

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM092Aug22

In the matter between:

Clover S.A (Pty) Ltd

**Primary Acquiring Firm**

And

The Milk Procurement Business of Dairy Farmers of  
South Africa (Pty) Ltd

**Primary Target Firm**

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Panel : Y Carrim (Presiding Member)  
: A Ndoni (Tribunal Panel Member)  
: F Tregenna (Tribunal Panel Member)  
Heard on : 01 December 2022  
Decided on : 01 December 2022

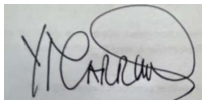
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### Order

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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 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**  
**Ms Yasmin Carrim**

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**01 December 2022**

**Date**

**Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna**



**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](mailto:ctsa@comptrib.co.za)

# Merger Clearance Certificate

**Date** : 01 December 2022

**To** : Herbert Smith Freehills Attorneys

Case Number: LM092Aug22

Clover S.A (Pty) Ltd And the Milk Procurement Business of Dairy Farmers of South Africa (Pty) Ltd

You applied to the Competition Commission on **08 August 2022** 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

*Tebogo Mphahlele*

## ANNEXURE A

CLOVER S.A. PROPRIETARY LIMITED

AND

THE CLOVER MILK PROCUREMENT BUSINESS OF DAIRY FARMERS OF SOUTH  
AFRICA PROPRIETARY LIMITED

CASE NUMBER: 2022AUG0019

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### CONDITIONS

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#### 1. DEFINITIONS

In this document, the following expressions bear the meanings assigned to them below, and related expressions bear corresponding meanings: –

- 1.1 **"Act"** means the Competition Act, No. 89 of 1998 as amended;
- 1.2 **"Affected Employees"** means the 52 employees that were retrenched by DFSA pursuant to a section 189A process which formally commenced on 25 April 2022;
- 1.3 **"Approval Date"** means the date the Tribunal orders the conditional approval of the Merger in accordance with these Conditions;
- 1.4 **"Clover"** means Clover S.A. Proprietary Limited and its subsidiaries;
- 1.5 **"Clover Milk Procurement Business"** means the business and assets used or owned by DFSA in relation to the procurement and supply of regular raw milk to Clover;
- 1.6 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act;
- 1.7 **"Commission Rules"** means the Rules for the Conduct of Proceedings in the Commission;

- 1.8        **"Conditions"** means the conditions, set out herein, agreed to by the Merging Parties and the Commission;
- 1.9        **"Dairy Group"** means Dairy Group Holdings Proprietary Limited, the holding company of DFSA;
- 1.10       **"Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.11       **"DFSA"** means Dairy Farmers of South Africa Proprietary Limited;
- 1.12       **"DTIC"** means the Department of Trade, Industry and Competition;
- 1.13       **"Employees"** means the 52 current permanent employees of the Clover Milk Procurement Business;
- 1.14       **"HDP"** means historically disadvantaged persons, as defined in the Act;
- 1.15       **"Implementation Date"** means the effective date of implementation of the Merger;
- 1.16       **"Merged Entity"** means the Clover Milk Procurement Business, subject to the control of Clover;
- 1.17       **"Merger"** means the acquisition of the Clover Milk Procurement Business by Clover;
- 1.18       **"Merging Parties"** means Clover and the Clover Milk Procurement Business;
- 1.19       **"Moratorium Period"** means a period of 5 (five) years from the Implementation Date and includes a period between the Approval Date and Implementation Date.
- 1.20       **"Parties"** means DFSA, Dairy Group, Coega and Clover;
- 1.21       **"Relevant Supplier"** means SME and HDP milk producers with which DFSA has milk procurement contracts as at the Implementation Date;
- 1.22       **"SME"** means a small or medium-sized business, as defined in the Act;
- 1.23       **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act; and
- 1.24       **"Tribunal Rules"** means the Rules for the Conduct of Proceedings in the Tribunal;

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

### **EMPLOYMENT CONDITIONS**

- 2.1 The Merging Parties shall not retrench any Employees as a result of the Merger during the Moratorium Period.
- 2.2 For the sake of clarity, retrenchments do not include (i) voluntary retrenchment and/or 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; and (vi) terminations in the ordinary course of business, including but not limited to dismissals as a result of misconduct or poor performance.
- 2.3 The Employees shall be transferred to Clover pursuant to section 197 of the Labour Relations Act No. 66 of 1995 on terms and conditions of employment that are no less favourable than those that existed between DFSA and the Employees.
- 2.4 The Parties shall give Affected Employees an opportunity to apply for vacancies that may become available for a period of 3 (three) years from the Implementation Date using the contact details provided by each Affected Employee to the Parties.

### **TRAINING AND SKILLS DEVELOPMENT**

- 2.5 Clover shall invest a total of [REDACTED] in training and skills development over a period of 5 (five) years from the Implementation Date.

### **ENTERPRISE DEVELOPMENT**

- 2.6 Clover shall invest a total of [REDACTED] in enterprise development over a period of 5 (five) years from the Implementation Date.

### **MILK PROCUREMENT CONTRACTS WITH RELEVANT SUPPLIERS**

- 2.7 Clover shall maintain existing milk procurement contracts with Relevant Suppliers for a period of 5 (five) years from the Implementation Date, provided that the Relevant Suppliers continue to supply regular raw milk to Clover at market-related prices.

- 2.8 For the avoidance of doubt, should any Relevant Supplier increase its price per litre of regular raw milk above market-related prices, Clover shall be entitled to terminate its contract with the Relevant Supplier.

### **SUPPLY OF SURPLUS REGULAR RAW MILK**

- 2.9 Clover will make available to its competitors regular raw milk that is surplus to Clover's own requirements at market-related prices.

### **3. MONITORING**

- 3.1 The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.
- 3.2 The Merging Parties shall circulate a non-confidential version of the Conditions to the relevant trade unions and Relevant Suppliers within 10 (ten) Days of the Implementation Date.
- 3.3 As proof of compliance with clause 3.2, the Merged Entity, shall within 10 (ten) Days of circulating the non-confidential version of the Conditions, submit an affidavit by a senior official of Clover to the Commission attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the relevant trade unions.
- 3.4 The Merged Entity shall, within one (1) month of the first anniversary of the Implementation Date and for a period of four (4) years thereafter in respect of the conditions in clauses 2.1, 2.5, 2.6 and 2.7, and for two (2) years thereafter in respect of the condition in clause 2.4, submit a report to the Commission and the DTIC, confirming its compliance with the Conditions. The compliance report shall be accompanied by an affidavit from a senior official of Clover attesting to the correctness of the report.
- 3.5 The Commission may request any additional information from the Merged Entity, which the Commission from time to time may deem necessary for purposes of monitoring the extent of compliance with these Conditions.
- 3.6 Any person who believes that the Merging Parties have not complied with these Conditions may approach the Commission.

4. **VARIATION**

The Merged Entity or the Commission may at any time, on good cause shown, including changes in economic conditions, apply to the Tribunal for the Conditions to be lifted, revised or amended.

5. **APPARENT BREACH**

Should the Commission receive any complaint in relation to non-compliance with the above Conditions, or otherwise determine that there has been an apparent breach by the Parties of these Conditions, the breach shall be dealt with in terms of Rule 37 of the Tribunal Rules read together with Rule 39 of the Commission Rules.

6. **General**

All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za [and](mailto:and_ministry@thedtic.gov.za) ministry@thedtic.gov.za.