



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR013Apr19/SA073Jul24

In the matter between:

The Competition Commission

Applicant

And

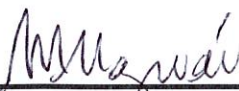
New Era Packaging (Pty) Ltd

Respondent

Panel	:	M Mazwai (Presiding Member)
	:	G Budlender (Tribunal Member)
	:	I Valodia (Tribunal Member)
Heard on	:	14 August 2024
Decided on	:	14 August 2024

Settlement Agreement

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



Presiding Member
Ms Mondo Mazwai

14 August 2024

Date

Concurring: Adv. Geoff Budlender SC and Prof. Imraan Valodia

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

**CT Case No: CR013Apr19
CC Case No:2016MAY0232,
2017APR0039 & 2017APR0031**

In the matter between

COMPETITION COMMISSION

APPLICANT

and

NEW ERA PACKAGING (PTY) LTD

RESPONDENT

In re:

COMPETITION COMMISSION

APPLICANT

and

MPACT LIMITED

FIRST RESPONDENT

NEW ERA PACKAGING (PTY) LTD

SECOND RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) AND 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND NEW ERA PACKAGING PROPRIETARY LIMITED, IN RESPECT OF ALLEGED CONTRAVENTIONS OF SECTIONS 4(1)(b)(i),(ii) AND (iii) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED

The Commission and New Era hereby agree that an application be made to the Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Act, in respect of alleged contraventions of section 4(1)(b)(i),(ii) and (iii) of the Act in relation to Complaint 1 and in respect of an alleged contravention of section 4(1)(b)(i) of the Act in relation to Complaint 2 described below on the terms set out below.

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1. DEFINITIONS

For the purposes of this Consent Agreement, the following definitions shall apply:

- 1.1. **"Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.2. **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3. **"Commissioner"** means the Commissioner of the Commission, appointed in terms of section 22 of the Act;
- 1.4. **"Complaint 1"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers: **2016MAY0232** and **2017APR0031**;
- 1.5. **"Complaint 2"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number: **2017APR0039**;
- 1.6. **"Consent Agreement"** means this consent agreement concluded between the Commission and New Era in full and final settlement of Complaint 1 and Complaint 2;
- 1.7. **"Day"** means any calendar day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.8. **"Packaging Paper"** includes Containerboard and Cartonboard;



- 1.9. **"Containerboard"** means the corrugated case material used to manufacture packaging products such as fruit boxes and boxes for secondary packaging of wholesale goods;
- 1.10. **"Cartonboard"** means the packaging material used for items such as cereal boxes, detergent boxes and paper plates;
- 1.11. **"Corrugated Paper"** is the input used for the manufacturing of Packaging Paper which paper can be manufactured from both virgin pulp and Recyclable Paper Material.
- 1.12. **"New Era"** means New Era Packaging (Pty) Ltd, a private company registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 3 Power Street Germiston.
- 1.13. **"Mpact"** means Mpact Ltd, a public company registered in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 3 Melrose Boulevard, Melrose Arch, Johannesburg.
- 1.14. **"Recyclable Paper Material"** is made up of various types of paper products which are capable of being recycled to be used once again as an input in the process of producing Corrugated Paper. Examples of recyclable paper material include material such as wastepaper sheets, magazines, magazine trimmings, newspapers, corrugated material or corrugated boxes, paper and board trimmings.
- 1.15. **"Parties"** means the Commission and New Era;
- 1.16. **"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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.



2. THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1. Complaint 1

2.1.1 On 16 May 2016, the Commissioner initiated a complaint against Mpack and New Era for alleged price fixing, market division and collusive tendering in the market for the manufacture and supply of Packaging Paper in contravention of section 4(1)(b)(i),(ii) and (iii) of the Act. This complaint was investigated under case number **2016MAY0323**. The initiation in this matter was later amended to add more respondents, namely, Sunnypack, Corroseal and Nampak. The amended initiation was assigned case number **2017Apr0031**.

2.1.2 The Commission investigation found that from around 1998 Mpack and New Era ("the Respondents") agreed not to compete for each other's traditional customers in the market for the supply of packaging paper products.

2.1.3 The Respondents rigged bids that they submitted to their 'traditional customers' in that they devised means to prevent other market players from competing with them for business of those 'traditional customers' by undercutting competitors or suppressing the price at which those competitors obtained business from their 'traditional customers'.

2.1.4 They held regular meetings to discuss amongst others, compliance with their agreement to not compete for each other's customers.

2.1.5 The Commission found that the above conduct between the Respondents amounts to price fixing, market division by allocation of customers and collusive tendering in contravention of section 4(1)(b)(i),(ii) and (iii) of the Act.

2.2 Complaint 2

2.2.1 On 19 April 2017, the Commissioner initiated a complaint against, inter alia, Mpact and New Era for price fixing, market division and collusive tendering in the market for the collection and supply of Recyclable Paper Material in contravention of section 4(1)(b)(i), (ii) & (iii) of the Act. Complaint 2 was investigated under case number **2017APR0039**.

2.2.2 The Commission found that the Respondents agreed to operate in a "sensible" manner when purchasing Recyclable Paper Material in order to avoid price wars and to ensure that the base price of the loose material remains as low as possible.

2.2.3 The Commission found that the above conduct amounts to price fixing in contravention of section 4(1)(b)(i) of the Act.

3. ADMISSION OF LIABILITY

3.1 New Era does not admit liability in respect of any of the conduct described in paragraph 2 above.

4. AGREEMENT REGARDING FUTURE CONDUCT

4.1 New Era agrees and undertakes to:

4.1.1 Refrain from engaging in any conduct that may be in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice in future;

4.1.2 This undertaking excludes legitimate interactions between New Era and Mpact in regard to the provision of paper (this means the sale of Packaging Paper provided by Mpact to New Era or vice versa).

- 4.1.3 Prepare and circulate a statement summarising the content of this Consent Agreement to its employees, managers and directors within 14 (fourteen) Days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 4.1.4 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
- 4.1.5 Submit a copy of such compliance programme to the Commission within 60 (sixty) Days of the date of confirmation of this Consent Agreement as an order by the Tribunal.

5. ADMINISTRATIVE PENALTY

- 5.1. New Era agrees and undertakes to pay an administrative penalty in the amount of R21 298 478.38 (**Twenty one million, two hundred and ninety eight thousand, four hundred and seventy eight rand and thirty eight cents**). This amount does not exceed 10% of New Era's annual turnover in South Africa for its 2015 financial year.
- 5.2. New Era will pay the amount of the administrative penalty set out in paragraph 5.1 above to the Commission in three equal instalments. The first payment will be made within 6 months of this Consent Agreement being confirmed as an order of the Tribunal, the second payment within three months after that, and the third payment three months later.

5.3. The payment shall be made into the Commission's bank account, details of which are as follows:

Bank name: Absa Bank
Branch name: Pretoria
Account holder: Competition Commission Fees Account
Account number: 4087641778
Account type: Current Account
Branch Code: 632005
Reference: 2016MAY0232/NEWERA

5.4. The penalty in paragraph 5.1 will then be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

6. FULL AND FINAL SETTLEMENT

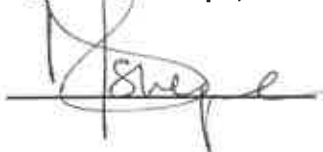
This Consent Agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and New Era relating to the conduct that is the subject matter of the Commission investigation under Complaint 1, Complaint 2 and Tribunal case number CR013Apr19.

For: New Era Packaging (Pty) Ltd
Ms. Asha Chhita, Chief Executive Officer



Dated and signed at Johannesburg, on the 10 day of July 2024

For: The Competition Commission
Ms. Doris Tshepe, Commissioner



Dated and signed at Pretoria, on the 16th day of July 2024