



Takeovers Code (SK Foods International) Exemption Notice 2003

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

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Notice

- 1 Title**
This notice is the Takeovers Code (SK Foods International) Exemption Notice 2003.
- 2 Application**
This notice applies to acts or omissions occurring on or after 11 September 2003.
- 3 Expiry**
This notice expires on the close of 31 December 2003.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
 - acquisition notice** means the notice sent to the outstanding security holders concerning the compulsory acquisition of the outstanding securities by SK Foods and filed with New Zealand Exchange Limited, the Panel, and Cedenco on 11 September 2003
 - Act** means the Takeovers Act 1993

Cedenco means Cedenco Foods Limited

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

entitled persons means all outstanding security holders who—

- (a) object to the specified consideration of \$2.30 per outstanding security in the manner set out in clause 6(a); or
- (b) did not, on or prior to its closing on 15 September 2003, accept the offer

offer means the full takeover offer made by SK Foods on 7 August 2003 for all of the shares in Cedenco that SK Foods did not hold at the time of the offer

outstanding securities means the 1 274 729 shares in Cedenco that, as at 11 September 2003, SK Foods did not hold or in respect of which SK Foods had not received valid acceptances of its offer

outstanding security holders means those persons who hold or held outstanding securities

SK Foods means SK Foods International, a company incorporated in New Zealand.

- (2) Any term or expression that is defined in the Act or the Code and used, but not defined, in this notice has the same meaning as in the Act or the Code.

5 Exemption from rule 55(d) and rule 57(1)(a) of Code

SK Foods is exempted from rule 55(d) and rule 57(1)(a) of the Code in respect of the compulsory acquisition of shares in Cedenco pursuant to the offer.

6 Conditions to clause 5

The exemptions in clause 5 are subject to the conditions that—

- (a) SK Foods must inform all outstanding security holders, in the notice sent to the outstanding security holders in accordance with paragraph (d), that the outstanding security holders may object, in writing to SK Foods, to the specified consideration of \$2.30 per outstanding security referred to in the acquisition notice; and

- (b) if SK Foods receives written objections (in accordance with paragraph (a)) from outstanding security holders who hold or held an aggregate of 127 473 or more outstanding securities within 14 days after the date on which SK Foods sends the notice under paragraph (d), then SK Foods must immediately refer to expert determination, under rules 57(3) to (5) and 58 of the Code, the amount of the consideration to be provided for the outstanding securities, as if those rules applied; and
- (c) if the consideration fixed by expert determination in accordance with paragraph (b) exceeds \$2.30 per outstanding security, then SK Foods must immediately pay, in the same manner as the consideration specified in the acquisition notice was paid, the balance owing to the entitled persons; and
- (d) SK Foods must send a notice to all outstanding security holders informing them, in a manner and in language that a reasonable outstanding security holder is likely to understand,—
 - (i) that the Panel considers that the acquisition notice was incorrect in stating that the outstanding security holders had no right to object to the price of \$2.30 to be paid for each outstanding security; and
 - (ii) of the exemption granted by this notice; and
 - (iii) of the terms and conditions imposed by this notice; and
 - (iv) of the rights and obligations of the outstanding security holders under this notice and the Code; and
 - (v) of the nature and consequences of the contractual arrangements that will be created by outstanding security holders whose acceptance of the offer was received after 11 September 2003 and who object to the specified consideration of \$2.30 per outstanding security paid to those holders; and
- (e) the notice sent to all outstanding security holders under paragraph (d), and any letter accompanying the notice, must be approved by the Panel before being sent by SK Foods.

Dated at Auckland this 16th day of October 2003.

The Common Seal of the Takeovers Panel was affixed in the presence of:

[L.S.]

D. O. Jones,
Deputy Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 11 September 2003, and expires on the close of 31 December 2003.

The Takeovers Panel has granted SK Foods International (**SK Foods**) an exemption from rules 55(d) and 57(1)(a) of the Takeovers Code (the **Code**).

On 7 August 2003, SK Foods made a full takeover offer for all of the shares in Cedenco Foods Limited (**Cedenco**) that SK Foods did not hold at that time. After becoming the dominant owner in relation to Cedenco (through holding or controlling 90% or more of the voting rights in Cedenco), SK Foods sent a notice of compulsory acquisition to the persons who still held shares in Cedenco (the **outstanding shareholders**). In the compulsory acquisition notice, SK Foods stated that it intended to pay \$2.30 for each outstanding share in Cedenco, and that the outstanding shareholders had no right to object to the amount of this consideration.

The Panel considers that the compulsory acquisition notice was incorrect in stating that the outstanding shareholders had no right to object to the price of \$2.30 per share. This notice gives the outstanding shareholders the opportunity to object to the amount of consideration being paid for the compulsory acquisition of their Cedenco shares.

Under clause 6(d) of this notice, SK Foods must send a notice (the **correction notice**) to the outstanding shareholders informing them that they may object to the \$2.30 per share consideration specified in the compulsory acquisition notice. If outstanding shareholders who in aggregate hold or held 10% or more of the shares in Cedenco that were not held or controlled by SK Foods on 11 September 2003 object to the consideration of \$2.30 per share, then SK Foods must

refer the matter to expert determination under rules 57(3) to (5) and 58 of the Code, as if those rules applied.

If the consideration fixed by expert determination is more or less than \$2.30 per share, then various outcomes are possible for each outstanding shareholder, depending upon the course of action that the shareholder has taken.

Any shareholder whose acceptance of the offer was received after 11 September 2003 and who chooses not to object to SK Foods under the correction notice will retain the \$2.30 per share consideration the shareholder received under the offer.

Any shareholder whose acceptance of the offer was received after 11 September 2003 and who objects to SK Foods under the correction notice, will, by objecting under the correction notice, be bound by the following possible outcomes:

- if the matter is not sent to expert determination, or if it is sent to expert determination but the expert determines that the consideration of \$2.30 is correct, then the \$2.30 per share consideration the shareholder received under the offer remains unaffected:
- if the matter is sent to expert determination and the consideration fixed by the expert is more than \$2.30 per share, then SK Foods must pay the difference between \$2.30 per share and the amount set by the expert per share, to the shareholder:
- if the consideration fixed by the expert is less than \$2.30 per share, then the shareholder will be obliged, if SK Foods enforces its right to recover this amount, to pay the difference between \$2.30 per share and the amount set by the expert per share, back to SK Foods.

If the shareholder did not accept the offer before it closed, then the provisions of the Code, subject to the terms of this notice, apply to the shareholder. In this case, SK Foods can compulsorily acquire the shareholder's shares and must provide consideration of \$2.30 per share to the shareholder within 7 days of the shareholder returning the instrument of transfer to SK Foods. If the shareholder did not return the instrument of transfer to SK Foods before 2 October 2003, then SK Foods is obliged to pay the consideration to Cedenco in accordance with rule 61 of the Code. If the amount of consideration is sent to expert determination, then under the terms of this notice,

SK Foods may have to provide further consideration to the shareholder or, under rule 62(2) of the Code, the shareholder may have to return excess consideration to SK Foods.

The Panel considers it is appropriate to grant the exemptions to SK Foods because it provides the shareholders of Cedenco who had not accepted SK Foods' offer before it closed, and those shareholders of Cedenco who accepted the offer after receiving the incorrect compulsory acquisition notice, with an opportunity to object to the amount of consideration being provided for the compulsory acquisition.

The Panel considers that the exemptions are consistent with the objectives of the Code because—

- it provides the relevant shareholders of Cedenco with the right or opportunity to object to the amount of consideration being provided under compulsory acquisition as if the acquisition notice had been given under the applicable provisions of the Code; and
- it enables the compulsory acquisition of Cedenco to proceed in a timely and cost effective manner consistent with the restoration of Code rights to affected shareholders.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 23 October 2003.
This notice is administered by the Takeovers Panel.
