



**competitiontribunal**  
SOUTH AFRICA

## COMPETITION TRIBUNAL OF SOUTH AFRICA

**Case No: CR125Sep20/SA146Dec21**

In the matter between:

The Competition Commission

**Applicant**

And

Ikemele Egg Production CC

**Respondent**

Panel: AW Wessels (Presiding Member)  
F Tregenna (Tribunal Member)  
H Cheadle (Tribunal Member)

Heard on: 23 December 2021

Decided on: 23 December 2021

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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 Ikemele Egg Production CC annexed hereto.

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**Presiding Member**  
**Mr Andreas Wessels**

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**23 December 2021**  
**Date**

**Concurring: Prof. Fiona Tregenna and Mr Halton Cheadle**

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**CT CASE NO: CR125SEP20**

**CC CASE NO: 2019SEP0024**

In the matter between:

**COMPETITION COMMISSION OF SA**

**Applicant**

And

**IKEMELE EGG PRODUCTION CC**

**Respondent**

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**CONSENT 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 IKEMELE EGG PRODUCTION CC, IN RESPECT  
OF A CONTRAVENTION OF SECTION 4(1)(b)(iii) OF THE COMPETITION ACT 89  
OF 1998**

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**Preamble**

The Competition Commission ("Commission") and Ikemele Egg Production CC ("Ikemele") hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of

  
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section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended ("the Act"), in respect of a contravention of section 4(1)(b)(iii) of the Act.

## 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. "**Ikemele**" means a close corporation duly registered in accordance with the laws of the Republic of South Africa, with its registered place of business situated at Plot 35, kalk-Fontein, Palmada, Polokwane, 0700;
- 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. "**Consent Agreement**" means this agreement duly signed and concluded between the Commission and Ikemele;
- 1.6. "**Department of National Treasury**" means a government department that manages national economic policy, prepares the South African government's



annual budget and manages the government's finances, with its principal place of business situated at 240 Madiba St, Pretoria Central, Pretoria, 0002.

- 1.7. **“National Treasury Tender”** means tender issued by the Department National Treasury under tender number: RT11/2016 for the supply, delivery and off-loading of animal feed to the State.
- 1.8. **“Parties”** means the Commission and Ikemele.
- 1.9. **“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. COMMISSION'S INVESTIGATION AND FINDINGS**

- 2.1. On 29 March 2019, the Commission received a complaint from the Department of National Treasury (“National Treasury”) in terms of section 49B(2)(b) of the Competition Act 89 of 1998, as amended (“the Act”). National Treasury alleged that Aludar Holdings (Pty) Ltd and Ikemele Egg Production CC (“Ikemele”) being firms in a horizontal relationship colluded when tendering for the National Treasury Tender.
- 2.2. The National Treasury Tender was for the supply, delivery and off-loading of animal feed to the State for the period 1 October 2016 to 30 September 2019.

- 2.3. This complaint was investigated under case number 2019Mar0051.
- 2.4. The Commission's investigation found that on or about April 2016, Aludar Holdings (Pty) Ltd and Ikemele assisted each other when completing tender documents for the National Treasury Tender. In this regard, the investigation revealed that the sole member of Aludar Holdings (Pty) is the son of the sole member of Ikemele and that the two members coordinated their bids when tendering for the National Treasury Tender as evidenced by various similarities in their bid documents.
- 2.5. The conduct between Aludar Holdings (Pty) Ltd and Ikemele amounts to collusive tendering in contravention of section 4(1)(b)(iii) of the Act.

### **3. ADMISSION**

- 3.1. Ikemele does not admit that it has acted in contravention of section 4(1)(b)(iii) of the Act as described in paragraph 2 above.
- 3.2. The Commission has agreed to enter into the Consent Agreement without admission of liability with Ikemele based on the following factors:
  - 3.2.1 Ikemele is a small firm;
  - 3.2.2 Given the small size of Ikemele as well as the small size of the tender, the Commission does not consider it worthy to engage in protracted and



costly litigation with Ikemele;

3.2.3 Ikemele has not won the tender in question; and

3.2.4 Ikemele is a first-time offender, it has never contravened the Act before.

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

4.1. Ikemele undertakes to refrain from engaging in any anti-competitive conduct in contravention of the Act in future.

4.2. Ikemele will develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that all its members and board of directors do not engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the identification, prevention, detection and monitoring and detection of any contraventions of the Act.

4.3. Ikemele shall circulate a statement summarising the contents of this Consent Agreement to all its members and board of directors within 60 (sixty) business days from the date of confirmation of this Consent Agreement by the Tribunal.

#### **5. ADMINISTRATIVE PENALTY**

5.1. Ikemele agrees that it is liable to pay an administrative penalty of R50 000 (**Fifty Thousand Rand**). This amount does not exceed 10% of Ikemele's annual

turnover for the financial year ending February 2020.

5.2. Ikemele will pay R50 000 (**Fifty Thousand Rand**) to the Commission in 1 (**one**) instalment payable within sixty (60) days after the confirmation of the Consent Agreement as an order of the Tribunal.

5.3. The payment shall be made into the Commission's bank account, details of 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>2019Mar0051/Ikemele Egg Production CC</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. MONITORING



6.1. Ikemele undertakes to submit a copy of the compliance programme referred to in clause 4.2 to the Commission within 60 calendar days of the date of confirmation of this Consent Agreement as an order to the Tribunal.

6.2. 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).

## 7. FULL AND FINAL SETTLEMENT

7.1. This Consent Agreement is entered into in full and final settlement of the Commission's investigation under Case No's. 2019Mar0051 and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and Ikemele relating to the conduct that is the subject of the Commission's investigation under Case No's. 2019Mar0051.

**FOR Ikemele Egg Production CC:**

  
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KIALADI MAGDELINE SEBONE

Dated and signed at POLOKWANE on the 06 day of DECEMBER 2021.





**FOR THE COMMISSION:**



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**TEMBINKOSI BONAKELE**

**Commissioner**

**Dated and signed at** PRETORIA **on the** 14 **day of** DECEMBER **2021.**