



**COMPETITION TRIBUNAL**  
**REPUBLIC OF SOUTH AFRICA**

**Case No: CO247Mar16**

In the matter between:

The Competition Commission

**Applicant**

And

Sime Darby Hudson Knight (Pty) Ltd

**Respondent**

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Panel : AW Wessels (Presiding Member)  
M Mokuena (Tribunal Member)  
A Ndoni (Tribunal Member)

Heard on : 13 April 2016

Last submission received on : 15 July 2016


Decided on : 20 July 2016

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**Consent Agreement**

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The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Sime Darby Hudson Knight (Pty) Ltd annexed hereto marked "A" and addendum annexed hereto marked "B"

  
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**Presiding Member**  
**Mr AW Wessels**

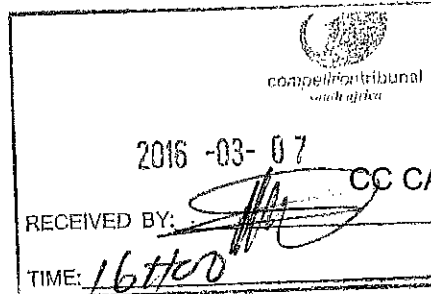
**20 July 2016**  
**Date**

**Concurring: Ms M Mokuena and Ms A Ndoni**

Non-Confidential

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**(HELD IN PRETORIA)**



**C0247Mar16**

**CT CASE NO:**

**CC CASE NO: 2012Nov0663**

In the matter between:

**THE COMPETITION COMMISSION**

**Applicant**

and

**SIME DARBY HUDSON KNIGHT (PTY) LTD**

**Respondent**

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**FILING NOTICE**

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**TAKE NOTICE** that the Applicant herewith files the following documents:

1. CT6 Form;
2. Consent agreement between the Competition Commission and Sime Darby Hudson Knight (Pty) Ltd.

**DATED AT PRETORIA ON 07 MARCH 2016**

  
\_\_\_\_\_  
**Tshepiso Mnguni**  
**Competition Commission**  
**DTI Campus**  
**77 Meintjies Street**  
**Sunnyside**

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

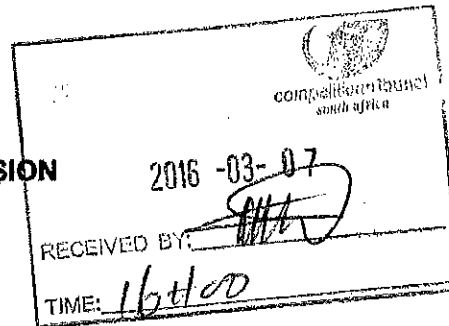
**CT CASE NO: \_\_\_\_\_**  
**CC CASE NO: 2012Nov0663**

In the matter between:

**THE COMPETITION COMMISSION**

and

**SIME DARBY HUDSON & KNIGHT (PTY) LTD**



**Applicant**

**Respondent**

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**CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND SIME DARBY HUDSON & KNIGHT (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(ii) OF THE COMPETITION ACT, 1998**

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**Preamble**

The Competition Commission ("**Commission**") and Sime Darby Hudson & Knight (Pty) Ltd ("**SDH&K**") hereby agree that an application be made to the Competition Tribunal ("**Tribunal**") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended (the "**Act**"), in respect of a contravention of section 4(1)(b)(ii) of the Act.

*RA*

## **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 **"BEE Distributor"** means a company with B-BBEE level between 1 and 4 as determined by the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), applicable Regulations and Codes of Good Practice;
- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and SDH&K;
- 1.5 **"Edible fats and oils"** means frying oil/fats, spreads, bakery margarines, and speciality fats and oils;
- 1.6 **"Parties"** means the Commission and SDH&K;
- 1.7 **"Respondent"** means SDH&K;
- 1.8 **"SDH&K"** means Sime Darby Hudson & Knight (Pty) Ltd (previously named Hudson & Knight (Pty) Ltd) (reg. no. 2004/009647/07), a private



company duly incorporated in accordance with the Company Laws of the Republic of South Africa with its principal place of business at 511 Commissioner Street, Boksburg;

1.9 **"Third party complaint"** A complaint in terms of section 49B(2) of the Act;

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 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and

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. INVESTIGATION AND FINDINGS OF THE COMMISSION**

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 SDH&K and Unilever. Where appropriate, SDH&K and Unilever shall be referred to as the "Respondents".

2.2. The Commission's investigation under Case No. 2012Nov0663 revealed the following:

2.2.1. During the period 2004 up to approximately 2013, the Respondents, being competitors and/or potential competitors in the edible fats and oils industry, concluded an agreement in terms of which they agreed to divide markets by allocating customers and specific types of edible fats and oils; more specifically SDH&K was precluded from supplying certain pack sizes of edible fats and oils to a number of customer channels.

2.2.2. In terms of the agreement SDH&K could not supply customers with margarine pack sizes that were less than 15kg, such that SDH&K could have no presence in the retail sector of the market for margarines where Unilever is active.

2.2.3. In respect of edible oils, the agreement stipulated that SDH&K would only produce pack sizes of edible oils equal to or greater than 25L which only industrial customers would be interested in purchasing. SDH&K could therefore not supply retail customers with its Crispa brand of edible oils in smaller pack sizes.

### **3. ADMISSION**

3.1. SDH&K admits that it engaged in the conduct set out in clause 2 above in



contravention of section 4(1)(b)(ii) of the Act.

#### **4. CO-OPERATION**

4.1. SDH&K confirms that it has ceased engaging in the conduct set out in clause 2 above.

4.2. SDH&K agrees to fully co-operate with the Commission in its investigation and prosecution of the other participant(s) in the alleged contravention. This co-operation includes, but is not limited to the following:

4.2.1. To the extent that it is in existence, the provision of evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement.

4.2.2. Testifying in any complaint referral which may arise in respect of this conduct.

4.2.3. Availing its employees to testify as witnesses for the Commission. Where witnesses are no longer in SDH&K's employ, but previously were in its employ, SDH&K undertakes to use its best endeavours to procure the co-operation of such witnesses with the Commission in the manner aforesaid.



## **5. ADMINISTRATIVE PENALTY**

- 5.1. SDH&K agrees that it is liable to pay an administrative penalty of R35 000 000 (thirty five million rand). This amount is less than 10% of SDH&K's annual turnover for the year ended February 2012;
- 5.2. SDH&K shall pay the abovementioned R35 000 000 (thirty five million rand) to the Commission in 2 (two) instalments of R17 500 000 (seventeen million five hundred thousand rand);
- 5.3. The first payment being made within 30 days of the confirmation of the Consent Agreement as a consent order by the Tribunal. The second instalment will thereafter be paid on the eleventh month following the confirmation of the Consent Agreement as a consent order by the Tribunal.
- 5.4. The payments shall be made into the Commission's bank account, details of which are as follows:

<b>Bank name:</b>	<b>Absa Bank</b>
<b>Branch name:</b>	<b>Pretoria</b>
<b>Account holder:</b>	<b>Competition Commission Fees Account</b>
<b>Account number:</b>	<b>4087641778</b>

*BL*



**Account type:** Current Account

**Branch Code:** 632005

**Reference:** Case Number: 2012Nov0663/Sime Darby.

5.5. The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

**6. AGREEMENT REGARDING FUTURE CONDUCT**

6.1. SDH&K undertakes to refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future.

6.2. SDH&K shall implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contraventions of the Act;

6.3. SDH&K shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at SDH&K within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.



6.4. In addition to the administrative penalty SDH&K has also agreed to various additional behavioural remedies.

6.5. In particular, Sime Darby shall within 5 (five) years from the date on which this Consent Agreement is made an order of the Tribunal:

6.5.1. Invest funds to build and commission a new packaging and warehousing facility in order to package and store its edible fats and oils. It is currently estimated that the packaging and warehousing facility will cost approximately R135 000 000 (one hundred and thirty five million rand).

6.5.2. Ensure that this new packaging and warehousing facility has the ability to package small size edible fats and oils to be supplied to retail customers which it was precluded from supplying by the conduct referred to in clause 2.2 of this Consent Agreement.

6.6. SDH&K further undertakes that, commencing by no later than 6 (six) months from the date on which this Consent Agreement is made an order of the Tribunal, it shall utilise the services of a BEE distributor to undertake some of its distribution requirements (it being noted that at any point in time, should a successful commercial relationship with a BEE distributor not be established or deteriorate, SDH&K will procure the services of another suitable BEE distributor in this regard). In particular,



SDH&K agrees that:

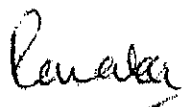
- 6.6.1. In its initial year of operation the BEE distributor will derive revenues of approximately R [Confidential] per annum from distribution services that it will perform on behalf of SDH&K.
- 6.6.2. Once the new packaging and warehousing facility is operational, the BEE distributor will transport some of SDH&K's edible fats and oils from this new facility to its various client premises.
- 6.6.3. SDH&K commits to providing assistance to the BEE firm so as to facilitate it becoming a viable business. Such assistance may include financial assistance to procure its requirements such as a fleet of vehicles, loan guarantees and other forms of investment to enable the BEE distributor to render the transportation services on a sustainable basis.

## **7. FULL AND FINAL SETTLEMENT**

- 7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No. 2012Nov0663 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and SDH&K relating to the conduct that is the subject of the Commission's investigation under Case No. 2012Nov0663.



**For SDH&K**



Dated and signed at KUALA LUMPUR on the 2 day of MARCH 2016

**For the Commission**

  
**TEMBINKOSI BONAKELE**  
**Commissioner**

Dated and signed at PRETORIA on the 4<sup>th</sup> day of March 2016