



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CR134Oct22/SA088Sep23**

In the matter between:

The Competition Commission

**Applicant**

And

Pienaar Brothers (Pty) Ltd

**Respondent**

Panel : L Mncube (Presiding Member)  
: I Valodia (Tribunal Member)  
: G Budlender (Tribunal Member)

Heard on : 5 October 2023

Decided on : 6 October 2023

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**Settlement Agreement**

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

Signed by Liberty Mncube  
Signed at: 2023-10-06 10:11:55 +02:00  
Reason: Witnessing Liberty Mncube

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**Presiding Member  
Prof. Liberty Mncube**

**6 October 2023**

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**Date**

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

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

**CT CASE NO: CR134OCT22**

**CC CASE NO: 2022FEB0051**

In the matter between:

**COMPETITION COMMISSION OF SA**

**Applicant**

And

**PIENAAR BROTHERS (PTY) LTD**

**Respondent**

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**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 PIENAAR BROTHERS (PTY) LTD, IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b)(II) OF THE COMPETITION ACT 89 OF 1998**

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**Preamble**

The Competition Commission ("Commission") and Pienaar Brothers (Pty) Ltd ("Pienaar Brothers") hereby agree that an application be made to the Competition Tribunal for the 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 no. 89 of 1998, as amended, in respect of a contravention of section 4(1)(b)(ii) of the Act.



## **1. DEFINITIONS**

For the purposes of this settlement agreement the following definitions shall apply:

- 1.1 **"Act"** means the Competition Act No. 89 of 1998, as amended.
- 1.2 **"Brian Plenaar"** means Brian Plenaar (Pty) Ltd, a private company duly incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at Mazars House, 54 Glenhove Road, Melrose Estate, Gauteng, 2196.
- 1.3 **"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.
- 1.4 **"Commissioner"** means the Commissioner of the Competition Commission (the Commissioner) in terms of section 24(1) of the Act.
- 1.5 **"Investigation"** means Investigation of the Complaint.
- 1.6 **"Complaint"** means the complaint initiated by the Commissioner on 17 February 2022 in terms of section 49B(1) of the Act under case number 2022Feb0051.
- 1.7 **"Complaint Referral"** means the complaint referred by the Commission to the Tribunal under case number CR134OCT22.
- 1.8 **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and Plenaar Brothers.
- 1.9 **"Parties"** means the Commission and Plenaar Brothers.



- 1.10 **"Pienaar Brothers"** means Pienaar Brothers (Pty) Ltd a private company duly incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 22 Auckland Street, Paarden Eiland, Cape Town, 7045.
- 1.11 **"Pienaar North"** means Brian Pienaar North (Pty) Ltd, a private company duly incorporated in accordance with the laws of the Republic of South Africa, with its principal place of business situated at 2<sup>nd</sup> Floor Mazars House, 5 St Davids Place, Parktown, 2193. Pienaar North is a wholly owned subsidiary of Brian Pienaar.
- 1.12 **"Pienaar North Group"** means Brian Pienaar and its wholly owned subsidiary, Brian Pienaar North.
- 1.13 **"Respondents"** means Brian Pienaar, Pienaar North and Pienaar Brothers.
- 1.14 **"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 the 1<sup>st</sup> Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

## **2. THE COMMISSION'S INVESTIGATION FINDINGS - INTO THE ALLEGED CONTRAVENTION**

- 2.1 On 17 February 2022, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against the Respondents for allegedly entering into an agreement and / or engaging in a concerted practice to divide markets in the safety and PPE market in contravention of section 4(1)(b)(ii). This complaint was investigated under case number 2022FEB0051.



**2.2 The investigation revealed the following:**

**2.2.1 The Respondents are involved in the supply of safety and personal protective equipment ("PPE") including but not limited to respiratory protection, hearing protection, protective gloves, protective eyewear, safety footwear, disposable suits, welding wear, work wear, head, and face protection as well as safety signage.**

**2.2.2 The Respondents entered into an agreement in terms of which they agreed that Pienaar North Group would not sell safety and PPE products to the coastal regions of South Africa, where Pienaar Brothers operates. Likewise, Pienaar Brothers agreed that it would refrain from selling safety and PPE products to the northern regions of South Africa, the geographic area where Pienaar North Group operates.**

**2.2.3 The Respondents also coordinated on national tenders or Request for Quotation ("RFQ") for the supply of safety and PPE products in terms of which they only respond to tenders or RFQs that are in their respective allocated geographic area. That is, Pienaar Brothers will respond to tenders or RFQs in the coastal region and Pienaar North Group will respond to tenders or RFQs in the northern region.**



**2.2.4 The conduct between Respondents amounted to market division by allocation of territories and / or customers in contravention of section 4(1)(b)(ii) of the Act.**

### **3. ADMISSION**

**3.1. Pienaar Brothers does not admit to the aforesaid conduct, or that it has acted in contravention of section 4(1)(b)(ii) of the Act.**


### **4. AGREEMENT REGARDING FUTURE CONDUCT**

**4.1. Pienaar Brothers agrees that it will not engage in any anti-competitive conduct which contravenes the Act.**

**4.2. Pienaar Brothers will develop, implement, and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all employees, members, and management do not engage in contraventions of the Act. Such compliance programme will include mechanisms for the identification and prevention of any contraventions of the Act.**

**4.3. Pienaar Brothers undertakes to submit a copy of such compliance programme to the Commission within 60 (sixty) calendar days of the date of confirmation of this Settlement Agreement as an order to the Tribunal.**

**4.4. Pienaar Brothers shall circulate a statement summarising the contents of this Settlement Agreement to all management and operation staff employed by**



Pienaar Brothers within 60 (sixty) calendar days from the date of confirmation of this Settlement Agreement by the Tribunal.

## **5. ADMINISTRATIVE PENALTY**

5.1. Pienaar Brothers agrees and undertakes to pay an administrative penalty in the amount of R 3 000 000 (Three Million Rands), which does not exceed 10% (ten percent) of Pienaar Brothers' annual turnover in the Republic of South Africa for the financial year ending February 2021.

5.2. Pienaar Brothers agrees to pay the administrative penalty over a 6-month period, in monthly instalments of R500 000 (Five Hundred Thousand Rands) starting 30 calendar days from the date of confirmation of this Settlement Agreement by the Tribunal.

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

<b>Bank name:</b>	<b>Absa Bank</b>
<b>Branch name:</b>	<b>Pretoria</b>
<b>Account holder:</b>	<b>Competition Commission Fees Account</b>
<b>Account number:</b>	<b>4087641778</b>
<b>Account type:</b>	<b>Current Account</b>
<b>Branch Code:</b>	<b>632005</b>
<b>Reference:</b>	<b>2022FEB0051 / Pienaar Brothers</b>

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



## **6. UNDERTAKINGS**

**6.1. Pienaar Brothers have undertaken, for the period of three years, that:**

### **Bursaries**

**6.1.1. Pienaar Brothers commits an annual amount of R1 080 000 (One Million and Eighty Thousand Rands) towards bursaries for HDP students with a tertiary institution.**

### **Enterprise and supplier development**

**6.1.2. Pienaar Brothers will make donations (in the form of cash, stock, or machinery) to the value of R115 000 (One Hundred and Fifteen Thousand Rands) per year to small, micro and medium enterprises (SMMEs) owned by HDPs. This undertaking will serve to facilitate the entry of SMMEs in the market.**

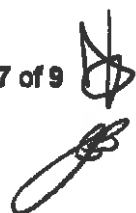
### **Local procurement**

**6.1.3. Pienaar Brothers undertakes to spend [REDACTED] of its procurement on SMMEs.**

### **Staff assistance**

**6.1.4. Pienaar Brothers will offer travel assistance (In the form of physical transport and / or a stipend) to its staff to the value of [REDACTED]**

**[REDACTED]**





## **Employment**

6.1.5. Pienaar Brothers will offer permanent employment to at least [REDACTED] historically previously disadvantaged students (HDPs), either through its learnership programme or otherwise.

6.2. Pienaar Brothers further undertakes that for the undertakings listed in subparagraph 6.1.1 to 6.1.3 above, to the extent possible, that it will give preference to women and women owned enterprises.

## **7. MONITORING**

7.1. Provide reports on the progress in relation to undertakings in paragraphs 6 above on an annual basis for the period of four years on the anniversary of the confirmations of the Consent Agreement as an order of the Tribunal.

7.2. All reports in relation to conditions set out in this agreement, including but not limited to Compliance programmes, Proof of payment(s) etc. shall be submitted to the Commission at [CartelSettlements@compcom.co.za](mailto:CartelSettlements@compcom.co.za).

## **8. FULL AND FINAL SETTLEMENT**

8.1. This Settlement Agreement is entered into in full and final settlement of the Commission's investigations of the Complaint and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Pienaar



Brothers relating to the conduct that is the subject of the Commission's investigation of the Complaint under case number 2022Feb0051.

**For Plenaar Brothers (Pty) Ltd**

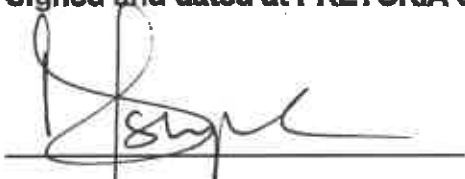
Signed and dated at PRAELEN EILAND on the 28 day of AUGUST 2023.

Name in Full: JACQUELEEN BREDEVELDT 

Designation: EXECUTIVE DIRECTOR

**For the Competition Commission**

Signed and dated at PRETORIA on the 06 day of September 2023



**DORIS TSHEPE**

Designation: **COMMISSIONER**