

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 81/AM/Dec10

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

PIONEER HI-BRED INTERNATIONAL INC

First Respondent

PANNAR SEED (PTY) LTD

Second Respondent

In consideration of the intermediate merger between:

PIONEER HI-BRED INTERNATIONAL INC

Acquiring Firm

and

PANNAR SEED (PTY) LTD

Target Firm

Panel : Norman Manoim (Tribunal Member), Yasmin Carrim (Tribunal Member) and
Andreas Wessels (Tribunal Member)

Heard on : 10 June 2011

Decided on : 13 June 2011

ORDER: FURTHER AND BETTER DISCOVERY

Following the hearing of 10 June 2011 of the application by the Competition Commission ("Commission") to compel further and better discovery, the First and Second Applicants (Pioneer Hi-Bred International Inc and Pannar Seed (Pty) Ltd respectively) are ordered to make discovery, by no later than 22 June 2011, of the following:

A. Documents/information to be produced

1. Maize seed varieties

1.1. Documents reflecting, in respect of total maize seed produced, distributed and/or sold by Pioneer and/or Pannar in South Africa, over the period 2007 - 2010, the total annual seed production costs in each year, broken down (where available) into fixed costs and variable costs (including, where available, the individual components of such fixed and variable costs), and/or the resultant variable margin (see item 2.2 of the Commission's revised "Annexure A" to its Notice of Motion).

1.2. Documents reflecting the timing involved in the development of each of the maize seed products produced, distributed and/or sold by Pioneer and/or Pannar in South Africa during the period 2001 – 2010, including (without limitation) the time required (see item 2.6 of the Commission's revised "Annexure A" to its Notice of Motion):

1.2.1. to find, test and select suitable parent lines;

1.2.2. to fix parental lines;

1.2.3. to breed, select and test new hybrids from fixed parental lines;

1.2.4. to obtain regulatory approval for the commercialization of such product; and

1.2.5. to multiply and commercialize such product.

2. Financial performance and customer price sensitivity

2.1. Financial statements covering each of the financial years during the period 2001-2010, for each of (see item 3.1 of the Commission's revised "Annexure A" to its Notice of Motion):

2.1.1. Pioneer Hi-Bred Research R.S.A. (Proprietary) Limited;

2.1.2. Pioneer Hi-Bred R.S.A. (Proprietary) Limited;

2.1.3. Pannar Seed (Proprietary) Limited;

2.1.4. Pannar Research Farms (Proprietary) Limited;

2.1.5. Pannar International (Proprietary) Limited; and

2.1.6. Pannar Industrial Holdings (Proprietary) Limited.

2.2. Any and all documents prepared for senior management and/or the board of directors in the period 2001 - 2010 in respect of Pannar and in the period 2007 – 2010 in respect of Pioneer, relating to (see item 3.2 of the Commission's revised "Annexure A" to its Notice of Motion):

- 2.2.1. the analysis of maize seed sales in South Africa; and
- 2.2.2. forecasts of future sales, revenues, and profits.

This request is limited to documents prepared for senior management and/or the board of directors, and as such does not request every document, but rather focuses on reports to senior management relating to important competitive trends over this period, and would be expected to include:

- discussions of farmers' price sensitivity;
- competition and potential price comparisons between specific maize seed products and rival maize seed products;
- competition in respect of specific sub-segments of the overall industry;
- general trends in the company's performance; and
- the consideration of potential collaborations or other important commercial arrangements.

3. Competitive interaction

3.1. Any and all correspondence between Pioneer and Monsanto in respect of Pannar over the period 2001 – 2010 (see item 4.2 of the Commission's revised "Annexure A" to its Notice of Motion).

3.2. Any and all correspondence between Pannar and Monsanto in respect of Pioneer over the period 2001 – 2010 (see item 4.3 of the Commission's revised "Annexure A" to its Notice of Motion).

4. Licensing and commercial arrangements

4.1. Any and all correspondence between Pioneer and/or Pannar and each of Syngenta, Dow and BASF at senior management and/or director level in relation to historical actual, future or potential licensing, utilisation, exploitation or development of any products that might use or benefit from Pioneer and/or Pannar germplasm or biotech traits in respect of the development of maize seeds for sale in South Africa over the period 2005 – 2010 (see item 5.5 of the Commission's revised "Annexure A" to its Notice of Motion).

4.2. Any and all documents reflecting discussions, negotiations, offers and draft agreements and/or understandings in respect of a potential commercial relationship between Pannar and any party other than Pioneer in respect of Pannar's germplasm and/or biotech traits for the period 2005 – 2010 (see item 5.6 of the Commission's revised "Annexure A" to its Notice of Motion).

4.3. Documents reflecting internal discussions, presentations, analyses and correspondence of each of the merger parties, and negotiations and agreements between each of the merger parties and Monsanto, regarding the "coming off-patent" of the BT and RR traits, including (without limitation) the fees and other terms and conditions for the provision of each of such traits in the post-patent period (see item 5.10 of the Commission's revised "Annexure A" to its Notice of Motion).

B. Documents/information to be made available for inspection

5. In respect of item 2.7 of the Commission's revised "Annexure A" to its Notice of Motion, the following regime shall apply:

In order to verify the issues raised in paragraph 39 of the Commission's founding affidavit, the Commission's requests of documents and/or information are granted, to the extent that they exist and subject to the following:-

The merging parties are not required to hand over these documents/information, but the Commission's external legal representatives and/or independent experts must be given access to inspect and copy, during office hours, relevant documents and/or electronic data at any of the relevant premises of Pioneer and/or Pannar by prior arrangement and on the furnishing of appropriate confidentiality undertakings.

Access to the above information and data shall relate to each maize seed product produced, distributed and/or sold by Pioneer and/or Pannar in South Africa for each year during the period 2007 – 2010 but is limited to the following details of each transaction:

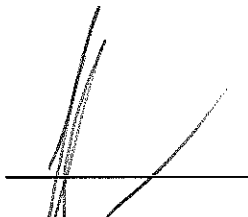
- (i) the date of the transaction on an annualized basis;
- (ii) the hybrid maize seed product name;
- (iii) price, including details of any applicable discounts, transport or other fees or variations from any list prices;

- (iv) volume of sales;
- (v) customer identity; and
- (vi) customer location.

Pioneer and/or Pannar must make these documents and/or electronic data available for inspection by no later than 20 June 2011.

C. General/other

6. Insofar as Pioneer and/or Pannar may contend that some or all of the documents/information sought in the above paragraphs have already been made available to the Commission, they are requested to identify such documents and where they appear in the merger record.
7. The Commission's application to compel discovery in regard to any remaining items included in its revised "Annexure A" to its Notice of Motion but not included in the above list is dismissed.



Norman Manoim

Presiding Member

Concurring: Yasmin Carrim and Andreas Wessels