

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 10/CR/Mar10
016030

In the matter between:

The Competition Commission

Applicant

and

Foodcorp (Pty) Ltd

Respondent

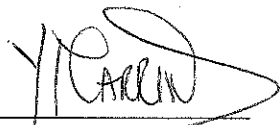
Panel : Y Carrim (Presiding Member), M Mokuena (Tribunal Member) and T Madima (Tribunal Member)

Heard on : 12 December 2012

Decided on : 13 December 2012

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent annexed thereto marked "A" including the letter annexed thereto marked "B".



Presiding Member
Y Carrim

Concurring: M Mokuena and T Madima



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CC CASE NO: 2007MAR2844
CT CASE NO: 10/CR/MAR10 &
15/CR/MAR10

In the matter between:

COMPETITION COMMISSION

and

FOODCORP (PTY) LTD

In re:

COMPETITION COMMISSION

And

PIONEER FOODS (PTY) LTD
FOODCORP (PTY) LTD
GODRICH MILLING (PTY) LTD
PREMIER FOODS (PTY) LTD
TIGER BRANDS LIMITED

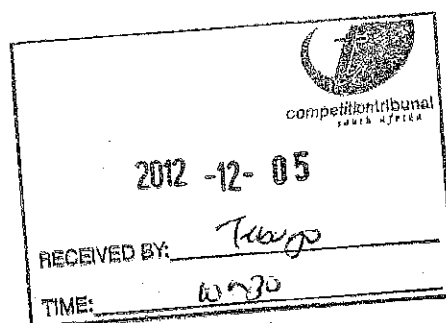
And

In re:

COMPETITION COMMISSION

And

PIONEER FOODS (PTY) LTD
FOODCORP (PTY) LTD
GODRICH MILLING (PTY) LTD
PROGRESS MILLING (PTY) LTD
PRIDE MILLING (PTY) LTD
WESTRA MILLING (PTY) LTD
BRENNER MILLS (PTY) LTD
BLINKWATER MILLS (PTY) LTD



Applicant

Respondent

Applicant

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent

Applicant

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent

TWK MILLING (PTY) LTD
NTK MILLING (PTY) LTD
CAROLINA MILLS (PTY) LTD
ISIZWE MILLS (PTY) LTD
BOTHAVILLE MILLING (PTY) LTD t/a THUSO MILLS
PARAMOUNT MILLS (PTY) LTD
KEYSTONE MILLING (PTY) LTD
PREMIER FOODS (PTY) LTD
TIGER BRANDS LIMITED

Ninth Respondent
Tenth Respondent
Eleventh Respondent
Twelfth Respondent
Thirteenth Respondent
Fourteenth Respondent
Fifteenth Respondent
Sixteenth Respondent
Seventeenth Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
FOODCORP (PTY) LTD IN REGARD TO ALLEGED CONTRAVENTIONS OF SECTION 4(1)(b)
OF THE COMPETITION ACT 89 OF 1998**

The Competition Commission and Foodcorp (Pty) Ltd hereby agree that application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D as read with sections 58(1)(b) and 59(1)(a) of the Competition Act 89 of 1998, as amended, on the terms set out below. This Settlement Agreement is entered into in settlement of the price fixing and market allocation allegations in the wheat milling industry, and the price fixing allegations in the white maize milling industry.

1. Definitions

2. For the purposes of this Settlement Agreement the following definitions shall apply -

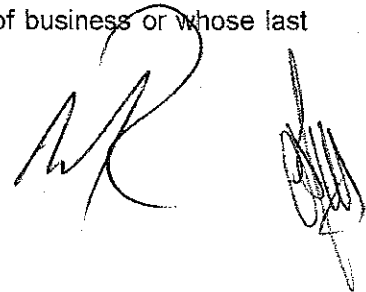
2.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;

2.2 "Blinkwater" means Blinkwater Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 10 SADC Street, Middelburg, Mpumalanga Province;

2.3 "Bothaville" means Bothaville Milling (Pty) Ltd t/a Thuso Mills, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively, its principal place of business at 10th Avenue, Industrial Site, Bothaville, Free State Province;

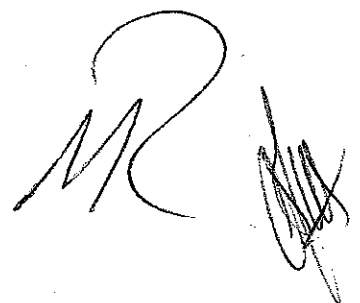


- 2.4 "Brenner" means Brenner Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 980 Park Street, Arcadia, Pretoria, Gauteng;
- 2.5 "Carolina Mills" means Carolina Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 27 Voortrekker Street, Carolina, Mpumalanga Province;
- 2.6 "CLP" means the Commission's Corporate Leniency Policy gazetted in Government Gazette number 31064 of 2008;
- 2.7 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 2.8 "Commissioner" means the Commissioner of the Competition Commission appointed in terms of section 22 of the Act;
- 2.9 "Foodcorp" means Foodcorp (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office alternatively its principal place of business at 415 Mitchel Street, Pretoria West, Gauteng, also referred to as "Ruto Mills";
- 2.10 "Godrich" means Godrich Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at Lanham Street, Extension Bronkhorstspuit, Mpumalanga Province;
- 2.11 "Kalel" means Kalel Mills, now t/a Isizwe Mills (Pty) Ltd a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively, its principal place of business or whose last



known address was 32 Watt Street, Industrial Area, Middelburg, Mpumalanga Province;

- 2.12 "Keystone" means Keystone Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively its principal place of business at 47 Lucas Street, Rustenburg, North West Province;
- 2.13 "NTK" means NTK Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively, its principal place of business at 84 River Road, Modimole, Limpopo Province;
- 2.14 "Paramount" means Paramount Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively, its principal place of business at 4 Royan Road, Gately East London, Eastern Cape Province;
- 2.15 "Pioneer" means Pioneer Foods (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively its principal place of business at Markstraat 32, Paarl, Cape Town, Western Cape Province;
- 2.16 "Premier" means Premier Foods (Pty) Ltd a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Joint Street, Isando, Johannesburg, Gauteng.
- 2.17 "Pride" means Pride Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively principal place of business at Ground Floor, Block C, Futuram Office Park, 117 Lenchen Avenue, Centurion, Pretoria, Gauteng;

A large, stylized handwritten signature in black ink, consisting of a large 'R' followed by a series of loops and a final flourish.

- 2.18 **"Progress Milling"** means Progress Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at No. 1 20th Street, Industria Polokwane, Limpopo Province;
- 2.19 **"Respondents"** means all the firms that are cited in the complaint referral affidavit and which are individually named in this Settlement Agreement;
- 2.20 **"Settlement Agreement"** means this settlement agreement duly signed and concluded between the Commission and Foodcorp;
- 2.21 **"Tiger"** means Tiger Brands Limited, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 3010 William Nicol Drive, Bryanston, Johannesburg, Gauteng;
- 2.22 **"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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria;
- 2.23 **"TWK"** means TWK Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 13 Church Street, Piet Retief, Mpumalanga Province;
- 2.24 **"Westra"** means Westra Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively principal place of business at Stasie Straat, Christiana, Northern Cape Province.

A large, stylized handwritten signature in black ink, consisting of a large 'R' followed by a series of loops and a final vertical stroke.

3. Complaint Investigation and Commission's Findings

3.1 *The white maize milling complaint (Case number 2007Mar2844)*

3.1.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp, Pride Milling and Progress Milling in respect of alleged collusive activities in the maize milling industry. The initiation was subsequently amended to include other players in the maize milling industry, namely Blinkwater Mills, Godrich Milling, TWK Milling, Keystone Milling, Westra Milling, Carolina Rollermeule, Brenner Mills, Paramount Mills, NTK Milling, Kalel Mills, Bothaville Milling and Allem Brothers. The complaint was initiated after the Commission had received a corporate leniency application from Premier, in 2007, which was subsequently corroborated by a further leniency application from Tiger. This complaint was referred on 31 March 2010 to the Tribunal for determination.

3.1.2 The Commission's investigations revealed that at various stages during the period 1999 to at least January 2007 the Respondents in the complaint referral, being firms in the same line of business, were involved in conduct in contravention of section 4(1)(b)(i) of the Act in that various representatives of the firms engaged in the following conduct:

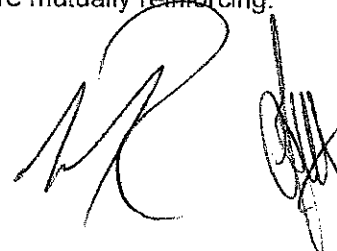
3.1.3 Attended numerous meetings and held telephone discussions in which they agreed *inter alia* -

3.1.3.1 to fix the prices of white maize products;

3.1.3.2 to create uniform price lists for wholesale, retail and general trade customers;

3.1.3.3 to the timing of price increases and the implementation thereof.

3.1.4 The agreements concluded at these meetings were used to secure co-ordination at both national and regional level and were mutually reinforcing.

Two handwritten signatures are present at the bottom right of the page. The first signature is a large, stylized 'R' with a long horizontal stroke. The second signature is a smaller, more complex scribble.

- 3.1.5 During the period between 1999 to 2007 competitors at both national and regional level namely Pioneer, Tiger, Premier, Ruto Mills, Godrich, Progress Milling, Pride Milling, Brenner Mills, Blinkwater, OTK, TWK, and Westra met to agree to the level and timing of price increases.
- 3.1.6 Foodcorp also participated in meetings of the National Chamber of Milling which were attended by firms from across all regions namely Tiger, Pride, Brenner Mills, NTK, Thuso Mills, Progress Milling and Blinkwater Milling. The Commission's findings are that, after some of those meetings, discussions were held amongst Pioneer and its competitors relating to, amongst other things, the fixing of the selling prices and implementation dates of both wheat and maize products.
- 3.1.7 Through these price fixing arrangements, Foodcorp and its competitors prevented and/or limited price competition amongst themselves in relation to the pricing of milled wheat and white maize products.

3.2 ***The wheat milling complaint (Case number 2007Mar2844)***

- 3.2.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp and Godrich Milling in respect of alleged collusive activities in the wheat milling industry. This complaint was also initiated after the Commission had received a corporate leniency application from Premier, in 2007, which was subsequently corroborated by a further leniency application from Tiger. This complaint was on 15 March 2010 referred to the Tribunal for determination.
- 3.2.2 The Commission's investigations revealed that at various stages during the period 1999 to at least 2007 the Respondents in the complaint referral, being firms in the same line of business, were involved in conduct in contravention of section 4(1)(b)(i) and (ii) of the Act in that various representatives of the firms engaged in the following conduct:



3.2.3 Attended numerous meetings and held telephone discussions in which they agreed *inter alia* -

3.2.3.1 to fix the prices of milled wheat products;

3.2.3.2 to create uniform price lists for wholesale, retail and general trade customers;

3.2.3.3 to the timing of price increases and the implementation thereof; and

3.2.3.4 to allocate customers between themselves.

3.2.4 The agreements concluded at these meetings were used to secure co-ordination at both national and regional level and were mutually reinforcing.

3.2.5 During the period between 1999 to 2007, competitors at both national and regional level namely Pioneer, Tiger Brands, Premier, Foodcorp and Godrich Milling met to agree to the level and timing of price increases as well as allocating their customers.

3.3 Foodcorp also participated in meetings of the National Chamber of Milling which were attended by firms from across all regions namely Tiger, Premier, Foodcorp and Godrich Milling. The Commission's findings are that after some of those meetings, discussions were held amongst Pioneer and its competitors relating to, amongst other things, the fixing of the selling prices and implementation dates of both wheat and maize products.

4. Admission

Foodcorp admits that it has contravened section 4(1)(b)(i) of the Act, in that during the period between 1999 and 2007 it was represented in a series of meetings between it and its competitors at which agreements to fix selling prices of both milled white maize as well as milled wheat products and the implementation dates of such prices were reached.

Two handwritten signatures in black ink, one appearing to be 'MR' and the other a more complex signature.

5. Agreement Concerning Future Conduct

5.1 Foodcorp agrees to fully cooperate with the Commission in relation to the prosecution of any other respondents in the complaint referrals under Case No's 10/CR/Mar10 and 15/CR/Mar10. Without limiting the generality of the above, Foodcorp specifically agrees to -

5.1.1 testify in support of the Commission's case regarding the contraventions in this Settlement Agreement; and

5.1.2 provide evidence, written or otherwise, which is in its possession or under its control concerning the contraventions contained in this Settlement Agreement.

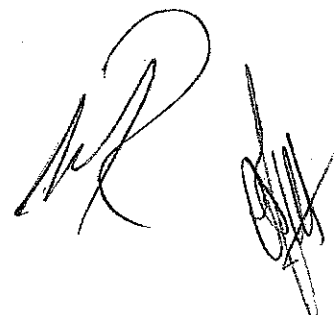
5.2 Foodcorp agrees to develop and implement a further compliance programme to that already implemented by Foodcorp following its settlement with the Commission under case number 50/CR/May08, incorporating corporate governance, designed to ensure that employees, management and directors within Foodcorp's business divisions do not engage in any contraventions of the Act. A copy of the programme, which shall include the compliance measures already in place within Foodcorp, shall be submitted to the Commission within 60 days of the date of confirmation of this consent agreement as an Order by the Tribunal.

5.3 Foodcorp confirms that it has ceased engaging in and undertakes to not engage in conduct detailed in paragraph 3.

6. Administrative Penalty

6.1 Having regard to the provisions of section 58(1)(a)(iii), read with sections 59(1)(a), 59(2) and (3) of the Act, Foodcorp accepts that it is liable to pay an administrative penalty for its contravention of section 4(1)(b) of the Act.

6.2 Foodcorp will pay an administrative penalty in the sum of R88 500 000.00 (eighty-eight million five hundred thousand rand) which is 10% affected turnover for the 2010 financial year of its milling division.

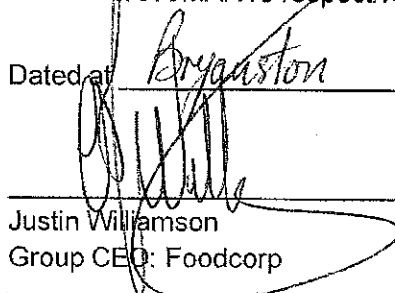


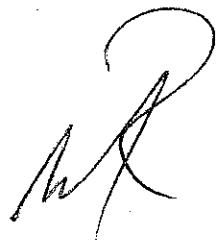
- 6.3 Foodcorp will pay the penalty amount to the Commission in three equal payments, the first such payment of R29 500 000.00 (twenty-nine million five hundred thousand rand) to be made within thirty (30) days of confirmation of this Settlement Agreement as an Order of the Tribunal.
- 6.4 Foodcorp will make the second payment of R29 500 000.00 (twenty-nine million five hundred thousand rand) on the first anniversary of the confirmation of the Settlement Agreement as an Order of the Tribunal.
- 6.5 Foodcorp will make the second payment of R29 500 000.00 (twenty-nine million five hundred thousand rands) on the second anniversary of the confirmation of the Settlement Agreement as an Order of the Tribunal.
- 6.6 This amount shall be paid into the following bank account:
- | | |
|-----------------|--|
| Name: | The Competition Commission Fee Account |
| Bank: | Absa Bank, Pretoria |
| Account Number: | 4050778576 |
| Branch Code: | 323 345 |
- 6.7 The Commission will pay these sums to the National Revenue Fund in terms of section 59(4) of the Act.

7. Full and Final Resolution

This Settlement Agreement is entered into in full and final settlement and upon confirmation as an Order by the Tribunal, concludes all proceedings between the Commission and Foodcorp relating to any alleged contraventions by Foodcorp of section 4(1)(b) of the Act that are the subject of the Commission's complaint under case number 2007Mar2844 and the Commission's referrals under Tribunal case numbers 10/CR/MAR10 and 15/CR/MAR10 respectively.

Dated at Bryanston on this the 23 day of November 2012


Justin Williamson
Group CEO: Foodcorp



Dated at Port of Spain on this the 29 day of November 2012

Shan Ramburuth
The Commissioner: Competition Commissioner

[Handwritten signature] *[Handwritten signature]*



competition commission
south africa

The dti campus, Block C
Mulayo Building
77 Meintjies street
Sunnyside, Pretoria
Private Bag X23, Lynnwood Ridge 0040
Tel: +27 (12) 394 3448 Fax: +27 (12) 394 4448
E-mail: BonganiN@compcom.co.za
Website: <http://www.compcom.co.za>

13 December 2012

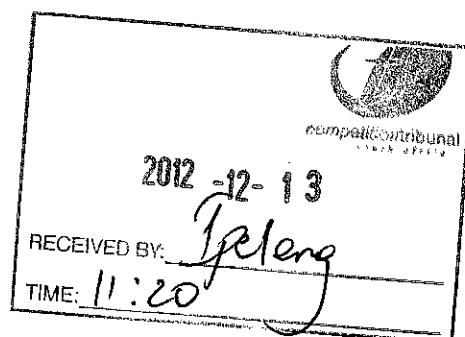
Our Ref: B.Ngcobo/2007MAR2844

Your Ref: Ipeleng Selaledi/L. Motaung

CTNumbers:10/CR/MAR10&15/CR/MAR10

THE COMPETITION TRIBUNAL

The DTI Campus
Block C, Mulayo Building
77 Meintjies Street
Sunnyside
Pretoria



By e-mail: ipelengs@comptrib.co.za

leratom@comptrib.co.za

d.lotter@bowman.co.za

x.nyali@bowman.co.za

Dear Ipeleng,

**COMPETITION COMMISSION/FOODCORP (PTY) LTD (CT Numbers
:10/CR/MAR10 & 15/CR/MAR10)**

1. We refer to the above matter.
2. Please be advised that this matter was before the Tribunal on Wednesday, 12 December 2012 for confirmation of a settlement agreement. However, the Tribunal has advised that the parties to amend the following clauses:

2.1. By replacing the present clause 4 with the following clauses which will be clause 4.1 and 4.2 respectively;

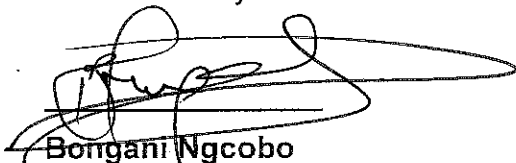
2.1.1 Foodcorp admits that it has contravened section 4(1)(b)(i) of the Act, in respect of the white maize milling complaint, in that during the period between 1999 to 2007 Foodcorp was represented in a series of meetings between it and its competitors at which agreements to fixing selling prices of milled white maize and the implementation dates of such prices were reached.

2.1.2 Foodcorp further admits that it has contravened section 4(1)(b)(i) and (ii) of the Act, in respect of the wheat milling complaint, in that during the period between 1999 to 2007 Foodcorp was represented in a series of meeting between it and its competitors at which agreements to fixing selling prices, the implementation dates of such prices and allocation of customers of milled wheat products were reached.

3. By deleting the word "second" in the first sentence of clause 6.5 and to replace it with "third".

4. We await confirmation of the settlement agreement .


Yours faithfully



Bongani Ngcobo

Senior Legal Counsel

Competition Commission



Derek Lotter

Bowman Gilfillan

Respondent's Attorneys