

SOUTH AFRICA / JUDGMENT

Nu Africa Duty Free Shops (Pty) Ltd v Distell Limited and related matters (CRP064Jun19) [2020] ZACT 77 (26 October 2020)

[2020] ZACT 77

COURT

Competition Tribunal

BEFORE

Yasmin Carrim, Enver Daniels, Andiswa Ndoni

CASE / FILE NUMBER

CRP064Jun19

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COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No.: CRP064Jun19

Nu Africa Duty Free Shops (Pty) Ltd

Applicant

And

Distell Limited

Respondent

In re: the Application to Compel between: CRP064Jun19/DSC128Sep20

Nu Africa Duty Free Shops (Pty) Ltd

Applicant

Distell Limited

Respondent

In re: the Application to Compel between: CRP064Jun19/DSC129Sep20

Distell Limited

Applicant

Nu Africa Duty Free Shops (Pty) Ltd

Respondent

Panel : Yasmin Carrim (Presiding Member)

Enver Daniels (Tribunal Member) Andiswa Ndoni (Tribunal Member)

Heard on : 21 October 2020

Decided on : 26 October 2020

ORDER

This order relates to both applications to compel brought by Nu Africa Duty Free Shops in CRP064Jun19/DSC128Sep20 (“Nu Africa”) and Distell Limited in CRP064Jun19/DSC129Sep20 (“Distell”). After having heard the parties in the above matter the Competition Tribunal orders the following:

A. Application to Compel

1. Nu Africa’s application to compel further and better discovery in respect of items 1.1.1-1.1.5, 1.2-1.6 and 1.6.1-1.6.2 listed on its schedule filed on 21 October 2020 is hereby dismissed.
2. Nu Africa must provide Distell with the following documents which it offered up during the hearing held on 21 October 2020:
 - a. The audited annual financial statements of the Applicant for each of its financial years up to and including 2018 by no later than 23 October 2020
 - b. The report prepared by Mr Gideon Jacobus Joubert, referenced in paragraph 12.4 of the Nu Africa’s amended founding affidavit by no later than 23 October 2020
 - c. An Excel spreadsheet of the products purchased by Nu Africa from all suppliers of alcohol broken down by year and split into spirit categories by volume for the period 01 January 2015 to 31 December 2018 by no later than 04 November 2020.
 - d. An Excel spreadsheet of Nu Africa’s sales split between (i) duty free customers in South Africa and (ii) export customers broken down by year into spirit categories by volume for the period 01 January 2015 to 31 December 2018 by no later than 04 November 2020.
 - e. Ms Truen’s report to Distell by no later than 04 November 2020.
3. Distell must furnish written confidentiality undertakings to Nu Africa if it has not done so yet.
4. Distell’s application in respect of any other documents (not offered up in para 2 above) and listed on its schedule of 21 October 2020 is hereby dismissed.
5. Costs shall be in the cause.

B. Further Conduct of Proceedings Direction

6. When filing their written factual witness statements and expert witness statements, Nu Africa and Distell must comply with the timetable dated 15 September 2020

7. Nu Africa and Distell must make provision for the filing of Rebuttal Witness Statements (if any) by Nu Africa in the timetable.
8. The parties must propose hearing dates for the main matter by no later than close of business Monday, 26 October 2020.

Date: 26 October 2020

Presiding Member

Ms Yasmin Carrim

Concurring: Mr Enver Daniels and Ms Andiswa Ndoni

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