



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: LM108SEP19/VAR075SEP21

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 Member)
Y Carrim (Tribunal Member)

Heard on: 04 November 2021

Order Issued on: 04 November 2021

ORDER: VARIATION OF MERGER CONDITIONS

On application by PepsiCo, Inc., Simba Proprietary Limited and Pioneer Food Group Proprietary Limited, and by agreement between the Applicants and Respondents, the Tribunal orders the following:

1. The conditions attached to the Tribunal's order issued on 6 March 2020 under case number LM108Sep19 read together with the Tribunal's order issued on 19 March 2021 under case number LM108Sep19/EXT199Feb21 (the "**Amended Conditions**") are varied as follows:

1.1 line six of paragraph 2.1.1 of the Amended Conditions is amended by the deletion of *"within 18 (eighteen) months from the Closing Date"* and the insertion of *"by no later than 26 November 2021"*; and

1.2 the deletion of *"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)"* and the insertion of *"R1.655 billion"*

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 R1.655 billion which will be provided in the form of PepsiCo common stock (the "**Equity**"), which will be unencumbered and which will be issued by no later than 26 November 2021 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 Amended Conditions are amended by the deletion of "*within 18 (eighteen) months from the Closing Date*", and the insertion of "*by no later than 26 November 2021*", such that clause 2.1.5 reads as follows:

"provide for the appointment by the Workers Trust of at least (one) non-executive director to the board of Pioneer Foods on creation of the Workers Trust and in any event by no later than 26 November 2021."

2. The Merged Firm to pay the costs relating to advisory services provided to the Third Respondent and other union members of the Workers Representative Forum relating to the establishment of the Workers Trust as invoiced on 29 May 2021 and 21 June 2021 by Sigc Proprietary Limited and Novus Life Proprietary Limited respectively, in full and final settlement of all current and future advisory fees incurred by the Third Respondent and other union members of the Workers Representative Forum relating to the establishment and implementation of the Workers Trust; and
3. The Merged Firm to pay the costs of the Third Respondent occasioned by this application in accordance with Rule 58 of the Rules for the Conduct of Proceedings in the Competition Tribunal, it being recorded that such costs are to be paid by the Merged Firm by agreement with the Third Respondent and not on the basis of an adverse cost order or obligation on the Merged Firm to pay such costs.



**Presiding Member
Ms Mondo Mazwai**

04 November 2021

Date

Concurring: Ms Yasmin Carrim and Mr Andreas Wessels