Firm

Subject to the occurrence of the earlier of (i) the approval and implementation of any notifiable change of control in relation to the Target Firm in terms of any provision of the Competition Act, in which instance the Conditions will fall away and cease to be of any effect upon such approval and implementation, and (ii) the fifth anniversary of the Approval Date in which instance this Condition will fall away and cease to be of any effect:

- 2.1.1 The Founder Shareholder shall exercise, in his discretion, final and determinative power regarding the strategic marketing and/or pricing policies of the Target Firm and its products and will continue its business in the Ordinary Course of Business.
- 2.1.2 The Acquiring Firm shall ensure that none of its representatives appointed to the board of the Target Firm, shall be engaged in the direct day-to-day management and/or oversight of the CB Units or serve on the Pioneer Food Group Limited board of directors or otherwise be a member of the Acquiring firm's executive management team.
- 2.1.3 No person disqualified as a member of the Target Firm's board of directors in terms of 2.1.2 above, shall be permitted to contribute to, and/or participate in, (i) any meetings of the board of the Target Firm at which matters of strategy and/or pricing of the Target Firm's products are discussed and/or determined; or (ii) in any decisions of the board relating to such matters.
- 2.1.4 The Target Firm shall be administered as an independent unit and its day to day affairs and business shall be managed by the Founder Shareholder, in accordance with its business trading policies and practices as at the Implementation Date, except as may be necessary to comply with any changes in applicable law or good industry practice.
- 2.1.5 The Merging Parties shall establish "ethical" and/or "invisible" and/or "Chinese walls" (i.e. invisible "walls" between the operations of the Target Firm, on the one hand, and the CB Units, on the other hand), so as to ensure that:
- 2.1.5.1 Information barriers exist in relation to Competitively Sensitive Non-Public Information of the Target Firm (as determined by the Founder Shareholder,

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acting reasonably in his discretion) and that of the CB Units (ie in order to prevent any flow of such information between the Target Firm and the CB Units). These barriers may consist of both physical and procedural measures, as determined by the Founder Shareholder, acting reasonably in his discretion;

- 2.1.5.2 All members of the board of the Target Firm who obtain lawful access to the Target Firm's information, shall retain same in secret and confidentially other than for use as permitted in terms of the Shareholders Agreement;
- 2.1.5.3 Such other reasonable practical and/or operational measures, as the Founder Shareholder acting reasonably in his discretion, deems necessary so as to maintain the segregation of the Target Firm's Competitively Sensitive Non-Public Information from that of the CB Units and the independent operation of the Target Firm and/or its affairs; provided that all information necessary and/or required by the Acquiring Firm (i) to comply with its reporting and/or disclosure obligations under the JSE Limited's listing requirements; and/or (ii) where it is necessary for the Acquiring Firm to obtain legal and other professional advice; and/or (iii) to legitimately protect the Acquiring Firm's rights as a shareholder in the Target Firm shall be provided, as and when applicable and free from any such restrictions.
- 2.1.6 The Founder Shareholder shall procure that the members of the board of the Target Firm (at the cost of the Target Firm) undertake regular *ad hoc* training and/or awareness sessions from and with legal and/or other professionals, in relation to the Competition Act, its impact on the Target Firm, and measures to be undertaken so as to ensure that (i) they maintain a current awareness of the requirements of the Competition Act; and (ii) the Target Firm and its shareholders adhere to and comply with the provisions of the Competition Act.

2.2 **Condition relating to the commitment of expenditure on the ProNutro brand**

- 2.2.1 The Acquiring Firm had budgeted for and actually spent a cumulative amount of [CONFIDENTIAL] on its ProNutro brand during the financial year ending September 2015, comprising a combination of marketing expenditure and capital expenditure.

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- 2.2.2 The aforementioned amount was spent in various ways to promote, market and position the ProNutro brand, and to maintain and/or enhance the ProNutro production facilities to sustain and/or increase production capacity. This amount included extraordinary expenditure towards the revitalization of the ProNutro brand.
- 2.2.3 Taking into account that the figure indicated in 2.2.1 includes extraordinary expenditure, the Acquiring Firm undertakes to invest not less than **[CONFIDENTIAL]** on similar activities in respect of the ProNutro brand in its financial year ending September 2016 and a further **[CONFIDENTIAL]** in its financial year ending September 2017.
- 2.2.4 Should it be the case that due to an unforeseen circumstance of any nature, the Acquiring Firm is unable to meet this condition, or meeting it would cause undue hardship for the Acquiring Firm or have a material adverse effect on any of the Acquiring Firm employee, then the Acquiring Firm shall have the right to approach the Tribunal for a variation of this condition on good cause shown.

3 MONITORING OF COMPLIANCE WITH THE CONDITIONS

- 3.1 The Target Firm shall report to the Commission within one month of each anniversary of the Approval Date confirming by way of an affidavit by the Founder Shareholder that the condition contemplated in paragraph 2.1 above is being complied with.
- 3.2 The Acquiring Firm shall:
- 3.2.1 Within one month of the Approval date provide the Commission with proof from its financial statements to support the expenditure amount referred to in paragraph 2.2.1 above and
- 3.2.2 report to the Commission within one month of each anniversary of the Approval Date, confirming by way of an affidavit by a duly authorised senior officer of Pioneer Food Group Limited , accompanied by the relevant financial statements, that the condition contemplated in paragraph 2.2.3 above is being complied with.
- 3.3 The affidavits must be submitted to the following e-mail address: mergerconditions@compcom.co.za.

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- 3.4 An apparent breach by either Merging Party of any of the Conditions shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission.