



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: FTN114Jul18

In the matter between:

The Competition Commission

Applicant

And

Trade Call Investments Apparel (Pty) Ltd

First Respondent

Seardel Group Trading (Pty) Ltd

Second Respondent

Panel : Y Carrim (Presiding Member)
A Ndoni (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 15 August 2018

Decided on : 15 August 2018

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Trade Call Investments Apparel (Pty) Ltd; Seardel Group Trading (Pty) Ltd annexed hereto marked "A".

**Presiding Member
Ms Yasmin Carrim**

15 August 2018
Date

Concurring: Ms Andiswa Ndoni and Prof. Imraan Valodia

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO. FTN114 JUL 18

CC CASE NO. 2014Feb0043

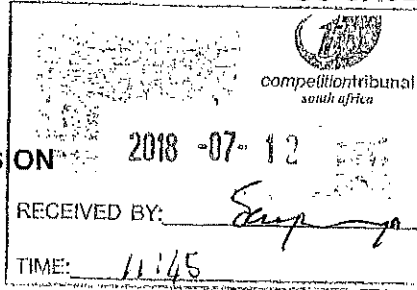
In the matter between:

THE COMPETITION COMMISSION

and

TRADE CALL INVESTMENTS APPAREL (PTY) LTD

SEARDEL GROUP TRADING PROPRIETARY LIMITED



Applicant

1ST Respondent

2ND Respondent

SETTLEMENT AGREEMENT IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 13A(3) OF THE COMPETITION ACT 89 OF 1998 (AS AMENDED).

The Commission and Trade Call Investments Apparel (Pty) Ltd and Seardel Group Trading (Pty) Limited hereby agree that application be made to the Tribunal for the confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 27(1)(d) read with section 49D of the Competition Act 89 of 1998, as amended, on the terms set out below.

1. DEFINITIONS

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

- 1.1 "Acquiring firm" or "TCIA" is a newly incorporated investment company directly controlled by the South African Textile and Clothing Workers Union ("SACTWU") through SACTWU Investment Group Proprietary Limited, which in turn is wholly owned and controlled by the

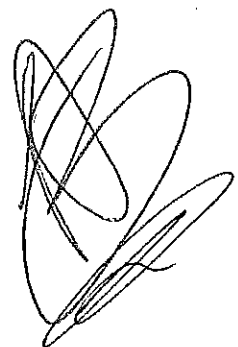
SACTWU Educational Trust.

- 1.2 "**Act**" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 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 Building C, Mulayo Building, the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 1.4 "**Parties**" means the Commission and the Respondents;
- 1.5 "**Respondents**" or "**Merging Parties**" mean Trade Call Investments Apparel Proprietary Limited and Seardel Apparel a division of Seardel Group Trading Proprietary Limited ("**SGT**");
- 1.6 "**Settlement Agreement**" means this agreement duly signed and concluded between the Commission and the Respondents;
- 1.7 "**Target firm**" or "**Seardel Apparel**" means the clothing and manufacturing division of SGT. At the time of the transaction, SGT was a wholly owned subsidiary of Seardel Investment Corporation Limited.
- 1.8 "**Transaction**" means the merger transaction in terms of which TCIA acquired control in terms of section 12(2) of the Act over Seardel Apparel.
- 1.9 "**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 Building C, Mulayo Building, the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa.

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2. BACKGROUND

- 2.1 TCIA was a newly incorporated entity, which was established by SACTWU for the purposes of the proposed transaction. In February 2014, TCIA and Seardel Apparel filed a proposed transaction with the Commission in terms of which TCIA would wholly own Seardel Apparel and thus acquire control over Seardel Apparel in terms of section 12(2)(a) of the Act. The proposed transaction was filed as an intermediate merger under case number 2014Feb0043.
- 2.2 In terms of the Sale of Shares Agreement, SACTWU agreed that it, or its duly-appointed assignee, would acquire Seardel Apparel as a going concern. In terms of clause 18 of the Sale of Business Agreement, SACTWU is entitled to cede and assign all of its rights and obligations to its wholly owned subsidiary (or a company to be incorporated by SACTWU).
- 2.3 Since entering into the Sale of Business Agreement, SACTWU has ceded and assigned all its rights and obligations under the Sale of Business Agreement to TCIA.
- 2.4 The Commission duly investigated the transaction and found that the transaction does not raise significant competition concerns. The proposed merger raised positive public interest issues through preserving domestic clothes manufacturers in light of increasing imports as well as preserving employment in a sector that has been losing jobs at an alarming rate. On 1 April 2014 the Commission approved the proposed transaction without conditions.

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3. COMMISSION'S FINDINGS

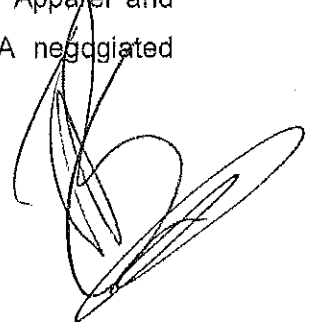
3.1 During the investigation of the transaction, the investigating team undertook a field investigation wherein the team visited the Seardel Apparel factory in Cape Town and spoke to various stakeholders of Seardel Apparel i.e. customers and shop stewards of SACTWU at Seardel Apparel. During a meeting between representatives from the Commission and Seardel Apparel on 25 February 2014, it became apparent to the investigating team, that the merger transaction may have been implemented prior to obtaining approval from the Commission in contravention of section 13A(3) of the Act, which allegation the Commission duly investigated.

3.2 After conducting its investigation, the Commission found that prior to the notification of the transaction and after notification but before obtaining the Commission's approval, TCIA was involved in and may have directed the operations and affairs of Seardel Apparel.

3.3 The Commission concluded that the following factors supported its findings in this regard. Prior to the approval of the transaction:

3.3.1 TCIA had access to the strategic information and interacted with suppliers and customers of Seardel Apparel. The CEO of TCIA interacted with retailers and customers regarding their upcoming order requirements. The CEO of TCIA was provided access to information regarding placement of orders, customer requirements and deliveries, factory lay-out, machine requirements and movement of assets amongst various production facilities at Seardel Apparel, as well as certain documentation pertaining to Seardel Apparel employees;

3.3.2 TCIA was involved in the operations of Seardel Apparel and negotiated with customers. The CEO of TCIA negotiated



certain customer arrangements in order to ensure that the business would be able to continue operating going forward;

3.3.3 TCIA was involved in the employment contracts of Seardel staff;

3.3.4 The CEO of TCIA attended Seardel Apparel meetings;

3.3.5 The name of the Cape Town facility was changed to TCIA;

3.3.6 TCIA was involved in communicating the new name to customers;

3.3.7 TCIA and Seardel Apparel had joint marketing and signage.

3.4 At the time when the acquiring firm took the above steps, Seardel Apparel was experiencing a drastic loss of orders or a significant loss of customers which may have resulted in its closure and the retrenchment of staff.

3.5 Although the Commission noted the circumstances under which the above steps were taken, it found that the conduct nonetheless constitutes a contravention of section 13A(3) of the Act in that the above steps were taken before the approval of the merger by the Commission.

3.6 The parties subsequently entered into a protracted negotiation process which culminated in this settlement agreement. The respondents have agreed to enter into this settlement agreement in the interest of resolving this matter expeditiously.

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4. STATEMENT OF CONDUCT

4.1 The merging parties note that, based on the Commission's version of the steps set out above, certain actions taken may arguably comprise prior implementation of the transaction.

5. AGREEMENT ON FUTURE CONDUCT

5.1 The Respondents agree and undertake to:

5.1.1 refrain from engaging in prior implementation of notifiable mergers in contravention of section 13(A)(3) of the Act; and

5.1.2 to develop, implement and monitor a competition law compliance programme, designed to ensure that all relevant employees are aware of the provisions of the Act and do not contravene them; and

5.1.3 submit a copy of the competition law compliance programme to the Commission within 90 days of the date of confirmation of this Settlement Agreement as an order of the by the Tribunal.

6. SETTLEMENT AMOUNT

6.1 Having regard to the provisions of the of section 49D of the Act, the Respondents agree to pay a settlement amount on the basis of joint and several liability, the one paying, the other being absolved.

6.2 The parties have agreed that the Respondents will pay a settlement in the amount of R1 000 000 (One Million Rand) to the Commission within 90 (ninety) days of the confirmation of this Settlement Agreement by the Tribunal;

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6.3 The payment shall be made into the Commission's bank account, details of which are as follows:

NAME: THE COMPETITION COMMISSION

BANK: ABSA BANK BUSINESS BANK

ACCOUNT NUMBER: 40-8764-1778

BRANCH CODE: 632005

PAYMENT REF: 2014FEB0043

7. FULL AND FINAL SETTLEMENT

This Settlement Agreement, upon confirmation by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and the Respondents relating to any alleged contravention by the Respondents of the Act that is the subject of the Commission's investigation of prior implementation under case No. 2014Feb0043.

Dated and signed at SPRING on this the 29 day of JUNE 2018

For The Merged Entity


Chief Executive Officer

Dated and signed at PRETORIA on this the 10 day of JULY 2018

For the Commission


Competition Commissioner