



8 November, 2017

Tribunal orders the Commission to file further documents in a collusion case involving Unilever

The Tribunal has upheld an exception application by Unilever and ordered the Competition Commission to file a supplementary affidavit to clarify a number of points contained in its original complaint alleging collusion and dividing markets for edible fats and oils.

The Tribunal has given the Commission 15 business days to file a supplementary affidavit that sets out whether the Commission is restricting its case to just the written contracts alleged in the referral, which would make it difficult to appreciate how that would also constitute a concerted practice, or whether the Commission is relying on more than the mere agreements which would then take the case further than “mere contracts and rely on conduct that constitutes concerted practices as well”.

The Tribunal said if the latter then the Commission needs to state this clearly.

Unilever has 20 days upon receipt of the Commission’s supplementary affidavit to file its answering affidavit.

The Commission alleges in its complaint referred to the Tribunal on 1 March 2017 that from 2005-2013 Unilever and Sime Darby Hudson & Knight (Pty) Ltd (“Sime Darby”), as firms in a horizontal relationship, had a ‘general agreement’ not to compete with one another in the manufacture and supply of edible fats and oils. This was done through various agreements wherein the respondents agreed to divide markets by allocating goods and customers between themselves, contravening section 4(1)(b)(ii) of the Act. .

One of the agreement was a Sale of Business agreement when Unilever sold its refinery business to the now Sime Darby. A non-compete clause was included in the agreement relating to the distribution channels of various products, and this was later amended when Unilever sold two companies to Sime Darby with a clause aiming to remove white fats and adjusting pack sizes on the list of products that fell under the clause. The amendment precluded Sim Darby from manufacturing and supplying frying oil/fat in certain pack sizes. All the precluded products were reserved for Unilever.

Unilever said it in its exception application heard on 27 September 2017 that it is unable to make out the case brought against it, and is thus unable to respond to the referral as it would be gravely prejudiced if it attempted to do so.

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