

## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM061Jul20

In the matter between:

DH Brothers Industries (Pty) Ltd  
Seaboard Corporation

**Primary Acquiring Firms**

And

Russellstone Protein (Pty) Ltd

**Primary Target Firm**

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Panel: Y Carrim (Presiding Member)  
AW Wessels (Tribunal Panel Member)  
H Cheadle (Tribunal Panel Member)

Heard on: 26 – 29 July 2021, 2- 3 August 2021 and 6 August 2021

Last Submission: 26 August 2021

Decided on: 31 August 2021

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### ORDER

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Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act, 1998 (“the Act”) the Competition Tribunal orders that-

1. the merger between the abovementioned parties be approved in terms of section 16(2)(b) of the Act subject to the conditions attached hereto; and
2. a Merger Clearance Certificate be issued in terms of Competition Tribunal rule 35(5)(a).

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**Presiding Member**  
**Ms Yasmin Carrim**

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**31 August 2021**

**Date**

**Concurring: Mr Andreas Wessels and Mr Halton Cheadle**



**competitiontribunal**  
SOUTH AFRICA

# Merger Clearance Certificate

**Date:** 31 August 2021

**To:** Vani Chetty Competition Law (Pty) Ltd

## Notice CT 10

### About this Notice

This notice is issued in terms of section 16 of the Competition Act.

You may appeal against this decision to the Competition Appeal Court within 20 business days.

### Contacting the Tribunal

The Competition Tribunal  
Private Bag X24  
Sunnyside  
Pretoria 0132  
Republic of South Africa  
tel: 27 12 394 3300  
fax: 27 12 394 0169  
e-mail: ctsa@comptrib.co.za

Case Number: LM061Jul20

DH Brothers Industries (Pty) Ltd and Seaboard Corporation And Russellstone Protein (Pty) Ltd

You applied to the Competition Commission on 29 June 2020 for merger approval in accordance with Chapter 3 of the Competition Act.

Your merger was referred to the Competition Tribunal in terms of section 14A of the Act, or was the subject of a Request for consideration by the Tribunal in terms of section 16(1) of the Act.

After reviewing all relevant information, and the recommendation or decision of the Competition Commission, the Competition Tribunal approves the merger in terms of section 16(2) of the Act, for the reasons set out in the Reasons for Decision.

This approval is subject to:

- no conditions.
- the conditions listed on the attached sheet.

The Competition Tribunal has the authority in terms of section 16(3) of the Competition Act to revoke this approval if

- it was granted on the basis of incorrect information for which a party to the merger was responsible.
- the approval was obtained by deceit.
- a firm concerned has breached an obligation attached to this approval.

**The Registrar, Competition Tribunal**

**CONFIDENTIAL**

**DH BROTHERS PROPRIETARY LIMITED AND SEABOARD CORPORATION**

**AND**

**RUSSELLSTONE PROTEIN PROPRIETARY LIMITED**

**CT CASE NUMBER: LM061JUL20**

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**ANNEXURE A: CONDITIONS**

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**1. DEFINITIONS**

The following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings:

- 1.1. **“Acquiring Firms”** mean Willowton and Seaboard;
- 1.2. **“Approval date”** means the date referred to in the Tribunal's Order;
- 1.3. **“Commission”** means the Competition Commission of South Africa;
- 1.4. **“Competing Businesses”** mean the Acquiring Firms' competing businesses in any or all of the Products as the case may be from time to time operated outside of RSP by each of Seaboard and Willowton for their respective account in South Africa;
- 1.5. **“Competition Act”** means the Competition Act No 89 of 1998, as amended;
- 1.6. **“Conditions”** mean these conditions;
- 1.7. **“Competitively Sensitive Information”** means information in relation to the Competing Businesses that is not in the public domain, which is or may reasonably be expected to be competitively sensitive information in that it *inter alia* relates to, but is not limited to:
  - 1.7.1. pricing – including but not limited to prices/discounts/rebates offered to specific customers and planned price reductions or increases;

- 1.7.2. margin information by product or customer;
- 1.7.3. volumes of Products produced, imported and/or sold as well as cost information;
- 1.7.4. information on specific customers and customer strategy, including information with respect to customer volumes and areas of operations of customers;
- 1.7.5. budgets, business plans and other strategic plans and strategies;
- 1.7.6. advertising and marketing plans and strategies; and
- 1.7.7. market know-how not generally available to or known by the public;
- 1.8. **“DH Brothers”** means DH Brothers (Pty) Ltd, one of the primary acquiring firms controlled by Willowton;
- 1.9. **“Director”** includes any executive or non-executive director appointed to the board of Willowton, Seaboard or RSP;
- 1.10. **“Implementation Date”** means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;
- 1.11. **“Merger”** means the acquisition of joint control by the Acquiring Firms over RSP;
- 1.12. **“Merging Parties”** mean the Acquiring Firms and RSP;
- 1.13. **“Person”** means shareholders, directors, managers, consultants and employees of either of Willowton, Seaboard or RSP as the context indicates;
- 1.14. **“Products”** mean soybean meal, soybean hulls and crude soybean oil;
- 1.15. **“RSP”** means RussellStone Protein (Pty) Ltd, being the primary target firm;
- 1.16. **“Sales Activities”** mean activities relating to customer sales and pricing including engagement with customers on pricing and sales;

- 1.17. “**Seaboard**” means Seaboard Corporation being one of the primary acquiring firms and includes other subsidiaries or holding companies;
- 1.18. “**Tribunal**” means the Competition Tribunal of South Africa; and
- 1.19. “**Willowton**” means Willowton Group (Pty) Ltd, being the controller of DH Brothers, and includes Willowton’s other subsidiaries or holding companies.

## 2. CONDITIONS TO THE MERGER

### 2.1. Confidentiality Obligations:

- 2.1.1. Seaboard will not appoint any person who is involved in the Sales Activities of its Competing Businesses to the position of director of the board of RSP.
- 2.1.2. No Person from Willowton shall disclose, share, or exchange any of Willowton's Competitively Sensitive Information with any Person from Seaboard or RSP. This provision shall not apply between Willowton appointed directors.
- 2.1.3. No Person from Seaboard shall disclose, share, or exchange any of Seaboard's Competitively Sensitive Information with any Person from Willowton or RSP.
- 2.1.4. No employee from RSP may in any manner (verbally, in writing or otherwise) disclose, share, or exchange any of Willowton’s sales information with any Person from Seaboard; or any of Seaboard’s sales information with any Person from Willowton. The aforesaid restrictions shall in particular include a restriction on disclosure of the following information:
  - 2.1.4.1. details of any **customer** of Willowton or Seaboard to whom the Products are on-sold or to whom the Products are delivered from RSP’s plant and premises;
  - 2.1.4.2. details pertaining to the **volume of the Products delivered** to any customer of Willowton or to any customer of Seaboard to whom the Products are on-sold from RSP’s plant and premises; and/or

2.1.4.3. the **price at which the Products are sold or delivered** by Willowton or Seaboard from RSP's plant and premises, insofar as a RSP employee has access to or is aware of such information.

2.1.5. For the avoidance of doubt, clause 2.1 should not be construed as precluding the Acquiring Firms from engaging in a customer-supplier relationship on an arm's length basis.

2.2. **Physical and information technology (IT) separation shall be maintained:**

2.2.1. Willowton and Seaboard shall ensure that the business sites of their respective Competing Businesses and that of RSP remain separate.

2.2.2. Willowton and Seaboard shall ensure that all Persons involved in the Sales Activities and operational activities of their Competing Businesses do not have access to RSP's information technology systems.

2.3. **Notification of Conditions:**

2.3.1. Within five (5) days of the Implementation Date, each of the Acquiring Firms will ensure that each Person involved in the Competing Businesses is provided with a copy of these Conditions with particular attention being drawn to the Confidentiality Obligations in clause 2.1 above.

2.3.2. Within five (5) days of the Implementation Date, RSP will ensure that each Person is provided with a copy of these Conditions with particular attention being drawn to the Confidentiality Obligations in clause 2.1 above.

2.3.3. Each of the Merging Parties must ensure that these Conditions, and in particular, the Confidentiality Obligations are included as terms and conditions of appointment of any new Person appointed in the Acquiring Firms' respective Competing Businesses, and in RSP.

2.4. **Policy development:**

2.4.1. Within three (3) months of the Implementation Date, each of the Merging Parties shall develop, adopt, and implement a policy ("**the Policy**") containing procedures for the implementation and on-going monitoring of these Conditions.

2.4.2. The purpose of the Policy shall be to ensure compliance with these Conditions.

**2.5. Commitment to competition law compliance:**

2.5.1. Each of the Merging Parties undertake to comply with the provisions of the Competition Act at all times.

2.5.2. Each of the Merging Parties shall, within three (3) months of the Implementation Date, develop a competition law compliance programme, which shall be submitted to the Commission for approval before implementation thereof.

2.5.3. All sales, marketing, management and executive employees, and all Directors of the respective Merging Parties shall undergo competition law training within one year of the Implementation Date.

**3. MONITORING COMPLIANCE WITH THE CONDITIONS**

3.1. The Acquiring Firms shall inform the Commission of the Implementation Date within five (5) days of it becoming effective.

3.2. Within four (4) months of the Implementation Date, each of the Merging Parties shall provide the Commission with a copy of the competition law compliance programmes referred to in clause 2.5.2 for the Commission's approval.

3.3. RSP shall submit to the Commission an affidavit deposed to by the General Manager on the anniversary of the Implementation Date confirming compliance with the Conditions for the duration of the Conditions.

3.4. Willowton shall submit to the Commission an affidavit deposed to by an Executive Director on the anniversary of the Implementation Date confirming compliance with the Conditions for the duration of the Conditions.

3.5. Seaboard shall submit to the Commission an affidavit deposed to by a senior representative from its local subsidiary, Seaboard Overseas Trading and Shipping (Pty) Ltd (South Africa) on the anniversary of the Implementation Date confirming compliance with the Conditions for the duration of the Conditions.

- 3.6. The Commission may request additional information from the Merging Parties which is relevant and necessary for the monitoring of compliance with these Conditions.

#### **4. DURATION**

- 4.1. These Conditions shall endure for as long as the Acquiring Firms remain shareholders in RSP.
- 4.2. Any change to the Acquiring Firms' shareholding in RSP must be notified to the Commission, as such change may impact these Conditions.

#### **5. APPARENT BREACH**

- 5.1. If the Merging Parties appear to have breached the Conditions or if the Commission determines that there has been an apparent breach of the Conditions by the Merging Parties, the breach shall be dealt with in terms of Rule 39 of the Rules for the Conduct of Proceedings in the Commission read with Rule 37 of the Rules for the Conduct of Proceedings in the Tribunal.

#### **6. VARIATION**

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

#### **7. GENERAL**

- 7.1. All reporting documents referred to in these Conditions and all correspondence in relation to the Conditions must be submitted to the following e-mail address: [mergerconditions@compcom.co.za](mailto:mergerconditions@compcom.co.za).