

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 15/CR/Mar10

In the matter between:

The Competition Commission

Applicant

and

Keystone Milling (Pty) Ltd

Respondent

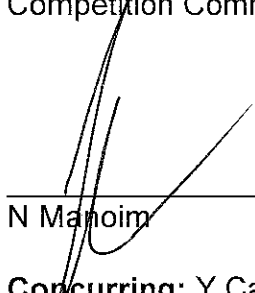
Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and A Wessels (Tribunal Member)

Heard on : 07 April 2010

Decided on : 07 April 2010

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".



N Manoim

Concurring: Y Carrim and A Wessels

'A'


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

CCCASENO: 2007MAR244

CT CASE NO.: 15/02/MAR10

In the matter between:

The COMPETITION COMMISSION
and
KEYSTONE MILLING Co.(PTY) LTD

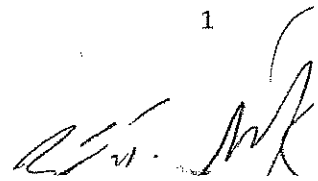
 competitiontribunal south africa	
2010 -03- 31	
RECEIVED BY: <u>Mogail</u>	Applicant
TIME: <u>15:39</u>	Respondent

In re:

THE COMPETITION COMMISSION Applicant
and

PREMIER FOODS (PTY) LTD
TIGER BRANDS LIMITED
PIONEER FOODS (PTY) LTD
FOODCORP (PTY) LTD
GODRICH MILLING (PTY) LTD
PROGRESS MILLING (PTY) LTD
PRIDE MILLING (PTY) LTD
WESTRA MILLING(PTY)LTD
BRENNER MILLS (PTY) LTD
BLINKWATER MILLS (PTY) LTD
TWK MILLING (PTY) LTD
KEYSTONE MILLING Co.(PTY) LTD
CAROLINA MILLS (PTY) LTD
PARAMOUNT MILLS (PTY) LTD
NTK (PTY) LTD
KALEL MILLS t/a ISIZWE MILLS (PTY) LTD
BOTHAVILLE MILLING (PTY) LTD t/a THUSO MILLS

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Ninth Respondent
Eight Respondent
Tenth Respondent
Eleventh Respondent
Twelve Respondent
Thirteen Respondent
Fourteenth Respondent
Fifteenth Respondent
Sixteenth Respondent
Seventeenth Respondent



CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND KEYSTONE MILLING CO. (PTY) LTD IN REGARD TO CONTRAVENTIONS OF SECTION 4 (1) (b) OF THE COMPETITION ACT 89 OF 1998


The Competition Commission and Keystone Milling Co. (Pty) Ltd hereby agree that application be made to the Competition Tribunal for confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D as read with sections 58(1) (b) and 59(1) (a) of the Competition Act 89 of 1998, as amended, on the terms set out below:

1. Definitions

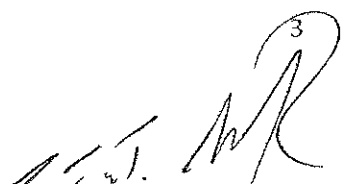
2. For the purposes of this consent agreement the following definitions shall apply:

- 2.1.1 "Act" means the Competition Act, 1998 (Act No.89 of 1998), as amended.
- 2.1.2 "Blinkwater" means Blinkwater Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 10 SADC Street, Middelburg, Mpumalanga Province.
- 2.1.3 "Bothaville" means Bothaville Milling (Pty) Ltd t/a Thuso Mills, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively, its principal place of business at 10th Avenue, Industrial Site, Bothaville, Free State Province.
- 2.1.4 "Brenner" means Brenner Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 980 Park Street, Arcadia, Pretoria, Gauteng.
- 2.1.5 "Carolina Mills" means Carolina Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 27 Voortrekker Street, Carolina, Mpumalanga Province.

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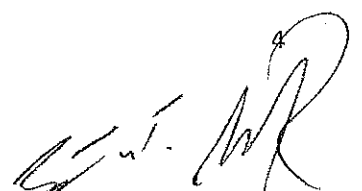


- 2.1.6 "CLP" means the Commission's Corporate Leniency Policy gazetted in Government Gazette number 31064 of 2008.
- 2.1.7 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa.
- 2.1.8 "Commissioner" means the Commissioner of the Competition Commission appointed in terms of section 22 of the Act;
- 2.1.9 "Consent Agreement" means this consent agreement duly signed and concluded between the Commission and Keystone.
- 2.1.10 "Foodcorp" means Foodcorp (Pty) Ltd; a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office alternatively its principal place of business at 415 Mitchel Street, Pretoria West, Gauteng.
- 2.1.11 "Godrich" means Godrich Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at Lanham Street, Extention Bronkhorstpruit, Mpumalang Province.
- 2.1.12 "Kalel" means Kalel Mills, now t/a Isizwe Mills (Pty) Ltd a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively, its principal place of business or whose last known address was 32 Watt Street, Industrial Area, Middelburg, Mpumalanga Province.
- 2.1.13 "Keystone" means Keystone Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively its principal place of business at 47 Lucas Street, Rustenburg, North West Province.
- 2.1.14 "NTK" means NTK Mills a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively, its principal place of business at 84 River Road, Modimole, Limpopo province.
- 2.1.15 "Paramount" means Paramount Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively, its principal

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place of business at 4 Royan Road, Gately East London, Eastern Cape Province.

- 2.1.16 "Pioneer" means Pioneer Foods (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively its principal place of business at Markstraat 32, Paarl, Cape Town, Western Cape Province.
- 2.1.17 "Premier" means Premier Foods (Pty) Ltd a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Joint Street, Isando, Johannesburg, Gauteng.
- 2.1.18 "Pride" means Pride Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively principal place of business at Ground Floor, Block C, Futuram Office Park, 117 Lenchen Avenue, Centurion, Pretoria, Gauteng.
- 2.1.19 "Progress Milling" means Progress Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at No.1 20th Street, Industria Polokwane, Limpopo Province.
- 2.1.20 "Respondents" means all the firms that are cited in the complaint referral affidavit.
- 2.1.21 "Tiger" means Tiger Brands Limited, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 3010 William Nicol Drive, Bryanston, Johannesburg, Gauteng.
- 2.1.22 "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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria.
- 2.1.23 "TWK" means TWK Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 13 Church Street, Piet Retief, Mpumalanga Province.

A handwritten signature in black ink, appearing to be 'G. I. M. R.', located in the bottom right corner of the page.

2.1.24

"Westra" means Westra Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively principal place of business at Stasie Straat, Christiana, Northern Cape Province.

3. Complaint investigation and Commission's findings

3.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp, Pride and Progress Milling in the maize milling industries. The initiation was subsequently amended to include other players in the milling industry, namely Blinkwater, Godrich, TWK, Keystone, Westra, Carolina Mills, Brenner, Paramount, NTK, Kalel, Bothaville and Allem Brothers. The complaint was initiated after the Commission had received a corporate leniency application from Premier in 2007, which was corroborated by a further leniency application from Tiger.

3.2 The Commission's investigation revealed that at various stages during the period 1996 to 2007 the Respondents were involved in price-fixing in contravention of section 4(1)(b) of the Act in that various representatives of the firms engaged in the following conduct:

3.2.1 Attended numerous meetings and held telephone discussions in which they reached agreement in contravention of section 4(1) (b) (i) of the Act; and, in such meetings and telephone discussions, the respondents agreed *inter alia* to:

3.2.1.1 fixing prices of milled white maize products;

3.2.1.2 create uniform price lists for wholesale, retail and general trade customers;

3.2.1.3 not to implement exact pricing in an effort to "fool customers"; and

3.2.1.4 the timing of the price increases and implementation thereof.

3.3 The agreements concluded at these meetings were used to secure co-ordination at both a regional and national level and were mutually reinforcing.

3.4 During the period between 2005 to 2006 Keystone and its competitors (namely, Blinkwater, Pride, Brenner, TWK, Godrich, Ruto Mills, Tiger, Kalel and Carolina Mills) being firms in the same line of business i.e. the millers of white maize products acting through their respective representatives in meeting and in telephone discussions agreed to:

3.4.1 directly fixed prices of milled white maize products; and

3.4.2 directly fixed dates on which such agreed price increments were to be implemented.

3.5 This conduct constitutes price fixing and fixing trading conditions in contravention of section 4(1) (b) (i) of the Act.

3.6 Through these price fixing arrangements, Keystone and its competitors prevented and/or limited price competition amongst themselves in relation to pricing of milled white maize products.

3.7 On 1 December 2009, the Commission received an anonymous call from a player in the Maize Milling industry who wanted to provide information regarding the alleged collusion in the white maize milling industry.

3.8 The informant later revealed that he was a representative of Keystone and that he was unaware that Keystone was one of the Respondents in the investigation. He chose not to be legally represented, despite being afforded an opportunity to do so.

3.9 Keystone co-operated with the Commission's investigation and provided information to the Commission. Keystone further made available another employee to corroborate the information that had been provided by the first employee. The information provided by this employee was particularly valuable in that he had previously worked for various other milling companies who are also cited as Respondents in this matter.

3.10 The above-mentioned willingness of Keystone to co-operate as extensively as possible has culminated in this consent agreement.

4 Admission

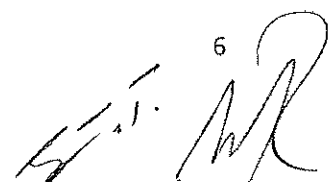
Keystone admits that it has contravened sections 4 (1)(b)(i) of the Act, in that during the period between 2005 and 2006 it was represented in a series of meetings wherein agreements to fix selling prices of white maize and the implementation dates of such prices were reached.

5 Agreement concerning future conduct

5.1 Keystone agrees to fully cooperate with the Commission in relation to the prosecution of any other respondents in this Complaint referral. Without limiting the generality of the above, Keystone specifically agrees to:

5.1.1 testify in support of the Commission's case regarding the contraventions in this consent agreement; and

5.1.2 provide evidence, written or otherwise, which is in its possession or under its control concerning the contraventions contained in this consent agreement.

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5.2 Keystone agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that employees, management and directors within Keystone, its subsidiaries and business units do not engage in any contraventions of section 4 (1) (b) of the Act, a copy of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this consent agreement as an order by the Tribunal.

5.3 Keystone agrees that it will cease to engage in conduct detailed in paragraph 4.

6 Administrative Penalty

6.1 Having regard to the provisions of section 58(1) (a) (iii), read with sections 59 (1) (a), 59 (2) and (3) of the Act, Keystone accepts that it is liable to pay an administrative penalty.

6.2 The parties have agreed that Keystone will pay an administrative penalty in the sum of R6 730 349.00 (six million seven hundred and thirty thousand three hundred and forty nine rands) being 3% of its total turnover for the 2009 financial year.

6.3 Keystone will pay the penalty amount to the Commission in two equal payments, the first such payment of R 3 365 175.00 (three million three hundred and sixty five thousand one hundred and seventy five rands) to be made within seven (7) days of confirmation of this Consent Agreement as an Order of the Tribunal.

6.4 Keystone will make the second payment of R 3 365 175.00 (three million three hundred and sixty five thousand one hundred and seventy five rands) within six (6) months after the confirmation of the Consent Agreement as an Order of the Tribunal.

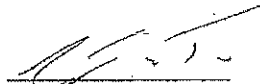
6.5 The Commission will pay these sums to the National Revenue Fund in terms of section 59 (4) of the Act.

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Full and final resolution

This Consent Agreement is entered into in full and final settlement and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Keystone relating to any alleged contraventions by Keystone of section 4 (1) (b) of the Act that are the subject of the Commission's investigation under case number 2007Mar2844.

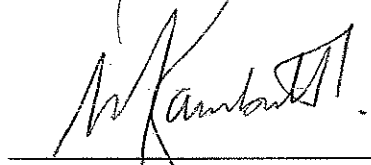
Signed at Pretoria on this the 30th day of March 2010



George du Toit

Director: Keystone Milling Co. (Pty) Ltd

Signed at Pretoria on this the 30th day of March 2010



Shan Ramburuth

The Commissioner : Competition Commissioner

Tebogo Mputle

From: Tebogo Mputle
Sent: Wednesday, April 07, 2010 2:16 PM
To: 'hugo@keystonemilling.co.za'; 'wendy@compcom.co.za'
Cc: Rietsie Badenhorst
Subject: Competition Commission/Keystone - 15/CR/Mar10
Attachments: 20100407141425985.tif

Good afternoon

Please see attached consent order.

Regards

Tebogo Mputle
Registry Administrator
competition tribunal south africa
Tel No: +27 (12) 394 3354
Fax No: +27 (12) 394 4354
Mobile: +27 (82) 557 6897
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