competitiontribunal
south africa

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: FTN151Aug15
Case No: FTN127Aug15

In the matter between:

The Competition Commission of South Africa	**Applicant**
and	
Deican Investments (Pty) Ltd	**First Respondent**
New Seasons Investments Holdings (Pty) Ltd	**Second Respondent**

The Competition Commission of South Africa	**Applicant**
and	
Dickerson Investments (Pty) Ltd	**First Respondent**
Nodus Equity (Pty) Ltd	**Second Respondent**

Panel	: Norman Manoim (Presiding Member) : Yasmin Carrim (Tribunal Member) : Prof Imraan Valodia (Tribunal Member)
Heard on	: 18 March 2016
Reasons Issued on	: 03 June 2016

Failure to Notify Combined Reasons and Order

Introduction

1. This matter concerns two applications ("referrals") brought by the Competition Commission of South Africa ("the Commission") to impose an administrative penalty because the respondents had failed to notify and had implemented mergers without the prior approval of the Competition Commission in contravention of sections 13A(1) and 13(A)(3) of the Competition Act ("the Act").

2. The first referral involved Deican Investments (Pty) Ltd ("Deican") and New Seasons Investments Holdings (Pty) Ltd ("New Seasons") as respondents, and is referred to as the "Deican transaction". Deican is a special purpose investment holding company. On 19th December 2012, Deican acquired 30% of the issued share capital in New Seasons and as a result obtained the right to veto any decision of the New Seasons shareholders which required special resolution. At the time of the transaction, Deican's shareholders were Nodus Equity (Pty) Ltd ("Nodus") and Dickerson Investments (Pty) Ltd ("Dickerson"), each of which jointly controlled Deican. Dickerson's total asset value at the time of implementation exceeded the threshold of R560m for notification.

3. The second referral related to a transaction involving Dickerson Investments (Pty) Ltd ("Dickerson") and Nodus Equity (Pty) Ltd ("Nodus") as respondents, and is referred to as the "Dickerson transaction". This transaction occurred in May 2013, when Dickerson increased its shareholding in Nodus Equity (Pty) Limited from 22% to 28%. This provided Dickerson with the ability to veto certain strategic decisions of Nodus.

4. The two transactions were not notified to the Commission and were subsequently implemented albeit for a short period.

5. While the referrals and the non-notified mergers pertaining thereto are two separate matters they were heard and decided together due to the fact that Dickerson forms part of the acquiring group in both transactions.

Background to the application

6. During July 2013, in the course of another unrelated transaction, Dickerson was alerted to the fact that both the Deican and the Dickerson transactions may have been notifiable. In May 2014, the respondents approached Cliffe Dekker Hofmeyr to seek advice. They were

advised that the transactions were indeed notifiable and that they ought to approach the Commission as soon as possible.

7. However, the respondents failed to act promptly on this advice and instead took pre-emptive steps to de-implement the mergers prior to and following their first meeting with the Commission on 11 September 2014. The Commission was not consulted by the respondents on this planned de-implementation.

8. The Dickerson transaction was the first merger to be de-implemented. On 6 August 2014, Nodus' memorandum of incorporation was amended to reduce the number of votes required for special resolutions thereby removing Dickerson's ability to control Nodus in terms of section 12(2)(g) of the Act. .

9. Notwithstanding the fact that the respondents had already approached the Commission, they still proceeded to reverse the Deican transaction on 22 September 2015 by increasing the share capital from 1000 shares to 1 million shares, thereby effectively diluting Dickerson's status to a minority shareholder. It should be noted that Deican's memorandum of incorporation does not afford Dickerson the ability to veto Deican's business plan or budget.

10. At the disclosure meeting held with the Commission on 11 September 2014, the respondents admitted that they had failed to notify both of these transactions. However, they submitted that such failure was based on a *bona fide* mistake of law. The respondents submitted that they were not aware at the time that as a result of Dickerson's increase in shareholding there had been a trigger of an acquisition of control. In addition they did not consider whether the prescribed minimum thresholds were met.

11. In light of the merging parties' acknowledgement that they had contravened the Act, the Commission entered into settlement proceedings with the respondents. The respondents and the Commission were unable to reach agreement on the appropriate penalty and the matter was eventually heard as an opposed application.

12. It was common cause that the two transactions were notifiable mergers and that the only issue for determination for the Tribunal was whether an administrative penalty was appropriate and if so the quantum thereof by having regard to the factors set out in section 59(3) and 59(2) of the Act.

13. At the hearing the Commission submitted that it had not considered any remedy other than an administrative penalty being imposed. This was due to the Commission not being given the opportunity to fully investigate the mergers prior and subsequently to the respondents approach. In the first instance the Commission was precluded from investigating the mergers due to the failure by the respondents to notify these transactions, but the Commission's jurisdiction was further ousted by the subsequent "de-implementation" when it became apparent that they had contravened the Act. As such, the Commission took the position that it could not confidently confirm anti-competitive effects which would require divestiture or a reversal of the merger.[1] In any event in light of the fact that the respondents had already effectively de-implemented the acquisition of control by the acquiring firm an order requiring divestiture or reversal of the merger would be ineffective. The Commission therefore persisted with an administrative penalty, being initially 10% of each respondent's turnover for the relevant year.

14. Both the Commission and the respondents relied on the methodology for calculating an administrative penalty that was used in the matter between *the Competition Commission and Aveng Africa Limited t/a Steeledale and Others* ("the *Aveng* case")[2]. That matter concerned a contravention of section 4(1)(b) of the Act. In that case the Tribunal developed the methodology by having regard to the European Commission Guidelines[3] (the EC Guidelines) in relation to contraventions of article 81 and 82,[4], as recommended by the CAC in *SPC, Contrite v Competition Commission*,[5] but adapting some features of the approach to meet the requirements of our Act.[6]

Relevant provisions of the Act

15. Section 13A(1) of the Act provides that:

> *"(1) A party to an intermediate or a large merger must notify the Competition Commission of that merger in the prescribed manner and form."*

16. Section 13A(3) of the Act provides that:

> *(3) The parties to an intermediate or large merger may not implement that merger until it has been approved, with or without conditions, by the Competition*

[1] Transcript 18 March 2016, page 16.
[2] Case no. 84/CR/Dec09 and 08/CR/Feb11
[3] Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (2006/C210/02)
[4] Relating to abuse of dominance and cartels.
[5] Case no. 106/CAC/Dec 2010
[6] *Aveng* paras 132 and 133.

Commission in terms of section 14(1)(b), the Competition Tribunal in terms of section 16(2) or the Competition Appeal Court in terms of section 17."

17. Section 59(1)(d)(i) of the Act provides that:

"(1) The Competition Tribunal may impose an administrative penalty only

(d) if the parties to a merger have-

(i)failed to give notice of the merger as required by Chapter 3, and

(iv) proceeded to implement the merger without the approval of the Competition Commission or the Competition Tribunal, as required by the Act".

18. Section 59(2) of the Act provides that:

"(2) An administrative penalty imposed in terms of sub-section (1) may not exceed 10% of the firm's annual turnover in the Republic during the firm's preceding financial year."

19. Section 59(3) provides that:

"(3) When determining an appropriate penalty, the Competition Tribunal must consider the following factors:

(a) the nature, duration, gravity and extent of the contravention;

(b)any loss or damage suffered as a result of the contravention;

(c) the behaviour of the respondent

(d) the market circumstances in which the contravention took place

(e) the level of profit derived from the contravention;

(f)the degree to which the respondent has co-operated with the Competition Commission and the Competition Tribunal;

(g) whether the respondent has previously been found in contravention of this Act."

20. In section 59(1) the Tribunal is granted the power to impose administrative penalties for contraventions of the Act. This power as reflected in the use of the word "may" and not "must" is a discretionary one which must be exercised with due regard to the facts of each case.

21. Notably section 59(1) distinguishes between three species or types of contraventions for which an administrative penalty may be imposed namely Chapter 2 type contraventions

(prohibited practices),[7] Chapter 3 type contraventions (merger control)[8] and failure to comply with or contravention of an order of the Tribunal or CAC.[9]

22. A further distinction is drawn within the Chapter 2 type contraventions where we see that for contraventions of sections 4(1)(a), 5(1), 8(c) or 9(1) an administrative penalty may only be imposed if the conduct substantially amounts to a repeat offence by the same firm.

23. Unlike in other jurisdictions our s59(1) does not prescribe different sanctions for Chapter 2 and Chapter 3 type contraventions.

24. In Europe for example, while a failure to notify is seen as a serious contravention warranting an administrative penalty, the approach taken by the European Commission (EC) to penalties for failure to notify mergers differs markedly from its approach for contraventions of article 81 and 82. Penalties for contraventions of article 81 and 82 are regulated in terms of the EC Guidelines and are usually much higher in magnitude, often running into tens of millions of euro, than penalties for failure to notify transactions. Whereas under Article 14(1) of the Merger Regulation the EC may impose on undertakings, fines ranging from ECU 1000 to 50 000 where it was found that the undertaking intentionally or negligently *inter alia* failed to notify a concentration. However a fine imposed under article 14(1) may not exceed 10% of the aggregate turnover of the undertakings concerned where they intentionally or negligently, *inter alia* put into effect a concentration before notification thereof.[10]

25. This is not dissimilar to the approach followed in the United States. In the US the Federal Trade Commission (FTC) is charged with administering a premerger notification program, and recommends actions and penalty amounts to DOJ. According to the FTC, several times a year parties contact the Premerger Notification Office (PNO) to report that they have consummated a reportable acquisition without filing the required notification or observing the appropriate waiting period under the Hart Scott Rodino (HSR) Act.

26. Depending on the circumstances, the FTC may decide to pursue civil penalties of up to $16,000 for every day that the parties have been in violation.[11] In determining whether to

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[7] 59(1)(a) and (b)
[8] 59(1)(d)
[9] 59(1)(c)
[10] Article 14(2)
[11] The $16,000 penalty was established by Commission Rule 1.98, 16 C.F.R. § 1.98, pursuant to the Debt Collection Act of 1996. Previously, the maximum penalty under § 7A(g)(1) of the Act was $11,000 per day. Multiple filing obligations can result in multiple continuing daily penalties.

take action, the FTC considers various factors, including, but not limited to whether the violation was the result of understandable or simple negligence; the corrective filing was made promptly after the violation was discovered; parties have realized any benefit that they would not otherwise have realized; and/or parties have implemented adequate measures to prevent future violations.

27. It is important to note that in the US parties are still subject to the filing fee, which forms part of the process before the PNO reviews the filing. According to the FTC, the applicable filing fees and thresholds are those in place at the time of the corrective filing. Hence the penalties imposed are over and above the relevant filing fee that ought to have been paid by the merging parties had the merger been notified.

28. On the other hand, in the US cartels may be pursued by the government as criminal offences. On the federal level, section 1 of the Sherman Antitrust Act (the 'Sherman Act'),[12] governs public enforcement actions relating to alleged cartels. Corporations found to have violated the Act face a maximum fine of USD100 million, while individuals face a maximum punishment of a USD1 million fine and ten years' imprisonment. This maximum potential fine may be increased to twice the gain or loss involved. Private civil antitrust cases[13] permit persons injured by violations of the Sherman Act to file civil lawsuits seeking recovery of three times the damages they suffered as a result of the alleged antitrust violation, as well as reasonable attorneys' fees.

29. In Australia which does not enjoy a compulsory notification framework, if a merger would be likely to substantially lessen competition in a market and the parties complete the merger without first obtaining clearance from the Australian Competition and Consumer Commission ("ACCC"), they risk the ACCC applying to the Federal Court for orders for divestiture or to unwind the merger, civil pecuniary penalties as well as banning orders and orders for legal costs.

30. In general we see in those jurisdictions, that a clear distinction is drawn between sanctions for cartel or exclusionary conduct on the one hand and merger related contraventions. In failure to notify (FTN) contraventions agencies always have available the remedy of

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[12] 15 U.S.C. §§ 1 et seq. Section 1 of the Sherman Act prohibits 'every contract, combination, in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations'.

[13] Governed by the Sherman Act and the Clayton Antitrust Act (the 'Clayton Act'), 15 U.S.C. §§ 15 et seq,

divestiture in merger control, which might not be available or appropriate for other types of contraventions.

31. In Section 59(1), the Tribunal's discretion is directed to having regard to the factors listed in section 59(3) and subject to the limitation in s59(2) that any penalty imposed not exceed 10% of the firm's annual turnover in the Republic during the firm's preceding financial year, for all three types of contraventions. Unlike in the US or the EU, the Act does not prescribe different sanctions for Chapter 2 and Chapter 3 type contraventions but has instead granted the Tribunal the discretion to make such a distinction when it has regard to the *nature, duration, gravity and extent* of the contravention as provided in section 59(3)(a).[14]

32. As we discussed earlier both the Commission and the respondents relied upon the methodology developed in the *Aveng* case to advance their own computations. Recall that this methodology was applied in the context of a cartel case namely a section 4(1)(b) contravention.

33. This is not to say that the principles advanced in the six step methodology of the *Aveng* case could not be rationally applied and adapted to Chapter 3 contraventions or that Chapter 3 contraventions are not regarded in a serious light. However it is trite that in competition law contraventions in relation to coordinated or exclusionary conduct are considered more egregious. This is because they are more difficult to detect due to their more secretive nature and because interventions by agencies can only be affected *ex post facto*. In other words it is far more difficult to detect the harm, early enough. In merger control the harm could be more easily detected due to the fact that mergers or changes in shareholding are generally more transparent (shareholders usually announce these for commercial reasons) or are reportable under other oversight or regulatory regimes such as financial or company law requirements. More importantly most if not all competition agencies have at their disposal the ability to undo a merger that had been implemented without their approval. In other words agencies are able to step in more quickly and are able to undo a transaction if it is found to have an adverse impact on competition.

34. More importantly in some types of transactions, such as these under consideration, which involve partial acquisitions and valuations of intangible shares as opposed to tangible goods, it might not always be evident when the notification requirement has been triggered.

[14] In our Act the sanction of divestiture is contemplated in section 60 of the Act, as qualified by the provisions of section 60(2).

35. This is why launching into a computation on the basis of the six-step methodology which proceeds on the assumption that the contravention is a Chapter 2 type and without first having regard to the factors in s59(3)(a) – namely the nature of the contravention - might result in an inflexible and blunt instrument for sanctioning of different contraventions of the Act, bearing in mind that in some, such as a failure to notify, regulators may have available other remedies in addition to the mere imposition of an administrative penalty.

36. Put another way, when we have regard to the nature, duration, gravity and extent of the contravention, as required by s59(3)(a) of the Act, the fact that this is a Chapter 3, and not a Chapter 2 contravention must be given significant weight, so that a meaningful distinction is drawn between the two types of contraventions.

37. In other words we must first ask ourselves what type of contravention this is. If this is not a cartel or abuse of dominance then we are alerted to the possibility that this contravention would require a somewhat different or even lesser sanction depending on the specific facts of the matter. We then turn to consider aggravating or mitigating factors by having regard to the remaining provisions of s59(3).

38. Turning to the facts of this case we enquire as to the nature of this contravention and note that it is a failure to notify and not a contravention of Chapter 2. We know from this that the respondents were required to notify the transactions and would have been liable at the very least for the prevailing filing fee of R100 000 per transaction. We know also at the level of principle that an administrative penalty equal to a filing fee would be tantamount to under-deterrence simply because recalcitrant respondents, who might wish to harm competition through pre-implementing mergers, could factor that into the cost of non-compliance. At the same time in the language of the guidelines established by *Aveng*, and having regard to the approach in other jurisdictions, the prevailing filing fee for an intermediate or large merger provides us with a rational "base" or a "minimum floor" from which to compute an appropriate penalty.

39. We can then turn to consider whether there are any aggravating or mitigating factors by having regard to the other factors listed in 59(3). If there are aggravating factors we would increase the amount appropriately bearing in mind the upper limit of 10% of turnover in 59(2)). If there are any mitigating factors we reduce the fine by these if appropriate and then finally we assess whether the fine falls below the upper limit of 10% of the respondent's turnover. If it does not there is no need for us to make any adjustments. If it

does we reduce the fine to the upper limit. This step approach is not to be applied mechanically or in a formulaic manner but with due regard to the factors in 59(3) overall.

40. Turning to the facts at hand, we see that the two transactions involved a change in control without giving rise to any competitive harm. This was not a case of competitors seeking to avoid the scrutiny of the regulator but instead involved contraventions of a technical nature. Moreover the contravention was of relative short duration. However we view this as a neutral factor. Had the transaction resulted in some adverse impact on competition or the public interest that might have been viewed as an aggravating factor.

41. With regard to the degree of co-operation of the Commission, the respondents relied on the fact that they self-reported as a mitigating factor. While we accept that the respondents did indeed self-report, the delay in bringing this matter to the attention of the Commission was not adequately explained. The respondents became aware of the notification issue as early as July 2013 but only approached the Commission in September 2014. We would have expected them to approach the Commission *post haste* after obtaining confirmation from their attorneys that the transactions required notification. Instead they delayed for more than 14 months. This is regarded as an aggravating factor.

42. The respondents further rely on the fact that they de-implemented the transactions as a mitigating factor but we do not see it as such. The Dickerson transaction was undone prior to the approach to the Commission and the Deican transaction during the course of negotiations with the Commission. Not only did the respondents fail to notify the Commission of their transactions, once being made aware of their infraction, they took the law into their own hands without consulting the Commission, which at the very least we would have expected them to do. The Commission argued that respondents ought to be deterred from taking the law into their own hands as a matter of principle. While we accept that the two transactions *in casu* did not have any competition effects, we agree with the Commission that the respondents' conduct of de-implementing the transaction without consulting the Commission beforehand suggests a cavalier attitude and is regarded as an aggravating factor. Had this been a merger of competitors with possible anti-competitive consequences such conduct, namely, the acquisition of a degree of control by a competitor for a period of time which enabled the acquirer to veto material decisions of its competitor, would certainly be viewed by us with a high degree of suspicion as having some kind of anti-competitive motive and an attempt by the acquiring firm to shield the consequences thereof from interrogation by the Commission. Furthermore, as pointed out by the Commission, the respondents effectively rendered unavailable the remedy of divestiture that would otherwise have been available to the Tribunal.

43. It was argued that the failure to notify was a *bona fide* mistake and that this should be regarded in mitigation. While the respondents accept that there was some degree of negligence on their part and that these reasons may be inadequate, they reiterated that this was not *mala fide*.[15] We accept that the respondents were not *mala fide*. However we bear in mind that Dickerson is an investment holding company and its business in the normal course is the acquisition and disposal of shares in investment companies. Hence we would expect Dickerson and the other respondents to be more alive to the notification requirements under the Competition Act precisely because their ordinary business involves the acquisition and disposal of shares in other companies. More so the expectation when we have regard to the fact that in the Deican transaction, Deican acquired 30% of the issued share capital in New Seasons, which from a company law, let alone competition law, perspective ought to have alerted Deican that negative control had been acquired. Similarly in the Dickerson transaction, Dickerson acquired more shares so as to hold 28%[16] in Nodus and thereby acquiring negative control. This was not a case in which the acquirer was uncertain about the effective level of shareholding it was acquiring due to any number of complex share capital arrangements. In light of this the explanation provided by the respondents for the subsequent de-implementation, namely that Dickerson did not intend to have any degree of control and somehow the acquisition of control was an error is unconvincing. The acquisition of 30% and 28% respectively in the two transactions were deliberate actions. Nor was this a case in which the acquiring firm had acted on the incorrect advice of experts that notification was not required. In light of these facts the respondents' failure to notify certainly suggests to us a high degree of negligence, at the very least on the part of Dickerson who was the acquirer of control in both transactions.

44. With respect to the market circumstances, they submitted that no competition issues arose out of the transactions. We accept this as a neutral factor as discussed above.

45. In terms of profit derived, the respondents submitted that given that there had been no competition effects or public interest effects, it could be inferred that the transaction would have been approved. As such, any profit derived by the respondents would have been obtained irrespective. This reasoning diverts the focus away from the real issue. The test here is not the likelihood of whether or not the Commission would have approved the merger but whether the respondents derived profits from a contravention of the Act, which

[15] Transcript 18 March 2016, page 56-59
[16] Which is higher than the 25% threshold for negative control provided for at company law

profits they were not entitled to unless they had obtained prior approval from the Commission. The fact that the respondents profited from a transaction concluded in contravention of the Act is seen as an aggravating factor. However the respondents argued that the level of profit derived from these transactions were in the nature of dividends. In the Deican transaction, the respondents argued that dividends were only recorded for Deican. In the Dickerson transaction, the respondents argued that while Dickerson received dividends in the 2015 financial year, Nodus did not. The Commission did not lead any evidence or submissions to the contrary and we were left to accept the respondents' averments.

46. Finally, it should be noted that while the respondents have not been found to have contravened the Act previously, it is to be taken into account that not one but two transactions had been implemented by the respondents in succession without any thought being given to the provisions of the Competition Act.

47. On balance we find that there are five aggravating factors, namely a degree of negligence on the part of the respondents, an undue and unexplained delay in approaching the Commission once the notification requirements had been confirmed, undoing the merger and taking the law into their own hands without providing the Commission an opportunity to assess the effects thereof, implementing two transactions involving acquisition of some degree of control, and profit that was derived from the unlawful prior implementation of the transactions. However given that the notification requirement was triggered by Dickerson's acquisition in both transactions, and that it was Dickerson who sought to undo the merger, thereby excluding the Commission's jurisdiction, we find it to be more culpable than the other respondents. We accept in mitigation that the respondents did indeed report the failure to notify voluntarily, they have not been found to have contravened the Act previously and that the contravention was for a relatively short duration.

48. Each respondent is fined R100 000 for failing to notify their transactions (as a floor or base). –

    48.1. Dickerson is fined an additional R150 000; and

    48.2. New Seasons, Deican and Nodus are each fined an additional R50 000.

49. The total amount of the penalty is R700 000, allocated as follows:

    49.1. Dickerson – R250 000.00

49.2. Deican – R150 000.00

49.3. New Seasons -R150 000.00.

49.4. Nodus – R150 000.00

50. Now we turn to examine whether the amount of the penalty for each respondent exceeds 10% of the turnover of that firm. We have attached as Annexure A hereto reflecting the total turnover of the parties as calculated by the respondents for the financial year 2015.

51. We note that the respondents have sought to exclude items listed as "Fair value movement on investment" from the computation of total income. Given that the ordinary business of the respondents is the acquisition and sale of shares (as investments) in other companies, in the ordinary course we would expect that the value derived from movements or adjustments to be classified as turnover/income and not as a capital gain/loss and as such ought to have been included in the computation of "turnover or income". However not much evidence was led on this issue and the Commission simply relied on the figures presented by the respondents in the line item "Total Income" as the turnovers of the firms citing immaterial differences between their calculations.

52. In relation to Deican the respondents submitted that the total turnover/income for 2015 is listed as [CONFIDENTIAL], 10% of which would amount to [CONFIDENTIAL] (rounded off). The administrative penalty of R150 000.00 does not exceed [CONFIDENTIAL].

53. In relation to New Seasons the total turnover/income for 2015 is listed as [CONFIDENTIAL], 10% of which amounts to [CONFIDENTIAL]. The administrative penalty of R150 000.00 does not exceed [CONFIDENTIAL].

54. In relation to Dickerson the total turnover/income for 2015 is listed as [CONFIDENTIAL], 10% of which amounts to [CONFIDENTIAL]. The administrative penalty of R250 000.00 does not exceed [CONFIDENTIAL].

55. In relation to Nodus the total turnover/income for 2015 is listed as [CONFIDENTIAL] 10% of which would amount to [CONFIDENTIAL]. The administrative penalty of R150 000.00 does not exceed [CONFIDENTIAL].

Order

56. In light of the above, we find the respondents have contravened Section 13(A)(1) through non-notification and 13(A)(3) by implementing the merger without the necessary notification, and are liable for the payment of an administrative fine.

57. In respect of the first referral in case number FTN151Aug15 Deican Investments (Pty) Ltd and New Seasons Investments Holdings (Pty) Ltd are each fined an amount of R150 000.00 (one hundred and fifty thousand rands), on the basis that if one of them pays the amount of R300 000.00, the other shall be absolved.

58. In respect of the second referral in case number FTN127Aug15, Dickerson Investments (Pty) Ltd is fined an amount of R250 000.00 (two hundred and fifty thousand rands) and Nodus Equity (Pty) Ltd the amount of R150 000.00 (one hundred and fifty thousand rands) on the basis that if one of them pays the amount of R400 000.00 the other is absolved.

59. The penalties must be paid to the Commission within 20 business days of this order.

Ms Yasmin Carrim

03 June 2016

DATE

Mr Norman Manoim and Prof Imraan Valodia concurring

Tribunal Researcher:	Karissa Moothoo Padayachie
For the Commission:	Layne Quilliam
For the Respondents:	Lwandile Sisilana together with Faye Hoat on instructions from Cliffe Dekker and Hofmeyr.