

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR076Sep08/SA254Mar16

In the matter between:

The Competition Commission

Applicant

and

Kap Raw Materials (Pty) Ltd
Loungefoam (Pty) Ltd
Steinhoff International Holdings Ltd
Kap Industrial Holdings Ltd
Feltex Holdings (Pty) Ltd

Respondents

Panel : N Manoim (Presiding Member)
M Mokuena (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 02 June 2016

Decided on : 02 June 2016

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondents annexed thereto marked "Annexure A".



Presiding Member
Mr N Manoim

Concurring: Ms M Mokuena and Prof F Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No:
CC Case No: 2007Sep3164

In the matter between

THE COMPETITION COMMISSION

and

KAP RAW MATERIALS (PTY) LTD

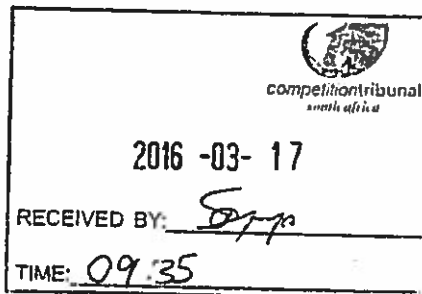
LOUNGEFOAM (PTY) LTD

STEINHOFF INTERNATIONAL HOLDINGS LIMITED

KAP INDUSTRIAL HOLDINGS LTD

FELTEX HOLDINGS (PTY) LTD

Applicant



First Respondent

Second Respondent

Third Respondent

Fourth Respondent

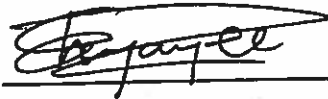
Fifth Respondent

FILING NOTICE

TAKE NOTICE THAT the applicant herewith files the following:

1. CT 6 Notice of Motion; and
2. Settlement Agreement between the Competition Commission and KAP Raw Materials (Pty) Ltd, Loungefoam (Pty) Ltd, Steinhoff International Holdings Limited, KAP Industrial Holdings Ltd and Feltex Holdings (Pty) Ltd.

Dated at Pretoria on this 17th day of March 2016.



COMPETITION COMMISSION

DTI Campus

77 Meintjie Street

Sunnyside

Pretoria

Tel: 012 394 3335

Ref: K. Ayayee

E-mail: korkoia@compcom.co.za

To: **THE REGISTRAR**
Competition Tribunal
3rd Floor, Mulayo
The DTI Campus
77 Meintjies Street
Sunnyside
Pretoria
Tel: (012) 394-3300/55
E-mail address: Leratom@comptrib.co.za

And to: **NORTON ROSE FULBRIGHT SOUTH AFRICA INC**
Respondents' Attorneys
15 Alice Lane, Sandton
Johannesburg
2196
Tel: 011 685 8829
Ref: Heather Irvine
E-mail: heather.irvine@nortonrosefulbright.com



competitiontribunal south africa

Form CT 6

About this Form

- This Form is issued in terms of the Competition Tribunal Rules.
- Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.
- If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

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

Notice of Motion

Date: 17-Mar-2016 File # _____


To: The registrar of the Competition Tribunal

Concerning the matter between:

COMPETITION COMMISSION (Applicant)
and KAP RAW MATERIALS (PTY) LTD AND 4 OTHERS (Respondent)

Take notice that the Applicant
intends to apply to the Tribunal for the following order:

Confirmation of the attached settlement agreement between the Applicant and the Respondents, as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(b) and section 59(1)(d)(i) and (iv) of the Competition Act 89 of 1998 as amended ("the Act") in respect of a contravention of section 13A(3) of the Act.

 2016 -03- 17 RECEIVED BY: <u>Sganga</u> TIME: 09:35
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Name and Title of person authorised to sign:

Chief Legal Counsel: Bukhosibakhe Majenge

Authorised Signature: _____

Date: _____



17/03/2016

For Office
Use Only:

Tribunal file number: _____

Date filed: _____

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No:

CC Case No: 2007Sep3164

In the matter between

THE COMPETITION COMMISSION

and

KAP RAW MATERIALS (PTY) LTD


LOUNGEFOAM (PTY) LTD

STEINHOFF INTERNATIONAL HOLDINGS LIMITED

KAP INDUSTRIAL HOLDINGS LTD

FELTEX HOLDINGS (PTY) LTD

Applicant

 competitiontribunal south africa
2016 -03- 17
RECEIVED BY: <i>Seymour</i>
TIME: 09:35

First Respondent

Second Respondent

Third Respondent

Fourth Respondent

Fifth Respondent

SETTLEMENT AGREEMENT

Preamble

The Competition Commission and KAP Raw Materials (Pty) Ltd, Loungefoam (Pty) Ltd, Steinhoff International Holdings Limited and KAP Industrial Holdings Ltd hereby agree that an application be made to the Competition Tribunal ("Tribunal") for the confirmation

Page 1 of 8

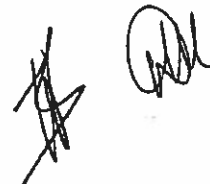
[Signature] *[Signature]*

of this Settlement Agreement as an order of the Tribunal in terms of section 49D read with sections 58 (1)(b) and 59(1)(d) of the Competition Act No. 89 of 1998, as amended ("the Act"), on the terms set out below.

1. Definitions

For the purposes of this Settlement Agreement the following definitions shall apply:

- 1.1. "**Act**" means the Competition Act, 1998 (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 place of business at Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3. "**Commissioner**" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4. "**Complaint**" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2007Sep3164;
- 1.5. "**Feltex**" means Feltex Holdings (Pty) Ltd, a company duly registered and incorporated in terms of the laws of the Republic of South Africa with its principal place of business at 291 Paisley Road, Jacobs, Durban;
- 1.6. "**KAP**" means KAP Industrial Holdings Ltd, a company duly registered and incorporated in terms of the laws of the Republic of South Africa, with its registered address at 28 Sixth Street, Wynberg, Johannesburg, which at the time of the Commission's complaint referral was named KAP International Holdings Ltd;
- 1.7. "**Loungefoam**" means Loungefoam (Pty) Ltd, a company duly registered and incorporated in terms of the laws of the Republic of South Africa with its



registered address at 28 Sixth Street, Wynberg, Johannesburg, which ceased trading on 1 July 2009, having sold all of its assets to Vitafoam;

- 1.8. **"Parties"** means the Commission, KAP, Loungefoam, Steinhoff and Vitafoam and Feltex;
- 1.9. **"Respondents"** means KAP, Loungefoam, Steinhoff, Vitafoam and Feltex;
- 1.10. **"Steinhoff"** means Steinhoff International Holdings Ltd, a company duly registered and incorporated in terms of the laws of the Republic of South Africa, with its principal place of business at 28 Sixth Street, Wynberg, Johannesburg;
- 1.11. **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and the Respondents;
- 1.12. **"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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng; and
- 1.13. **"Vitafoam"** means Vitafoam SA (Pty) Ltd, a company duly registered and incorporated in terms of the laws of the Republic of South Africa, with its registered address at 28 Sixth Street, Wynberg, Johannesburg, which is now a division of KAP Homeware (Pty) Ltd. From 1999 until June 2014, Vitafoam was a division of KAP Raw Materials (Pty) Ltd, which is a wholly owned subsidiary of Steinhoff, which at the time of the Commission's Complaint referral was called GommaGomma (Pty) Ltd.

2. The Complaint and Referral

Handwritten signature and initials in black ink, located at the bottom right of the page.

- 2.1. On 3 September 2007 and 26 May 2008, the Commissioner initiated the Complaint in terms of section 49B(1) of the Act, against the Respondents for allegedly engaging in conduct which contravened sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act.
- 2.2. The Commission duly investigated the Complaint and in September 2008, referred the Complaint to the Tribunal under case number 13/CR/Sep08. The Commission in its Complaint referral alleged that:
- 2.2.1. Loungefoam and Vitafoam agreed to fix the selling price of the foam they produce and the benchmark price they used to negotiate the purchase price of chemicals used in producing foam, in contravention of section ~~4(1)(b)~~(i) of the Act;
 - 2.2.2. Loungefoam and Vitafoam agreed to divide markets by allocating customers during meetings of the Foam Forum in contravention of section 4(1)(b)(ii) of the Act; and
 - 2.2.3. Loungefoam, Vitafoam and Feltex allocated customers through a reciprocal restraint agreement in contravention of section 4(1)(b)(ii) of the Act.
 - 2.2.4. After protracted litigation, the Commission and the Respondents entered into settlement discussions and agreed to settle the matter on the terms set out in this Settlement Agreement. In coming to this Settlement Agreement, the Commission considered the facts set out in clause 3 below, in particular the nature of the control exercised by Steinhoff over Loungefoam and Vitafoam, and decided that settlement on the basis of a contravention of section 13A(3) would be appropriate in these circumstances.

3. Prior Implementation

- 3.1. In October 1997, Steinhoff acquired a 50.1% interest in Loungefoam and its shareholding has fluctuated over time.
- 3.2. Subsequently in April 1999, Steinhoff acquired control of Cornick Group Limited ("Cornick Group") of which Vitafoam was a division of a subsidiary, in a transaction which was notified to the erstwhile Competition Board, in or about May 1999.
- 3.3. Steinhoff acquired sole control over Loungefoam on 1 September 2003.
- 3.4. Steinhoff's understanding was that it acquired control of Loungefoam in October 1997 and of Vitafoam in April 1999, when it acquired Cornick Group in the transaction which was notified to and approved by the erstwhile Competition Board. Accordingly it genuinely and *bona fide* understood itself, Loungefoam and Vitafoam to be firms which had merged (with permission from the competition authorities) prior to the current Act coming into effect.
- 3.5. Steinhoff has exercised control over both Vitafoam and Loungefoam since October 1997 and April 1999 respectively.
- 3.6. Loungefoam ceased trading on 1 July 2009 and accordingly, the co-operation between Loungefoam and Vitafoam which concerned the Commission also ceased then.

4. Admission

- 4.1. The Respondents admit that:

- 4.1.1. the acquisition by Steinhoff of sole control over Loungefoam constituted a notifiable merger as defined in section 11(5) of the Act; and



4.1.2. they failed to give notice of the merger as required by Chapter 3 of the Act and proceeded to implement the merger without the approval of the Commission as required by the Act.

5. Agreement concerning the Respondents' future conduct

- 5.1. The Respondents agree and undertake to notify to the Commission of all future transactions that constitutes a merger as defines defined in section 12(1) of the Act and which meets the thresholds in section 11(5)(b) or (c) of the act. The Respondents furthermore agree and undertake to not implement any such transaction without first obtaining approval from the competition authorities.
- 5.2. The Respondents also agree and undertake to develop, implement and monitor a competition law compliance programme as part of their 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 will include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act.
- 5.3. The Respondents furthermore agree and undertake to submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Settlement Agreement as an order by the Competition Tribunal.

6. Administrative Penalty

- 6.1. Having regard to the provisions of section 59(1)(d), 59(2) and 59(3) of the Act, the Respondents agree that they are jointly and severally liable to pay an administrative penalty for the contravention of section 13A(3) of the Act, the one paying and the others to be absolved.



6.2. The Respondents agree and undertake to pay an administrative penalty in the amount of R1 750 000.00 (one million, seven hundred and fifty thousand rand, only).

6.3. The Respondents will pay the amount set out in paragraph 6.2 above to the Commission within 30 days from the date of confirmation of this Settlement Agreement as an order of the Tribunal.

6.4. The penalty must be paid into the Commission's bank account which is as follows:

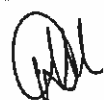
Name: The Competition Commission Fee Account
Bank: Absa Bank, Pretoria
Account Number: 4050778576
Branch Code: 323 345
Reference: Steinhoff/13/CR/Sep08

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

7. Full and Final Settlement

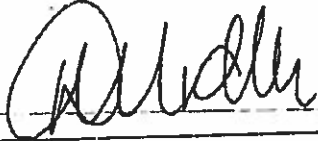
7.1 This Settlement Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement of the Complaint and concludes all proceedings between the Commission and the Respondents relating to the Complaint.

7.2 The applicants in the application to the High Court, Gauteng Division, Pretoria under case number 42898/15 will withdraw their application within 5 (five) business days of the date of confirmation of this Settlement Agreement as an order by the Tribunal and service notice of this on the Commission.



Dated and signed at Stellenbosch on the 4th day of March 2016

On behalf of the Respondents

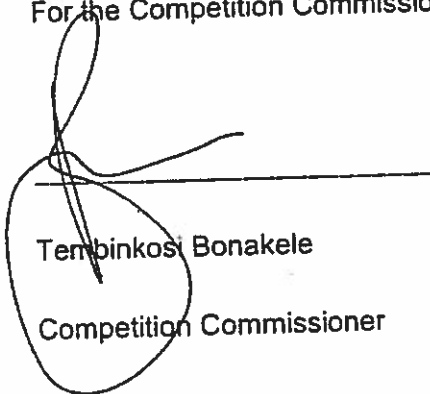


Danie van der Merwe

Director : Steinhoff Africa

Dated and signed at PRETORIA on the 16th day of March 2016

For the Competition Commission



Tembinkosi Bonakele

Competition Commissioner

