

[Emblem of the State of Israel]

## **Israel Antitrust Authority**

### Conditions for the merger between Ben & Jerry's Homemade, Inc. and Unilever N.V.

On May 30, 2000, approval was granted for the above-mentioned merger (hereinafter: "**the Merger Approval**"), subject to future determination of the merger conditions by the Antitrust Commissioner.

After further review of the effect of this merger on the competition in the relevant market, and due to the request made by the Parties to the merger to engage in an agreement to irrevocably<sup>1</sup> transfer the Concession to distribute Ben & Jerry's products in Israel to a third party that is not controlled by Unilever and/or Strauss Ice Creams, I have decided to set the following final conditions for the Merger Approval, instead of the conditions specified on May 30, 2000:

#### **Part A: Material conditions**

1. As of December 31, 2001, all Ben and Jerry's products in Israel shall be distributed by a person who is not related, directly or indirectly, to Unilever and/or Strauss Ice Creams (hereinafter: "**the Concession Holder**").
2. BJH and Unilever, who controls it, shall not reduce the Concession's scope and shall not worsen the Concession, its terms and the products that had been distributed under it before the announcement of the above-mentioned merger. Without detracting from the generality of the aforementioned, and notwithstanding any other provision of the agreement:
  - 2.1 The Concession Holder shall be allowed to set the prices of Ben & Jerry's products independently, and Unilever shall not determine, be a partner in or affect the prices of those products;
  - 2.2 The quantity and variety of Ben & Jerry's products that the Concession Holder will market shall not be reduced or limited compared to the quantity and variety of those products that had been marketed before the merger announcement was submitted, subject to the variety of BJH's products at any given time;
  - 2.3 Any new Ben & Jerry's product shall be available to the Concession Holder for marketing in Israel under the customary terms, subject to equal application of BJH's international marketing policy that applies to all the countries where its products are marketed;
  - 2.4 Any arrangement between the Concession Holder and BJH must not include any restriction that the Commissioner has not approved. Without detracting from the aforementioned –

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<sup>1</sup> This means that should the concession expire for any reason, it shall not be transferred to Unilever, Strauss Ice Creams or any person related to them, without the Commissioner's approval.

any agreement between the Concession Holder and Unilever shall be submitted to the Commissioner for review and approval; for the avoidance of doubt, it is hereby clarified that the aforementioned also applies to any agreement between the Concession Holder and Strauss Ice Creams.

2.5 The Concession Holder may be involved in any other frozen desserts business.

3. Until the date mentioned in Section 1 above, the conditions based on which the Antitrust Commissioner approved the merger between BJH and Unilever on May 30, 2000 shall remain in effect; nevertheless, during this period, Unilever and/or BJH may transfer money to the American company and/or its shareholders in order to liquidate it and transfer the Concession to a third party. As of the date specified in Section 1 above, and subject to the execution of the provisions of this Section, the May 30, 2000 conditions shall become null and void;
4. There shall be a complete business separation between Unilever's operations in Israel, including its business with regard to Strauss Ice Creams, and the Concession Holder's business; without detracting from the generality of the aforementioned, Unilever and/or BJH shall have no right to determine for the Concession Holder the marketing terms of Ben & Jerry's products in Israel; Unilever shall have no say in the Concession Holder's decisions regarding the terms of engagement with retailers, the scope and timing of the engagement, and the opening of retail ice cream parlors, their locations and the prices of Ben & Jerry's products at these parlors. Unilever and BJH, including all their officers, shall not contact the Concession Holder directly or indirectly on such matters;
5. BJH, Unilever and Strauss Ice Creams shall not engage in any activity that may interfere with the Concession Holder's activity in the frozen desserts industry in general, and in the distribution and marketing of Ben & Jerry's products in particular.
6. Any transfer of the Concession to another person, or the appointment of another person as a concession holder, as well as any change in the control of a concession holder, must be approved in advance by the Commissioner;
7. Should there be any doubt with regard to these conditions, applicability or interpretation – the Commissioner shall resolve it.
8. These provisions do not detract from the provisions of the Antitrust Law.

#### **Part B: Definitions**

**"Person"** - including a corporation;

**"Related person"** – any person who controls a corporation, a corporation controlled by a person or a corporation, and any corporation controlled by any of them;

**“The Concession”** – A concession to distribute Ben & Jerry’s products in Israel;

**“Strauss Ice Creams”** – Strauss Ice Creams Ltd. and any person related to it;

**“The American Company”** – The American Company for Ice Cream Manufacturing E.I. Ltd.;

**“Holding”** – directly or indirectly, without detracting from the generality of the aforementioned, shall be considered any person who holds directly, holds the holdings of any Related Person, the holdings of any corporation controlled by a Related Person, etc.;

**“The Commissioner”** – the Antitrust Commissioner;

**“Unilever”** – Unilever N.V. and any company that is controlled by it, controls it or is controlled by a persons who control it, individually or collectively;

**“Ben and Jerry’s products”** – frozen desserts, including ice cream, frozen yoghurt, sorbet, cakes made of any of those, and any other frozen desserts that BJH has developed under the Ben & Jerry tradename that it owns.

**“Control”** – The ability to direct the operations of a corporation, directly or indirectly. Without detracting from the generality of the aforementioned: (1) A person controls a corporation if they hold more than half of the voting rights based on shares or their types at the corporation’s AGM or an equivalent body, or of the right to nominate directors, and in a corporation that is not a company – the right to nominate similar officers of the corporation; (2) A person controls a corporation if they have the right to appoint its CEO; (3) A person controls a corporation if they hold more than thirty percent of the rights to the corporation, and no other person holds more than half of that amount; (4) A person controls a corporation if they are the beneficiary of a trust that controls its assets, except for holding units in a mutual fund that is subject to the Mutual Funds Law, 5754 – 1994; (5) A person controls a corporation if they have the power to prevent the corporation from making a material business decision, unless the source of this power is an agreement regarding the terms of a loan given by a banking corporation while conducting its normal business; a material business decision does not include a decision about issuing shares, selling or liquidating most of the corporation’s assets, or a material change to the corporation’s business.

**“BJH”** - Ben & Jerry’s Homemade, Inc. and any person related to it.

David Strum, Advocate  
Antitrust Commissioner

Jerusalem, 1 Tevet 5762  
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