



COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO155Jan25

In the matter between:

The Competition Commission

Applicant

And

DH Brothers Industries (Pty) Ltd T/A Willowton

Respondent

Panel:	AW Wessels (Presiding Member)
	T Vilakazi (Tribunal Member)
	G Budlender (Tribunal Member)
Heard on:	17 February 2025
Decided on:	17 February 2025

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and DH Brothers Industries (Pty) Ltd T/A Willowton dated 28 January 2025 as well as the addendum to the consent agreement dated 13 February 2025 annexed hereto.

Presiding Member
Mr Andreas Wessels

17 February 2025
Date

Concurring: Prof. Thando Vilakazi 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

DH BROTHERS INDUSTRIES (PTY) LTD T/A WILLOWTON

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 DH BROTHERS INDUSTRIES PROPRIETARY LIMITED T/A WILLOWTON ("WILLOWTON GROUP"), IN RESPECT OF ALLEGED CONTRAVENTIONS OF SECTION 4(1)(b)(i) AND (ii) OF THE COMPETITION ACT, 1998, AS AMENDED

PREAMBLE

The Competition Commission and the Willowton Group 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 an alleged contravention of section 4(1)(b)(i) and (ii) 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 and the Willowton Group 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"** mean 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. **"Historically Disadvantaged Persons"** means those persons contemplated in terms of section 3(2) of the Act;
- 1.12. **"Parties"** mean the Commission and the Willowton Group;
- 1.13. **"Sea Lake"** means Sea Lake Investments (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 the Willowton Group;
- 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. **"Unity Food Products"** means Unity Food (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 6 Birmingham Road, Willowton, Pietermaritzburg;
- 1.18. **"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 Orttman Road, Willowton, Pietermaritzburg; and
- 1.19. **"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 Competition Commission initiated a complaint against the Willowton Group, Wilmar, FR Waring, Africa Sun Oil, Epic Foods, Sea Lake and Unity Food Products ("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. The initiation in this matter was later amended to include the allegation of market division against Willowton Group and Wilmar under section 4(1)(b)(ii) of the Act.
- 2.2. The Respondents are alleged to have entered into an agreement and / or engaged in a concerted practice to fix prices and divide markets by allocating

specific goods in the supply of edible oils, including baking fats and margarine in South Africa. The conduct is alleged to have been in place as far back as 2007.

- 2.3. On 08 December 2016, the Commission conducted a search and seizure operation at the premises of the Respondents. Following the search and seizure, the Willowton Group instituted an urgent application 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.
- 2.4. As part of the context and history of litigation between the parties 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 filed a review application in the North Gauteng High Court to review and set aside the Commission's initiation, the Commission's decision to pursue the investigation and the 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 North Gauteng High Court.



3. THE WILLOWTON GROUP'S POSITION

- 3.1. The Willowton Group denies that it has contravened the Act as alleged in paragraphs 2.1 and 2.2 above. No findings have been made by the Commission in this regard to date.

4. NO ADMISSION OF LIABILITY

- 4.1. The Willowton Group does not admit that it acted in contravention of section 4(1)(b)(i) and (ii) 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 15 October 2024, Mr. Shoaib Moosa, who was an executive director and Deputy Chief Executive Officer of Willowton Group, tragically passed away. Mr. Moosa was the Head of Retail Sales for the entire Willowton group and oversaw all legal matters for the group.
- 4.4. This being the current circumstances, the parties have agreed that this 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, and is distracting and costly;
- 4.4.2. The current litigation will require extensive management time and given the limited availability of the top management at Willowton, Mr Zubeir Moosa, who is the current Chief Executive Officer, prefers to

focus his time and attention on managing its business;

4.4.3. Mr Zubeir Moosa has now taken on the time-intensive role of focusing on customer management which was previously his late brother's responsibility; and

4.4.4. Reaching a settlement is in the best interest of all parties involved and will enable the Willowton Group and the Commission to resolve long-standing disputed litigation, to put these matters to rest and to move forward constructively.

5. SETTLEMENT AMOUNT

5.1. The Willowton Group agrees to make payment of a settlement in the amount of R1,000,000 (One million rand). This amount does not exceed 10% of the Willowton Group's annual turnover in its most recent financial year.

5.2. The Willowton Group will pay the Settlement Amount over a period of 2 (two) months in two equal instalments of R500 000 (five hundred thousand rand).

5.3. The first instalment shall be paid within 30 (thirty) days from the date of the confirmation of this Settlement Agreement by the Tribunal. The balance of the Settlement Amount shall be paid within 30 days (thirty) from the date of the payment of the first instalment. The balance of the instalment shall be due on the last day of the month on which it becomes payable.

5.4. 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/WILLOWTON

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

6. OTHER COMMITMENTS MADE IN SETTLEMENT OF THIS MATTER

- 6.1. The Willowton Group has also proposed other public interest commitments aggregating to an amount of R100 million (One hundred million rand), over a period of five years which is purely for the promotion of the public interest and that which is consistent with the spirit and public interest objectives of the Act. These public interest commitments are proposed to be dispersed as follows:

Education Trust - Shoaib Moosa Education Trust or Dawood Hassam Moosa Education Trust.

- 6.2. The Willowton Group undertakes that an Education Trust will be set up as the Shoaib Moosa Education Trust or Dawood Hassam Moosa Education Trust. (The late Mr. Shoaib Moosa who passed away on 15 October 2024, lost his teenage son on 30 October 2022). The Education Trust will be set up as a Bursary Fund and the Willowton Group will donate a total amount of R20 million over a 5-year period (that is, R4 million per year for a period of 5 years).
- 6.3. These funds will be available for tertiary education students who are in most need of financial support and who are historically disadvantaged persons from under privileged schools. The recipients of such bursaries shall comprise at a

minimum, 60% female students.

Support to Non-Governmental / Non-Profit Organizations

- 6.4. The Willowton Group undertakes to make a donation of food products and groceries manufactured by it to the value of R30 million over a 5-year period (that is, R6 million per year for 5 years).
- 6.5. The objective of this commitment is to address hunger and poverty in the most underprivileged communities, and therefore, Willowton's food and grocery donations will be to registered Non-Governmental / Non-Profit Organizations that cater for historically disadvantaged persons.

Procurement From Black Economic Empowerment Service Providers

- 6.6. The Willowton Group also undertakes to procure products and/or services, including logistics services, from Level 1 B-BBEE-owned companies to the value of R50 million over a 5-year period (that is, R10 million per year for 5 years).

7. AGREEMENT REGARDING FUTURE CONDUCT

- 7.1. The Willowton Group agrees and undertakes to refrain from engaging in any anti-competitive conduct that may be in contravention of the Act in future;
- 7.2. The Willowton Group 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.

7.3. The Willowton Group shall submit a copy of the compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Settlement Agreement as an order by the Tribunal.

7.4. The Willowton Group shall circulate a statement summarising the contents of the Settlement Agreement to all employees, management and functionaries within 60 (sixty) days of the date of confirmation of the Settlement Agreement as an order by the Tribunal and inform the Commission once this obligation has been complied with.

8. COMPLIANCE WITH THE SETTLEMENT ORDER

8.1. The Willowton Group undertakes to:

Bursary Fund

8.1.1. Within 90 (ninety) days of confirmation of this agreement as an order of the Tribunal, advertise in national newspaper and/or electronic media as well as social media platforms the details of the Bursary Fund inviting applicants to submit applications. The notice for the submission of applications shall be a period of no less than 60 (sixty) days;

8.1.2. Provide the Commission on an annual basis with a report detailing:

8.1.2.1. the selection criteria for qualification of candidates that will benefit under the fund;

8.1.2.2. utilization of the bursary funds; and

8.1.2.3. the bursaries awarded including the names of the students, the school details, and the program and place of study.

- 8.1.3. Within 30 days of confirmation of this agreement as an order of the Tribunal submit for approval by the Commission the selection criteria for qualification of candidates that will benefit under the fund.

Support to Non-Governmental / Non-Profit Organizations

- 8.1.4. Within 90 (ninety) days of confirmation of this agreement as an order of the Tribunal, advertise in national newspaper and/or electronic media as well as social media platforms calling upon qualifying Non-Governmental / Non-Profit Organizations to submit applications for donation. The advertisement must contain the full details of the type of support contemplated and as stipulated in this agreement.
- 8.1.5. Within a period of 60 (sixty) days from the date of confirmation of the consent agreement submit a list of these qualifying Non-Governmental / Non-Profit organizations to the Commission for approval.
- 8.1.6. Provide the Commission on an annual basis with a report detailing donations of food products and groceries made in compliance with clause 6.4 of this agreement.

Procurement From Black Economic Empowerment Service Providers

- 8.1.7. Identify and select for each and every year such Level 1 B-BBEE-owned companies from which it intends to procure and values of the intended products and/or services.
- 8.1.8. Provide the Commission with a list of selected Level 1 B-BBEE firms within 90 (ninety) days of confirmation of this agreement as an order

of the Tribunal and thereafter at the beginning of every financial year for the period of 5 years.

8.1.9. Provide the Commission on an annual basis with a report of Level 1 B-BEE-owned companies selected by the Willowton Group and the products or services and the value of products or services procured from these companies.

8.2. The annual report contemplated in paragraphs 8.1.2., 8.1.4. and 8.1.6. shall be submitted to the Commission within three months of the anniversary of the Tribunal's approval of the Settlement Agreement for a period of five years.

8.3. The Willowton Group agrees to provide the Commission, upon request, with such other information as the Commission may reasonably require in relation to the above commitments.

8.4. The Commission shall have the right to request any information that it determines as being necessary from the Willowton Group in relation to any aspect of the commitments made.

8.5. All reports and communication concerning the commitments set out in this Settlement Agreement, including but not limited to the provision of the compliance programme, proof of the Settlement Amount contemplated in clause 5.1 and the annual report shall be submitted to the Commission at Cartelsettlements@compcom.co.za.

9. FULL AND FINAL SETTLEMENT

9.1. 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 Commission and the Willowton Group in respect of the conduct contemplated under the Commission's investigation under case number: **2016DEC0006**.

9.2. The Commission confirms that there are no other matters currently under investigation involving the Willowton Group.

9.3. Willowton Group will withdraw its review application in the North Gauteng High Court with each party bearing its own legal costs.

FOR THE RESPONDENT:

Duly authorised signatory



**MAHOMED ZUBEIR MOOSA
CHIEF EXECUTIVE OFFICER
DH BROTHERS INDUSTRIES (PTY) LTD T/A WILLOWTON**

Dated and signed at Pietermaritzburg on the 20th day of January 2025

FOR THE COMPETITION COMMISSION OF SOUTH AFRICA



**DORIS TSHEPE
COMPETITION COMMISSIONER**

Dated and signed at Pretoria on the 28th day of January 2025

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

CT Case No: CO155Jan25

CC Case No: 2016DEC0006

In the matter between

COMPETITION COMMISSION

Applicant

and

DH BROTHERS INDUSTRIES (PTY) LTD T/A WILLOWTON

Respondent

**ADDENDUM TO THE CONSENT AGREEMENT CONCLUDED BETWEEN THE
COMPETITION COMMISSION AND DH BROTHERS INDUSTRIES (PTY) LTD T/A
WILLOWTON IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i) and (ii)
OF THE COMPETITION ACT, 1998.**

It is hereby recorded, by agreement between the parties, that the Consent Agreement concluded between the Competition Commission and DH Brothers Industries (Pty) Ltd t/a Willowton, considered for confirmation by the Competition Tribunal on 28 January 2025, be supplemented and amended as recorded below:



1. INSERTING PARAGRAPH 6.5A TO READ AS FOLLOWS

6.6 The Commission should be informed of and approve the Non-governmental organisations that will be responsible for the administration of the commitments contained in respectively (i) clauses 6.1 to 6.3 and (ii) clauses 6.4 and 6.5 of the consent agreement.

2. AMENDING PARAGRAPHS 8.1.4 AND 8.1.5 TO READ AS FOLLOWS

8.1.4 Within 30 (thirty) days of confirmation of this agreement as an order of the Tribunal, advertise in national newspapers and/or electronic media as well as social media platforms calling upon qualifying Non-Governmental / Non-Profit Organizations to submit applications for donations. The advertisement must contain full details of the type of support contemplated and as stipulated in this agreement.

8.1.5 Within a period of 90 (ninety) days from the date of confirmation of the consent agreement submit a list of these qualifying Non-Governmental / Non-Profit organizations to the Commission for approval.

3. This addendum shall be deemed to be incorporated into and form part of the Consent Agreement, and unless otherwise stated, the words and phrases used in this addendum shall bear the meaning ascribed to them in the Consent Agreement.

Handwritten signature and initials in black ink.

FOR WILLOWTON:

Duly authorised signatory



MAHOMED ZUBEIR MOOSA

Chief Executive Officer

DH Brothers Industries (Pty) Ltd t/a Willowton

Dated and signed at Pietermaritzburg on the 18th day of February 2025

FOR THE COMPETITION COMMISSION OF SOUTH AFRICA



DORIS TSHEPE

Commissioner of the Competition Commission

Dated and signed at Pretoria on the 13th day of February 2025