



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR087Mar10/SA016Apr21

In the matter between:

The Competition Commission

Applicant

And

Premier FMCG (Pty) Ltd

Respondent

Panel: M Mazwai (Presiding Member)
E Daniels (Tribunal Member)
Y Carrim (Tribunal Member)

Heard on: 12 May 2021

Decided on: 12 May 2021

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Premier FMCG (Pty) Ltd annexed hereto.



Presiding Member
Ms Mondo Mazwai

12 May 2021
Date

Concurring: Mr Enver Daniels and Ms Yasmin Carrim

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD AT PRETORIA)

CT CASE:

CC CASE: 2007Mar2844

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

PREMIER FMCG (PTY) LTD

Respondent

FILING SHEET

PLEASE TAKE NOTICE THAT the Commission herewith files the following:

1. CT6 Notice of Motion; and
2. Consent Agreement entered into between the Applicant and the Respondent.

Dated at PRETORIA on this the 28 day of April 2021.



COMPETITION COMMISSION

DTI Campus

77 Meintjies Street

Sunnyside, Pretoria

Tel: 012 394 5816

Ref: Nokuphiwa Kunene/ Maya Swart

E-mail: NokuphiwaK@compcom.co.za

MayaS@compcom.co.za

To:

THE REGISTRAR

Competition Tribunal

3rd Floor, Mulayo Building

The DTI Campus

77 Meintjies Street

Sunnyside, Pretoria

Tel: (012) 394-3300/55

E-mail address: Registry@comptrib.co.za

And to:

Nortons Inc.

Respondent's Attorneys

135 Daisy Street

Sandown, Sandton

Tel. 011 041 2623

Ref: C Van Der Merwe/ J Oxenham

Email: charl@nortonsinc.com/ john@nortonsinc.com



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Form CT 6

About this Form

- This Form is issued in terms of the Competition Tribunal Rules.
- Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.
- If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: _____ File # _____

To: **The registrar of the Competition Tribunal**

Concerning the matter between:

_____ (Applicant)

and

_____ (Respondent)

**Take notice that the _____
intends to apply to the Tribunal for the following order:**

Name and Title of person authorised to sign:

Authorised Signature: _____ Date: **28 April 2021**

**For Office
Use Only:**

Tribunal file number:

Date filed:

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

CC Case No: 2007Mar2844

CT Case No: 15/CR/MAR10

In the matter between

THE COMPETITION COMMISSION

Applicant

and

PREMIER FMCG (PTY) LTD

Respondent

**SETTLEMENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION
58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN
THE COMPETITION COMMISSION AND PREMIER FMCG (PTY) LTD, IN RESPECT
OF CONTRAVENTIONS OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT**

The Competition Commission and Premier FMGC (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act 89 of 1998, as amended, in respect of contraventions of section 4(1)(b)(i), on the terms set out below.

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1. DEFINITIONS

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

- 1.1. “**Act**” means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2. “**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, Middelburg, Mpumalanga;
- 1.3. “**Bothaville**” means Bothaville Milling (Pty) Ltd t/a Thuso Mills, 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 10th Avenue, Industria Site, Bothaville, Free State Province;
- 1.4. “**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 980 Park Street, Arcadia, Pretoria, Gauteng;
- 1.5. “**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;
- 1.6. “**CLP**” means the Commission’s 2004 Corporate Leniency Policy in Government

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Gazette number: 25963 of 2004;

- 1.7. “**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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.8. “**Complaint**” means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under CC case number: 2007Mar2844 (CT: 10/CR/MAR10 AND 15/CR/MAR10);
- 1.9. “**Curions**” means Curions (Pty) Ltd, which became a subsidiary of GWK Limited in 2008;
- 1.10. “**Days**” means business days;
- 1.11. “**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;
- 1.12. “**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;
- 1.13. “**GWK Farm Foods**” means GWK Farm Foods (Pty) Ltd, formerly known as

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Westra Nywerhede (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;

1.14. “**GWK Limited**” means Griekwaland Wes Korporatied Limited, which is the holding company of GWK Farm Foods;

1.15. “**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, Middelburg, Mpumalanga;

1.16. “**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, Rustenburg, North West Province;

1.17. “**NTK Business**” means the maize milling business of NTKLA which was acquired from NTK Koöperasie in 2003;

1.18. “**NTK Koöperasie**” means the cooperative known as NTK Koöperasie or Northern Transvaal Cooperative Limited, which operated the NTK Business prior to 2003;

1.19. “**NTKLA**” means NTK Limpopo Agri (Proprietary) Limited, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa under registration number: 1980/008381/06, with its principal place of business at 84 Limpopo Street, Modimolle, Limpopo Province;

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- 1.20. **“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;
- 1.21. **“Parties”** means the Commission and Premier;
- 1.22. **“Pioneer Foods”** 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;
- 1.23. **“Premier”** means Premier FMCG(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 Building 5 Maxwell Park, Magwa Crescent West, Waterfall Office Park, Johannesburg, Gauteng; formerly known as “Premier Foods”;
- 1.24. **“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;
- 1.25. **“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;

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- 1.26. “**Respondents**” means Pioneer Foods, Foodcorp, Godrich, Progress Milling, Pride Milling, Westra Milling (Pty) Ltd, Brenner, Blinkwater Milling, TWK Milling, NTK Milling (Pty) Ltd, Carolina, Isiswe Mills (Pty) Ltd, Bothaville, Paramount, Keystone, Premier and Tiger Brands Limited;
- 1.27. “**Settlement Agreement**” means this agreement duly signed and concluded between the Commission and Premier;
- 1.28. “**Suidwes Nywerhede**” means Suidwes Nywerhede (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, which operated Westra Industries and the Westra milling business operations until 1 September 2005;
- 1.29. “**Tiger Brands**” 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;
- 1.30. “**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;
- 1.31. “**TWK**” means the milling business of TWK Agri (Pty) Ltd;

- 1.32. **"TWK Agri"** means TWK Agri (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 31a Market St, Piet Retief, Mpumalanga Province;
- 1.33. **"Westra Industries"** means Westra Industries (Pty) Ltd, which was a wholly owned subsidiary of Suidwes until 1 September 2005. Westra Industries changed its name to GWK Farm Foods and is now a subsidiary of GWK Limited through Curions; and
- 1.34. **"Westra Milling"** means the maize milling business of Westra Industries (Pty) Ltd, which was operated by Suidwes until 1 September 2005. Westra milling is now operated by GWK Farm Foods, a subsidiary of GWK Limited through Curions.

2. BACKGROUND

Commission's Complaint Initiations

- 2.1 In 2007, the Commissioner initiated a complaint (under CC case number: 2007Jan2712) against Premier, Tiger Brands and Pioneer Foods, for their alleged involvement in the bread manufacturer's cartel that fixed prices and divided markets in the Western Cape (**"Western Cape complaint"**).
- 2.2 In 2007, during the course of the Commission's investigation into the Western Cape complaint, Premier applied for immunity in terms of the Commission's CLP relating to the abovementioned conduct. In its application, Premier also disclosed its

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involvement in further price fixing and market division conduct in the wheat and maize milling industries (“wheat and maize milling cartels”).

2.3 On 14 March 2007, as a result of information received from Premier, the Commissioner initiated further complaints in respect of the wheat and maize milling industry cartels.

2.4 On 16 March 2007, the Commission granted Premier conditional immunity from prosecution for participating in the wheat and maize milling cartels in terms of the CLP.

2.5 On 2 October 2009, the Commission expanded its investigation into the wheat and maize milling cartels to include additional respondents. The Commission filed its amended initiation statement on 24 March 2010.

3. COMMISSION'S INVESTIGATION FINDINGS

3.1 The Commission's investigation led it to conclude that:

Wheat milling

3.1.1 During the period 1999 to 2007, Premier, Pioneer Foods, Foodcorp, Godrich and Tiger Brands, acting through their respective representatives and/or employees, engaged in unlawful activities in the wheat milling market in that they:

- (i) telephonically and in meetings, directly fixed the selling price of milled wheat products to their customers, agreed on implementation dates of such price increases and allocated customers amongst themselves; and
- (ii) used these meeting and telephone calls to secure on going price fixing agreements, agreements on trading terms and market sharing arrangements.

3.1.2 The aforesaid agreements constitute the fixing of a selling price in contravention of section 4(1)(b)(i) and (ii) of the Act.

Maize milling

3.1.3 At various stages during the period 1999 to 2007, the Respondents, acting through their respective representatives and/or employees, engaged in unlawful activities in the maize milling markets in that they:

- (i) attended various meetings and held telephone discussions in which the Respondents, *inter alia*, agreed to fix the prices of milled white maize products;
- (ii) agreed the timing of the price increases and implementation thereof; and
- (iii) used these meeting and telephone calls to secure on going price fixing agreements, agreements on trading terms and market sharing arrangements.

3.1.4 The aforesaid agreements constitute the fixing of a selling price in contravention of section 4(1)(b) and (ii) of the Act.

4. COMISSION'S REFERRALS

On 15 March 2010, the Commission referred the wheat milling cartel to the Tribunal against Premier, Pioneer Foods, Foodcorp, Godrich and Tiger Brands. The Commission also referred the maize milling complaint on 31 March 2010 against a total of seventeen Respondents, including Premier. The Commission did not seek any relief against Premier in either of the referrals.

5. CONDUCT IN CONTRAVENTION OF THE ACT

This Settlement Agreement seeks to finalize the matter against Premier by confirming its conduct as a contravention of the Act and grant Premier final immunity from a fine.

6. ADMISSION

Premier admits that it engaged in collusive conduct in the wheat and maize milling industries during the period 1999 to 2007, as disclosed in its CLP application, which is in contravention of section 4(1)(b)(i) of the Act.

7. CO-OPERATION

As far as the Commission is aware, and in compliance with the requirements as set out in the CLP, Premier:

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- 7.1 has provided the Commission with truthful and timely disclosure, including information and documents in its possession or under its control, relating to the prohibited practices which are the subject of this agreement;
- 7.2 has provided full and expeditious co-operation to the Commission concerning the prohibited practices which are the subject of this agreement;
- 7.3 has provided a written undertaking that it has immediately ceased to engage in, and will not in future engage in, any form of prohibited practice;
- 7.4 has confirmed that it has not wilfully destroyed or falsified or concealed information, evidence and documents relating to the prohibited practices which are the subject of this agreement;
- 7.5 has confirmed that it has not wilfully or negligently made any misrepresentation concerning the material facts of any of the prohibited practices which are the subject of this agreement or otherwise acted dishonestly.

8. FUTURE CONDUCT

- 8.1 Premier has not engaged in any prohibited practice since filing the CLP in 2007 and confirms that the management team of Premier implicated in the conduct which forms the subject of this settlement agreement are, since the CLP application in 2007, no longer employed at Premier.
- 8.2 Premier has developed, implemented and is monitoring a competition law

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compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme include mechanisms for the monitoring and detection of any contravention of the Act.

8.3 Premier shall submit a copy of such compliance programme to the Commission within 60 (sixty) days of the date of confirmation of the Settlement Agreement as an order by the Tribunal.

8.4 Premier shall circulate a statement summarising the contents of this Settlement Agreement to all management and operational staff employed at Premier within 60 days from the date of confirmation of this Settlement Agreement by the Tribunal.

8.5 Premier will not in the future engage in any form of prohibited conduct and will not engage in price fixing conduct in contravention of the Act but undertakes to continue engaging in competitive pricing.

9. MONITORING

All reports relating to the conditions set out in this Settlement Agreement, including but not limited to compliance programmes, shall be submitted to the Commission at CartelSettlements@compcom.co.za.

10. FULL AND FINAL SETTLEMENT

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This Settlement Agreement is entered into in full and final settlement in respect of the Complaint.

Dated and signed at JOHANNESBURG on the 20TH day of **APRIL** 2021



Premier FMCG (Pty) Ltd

Name in Full: JACOBUS JOHANNES GERTZENBACH

Authority: DIRECTOR

For the Commission

Dated and signed at **PRETORIA** on the 24th day of **APRIL** 2021.



Tembinkosi Bonakele

The Commissioner: Competition Commission

