



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM169Oct15

In the matter between:

**ACTIS 4 PCC WITH RESPECT TO BERRY CELL**

Primary Acquiring Firm

and

**FOOD LOVERS HOLDINGS (PTY) LTD**

Primary Target Firm

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|-------------------|------------------------------------|
| Panel             | : Norman Manoim (Presiding Member) |
|                   | : Medi Mokuena (Tribunal Member)   |
|                   | : Andiswa Ndoni (Tribunal Member)  |
| Heard on          | : 03 February 2016                 |
| Order Issued on   | : 03 February 2016                 |
| Reasons Issued on | : 02 March 2016                    |

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### Reasons for Decision

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#### Approval

- [1] On 03 February 2016, the Competition Tribunal ("Tribunal") approved the proposed transaction between Actis 4 PCC with respect to Berry Cell and Food Lovers Holdings (Pty) Ltd
- [2] The reasons for approving the proposed transaction follow.

## **Parties to proposed transaction**

### *Primary acquiring firm*

- [3] The primary acquiring firm, Actis 4 PCC is a protected cell company incorporated in accordance with company laws of the Republic of Mauritius.
- [4] Actis 4 PCC forms part of the Actis Group which is a global equity investor that manages capital investment on behalf of its investors and typically invests in established private businesses, which seeks to grow through both organic and acquisitive growth. In South Africa, the Actis Group investee entities are involved in the energy, industrial, consumer and financial services sector.

### *Primary target firm*

- [5] The primary target firm is Food Lovers Holdings (Pty) Ltd ("FLM Holdco"), a newly incorporated special vehicle (SPV) company, established for the purpose of acquiring and holding the grocery retail, distribution and franchise operations of Fruit & Veg City Holdings ("FVC Holdings"). FLM Holdco is not controlled by any firm.
- [6] FVC Holdings subsidiaries are involved in services such as wholesaling, distribution and/or the retail of fresh produce, groceries, beverages and other food-related and ancillary products to end customers.

## **Proposed transaction and rationale**

- [7] Actis 4 PCC intends to acquire 30% of the entire issued ordinary share capital of Food Lovers Holdings ("FLM Holdco") through a sale and/or a subscription of shares in FLM Holdco. Following which Actis 4 PCC will have joint control of FLM Holdco.
- [8] The other minority shareholders will collectively account for 70% of the remaining shares.<sup>1</sup>
- [9] Actis 4 PCC submits that the proposed transaction is a good investment and wished to invest in the retail sector.

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<sup>1</sup> The founding family the Coppin's own the largest amount of the remaining shares

- [10] The merger will allow the existing shareholders in FLM Holdco to realize some of their investments and to allow for the introduction of a new shareholder which will enable it to expand its business activities.

### **Impact on competition**


- [11] The Acquiring Group's (Actis Group) current investments are in the energy, industrial, consumer and financial services sectors. The Target Firm (Food Lovers Holdings) is involved in the wholesale, distribution and/or retail of fresh produce, groceries, beverages and other food-related and ancillary products to end customers.
- [12] The Commission considered the activities of the merging parties and found that the proposed transaction will not result in any horizontal overlap. Whilst the Actis Group owns interests in ventures conducting food operations in China, South East Asia and Egypt respectively, it does not own any investments or interest in firms involved in the retailing, franchising or the distribution of fresh produce, groceries, beverages and food-related products in South Africa.
- [13] The Commission therefore concluded that the proposed transaction is unlikely to lead to a substantial prevention or lessening of competition in the market
- [14] We concur with the Commission's conclusion that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market.

### **Public interest**

- [15] The merging parties confirmed that the proposed transaction will not result in any adverse impact on employment.<sup>2</sup>
- [16] The proposed transaction further raises no other public interest concerns.

## **Conclusion**

[17] In light of the above, we conclude that the proposed transaction is unlikely to substantially prevent or lessen competition in any relevant market. In addition, no public interest issues arise from the proposed transaction. Accordingly, we approve the proposed transaction unconditionally.

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**Mr. Norman Manoim**

02 March 2016

DATE

**Mrs Medi Mokuena and Ms Andiswa Ndoni concurring**

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|--------------------------|-------------------------|
| Tribunal Researcher:     | Busisiwe Masina         |
| For the merging parties: | Webber Wenzel Attorneys |
| For the Commission:      | Rakgole Mokolo          |