

MEMORANDUM OF AGREEMENT

Entered into between the

COMPETITION COMMISSION

(Hereinafter referred to as "the Commission")

a juristic person established in terms of the provisions of section 19 of the Competition Act, 1998 (Act No. 89 of 1998), as amended, herein duly represented by Mr S Ramburuth, In his capacity as the Commissioner of the Competition Commission

and the

NATIONAL CONSUMER COMMISSION

(Herein referred to as "the NCC")

An organization established in terms of the provisions of Section 85 of the Consumer Protection Act 68, of 2008, herein duly represented by Ms M Mohlala In her capacity as Commissioner of the National Consumer Commission

WHEREAS

The National Consumer Commission is responsible to exercise powers and perform functions in terms of the Consumer Protection Act 68, of 2008 ("the Consumer Protection Act") in order to, inter alia, promote and advance the social and economic welfare of consumers in South Africa.

WHEREAS

The Competition Commission, in terms of section 21 of the Competition Act No, 89 of 1998 ("the Competition Act") is responsible for, inter alia, investigating and evaluating alleged contraventions of Chapter 2, granting or refusing applications for exemptions in terms of Chapter 2, and to authorise, with or without conditions, prohibit or refer mergers of which it receives notice in terms of Chapter 3.



WHEREAS

The NCC may in terms of the provisions of section 97 of the Consumer Protection Act negotiate agreements with any regulatory authority on the co-ordination and harmonization of the exercise of jurisdiction over consumer matters to ensure the consistent application of the principles of the Consumer Protection Act.

WHEREAS

The Commission, in terms of the provisions of section 21 read with sections 3(3) (b) and 82 (1) and 82 (3) of the Competition Act, has a responsibility to negotiate agreements with any regulatory authority to ensure the consistent application of the principles of the Competition Act.

AND WHEREAS

The Commission and the NCC intend to establish and maintain a co-operative relationship for the provision of mutual assistance and advice in order to ensure the consistent application of the relevant legislation

The parties agree that the content of this Agreement shall, on an ongoing basis, be reviewed to accommodate relevant developments.

THEREFORE, the parties agree to regulate their relationship in accordance with the terms of this Agreement as set out hereunder.

1. BASIS OF THIS AGREEMENT

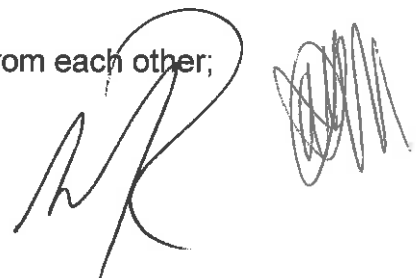
1.1 The primary object of this agreement is the:

1.1.1 participation of the parties in each other's proceedings;

1.1.2 the referral of complaints by the parties to each other;

1.1.3 providing for the exchange of information and the protection of confidential information

1.1.4 provision and/or receipt of advice to and from each other;

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1.1.5 promoting co-operation between the parties in general, including in respect of the setting of standards or conditions that affect matters of common interest, any joint investigations, market inquiries and/or research studies that the parties may agree to undertake.

1.2 This Agreement is entered into on the basis of mutual respect, in a spirit of goodwill and does not affect the independence of the two regulatory bodies hereto.

2. PARTICIPATION IN EACH OTHERS PROCEEDINGS

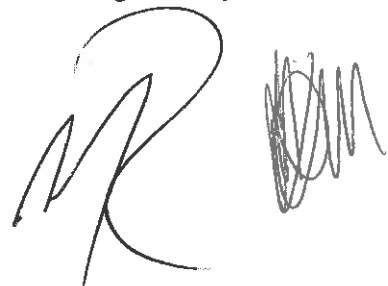
2.1 Where a merger transaction requires the approval of the Commission, which transaction has a negative impact on consumers, the Commission may prior to arriving at a decision, consult the NCC so as to ensure the consistent application of consumer protection principles to the transaction in question.

2.2 Where the NCC recommends industry codes in line with the provisions of section 82 of the Consumer Protection Act, the NCC shall, prior to it making a recommendation to the Minister of Trade and Industry, consult the Commission so as to ensure the consistent application of competition principles in respect of the industry codes in question.

2.3 In either of the circumstances set out in 2.1 or 2.2 above, or in any other circumstances as may be agreed upon amongst the parties in future, the Commission and the NCC may participate in each other's proceedings and may advise or receive advice from each other.

2.4 The Commission and the NCC may, upon request from each other, participate in each other's proceedings in their advisory capacity.

2.5 When the Commission and the NCC consult each other as contemplated above, they shall do so at no cost to each other unless otherwise agreed upon.

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- 2.6 In either of the circumstances contemplated in 2.1, 2.2 and 2.4 above, the Commission and the NCC shall act as expeditiously as circumstances permit and shall each encourage the other party to achieve a timely response.
- 2.7 In the event that a party participates in the proceedings of the other party, the decision by the party exercising jurisdiction over the complaint to consult the other regulator shall be discretionary and voluntary, and the regulator exercising jurisdiction shall, with or without consultation, make its independent decision.

3. COMPLAINTS

3.1 Where a complaint is lodged about a practice in respect of which the parties have concurrent jurisdiction, the following process shall be followed -

3.1.1 The party that receives the complaint ("the recipient regulator") shall ensure that the said complaint is made available to the other party within seven (7) days after a formal decision to investigate the complaint has been taken;

3.1.2 Where the recipient regulator deems it appropriate, the recipient regulator may inform the complainant(s) that the matter will be discussed jointly by the Commission and the NCC in terms of this Agreement;

3.1.3 The parties shall consult with each other in order to establish how the complaint may be managed and/or resolved;

3.1.4 In evaluating how the complaint may be managed, the parties must have regard to the principle that –

3.1.4.1 The Commission is has primary authority to detect and investigate alleged prohibited practices in order to give effect to the Competition Act;



3.1.4.2 the NCC has primary authority to exercise powers and perform functions assigned to it in terms of the Consumer Protection Act in order to give effect to its relevant legislation.

3.1.5 In the event that the complaint is dealt with by the Commission, persons from the NCC may participate in the investigation;

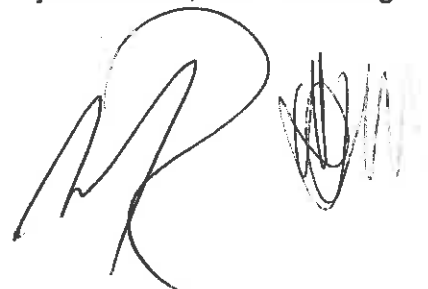
3.1.6 In the event that the complaint is dealt with by the NCC, persons from the Commission may participate in the investigation.

3.1.7 If it is decided in the consultation process contemplated above that the NCC will deal with the complaint, the Commission shall issue a notice of non-referral in terms of section 50(2)(b) of the Competition Act and in instances where the complaint was lodged with the Commission, the complainant(s) shall not be precluded from pursuing the matter with the Competition Tribunal.

3.1.8 If it is decided in the consultation process contemplated above that the Commission will deal with the complaint, the NCC shall issue a notice of non-referral in terms of section 72(1) (c) of the Consumer Protection Act and in instances where the NCC received the initial complaint, the complainant(s) shall not be precluded from pursuing the matter with the National Consumer Tribunal.

3.2 Nothing in the procedures contemplated in paragraph 3.1 shall detract from the jurisdiction of the Commission or the NCC to receive and deal with complaints in terms of their enabling statute, or preclude the public from lodging complaints with both the Commission and the NCC.

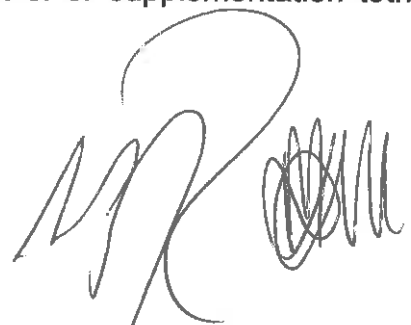
3.3 Where a complaint relates to a matter where either the Commission or the NCC has jurisdiction, but there is no concurrent jurisdiction, the following shall apply:

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- 3.3.1 The complaint must be lodged with the party that has jurisdiction;
- 3.3.2 If upon receiving a complaint, the party is of the view that it does not have jurisdiction over the matter, the regulator with whom the complaint is lodged shall advise the complainant(s) accordingly and recommend that the complainant(s) refer the complaint to the relevant party;
- 3.3.3 If the NCC is the party that has jurisdiction, it shall, if it is legally competent under its legislation to take into account considerations of competition, be entitled to liaise and consult with the Commission so as to ensure the consistent application of competition principles to the complaint in question;
- 3.3.4 The Commission shall be entitled to, when it is the party with jurisdiction, consult with the NCC on the regulatory aspects subject to the jurisdiction of the NCC in order to obtain the input of the NCC on regulatory issues pertaining to the complaint.

4. ESTABLISHMENT OF JOINT WORKING COMMITTEE

- 4.1 A Joint Working Committee ("the Committee") constituted by representatives of the Commission and the NCC as nominated by the parties respectively, shall be established pursuant to this Agreement and shall function on an on-going basis.
- 4.2 Functions of the Committee shall include:
- 4.2.1 the management and facilitation of cooperation and consultation in respect of matters dealt with by each party in terms of this Agreement;
- 4.2.2 the proposal of, when necessary, any amendment of or supplementation to this Agreement;

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4.2.3 providing advice to management of the Commission and the NCC on issues affecting competition and consumer protection in South Africa as the case may be, and the making of recommendations on how to deal with same. Such advice shall pertain to, but is not limited to, the following:

- 4.2.3.1 types of conduct or transactions affected by both the Competition Act and the Consumer Protection Act in respect of which jurisdiction is to be exercised by the two regulators;
- 4.2.3.2 policy considerations and the development of standards, where necessary, in relation to matters that are subject to an overlap of jurisdiction;
- 4.2.3.4 international approach to issues of jurisdictional overlap between a competition and consumer protection authority;
- 4.2.3.5 amendments to the relevant or applicable statutes that may be necessary from time to time;
- 4.2.3.6 policy considerations
- 4.2.3.7 any other related matter

5. EXCHANGE OF INFORMATION

5.1. Subject to paragraph 6 below, the parties shall endeavour to exchange information necessary to give effect to this Agreement.

5.2. To facilitate an appropriate and timely response, any request for information made under this Agreement shall be made in writing and shall contain the following elements:

5.2.1 the purpose for which the information is sought;

5.2.2 details of the request comprising information on the person or entity that is the subject of the request, a description of the facts underlying the request, specific questions to which a response is required and whether or not the request itself is confidential or sensitive ;



- 5.2.3 a statement on whether, to whom and for what reasons Confidential Information is likely to be passed on.
- 5.3. All requests will be considered seriously and shall be replied to without undue delay.
- 5.4. The party from whom information is requested will assess each request on a case-by-case basis. In deciding whether and to what extent to fulfil a request, the party may take into account whether compliance with the request would be so burdensome as to disrupt the proper performance of the party's functions.
- 5.5. Where a request for information cannot be fulfilled in its entirety the request will be fulfilled to the extent possible.
- 5.6. For urgent cases in which a written request is not appropriate, a request can be presented orally subject to written confirmation within 10 business days.
- 5.7. Parties must keep records of information exchanged at all times.
- 5.8. If the costs of fulfilling a request are likely to be substantial, the party from whom the information is requested may, as a condition of agreeing to provide assistance under this Agreement, require the requesting party to make a contribution to costs

6. TREATMENT OF CONFIDENTIAL INFORMATION

- 6.1. Any confidential information shared pursuant to this Agreement shall be used only for lawful purposes.
- 6.2. Parties shall share confidential information subject to their statutory confidentiality requirements.
- 6.3. The party providing confidential information pursuant to this Agreement shall clearly indicate what information is confidential to the requesting party.
- 6.4. The party requesting confidential information shall be required to submit a written confidentiality undertaking in respect of the confidential information provided by the other party



7. SHARING OF RESOURCES

The Commission and the NCC may, under certain circumstances, share each other's available resources in order to bring the provisions of this Agreement into full effect; provided such a process is reasonable, shall not compromise the respective independence of the two institutions and does not contravene any statute with which the parties must comply.

8. DISPUTE RESOLUTION

Should any dispute or difference arise between the Parties with regard to interpretation and/or implementation of any one or more of the provisions of this Agreement, such dispute or difference must be resolved in a manner other than through judicial proceedings.

9. VARIATION OF THE AGREEMENT

Any variation of this Agreement shall have no legal effect and shall not be binding on the parties unless reduced to writing and signed by persons authorized to act on behalf of both the parties.

10. EFFECTIVE DATE OF THE AGREEMENT

This Agreement shall come into force on the date on which it is signed by persons authorized to act on behalf of both the parties.

11. DURATION OF THE AGREEMENT

This Agreement shall remain in force until it is changed or repealed by both parties hereto, acting jointly.

12. DOMICILIM CITANDI ET EXECUTANDI

The parties choose the following addresses as their respective domicilium citandi et executandi for purposes of this Agreement:

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THE COMPETITION COMMISSION
DEPARTMENT OF TRADE AND INDUSTRY CAMPUS
BUILDING C
77 MEINTJIES STREET
SUNNYSIDE
PRETORIA
CONTACT PERSON: MR OUPA BODIBE

THE NATIONAL CONSUMER COMMISSION
DEPARTMENT OF TRADE AND INDUSTRY CAMPUS
BUILDING E
77 MEINTJIES STREET
SUNNYSIDE
PRETORIA
CONTACT PERSON: NARAIN KULJEETH

THE NCC

77 Meintjies Str

Sunnyside

Pretoria

SOUTH AFRICA.

COMPETITION COMMISSION

77 Meintjies Str

Sunnyside

Pretoria

SOUTH AFRICA

Any notice delivered by hand, sent by fax or e-mail will be acknowledged as received on day of dispatch provided receipt is made no later than 17.00 hours on and normal business day (excluding Saturday, Sunday and Public Holidays).

THUS SIGNED AT..... ON THIS THE DAY OF 2011

In presence of the undersigned witnesses.






for the NATIONAL CONSUMER COMMISSON

(Duly authorized hereto)

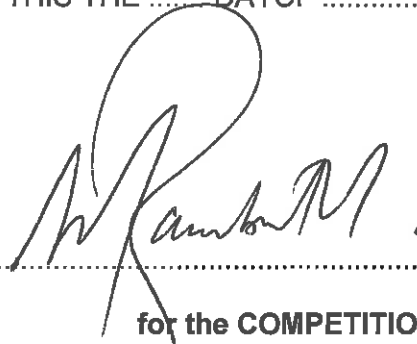
AS WITNESSES:

1. 

2. 

THUS SIGNED AT PRETORIA ON THIS THE 12th DAY OF JULY 2011


In presence of the undersigned witnesses.



for the COMPETITION COMMISSION

(Duly authorized hereto)

AS WITNESSES:

1. 

2. 

13. PUBLICATION

This Agreement shall be published in the Gazette for public information as soon as it has been signed.