

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM190Jan21

In the matter between:

Premier FMCG (Pty)

Primary Acquiring Firm

And

Lodestone Brands (Pty) Ltd

Primary Target Firm

Panel : M Mazwai (Presiding Member)
: E Daniels (Tribunal Member)
: A Ndoni (Tribunal Member)
Heard on : 21 April 2021
Decided on : 22 April 2021

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



Presiding Member
Ms Mondo Mazwai

22 April 2021

Date

Mr Enver Daniels and Ms Andiswa Ndoni concurring



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 : 22 April 2021

To : Nortons Attorneys

Case Number: LM190Jan21

Premier FMCG (Pty) Ltd And Lodestone Brands (Pty) Ltd

You applied to the Competition Commission on **20 January 2021** 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

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

The Registrar, Competition Tribunal

Tebofo Mputle

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM190Jan21

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Premier FMCG (Pty) Ltd

Primary Acquiring Firm

And

Lodestone Brands (Pty) Ltd

Primary Target Firm

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 1.1. **"Act"** means the Competition Act 89 of 1998, as amended;
- 1.2. **"Approval Date"** means the date the Tribunal issues a Clearance;
- 1.3. **"Commission"** means the Competition Commission of South Africa;
- 1.4. **"Commission Rules"** mean Rules for the Conduct of Proceedings in the Competition Commission;
- 1.5. **"Conditions"** mean these Conditions;
- 1.6. **"Days"** mean business days, being any day other than a Saturday, Sunday or official public holiday in the Republic of South Africa;
- 1.7. **"Implementation Date"** means the date on which the Proposed Transaction is implemented;
- 1.8. **"Lodestone"** means Lodestone Brands (Pty) Ltd and any firm directly or indirectly controlled by Lodestone;
- 1.9. **"LRA"** means the Labour Relations Act 66 of 1995, as amended;

- 1.10. **"Merger"** means Premier's acquisition of Lodestone's sugar-based confectionary business, which is currently trading under the "Mister Sweet" brand, as a going concern;
- 1.11. **"Merging Parties"** mean Premier and Lodestone and any firm directly or indirectly controlled by the Merging Parties and/or any firm that has direct or indirect control over the Merging Parties;
- 1.12. **"Premier"** means Premier FMCG (Pty) Ltd and any firm directly or indirectly controlled by Premier;
- 1.13. **"South Africa"** means the Republic of South Africa;
- 1.14. **"Tribunal"** means the Competition Tribunal of South Africa; and
- 1.15. **"Tribunal Rules"** means Rules for the Conduct of Proceedings in the Tribunal.

2. EMPLOYMENT CONDITIONS

- 2.1. There shall, for a period of two years following the Implementation Date, be no merger specific retrenchments arising from the proposed transaction, other than those specified below:
 - 2.1.1. no more than 6 (six) employees set out in **Schedule 1** who occupy executive or senior positions (collectively the **"Affected Employees"**); and
 - 2.1.2. no more than 19 (nineteen) employees set out in **Schedule 2** (the **"Potentially Affected Employees"**), although no Potentially Affected Employees may be retrenched within 24 months after the Implementation Date (the **"Moratorium Period"**).
- 2.2. During the Moratorium Period, Premier shall use its best endeavours to identify and offer alternative employment opportunities, which arise within Premier (i.e., including other divisions within Premier), to the Potentially Affected Employees (provided that they possess the necessary qualifications, skills and experience) in order to mitigate, as far as reasonably possible, any retrenchments of the Potentially Affected Employees after the expiry of the Moratorium Period.
- 2.3. Should any of the Potentially Affected Employees be retrenched after the Moratorium Period, Premier shall use its best endeavours to offer any such employment

opportunities, which arise between the date the retrenchment(s) are implemented and the third anniversary of the Implementation Date, to the affected employees on the basis that such persons possess the necessary qualifications, skills and experience.

- 2.4. For the sake of clarity, retrenchments do not include: (i) voluntary separation arrangements; (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; or (vii) any decision not to renew or extend a contract of a contract worker.

3. MONITORING

- 3.1. The Merging Parties shall circulate a non-confidential copy of the Conditions (excluding the Schedules which are confidential) to all employees and/or their respective trade unions and/or employee representatives within 5 (five) Days of the Implementation Date.
- 3.2. As proof of compliance thereof, the Merging Parties shall within 5 (five) days of circulating the Conditions, provide the Commission with an affidavit by a senior official of the Merging Parties attesting to the circulation of the Conditions and attaching a copy of the notice sent.
- 3.3. For a period of 3 (three) years from the Implementation Date, Premier shall submit an affidavit (deposed to by a senior official of Premier) on each anniversary of the Implementation Date, confirming compliance with the Conditions.
- 3.4. All correspondence in relation to monitoring the above Conditions may be sent to retha.stoltz@premierfmcg.com.
- 3.5. The affidavits/reports and or documents referred to in the Conditions shall be submitted to the following email address: mergerconditions@compcom.co.za and Ministry@thedtic.gov.za.

4. BREACH

- 4.1. In the event that the Commission receives 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 read together with Rule 37 of the Tribunal Rules.

5. VARIATION

5.1. The Merging Parties and/or the Commission may at any time, on good cause shown, apply to the Tribunal 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 and/or the Commission shall apply to the Tribunal, on good cause shown, for the Conditions to be waived, relaxed, modified and/or substituted.

Schedule 1: List of Affected Employees

The list below reflects Mister Sweet’s employees and titles although it could be that a Premier employee who occupies an equivalent position be retrenched, and the Mister Sweet employee be retained.

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■			
■			
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■			

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]