



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: LM108SEP19/VAR048Jun24

In the matter between:

PEPSICO, INC. First Applicant

**PEPSICO SOUTH AFRICA PROPRIETARY LIMITED
(PREVIOUSLY 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

THE TRUSTEES FOR THE TIME BEING OF THE Fourth Respondent

PEPSICO SOUTH AFRICA WORKERS TRUST Fifth Respondent

THE TRUSTEES FOR THE TIME BEING OF THE

KGODISO TRUST

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)
A Wessels (Tribunal Member)
T Vilakazi (Tribunal Member)

Heard on: 6 September 2024

Last submission received on: 14 October 2024

Order Issued on: 16 October 2024

ORDER

On application by PepsiCo, Inc., PepsiCo South Africa Proprietary Limited (previously Simba Proprietary Limited) and Pioneer Food Group Proprietary Limited, 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 and its order issued on 4 November 2021 under case number LM108Sep19/Var075Sep21 (the "**Amended Conditions**") are varied as follows:

- 1.1 line one of clause 2.1.4 of the Conditions is amended by the deletion of the words *"during the reorganisation period"* such that clause 2.1.4 of the Conditions reads as follows:

"provide for the distribution of 50% of all dividends received by the Workers Trust to the Workers and retention in the Workers Trust of the remaining 50% of the dividends received (which may be reinvested in PepsiCo common stock in the discretion of the trustees of the Workers Trust);"

- 1.2 lines two and three of clause 2.1.6 of the Conditions are amended by the deletion of the words *"for the remainder of the reorganisation period"*, such that clause 2.1.6 of the Conditions reads as follows:

"provide for the entitlement of the Workers Trust to exercise the equivalent of 12.9% voting rights in Pioneer Foods upon issue of the Equity;"

- 1.3 subject to obtaining approval from the South African Reserve Bank ("**SARB**") for the retention of the Equity in PepsiCo, Inc., the deletion of clauses 2.1.3; and 2.1.7 to 2.1.9, in their entirety.

- 1.4 For the avoidance of doubt, in the event that the SARB does not approve the retention by the Workers Trust of the Equity in PepsiCo, Inc., the relevant clauses of the Conditions pertaining to the Workers Trust shall not be amended and all the provisions of Clause 2 of the Conditions shall be implemented as provided for in the Conditions, save for the fact that clause 2.1.3 is amended to read as follows:

*"provide for the retention of the Equity in the Workers Trust for a period of no more than 5 (five) years from the Closing Date or such extended period as may be granted by the SARB (the "**reorganisation period**")",*

- 1.5 the definition of "*Disposals*" in clause 1.10 is amended as follows:

"Disposals" means the transfer of all businesses of Pioneer Foods which will include (i) [REDACTED] (ii) [REDACTED] and (iii) [REDACTED] [REDACTED] as well as any other disposals, discontinuations, and non-merger related restructurings, within Pioneer Foods and/or Simba for operational requirements that will take place after the Closing Date;"

- 1.6 by the deletion of the current wording of clause 3.4 and its substitution with the following:

"The aggregate number of Employees to which this commitment applies shall be reduced in line with any Disposals as may occur post the Closing Date (whether in terms of section 197 of the Labour Relations Act or otherwise), provided that, for the period that this Condition applies, any such Disposals shall not result in the aggregate number of Employees employed at the Merged Firm in South Africa decreasing below [REDACTED]

- 1.7 by the deletion of the following wording of clause 3.5:

"throughout the supply chain associated with the Merged Firm in South Africa, including, without limitation, as outcomes from the development fund set out in clause 8 below;" and

"that no less than 500 direct employment opportunities within the Merged Firm and 2,500 indirect employment opportunities in suppliers to the Merged Firm will be created within 5 (five) years of the Closing Date"

and its substitution with the following wording, such that clause 3.5 reads as follows:

"PepsiCo underlines its commitment to grow the operations of the Merged Firm and to create employment opportunities. In this regard, PepsiCo undertakes that no less than 150 direct employment opportunities within the Merged Firm will be created between the period 1 April 2025 and 31 March 2027 (unless material and/or substantial changes to the macroeconomic conditions occur that prevent the planned growth strategy of the Merged Firm). In that event, the Merged Firm shall propose and motivate to the Commission and the Minister in writing reduced numbers of direct employment opportunities;"

1.8 line one of clause 5.3.2 is amended by the deletion of the words *"R5.5 billion over a 5-year"* and the insertion of the words *"R6.5 billion over a 7-year"*.

1.9 line two of clause 5.3.2 is amended by the insertion of the words *"inclusive of the Merged Firm's digitisation and energy generation investments "* at the end of the sentence between the words *"Pioneer Foods;"* and *"and"*; such that clause 5.3.2 reads as follows:

"make a cumulative investment of R6.5 billion over a 7-year time frame from the Closing Date in the development of the overall operations of Pioneer

Foods, inclusive of the Merged Firm's digitisation and energy generation investments; and"

- 1.10 line one of clause 8.1 by the deletion of the words *"Over the 5-year period post the Planning Phase,"* such that clause 8.1 reads as follows:

"The Merged Firm shall make available an aggregate amount of R 600 million as a development fund for investment in programmes in South Africa with respect to education, SMMEs, enterprise and agricultural development."

- 1.11 line one of clause 8.2.1.1 by the insertion of the words *"Over a 7-year period post the Planning Phase,"* such that clause 8.2.1.1 reads as follows:

"Over a 7-year period post the Planning Phase, the Merged Firm shall invest R 300 million in developing the capacity of Emerging Farmers and expanding Emerging Farmer participation in the supply chain of the Merged Firm"

- 1.12 line one of clause 8.2.2 by the insertion of the words *"Over a 5-year period post the Planning Phase,"* such that clause 8.2.2 reads as follows:

"Over a 5-year period post the Planning Phase, the Merged Firm shall invest R 200 million in education which shall include:"

- 1.13 line one of clause 8.2.3.1 by the insertion of the words *"Over a 7-year period post the Planning Phase"* such that clause 8.2.3.1 reads as follows:

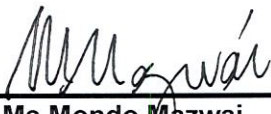
"Over a 7-year period post the Planning Phase, the Merged Firm shall make available an amount of R 100 million to be invested in South African entrepreneurs as part of an incubator fund"

1.14 line one and two of clause 8.3 are amended by the deletion of the words *"The amounts in the Fund shall be made available to be disbursed in equal annual portions over the 5-year period, and"*, such that clause 8.3 will read as follows:

"The administration and management of the Fund shall vest with the Merged Firm. The Merged Firm shall design and implement projects and identify beneficiaries in line with the objectives of the Fund and consistent with principles of longer-term sustainability."

1.15 clause 9.10 is amended by the deletion of the words *"the 5th anniversary (and 6th anniversary as it relates to the Fund Conditions, and the 7th anniversary as it relates to the provisions of clause 2 of the Conditions of the Closing Date"* and the insertion of the words *"until all of the Conditions have been complied with"*, such that clause 9.10 will read as follows:

"Within 45 (forty-five) Days of each anniversary of the Approval Date up until all of the Conditions have been complied with, the Merged Firm shall provide a suitable and appropriately detailed annual report regarding the Merged Firm's compliance with the Conditions"



Ms Mondo Mazwai

Mr Andreas Wessels and Prof. Thando Vilakazi concurring

16 October 2024

Date