



COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: LM108SEP19/EXT199FEB21

In the matter between:

PEPSICO, INC. First Applicant

SIMBA PROPRIETARY LIMITED Second Applicant

PIONEER FOOD GROUP PROPRIETARY LIMITED Third Applicant

and

COMPETITION COMMISSION OF SOUTH AFRICA First Respondent

**MINISTER OF TRADE, INDUSTRY AND
COMPETITION** Second Respondent

FOOD AND ALLIED WORKERS UNION Third Respondent

In re the large merger involving:

SIMBA PROPRIETARY LIMITED Primary Acquiring Firm

and

PIONEER FOOD GROUP PROPRIETARY LIMITED Primary Target Firm

Panel: M Mazwai (Presiding Member)
AW Wessels (Tribunal Panel Member)
Y Carrim (Tribunal Panel Member)

Heard on: 19 March 2021

Order Issued on: 19 March 2021

ORDER: VARIATION OF MERGER CONDITIONS

On application by PepsiCo, Inc., Simba Proprietary Limited and Pioneer Food Group Proprietary Limited to vary the conditions imposed by the Tribunal in the

abovementioned large merger, and as abided by the Competition Commission, and unopposed by the Second and Third Respondents, the Tribunal orders the following:

1. The conditions attached to the Tribunal's order issued on 5 March 2020 under case number LM108Sep19 (the "**Conditions**") are varied as follows:

1.1 Line four of clause 2.1.1 of the Conditions is varied by the insertion of the following words after R1.6 billion "*(plus an additional amount of R55 million as compensation for any potential economic prejudice to the Workers of the Merged Firm during the period 23 March 2021 and 22 September 2021)*";

1.2 Line six of clause 2.1.1 of the Conditions is amended by the deletion of "*12 (twelve) months*" and the insertion of "*18 (eighteen) months*",

such that clause 2.1.1 of the Conditions reads as follows:

*"provide for an equity value for the Workers of the Merged Firm (it being agreed that for the purposes of this clause 2 only, the term "Workers of the Merged Firm" shall include such Workers of Pioneer Foods who may be transferred after the Closing Date to a different employer as a result of any of the Disposals) of no less than R1.6 billion (plus an additional amount of R 55 million as compensation for any potential economic prejudice to the Workers of the Merged Firm during the period 23 March 2021 and 22 September 2021) which will be provided in the form of PepsiCo common stock (the "**Equity**"), which will be unencumbered and which will be issued within 18 (eighteen) months from the Closing Date to a South African trust to be established, after consultation with Workers' representatives appointed for that purpose, for the benefit of Workers of the Merged Firm (the "**Workers Trust**");"*

1.3 Lines two and three of clause 2.1.5 of the Conditions are amended by the deletion of "12 (twelve) months" and the insertion of "18 (eighteen) months", such that clause 2.1.5 reads as follows:

"provide for the appointment by the Workers Trust of at least 1 (one) non-executive director to the board of Pioneer Foods on creation of the Workers Trust and in any event within 18 (eighteen) months from the Closing Date;"



Presiding Member
Ms Mondo Mazwai

19 March 2021

Date

Concurring: Mr Andreas Wessels and Ms Yasmin Carrim