

ANNEXURE A NON- CONFIDENTIAL
Gutsche Family Investments Proprietary Limited
And
Fairfield Dairy Proprietary Limited
CC Case Number: 2017Sep0007

CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meaning assigned to them below and cognate expressions bear corresponding meaning: –

- 1.1 **"Acquiring Firm" or "GFI"** means Gutsche Family Investments Proprietary Limited, a company incorporated in accordance with the laws of the Republic of South Africa;
- 1.2 **"Approval Date"** means the date referred to in the Tribunal's clearance certificate (Notice CT 10);
- 1.3 **"Business Day"** means any calendar day which is not a Saturday, a Sunday or an official public holiday in South Africa;
- 1.4 **"Commission"** means the Competition Commission of South Africa;
- 1.5 **"Competition Act"** means the Competition Act 89 of 1998, as amended;
- 1.6 **"Conditions"** mean these conditions;
- 1.7 **"Fairfield"** means Fairfield Dairy Proprietary Limited;
- 1.8 **"Fairfield Trust"** means the Trustees for the time being of the Fairfield Trust;
- 1.9 **"First Option"** means the first call option granted by the Fairfield Trust to GFI, or the first put option granted by GFI to the Fairfield Trust, for the purchase by GFI of approximately [REDACTED] of the issued share capital of Fairfield at any time on or after [REDACTED], but before [REDACTED], in terms of the SSA;
- 1.10 **"Implementation Date"** means the date on which the Merger is implemented [REDACTED];
- 1.11 **"LRA"** means the Labour Relations Act 66 of 1995;
- 1.12 **"Merging Parties"** means GFI and Fairfield;

- 1.13 **"Merger"** means the acquisition of control of Fairfield by GFI, resulting in GFI eventually acquiring unfettered sole control over Fairfield;
- 1.14 **"Minority Protections"** means the minority protections numbered 31 and 32 and contained in Schedule 2 (*Matters Requiring a Special Resolution*) of Fairfield's Memorandum of Incorporation. For the sake of clarity, these minority protections stipulate that a special resolution is required with respect to: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
- 1.15 **"Sellers"** means the Fairfield Trust which currently holds a shareholding of 97.3% in Fairfield, and Barry David Glanz who holds a shareholding of 2.7% in Fairfield;
- 1.16 **"Second Option"** means the second call option granted by the Sellers to GFI, or the second put option granted by GFI to the Sellers, for the purchase by GFI of approximately [REDACTED] of the issued share capital of Fairfield at any time on or after [REDACTED], but before [REDACTED], in terms of the SSA;
- 1.17 **"SSA"** means the Sale of Shares and Option Agreement entered into between the Sellers and GFI on 13 June 2017 (as amended as contemplated in clause 3.2 herein);
- 1.18 **"Target Firm"** means Fairfield Dairy Proprietary Limited, a company incorporated in accordance with the laws of the Republic of South Africa; and
- 1.19 **"Tribunal"** means the Competition Tribunal of South Africa.

2. RECORDAL

- 2.1. On 04 September 2017, the Commission received notice of a large merger whereby GFI intends to acquire control of Fairfield over a period of time, resulting in GFI eventually acquiring unfettered sole control over Fairfield (i.e. the Merger). The Merger will take place in tranches or portions. The first tranche involves GFI acquiring an initial [REDACTED] of the issued share capital of Fairfield as well as the Minority Protections. The second tranche involves the exercise of the First Option. The third and final tranche will see the exercise of the Second Option. On completion of the above mentioned tranches, GFI will wholly own and control Fairfield.

- 2.2. The Merging Parties submit that with this notification they seek approval for all three tranches.
- 2.3. The first tranche, will give GFI *de facto* control of Fairfield. When the First Option is exercised, GFI will cross the bright line (50% plus of Fairfield's issued share capital) to acquire a total shareholding in Fairfield of approximately [REDACTED]. Initially, notwithstanding the exercise of the First Option (i.e. the second tranche), GFI would have joint control of Fairfield as the Fairfield Trust would retain the Minority Protections, (and therefore *de facto* control of Fairfield). This then made the exercise of the Second Option a notifiable transaction.
- 2.4. However, during the investigation, the Merging Parties decided to change the structure of the transaction such that upon the exercise of the First Option (i.e. the second tranche), GFI will then acquire unfettered sole control (i.e. both *de jure* and *de facto* control) of Fairfield. This means that the Minority Protections afforded to the remaining [REDACTED] shareholders of Fairfield will now be removed to allow GFI to have unfettered sole control after the exercise of the First Option. This then makes the notification of the Second Option immaterial as GFI would already have unfettered sole control after the exercise of the First Option.
- 2.5. The Commission is of the view that if the First Option is exercised timeously, the Merging Parties will not need to re-notify the exercise of the First Option to the Commission. In other words, if the First Option is exercised within two (2) years of the Approval Date, the Commission is of the view that the Merging Parties will not need to re-notify the exercise of the First Option to the Commission. This is because the Commission has analysed the Merger as if it entails the acquisition by GFI of both *de jure* and *de facto* control. Further, the Commission is of the view that within this period, it is unlikely that market conditions could substantially change.

3. CONDITIONS

3.1. Exercise of the First Call Option

- 3.1.1. Should the First Option be exercised within a period of 2 (two) years from the Approval Date, GFI shall inform the Commission of its decision within 10 (ten)

Business Days of exercising the First Option by way of an affidavit deposed to by the CEO of the Acquiring Firm.

- 3.1.2. Should the First Option be exercised after a period of 2 (two) years from the Approval Date, GFI shall notify the exercise of the First Option in the form of a new merger filing in the form prescribed by the Competition Act, provided that at the time the relevant merger notification thresholds are met.

3.2. Amended documents

- 3.2.1. The Merging Parties shall submit signed amended transaction documents which includes, but is not limited to, the amended Memorandum of Incorporation and Shareholders Agreement of Fairfield, clearly reflecting that the exercise of the First Option will provide GFI with unfettered sole control over Fairfield (i.e. the removal of the relevant Minority Protections), within 10 (ten) Business Days of the Approval Date.

3.3. Employment conditions

- 3.3.1. The Merging Parties shall not retrench any employees as a result of the Merger for a period of two (2) years from the Implementation Date.
- 3.3.2. For the sake of clarity, retrenchments do not include (i) voluntary separation arrangements; or (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.

4. MONITORING OF COMPLIANCE WITH THE EMPLOYMENT CONDITIONS

- 4.1. The Merging Parties shall circulate a copy of the Conditions to all their employees and their relevant trade unions or employee representatives within 5 (five) business days of the Approval Date.
- 4.2. As proof of compliance thereof, the Chief Executive Officers of the Merging Parties

shall within 10 (ten) business days of circulating the Conditions, submit affidavits attesting to the circulation of the Conditions and provide a copy of the notice that was sent to the employees, respectively.

- 4.3. The Merging Parties shall inform the Commission of the Implementation Date within 5 (five) business days of it becoming effective.
- 4.4. The Merging Parties shall, for a period of two (2) years, on each anniversary of the Implementation Date submit an affidavit confirming compliance with Condition 3.3.
- 4.5. Any individual who believes that the Merging Parties have not complied with or have acted in breach of these Conditions may approach the Commission.

5. BREACH

- 5.1. In the event that the Commission determines that there has been an apparent breach by the Merging Parties of any of the above Conditions, this shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read together with Rule 37 of the Rules For the Conduct of Proceedings in the Tribunal.

6. VARIATION

- 6.1. The Merging Parties may at any time, on good cause shown, apply to the Tribunal for the Conditions to be lifted, revised or amended.

7. GENERAL

- 7.1. All correspondence in relation to the Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za