



competitiontribunal
SOUTH AFRICA

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: FTN123Sep20

In the matter between:

Competition Commission of South Africa

Applicant

And

ETG Agro Products (Pty) Ltd

First Respondent

Rand Agri (Pty) Ltd

Second Respondent

Panel: M Mazwai (Presiding Member)
E Daniels (Tribunal Member)
A Wessels (Tribunal Member)

Heard on: 02 July 2021

Decided on: 05 July 2021

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and ETG Agro Products (Pty) Ltd and Rand Agri (Pty) Ltd annexed hereto.



Presiding Member
Ms Mondo Mazwai

05 July 2021

Date

Concurring: Mr Enver Daniels and Mr Andreas Wessels

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: FTN123SEP20

CC CASE NO: 2018DEC0043

In the matter between:

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

ETG AGRO PRODUCTS PROPRIETARY LIMITED


First Respondent

RAND AGRI PROPRIETARY LIMITED

Second Respondent

**AMENDED SETTLEMENT AGREEMENT IN RESPECT OF AN ALLEGED
CONTRAVENTION OF SECTION 13A OF THE COMPETITION ACT, 1998 (ACT
NO. 89 OF 1998), AS AMENDED**

The Competition Commission and ETG Agro Products (Pty) Ltd and Rand Agri (Pty) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Competition Tribunal in


King Tembinkosi Bonakele
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Bonakele,

terms of section 27(1)(d) read with section 59(1)(d) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, on the terms set out below.

1. DEFINITIONS

For the 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. “**CAC**” means the Competition Appeal Court, a court established in terms of section 36 of the Act;
- 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, appointed in terms of section 22 of the Act;
- 1.5. “**ETG AGRO**” or “**ETG Agro**” means ETG Agro Products (Pty) Ltd,
- 1.6. “**ETG Group**” means Export Trading Group (Pty) Ltd;
- 1.7. “**ETGSA**” means ETG Investments South Africa (Pty) Ltd;
- 1.8. “**Parties**” means the Commission and the Respondents;




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- 1.9. “**Rand Agri**” means Rand Agri (Pty) Ltd;
- 1.10. “**Respondents**” means ETG Agro Products (Pty) Ltd and Rand Agri (Pty) Ltd;
- 1.11. “**Settlement Agreement**” means this agreement duly signed and concluded between the Commission and the Respondents;
- 1.12. “**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. BACKGROUND

- 2.1. On 20 December 2018, the *Commission* received notice of an intermediate merger between *ETG Agro* and *Rand Agri*, previously known as Maize And More (Pty) Ltd. This merger was implemented in May 2013 (“the May 2013 merger”).
- 2.2. The primary acquiring firm is *ETG Agro*. *ETG Agro* is controlled by *ETG SA*. Both *ETG Agro* and *ETG SA* are ultimately controlled by the Export Trading Group (Pty) Ltd. For purposes of this settlement, these entities are collectively referred to as the *ETG Group*. The *ETG Group* conducts agricultural business activities through a number of entities in South Africa. The *ETG Group* is commonly known as a manufacturer and distributor of fertiliser in South Africa, through Kynoch Fertilizer and Sidi


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Parani. However, relevant for purposes of this *settlement* are the activities of *ETG Agro*. *ETG Agro* is involved in the *ETG Group's* physical grain trading operations in South Africa. The *ETG Group*, by virtue of *ETC Agro's* operations, currently trades the following grain commodities in South Africa: (i) white maize, (ii) yellow maize, (iii) soybeans, (iv) sunflower seeds, and (v) wheat.

- 2.3. The primary target firm is *Rand Agri*. Before the May 2013 merger, the CSG Trust and the Mettle Trust jointly controlled *Rand Agri*, in equal proportions. Following the May 2013 merger, *Rand Agri* is controlled by *ETG Agro* as to 50.1%. The remaining shareholding in *Rand Agri* is held equally (i.e., 24.95% each) by the CSG Trust and the Mettle Trust.
- 2.4. At the time of the May 2013 transaction, *Rand Agri* was involved in the physical trading of grain commodities in South Africa. In this regard, *Rand Agri* was (and still is) involved in the trading of (i) white maize, (ii) yellow maize, (iii) soybeans, (iv) sunflower seeds, and (v) wheat.
- 2.5. The business of *Rand Agri* has expanded over the years and *Rand Agri* is now also active in the market for the storage and handling of grain for third parties. *Rand Agri* also has maize production mills in QwaQwa and Bethal which specialise in the production of yellow maize. *Rand Agri* has its own mills in QwaQwa through its wholly owned subsidiary Maluti Milling; and currently shares in mills in Bethal pursuant to its controlling 50% interest in Aledlox Milling. Both mills specialise in the production of yellow maize and roughly 7,000mt of maize is processed per month.



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3. THE COMMISSION'S FINDINGS

- 3.1. *ETG Agro* acquired 50,1% of *Rand Agri* in 2013. The merged parties implemented the merger without notifying the *Commission* of the transaction, in terms of section 13 A of the Act.
- 3.2. *ETG Agro's* acquisition of 50,1% shareholding in *Rand Agri* in 2013 amounted to an acquisition of control in terms of 12(2) of the *Act*.
- 3.3. In November 2018 the merged parties informed the *Commission* that they were seeking the *Commission's* approval of the May 2013 transaction wherein *ETG Agro* acquired 50.1% of the total issued share capital in *Rand Agri*.
- 3.4. In assessing the merged parties' market shares since the prior implementation of the merger, the *Commission* found that the merged parties' respective market shares have remained fairly consistent since *Rand Agri* was acquired by *ETG Agro* in 2013. Accordingly, the merger did not result in any substantial structural change in the relevant markets.
- 3.5. Although the market shares for the merged entity post-merger have been relatively high in relation to Soya beans in 2017, the May 2013 transaction did not significantly alter the structure of the market since *Rand Agri* remains a small player in South Africa with its estimated market being relatively small in 2017, the latest period under consideration in the merger analysis.
- 3.6. In addition, the *Commission* found that there are various other



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established competitors in the market for the physical trading of Soya beans who will continue to constrain the merged entity.

3.7. Customers and competitors contacted by the *Commission* indicated that they had no concerns with the merger as *Rand Agri* remains a relatively small player and combined the merged parties may offer some benefits for customers.


3.8. The *Commission* is of the view that it is unlikely that the merger resulted in any negative employment effects. In addition, the *Commission* did not find any evidence to suggest that the prior-implemented transaction raised any other public interest concerns.

4. ADMISSION

4.1. *ETG Agro* and *Rand Agri* admit that the entities entered into a merger transaction without notifying the *Commission*, and implemented the merger without the approval of the Commission in terms of section 14(1)(b), or the *Tribunal* in terms of section 16(2) or the *CAC* in terms of section 17, as required by section 13 A of the *Act*, and as such are in contravention of the *Act*.

5. AGREEMENT CONCERNING RESPONDENTS' FUTURE CONDUCT

5.1. The *Respondents* agree:


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5.1.1. Not to engage in any contravention of the *Act*;

5.1.2. To develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the *Act*;

5.1.3. To submit a copy of such compliance programme to the *Commission* within 60 days of the date of confirmation of the *Settlement Agreement* as an order by the Tribunal.

6. ADMINISTRATIVE PENALTY

6.1. Having regard to the provisions of sections 27(1)(d) as read with sections 59(1)(d), 59(2) and 59(3) of the *Act*, the *Respondents* accept that they are jointly and severally liable to pay an administrative penalty, the one paying, the other to be absolved.

6.2. The *Parties* have agreed that *the Respondents* will pay an administrative penalty in the amount of R1 000 000 (one million rand);

6.3. This amount does not exceed 10% of [REDACTED], which is the *Respondents'* total annual income in the Republic and its exports from the Republic for its 2019/2020 financial year;

6.4. The *Respondents* will pay the amount set out in paragraph 6.2 above to the *Commission* within 30 days from the date of confirmation of this *Settlement Agreement* by the Tribunal.



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

NAME: THE COMPETITION COMMISSION FEE ACCOUNT

BANK: ABSA BANK, PRETORIA

ACCOUNT NUMBER: 4050778576

BRANCH CODE: 323 345

REF: 2018DEC0043

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

7. FULL AND FINAL SETTLEMENT

7.1. This *Settlement Agreement*, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the *Commission* and the *Respondents* relating to any alleged contravention of the Act by the *Respondents*, that is the subject of the *Commission's* investigation referred to the Tribunal under CT Case No. FTN123SEP20.

Dated and signed at Sandton on the 29th day of JUNE 2021

For ETG AGRO PRODUCTS (PTY) LTD



Chief Executive Officer



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Signed by King Tembinkosi
Bonakele,

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Dated and signed at Sandton on the 29th day of JUNE 2021

For RAND AGRI (PTY) LTD



Chief Executive Officer

Dated and signed at _____ on the _____ day of JUNE 2021

For THE COMPETITION COMMISSION



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Competition Commissioner