



## COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR223Mar17/SA050Jul23

In the matter between:

The Competition Commission

**Applicant**

And

Unilever South Africa (Pty) Ltd

**Respondent**

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Panel : L Mncube (Presiding Member)  
: F Tregenna (Tribunal Member)  
: G Budlender (Tribunal Member)  
Heard on : 03 October 2023  
Order issued on : 03 October 2023

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### SETTLEMENT AGREEMENT

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The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Unilever South Africa (Pty) Ltd annexed hereto.

Signed by: Liberty Mncube  
Signed at: 2023-10-03 14:12:51 +02:00  
Reason: Witnessing Liberty Mncube

*L. Mncube*

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**Presiding Member**  
**Professor Liberty Mncube**

**03 October 2023**

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**Date**

**Concurring: Professor Fiona Tregenna and Advocate Geoff Budlender SC**

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**CT Case No. CR22Mar17  
CC Case No. 2012Nov0663**

**In the matter between:**

**THE COMPETITION COMMISSION**

**APPLICANT**

**and**

**UNILEVER SOUTH AFRICA (PTY) LTD**

**RESPONDENT**

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**CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998 (AS AMENDED), BETWEEN THE COMPETITION COMMISSION AND UNILEVER SOUTH AFRICA (PTY) LTD IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998**

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The Competition Commission ("Commission") and Unilever South Africa (Pty) Ltd ("Unilever") hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of Section 49D as read with Sections 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b)(i) of the Act, on the terms set out below.



## 1. DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply:

- 1.1 **"Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.2 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3 **"Commissioner"** means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.4 **"Complaint"** means the complaint filed by Mr Juan-Pierre Lerena ("Mr Lerena"), in terms of section 49(B)(2)(b) of the Act under case numbers 2012Nov0663.
- 1.5 **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and Unilever
- 1.6 **"Edible fats and Oils"** means industrial/professional bakery fats, processed and/or refined oils, various related food solutions products that are typically sold to hotels, restaurants and caterers; and consumer/retail fats and oils;
- 1.7 **"Parties"** means the Commission and Unilever
- 1.8 **"Respondent"** means Unilever
- 1.9 **"SDH&K"** means Sime Darby Hudson and Knight Proprietary Limited (reg. no 2004/00964707), a private company duly incorporated in accordance with the



Company Laws of the Republic of South Africa with its principal place of business at 511 Commissioner Street, Boksburg.

1.10 "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 1<sup>st</sup> Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.11 "**Unilever**" means Unilever South Africa (Pty) Ltd (reg. no. 1939/012365/07), a private company duly incorporated in accordance with the Company Laws of the Republic of South Africa with its principal place of business at 15 Nollsworth Crescent, Nollsworth Park La Lucia Ridge.

## **2. THE COMMISSION'S INVESTIGATION AND FINDINGS**

2.1 On 25 October 2012, the Commission received a third-party complaint in terms of section 49B(2) of the Act into alleged prohibited practices relating to market division in contravention of section 4(1)(b)(ii) of the Act in the edible fats and oils industry within South Africa against Sime Darby Hudson Knight (Pty) Ltd ("Sime Darby"), and Unilever. Where appropriate, SDH&K and Unilever shall be referred to as the "Respondents".

2.2 The Commission's investigation of the Complaint revealed the following:

2.2.1 In 2004 and 2005, Unilever and SDH&K concluded a suite of agreements relating to the sale of Unilever's Edible Fats and Oils refinery in Boksburg, Unilever's bakery business, as well as the

disposal of Unilever's *Crispa* and *Holsum* businesses to SDH&K.

2.2.2 The suite of agreements included co-dependent sourcing, refining, procurement, as well as process and packaging arrangements between Unilever and SDH&K, which lasted until approximately 2012.

2.2.3 The suite of also agreements contained a number of restrictive covenants in terms of which SDH&K was precluded from supplying products of a particular classification, pack size and format to specific customer channels.

2.2.4 In particular, in terms of the agreements, SDH&K could not supply customers in specific channels with various types of spreads and bakery margarines in pack sizes that were less than 15kg or 15 litres, and speciality fats and oils in pack sizes and formats smaller than or equal to 25kg or 25 litres.

2.2.5 In respect to edible fats and oils, the agreements stipulated that SDH&K would only produce pack sizes of 5kg or 5 litres or greater.

2.2.6 It is these restrictions that the Commission found to amount to market division in contraventions of section 4(1)(b)(ii) of the Act.

2.3 Unilever contends that:

2.3.1 its relationship with SDH&K was primarily vertical in nature, such that the parties were neither actual nor potential competitors to one another; and

2.3.2 the restrictive covenants in the suite of agreements described above constituted legitimate vertical restraints, falling outside of the conduct prohibited in terms of section 4(1)(b)(ii) of the Act.

2.3.3 The outcome of the Tribunal hearing on the contested issues above is pending.

### **3. ADMISSION OF LIABILITY**

3.1 Unilever does not admit that it has acted in contravention of section 4(1)(b)(ii) of the Act as described in paragraph 2 above.

### **4. FUTURE CONDUCT**

Unilever agrees and undertakes to:

4.1.1 prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within 30 (thirty) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

4.1.2 refrain from engaging in conduct which contravenes section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;

4.1.3 develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the

identification, prevention, detection and monitoring of any contravention of the Act;

4.1.4 submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Consent Agreement as an order by the Tribunal;

## **5. ADMINISTRATIVE PENALTY**

5.1 Unilever agrees and undertakes to pay an administrative penalty in the amount of **R16 000 000 (Sixteen Million Rand)**, which does not exceed 10% (ten percent) of Unilever's annual turnover in the Republic of South Africa for the financial year ended 2022.

5.2 The payment shall be made within 60 (Sixty) days of the confirmation of the Consent Agreement as an order of the Tribunal.

5.3 The administrative penalty shall be paid into the Commission's bank account, details of which are as follows:

**Name: The Competition Commission Fee Account**

**Bank: Absa Bank, Pretoria**

**Account Number: 4087641778**

**Branch Code: 323 345**

**Ref: 2012Nov0663/Unilever**

5.4 The administrative penalty will be paid over by the Commission to the National

Revenue Fund in accordance with section 59(4) of the Act.

## 6. OTHER REMEDIES

### Enterprise and Supplier Development Fund (ESD Fund)

- 6.1 Unilever further undertakes that, within 60 business days of the confirmation of the settlement by the Tribunal, Unilever will establish and administer an Enterprise and Supplier Development Fund ("ESD Fund") to the value of **R40 000 000 (Forty Million Rands)**,
- 6.2 The ESD Fund will provide interest-free business loans to qualifying black-owned entities in the manufacturing, logistics and wholesale industries in South Africa that meet Unilever's credit and selection criteria.
- 6.3 The qualifying black-owned entities in manufacturing shall include black-owned companies requiring start-up funds to enter logistics, wholesale and distribution industries.
- 6.4 The ESD will be managed and administered by Unilever and will be subject to annual audits in accordance with Unilever's auditing practices. Unilever shall submit an audited report relating to the management and administration of the activities of the ESD to the Commission within 3 (three) months of the completion of the audit.
- 6.5 Unilever commits to maintaining the ESD Fund in place for a period of at least three years following its establishment.



### Local Procurement

6.6 Unilever will increase the aggregate annual value of its local procurement of products and services from entities operating in South Africa by a minimum of [REDACTED] for a period of [REDACTED] years. The current aggregate annual value of Unilever's local procurement of products and services stands at about [REDACTED]. The proposed increase in local procurement of products and services on an annual basis shall be at a minimum of [REDACTED]

### Donation of Hygiene Products to Schools

6.7 Unilever shall donate products such as hygiene, disinfectant and oral products to public schools to the tune of R3 000 000 (**Three Million Rands**) over a period of 5 years.

6.8 To this end Unilever shall make a minimum annual donation of R600 000 (Six Hundred Thousand Rands).

6.9 The donation by Unilever shall be in accordance with appendix A attached hereto.

6.10 Unilever shall publish the terms in paragraph 6 of this Consent Agreement using national media that has a reach to qualifying beneficiaries within 3 (three) months from the date of confirmation of this Consent Agreement as an order of the Tribunal.

## 7. MONITORING

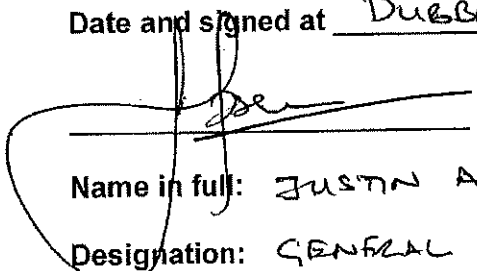
- 7.1 Unilever shall provide the Commission with annual written reports on the progress in relation to undertakings in paragraphs 6 above. Such report shall include the following:
- 7.1.1 information on the number of qualifying black owned businesses that utilized the ESD Fund, the Rand value of interest free loans dispensed to each qualifying black owned business.
  - 7.1.2 qualifying black owned businesses that Unilever utilizes for local procurement of products and services and the Rand value of the increase in the local procurement.
  - 7.1.3 the number of Schools benefiting from the donations of hygiene products, including names, contact details and the Rand value of each school beneficiary.
- 7.2 Notwithstanding paragraph 7.1 above the Commission may require production of the report from Unilever at any time within a reasonable period of no more than 60 (sixty) business days.
- 7.3 All reports in relation to conditions set out in this agreement, including but not limited to Compliance programmes, Proof of payment(s) etc. shall be submitted to the Commission at [CartelSettlements@compcom.co.za](mailto:CartelSettlements@compcom.co.za).

**8. FULL AND FINAL SETTLEMENT**

This agreement is entered into in full and final settlement of all allegations under case numbers 2012Nov0663 and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission, Unilever under this case numbers.

**Unilever South Africa (Pty) Ltd**

Date and signed at DURBAN on the 5 day of MAY 2023.

  
Name in full: JUSTIN ARSEY

Designation: GENERAL MANAGER UNILEVER  
SOUTHERN AFRICA.

**For the Commission**

Date and signed at PRETORIA on the 15 day of JUNE 2023.

  
DORIS TSHEPE

COMPETITION COMMISSIONER

## Appendix A

### Terms of the Donation of Hygiene Product by Unilever (Paragraph 6.6 of the Consent Agreement)

1. Unilever shall donate Hygiene Products to no less than 16,780 public primary schools across all the provinces of South Africa
2. During the life of the programme, the following products shall distributed across the public schools:-
  - 2.1. Domestos disinfectants (for school use)
  - 2.2. Lifebuoy soap bars (for grade R to 1 Learners)
  - 2.3. Mentadent P toothpaste/Unilever brand toothpaste (for grade R to 1 Learners)
  - 2.4. Mentadent P toothbrushes (for grade R to 1 Learners)
  - 2.5. Omo/Unilever brand washing powder (for grade R Learners)
  - 2.6. Knorr nutrition programme (for primary school).
  - 2.7. Dove (for senior primary school learners)
3. In addition, as an alternative to the product donation in certain schools, Unilever may at its discretion provide where necessary:
  - 3.1. Permanent handwashing stations constructed in schools
  - 3.2. Refurbish school toilets;
  - 3.3. Provide schools with food gardens and/or school kitchen refurbishments
4. The schools will also receive behaviour change learning materials to be used as part of in-class activities supported by each of the abovementioned brands and taught by teachers.

