



COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO194Mar25

In the matter between:

The Competition Commission

Applicant

And

Sea Lake Investments (Pty) Ltd

Respondent

Panel: I Valodia (Presiding Member)
A Ndoni (Tribunal Member)
G Budlender (Tribunal Member)

Heard on: 14 April 2025

Decided on: 15 April 2025

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and Sea Lake Investments (Pty) Ltd annexed hereto.

Signed by: Imraan Valodia
Signed at: 2025-04-14 16:54:24 +02:00
Reason: I/We, Imraan Valodia
Imraan Valodia

Presiding Member
Prof. Imraan Valodia

15 April 2025
Date

Concurring: Ms Andiswa Ndoni and Adv. Geoff Budlender SC

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

CT Case No:

CC Case No:2016DEC0006

In the matter between

COMPETITION COMMISSION

APPLICANT

and

SEA LAKE INVESTMENTS (PTY) LTD

RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND SEA LAKE INVESTMENTS PROPRIETARY LIMITED, IN RESPECT OF ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, 1998, AS AMENDED

PREAMBLE

The Competition Commission, Sea Lake and Unity Food Products hereby agree that an application be made to the Competition 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, in respect of alleged contravention of section 4(1)(b)(i) of the Act on the terms set out below.



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. **"Africa Sun Oil"** means Africa sun Oil Refineries (Pty) Ltd, a public company registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 1271 South Coast Road Mobeni, Durban;
- 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 business address at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4. **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5. **"Complaint "** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number: **2016DEC0006**;
- 1.6. **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission, Sea Lake and Unity Food Products in full and final settlement of Commission's complaints under the following case number **2016DEC0006**;
- 1.7. **"Day"** means any calendar day other than a Saturday, a Sunday or an official



public holiday in South Africa;

- 1.8. **"Edible oils"** means frying oil/fats, spreads, baking fats, margarines, and speciality fats and oils;
- 1.9. **"Epic Foods"** means Epic Foods (Pty) Ltd, a private company registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 1 Guy Gibson Avenue, Aeroton, Southdale, Johannesburg;
- 1.10. **"FR Waring"** means FR Waring Holdings (Pty) Ltd, a private company registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 56 Richefond Circle, Ridgeside Office Block, First Floor, Umhlanga Ridge, Durban;
- 1.11. **"Litigation"** means the proceedings instituted by Sea Lake Investments (Pty) Ltd, Unity Food Products (Pty) Ltd and Mahomed Rayhaaz Essack against the Commission in the High Court of South Africa, Gauteng Division, Pretoria under case number 29741/21;
- 1.12. **"Parties"** means the Commission, Sea Lake and Unity Food Products;
- 1.13. **"Sea Lake"** means Sea Lake Investments (Pty) Ltd ("Sea Lake") together with its associate company, Unity Food Products (Pty) Ltd, a private company duly registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 6 Birmingham Road, Willowton, Pietermaritzburg;
- 1.14. **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and Sea Lake;

- 1.15. **"Settlement Amount"** means the amount agreed upon in full and final settlement between the Parties;
- 1.16. **"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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.17. **"Willowton Group"** means DH Brothers Industries (Pty) Ltd t/a Willowton, a private company registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 266 Ohttman Road, Willowton, Pietermaritzburg; and
- 1.18. **"Wilmar"** means Wilmar Continental Edible Oils and Fats (Pty) Ltd, a private company duly registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at Bridle close, Woodmead Park, Corner Van Reenans Avenue and Woodmead Drive, Woodmead, Sandton.

2. THE COMMISSION'S INITIATION AND INVESTIGATION

- 2.1. On 02 December 2016, the Commissioner of the Commission initiated a Complaint against the Willowton Group, Wilmar, FR Waring, Africa Sun Oil, Epic Foods, Sea Lake ("Respondents") for price fixing and/ or fixing of trading conditions in contravention of section 4(1)(b)(i) of the Act. This complaint was investigated under case number **2016DEC0006**.
- 2.2. The Respondents are alleged to have entered into an agreement and / or

engaged in a concerted practice to fix prices in the supply of edible oils, including baking fats and margarine in South Africa. The conduct is alleged to have been in place since as far back as the year 2007.

- 2.3. On 08 December 2016, the Commission conducted a search and seizure operation at the premises of the Respondents save for Sea Lake. Following the search and seizure, both Wilmar and Willowton instituted Urgent Applications on 2 March 2017 to interdict the Commission from opening and examining the evidence secured through the seizure and sought a reconsideration of the search warrant obtained in the Pietermaritzburg High Court. The Pietermaritzburg High Court granted the application and set aside the search warrant. The Commission was then ordered to return all seized documents to the respective Respondents from whom documents had been seized.
- 2.4. As part of the context and history of litigation between the Commission, Wilmar and Willowton, it is noted that following the order of the High Court, the Commission approached the Supreme Court of Appeal and Constitutional Court to set aside the High Court order, but this was not successful.
- 2.5. On 16 March 2021, the Commissioner issued summons against the Respondents. Following the summons, the Willowton Group and Sea Lake filed Review Applications in the Pretoria High Court to review and set aside the Commission's initiation, the Commission's decision to pursue the investigation and summons, as well as interdicting the Commission from pursuing the investigation. Thus far, the Commission has not investigated the matter, which is currently before the Pretoria High Court.

3. SEA LAKE'S POSITION

- 3.1. Sea Lake denies that it has contravened the Act as alleged in paragraph 2.1 and 2.2 above. No findings have been made by the Commission in this regard.

4. NO ADMISSION OF LIABILITY

- 4.1. Sea Lake does not admit that it acted in contravention of section 4(1)(b)(i) of the Act as described in paragraph 2 above. Nonetheless the Parties have agreed to enter into this Settlement Agreement.
- 4.2. There is also ongoing litigation in the High Court which has delayed the investigation and finalization of this matter. The Commission has thus not made any findings in the matter.
- 4.3. Furthermore, on 8 April 2022, the Managing Director of Sea Lake, Mr Mahomed Rayhaaz Essack, passed away after a short illness having been afflicted with cancer.
- 4.4. The Parties have agreed that settlement is a pragmatic resolution to this long-standing dispute. The Parties also acknowledge that:
- 4.4.1. This litigation has been going on for a long time, distracting and costly; and
- 4.4.2. Settlement is in their best interest.

5. SETTLEMENT AMOUNT

- 5.1. Sea Lake agrees to make payment of a settlement in the amount of R750,000.00 (seven hundred and fifty thousand rand). This amount does not



exceed 10% of Sea Lake's annual turnover in its most recent financial year of trading.

- 5.2. Sea Lake will pay the Settlement Amount within 7 days of the Tribunal confirming this Settlement Agreement.
- 5.3. The payment shall be made into the Commission's bank account, details of which are as follows:

Bank name: ABSA Bank

Branch name: Pretoria

Account holder: Competition Commission Fees Account

Account number: 4087641778

Account type: Current Account

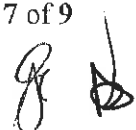
Branch Code: 632005

Reference: 2016DEC0006/SEA LAKE

- 5.4. The Commission shall pay the Settlement Amount over to the National Revenue Fund in accordance with section 59(4) of the Act.

6. AGREEMENT REGARDING FUTURE CONDUCT

- 6.1. Sea Lake agrees and undertakes not to engage in any anti-competitive conduct that may be in contravention of the Act in future;
- 6.2. Sea Lake will develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all employees, management and other functionaries do not engage



in conduct that is in contravention of the Act. In particular, such a compliance programme will include mechanisms for the identification, prevention, detection and monitoring of any contraventions of the Act.

- 6.3. Sea Lake shall submit a copy of the compliance programme to the Commission within 30 (thirty) days of the date of confirmation of the Consent Agreement as an order by the Tribunal.
- 6.4. Sea Lake shall circulate a statement summarising the contents of the Settlement Agreement to all employees, management and functionaries within 30 (thirty) days the date of confirmation of the Consent Agreement as an order by the Tribunal and report to the Commission once this obligation has been complied with.
- 6.5. All reports concerning the conditions set out in this Settlement Agreement, including but not limited to the provision of the compliance programme and proof of the Settlement Amount contemplated in clause 5.1 shall be submitted to the Commission at Cartelsettlements@compcom.co.za

7. FULL AND FINAL SETTLEMENT

- 7.1. This Settlement Agreement is entered into in full and final settlement of the Complaint and upon confirmation as an order of the Tribunal, concludes all proceedings between the Parties in respect of the conduct contemplated under the Commission's investigation under case number: **2016DEC0006**.
- 7.2. The Commission confirms that there are no other matters currently under investigation involving Sea Lake.




7.3. Sea Lake will withdraw the Review Application in the Pretoria High Court with each party bearing its legal costs.

7.4. Sea Lake will serve and file a Notice of Withdrawal of the Litigation to the Commission within five (5) days of the date of confirmation of the Settlement Agreement as an order of the Tribunal.

FOR THE RESPONDENT:

MAHOMED OBAID YUSUF ESSACK



DIRECTOR
Sea Lake

Dated and signed at DURBAN on the 11th day of MARCH 2025

FOR THE COMPETITION COMMISSION OF SOUTH AFRICA

DORIS TSHEPE



Commissioner

Dated and signed at Pretoria on the 18th day of March 2025