



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR087Mar10/SA075Jun18

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

And

PROGRESS MILLING (PTY) LTD

Respondent

Panel : M Mokuena (Presiding Member)
F Tregenna (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on : 27 June 2018

Decided on : 29 June 2018

SETTLEMENT AGREEMENT

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Progress Milling (Pty) Ltd annexed hereto marked "A".


Presiding Member
Mrs M Mokuena

29 June 2018
Date

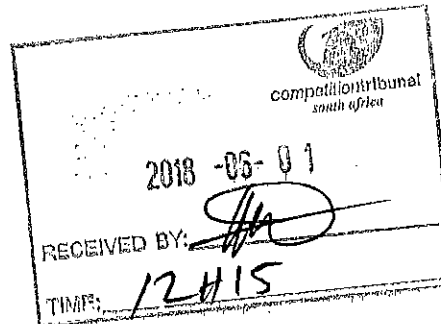
Concurring: Prof. F Tregenna and Ms A Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CC Case No: 2007Mar2844

CT Case No: 45/GR/MAR10

CRO87Mar10/SA075Jun18



In the matter between

THE COMPETITION COMMISSION

Applicant

and

PROGRESS MILLING

Respondent

SETTLEMENT AGREEMENT IN TERMS OF SECTION 27(1)(d) READ WITH SECTIONS 58(1)(a)(iii) AND 59(1)(a) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND PROGRESS MILLING (PTY) LTD IN RESPECT OF ALLEGED CONTRAVENTIONS OF THE COMPETITION ACT, 1998.

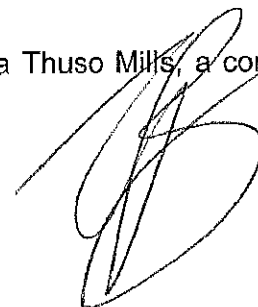
1. PREAMBLE

The Competition Commission ("the Commission") and Progress Milling (Pty) Ltd ("Progress Milling") hereby agree that an application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 27(1)(d) read with sections 58(1)(a)(iii) and 59(1)(a) of the Competition Act 89 of 1998, as amended ("the Act") on the terms set out below:

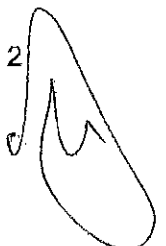
2. DEFINITIONS

For the purposes of this Settlement Agreement the following definitions shall apply:

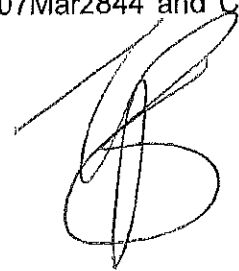
- 2.1. "**Act**" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 2.2. "**Affected turnover**" means turnover for the sale of white maize meal for human consumption for the financial year ending in 2007;
- 2.3. "**Blinkwater Milling**" means Blinkwater Mills (Pty) Ltd, a company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 57 Walter Sisulu Street, Middleburg, Mpumalanga;
- 2.4. "**Bothaville**" means Bothaville Milling (Pty) Ltd t/a Thuso Mills, a company duly




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- incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 10th Avenue, Industria Site, Bothaville, Free State Province;
- 2.5. "**Brenner**" means Brenner Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 27 Voortrekker Street, Carolina, Mpumalanga;
- 2.6. "**Carolina Mills**" means Carolina Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 27 Voortrekker Street, Carolina, Mpumalanga Province;
- 2.7. "**CLP**" means the Commission's Corporate Leniency Policy in Government Gazette number: 31064 of 2008;
- 2.8. "**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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 2.9. "**Complaint**" means the complaint initiated by the Commissioner on terms of section 49B(1) of the Act under CC case number: 2007Mar2844 and CT case number: 15/CR/MAR10;



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2.10. "**Days**" means business days;

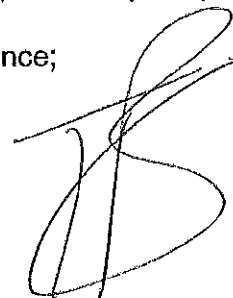
2.11. "**Foodcorp**" means Foodcorp (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 415 Mitchell Street, Pretoria West, Gauteng;

2.12. "**Godrich**" means Godrich Milling (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Lanham Street, Extension Bronkhorstspuit, Mpumalanga Province;

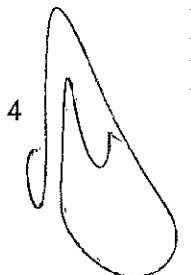
2.13. "**Kalel**" means Kalel Mills, now t/a Isizwe Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, whose last known business address was at 32 Watt Street, Industria Area, Middleburg, Mpumalanga;

2.14. "**Keystone**" means Keystone Milling (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 47 Lucas Street, Rustenberg, North West Province;

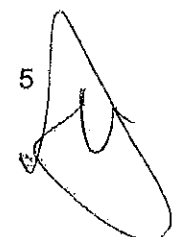
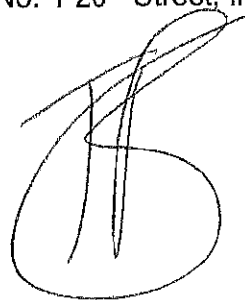
2.15. "**NTK**" means NTK Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 84 River Road, Modimolle, Limpopo Province;

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- 2.16. "**Paramount**" means Paramount Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 4 Royan Road, Gately East london, Eastern cape;
- 2.17. "**Parties**" means the Commission and Progress Milling;
- 2.18. "**Pioneer**" means Pioneer Foods (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 32 Markstraat, Paarl, Cape Town, Western Cape;
- 2.19. "**Premier**" means Premier Foods (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 1 Joint Street, Isando, Johannesburg, Gauteng;
- 2.20. "**Pride Milling**" means Pride Milling (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Ground Floor, Block C, Futuram Office Park, 117 Lenchen Avenue, Centurion, Pretoria, Gauteng;
- 2.21. "**Progress Milling**" means AM Alberts (Pty) Ltd, trading as Progress Milling, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at No. 1 20th Street, Industria Polokwane, Limpopo Province;



- 2.22. "**Respondents**" means all the firms that are cited in the complaint referral;
- 2.23. "**Settlement Agreement**" means this agreement duly signed and concluded between the Commission and Progress Milling;
- 2.24. "**Tiger**" means Tiger Brands Limited, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 3010 William Nicol Drive, Bryanston, Johannesburg, Gauteng;
- 2.25. "**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 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 2.26. "**TWK**" means TWK Milling (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 13 Church Street, Piet Retief, Mpumalanga Province; and
- 2.27. "**Westra**" means Westra Milling (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Stasie Straat, Christiana, Northern Cape.



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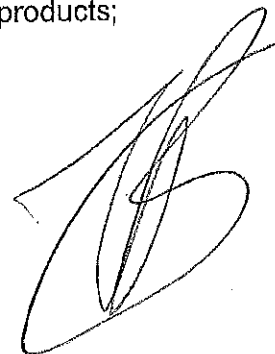
3. BACKGROUND AND THE COMMISSION'S INVESTIGATIONS AND FINDINGS

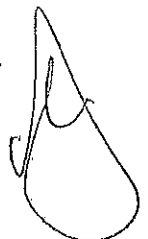
3.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp, Pride Milling and Progress Milling in the maize milling industry. The initiation was subsequently amended to include other players in the maize milling industry namely, Bothaville, Godrich, TWK, Keystone, Westra, Carolina Mills, Brenner, Paramount, NTK, Kalel, and Blinkwater. The complaint was initiated after the Commission had received a corporate leniency application from Premier in 2007, which was corroborated by a further corporate leniency application by Tiger in the same year.

3.2 The Commission's investigation revealed that during the period 1999 to 2007 the respondents were involved in price fixing of white milled maize in contravention of section 4(1)(b)(i) of the Act in that various representatives of the firms engaged in the following conduct:

3.2.1 Attended various meetings and held telephone discussions in which they reached agreements in contravention of section 4(1)(b)(i) of the Act, and in such meetings and telephone discussions, the respondents, *inter alia*, agreed:

3.2.1.1 To fix the prices of milled white maize products;

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3.2.1.2 To create uniform price lists for wholesale, retail and general trade customers; and

3.2.1.3 To the timing of the price increases and implementation thereof.

3.2.2 The agreements concluded at these meetings were used to secure coordination at both regional and national levels, and were mutually reinforcing.



3.3 During the above period, Progress Milling and its competitors; i.e. the millers of white maize products, acting through their representatives in meetings and in telephone discussions agreed:

3.3.1 To directly fix the prices of various maize meal products; and

3.3.2 To fix dates on which such agreed price increments were to be implemented,

3.4 This conduct constitutes price fixing and fixing of trading conditions in contravention of section 4(1)(b)(i) of the Act.

3.5 Through these price fixing arrangements, Progress Milling and its competitors prevented and/ or limited price competition amongst themselves in relation to pricing of milled white maize meal products.



 

3.6 Progress Milling also participated in meetings of the National Chamber of Milling ("NCM") which were attended by firms from across all regions namely, Pioneer Foods, Tiger Brands, Premier Foods, Foodcorp, Godrich, Pride Milling, Brenner Mills, NTK Milling, Bothaville Milling, Keystone Milling, Blinkwater Milling. The Commission's findings are that, after some of these meetings, discussions were held amongst Progress Milling and its competitors to, amongst other things, fix the selling prices and implementation dates of maize meal products.

4. BUSINESS RESCUE

4.1 Progress Milling has been in Business Rescue proceedings (in accordance with Chapter 6 of the Companies Act) since 11 March 2016, and the current business rescue practitioner ("BRP") only assumed this appointment on 13th October 2016. The BR Plan has now satisfied the last of the required regulatory approvals, and is in the process of final implementation. The BRP, in accordance with the BR Plan, anticipates that full and final settlement of the administrative penalty with the Commission will thus be made in the next few months.

4.2 There are no employees or directors left in Progress Milling with knowledge of (or who participated in) the contraventions of the Act alleged in this Complaint but in the interests of settling this Complaint, the BRP is prepared, on behalf of Progress Milling and subject to the implementation of this Agreement, to accept the findings of the Competition Commission and, on behalf of Progress Milling, to admit that it

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contravened section 4(1)(b)(i) of the Act in that it agreed with its competitors to directly and indirectly fix the selling price of milled white maize products, as well as agreeing on the dates when such price increments were to be implemented.

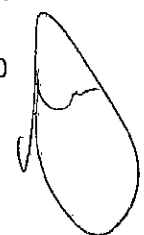

5. ADMISSION OF LIABILITY

Progress Milling admits that it has contravened section 4(1)(b)(i) of the Act in that it agreed with its competitors to directly and indirectly fix the selling price of milled white maize products, as well as agreeing on the dates when such price increments were to be implemented.

6. FUTURE CONDUCT

6.1 Progress Milling confirms that it has ceased the conduct referred to above and agrees to fully cooperate with the Commission in the prosecution of the remaining respondents under the Complaint referral. This cooperation includes, but is not limited to:

6.1.1 Providing such documentary evidence as remains in its possession or under its control concerning the alleged contraventions contained in the Settlement Agreement, as well as to assist the Commission in the prosecution of the alleged contraventions covered by the Settlement



Agreement;

6.2 Progress Milling further agrees and undertakes to:

6.2.1 Prepare and circulate a statement summarising the content of this Settlement Agreement to its managers and directors within 14 (fourteen) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;

6.2.2 Develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act; and

6.2.3 Submit a copy of such compliance programme outlines above to the Commission within 60 days of the date of confirmation of the Settlement Agreement as an order of the Tribunal.

7. ADMINISTRATIVE PENALTY

7.1 Having regard to the provisions of sections 58(1)(a)(iii) read with sections 59(1)(a), 59(2) and 59(3) of the Act, Progress Milling accepts that it is liable to pay an



administrative penalty.

7.2 The parties agreed that Progress Milling will pay an administrative penalty in the total amount of R2 120 000.00 (Two Million, One Hundred and Twenty Thousand Rand), which amount when grossed up in accordance with the approved business rescue plan for Progress Milling ("the BR Plan") is equal to 3% of the affected turnover for the 2007 financial year.

7.3 Progress Milling will pay the total amount of the administrative penalty within 30 days from the date of confirmation of this Settlement Agreement as an order of the Tribunal.

7.4 The penalty must be paid into the Commission's bank account which is as follows:

Bank name: Absa Bank

Branch name: Pretoria

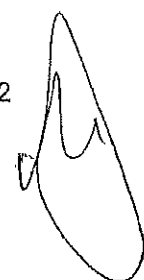
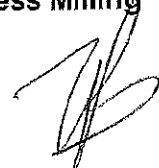
Account holder: Competition Commission Fees Account

Account number: 4050778576

Account type: Current Account

Branch Code: 323345

Reference: Case number 2007Mar2844/ Progress Milling

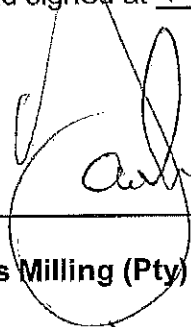


7.5 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

8. FULL AND FINAL SETTLEMENT

This agreement is entered into in full and final settlement of the complaint set out in paragraph 3 above, and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Progress Milling in respect of the conduct contemplated under the Commission's complaint case number: 2007Mar2844.

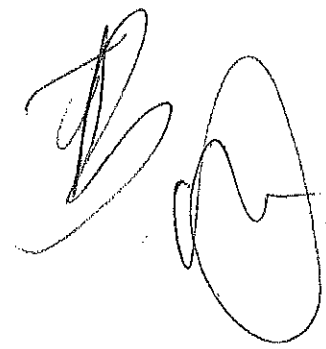
Dated and signed at Illovo on the 29 day of May 2018.



Progress Milling (Pty) Ltd

Name in Full: D.A.C. LAKE

Authority: Business Rescue Practitioner



For the Commission

Dated and signed at **PRETORIA** on the 29th day of MAY 2018.



Tembinkosi Bonakele
Competition Commissioner

