

**COMPETITION TRIBUNAL**  
**REPUBLIC OF SOUTH AFRICA**

Case No's: 10/CR/Mar10  
15/CR/Mar10

**In the matter between:**

The Competition Commission

Applicant

and

Pioneer Foods (Pty) Ltd

Respondent

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

Heard on : 30 November 2010

Decided on : 30 November 2010

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**Order**

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The Tribunal hereby confirms the consent and settlement agreement attached hereto.



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N Manoim

**Concurring:** Y Carrim and A Wessels

NON CONFIDENTIAL  
VERSION



# competitiontribunal south africa

Form CT1(1)

Page 2

About this Form

This form is issued in terms of section 27(2) of the Competition Act 1998.

This form is a consent proceeding for a referral by the Competition Commission.

Unless there is a consent proceeding, the respondent may answer this referral within 20 business days after being served with this referral.

It is a condition of the point of law that the respondent must be notified of the grounds on which the complaint is opposed by the material facts or points of law that the respondent relies on. An affidavit setting out the grounds on which the complaint is opposed by the material facts or points of law that the respondent relies on must be submitted to the Competition Tribunal.

An allegation of a breach of the Competition Act 1998, which is a condition of the point of law that the respondent must be notified of the grounds on which the complaint is opposed by the material facts or points of law that the respondent relies on.

For more information, contact the Competition Tribunal at 012 304 5000.

## Contacting the Tribunal

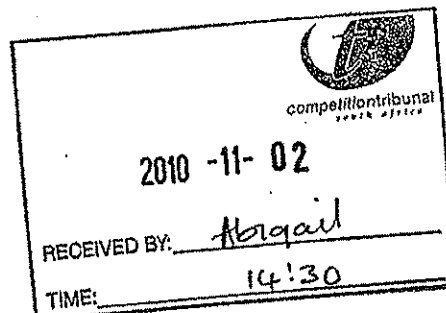
The Competition Tribunal  
Private Bag 24  
Stellenbosch  
7601  
South Africa  
Tel: 012 304 5000  
Fax: 012 304 0069  
e-mail: csa@comptrib.co.za

## Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

See attached Consent and Settlement agreement



☒ This referral is to proceed as a consent proceeding.

☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

Name and Title of person authorised to sign on behalf of the Competition Commission:

Wendy Mkwanzani : Chief Legal Counsel

Authorised Signature:



# competitiontribunal south africa

## Form CT1(1) Page 2 About this Form

This form is issued in terms of section 27 (2) of the Competition Act.

This form is to be presented only for a referral to the Competition Commission.

Unless this is a consent proceeding, the respondent must answer this referral within 30 business days after being served with this referral.

If there are no defensible points of law, the respondent must answer the referral within 30 business days after being served with this referral. The answer must be in the form of an affidavit setting out the grounds of the complaint, the grounds on which the complaint is based, and the points of law on which the respondent relies. (a) a statement of the grounds of the complaint, and/or (b) the material facts of the complaint, and/or (c) the points of law on which the respondent relies.

An affidavit of a respondent is not required for a consent proceeding. A statement of the material facts of the complaint, and/or a statement of the points of law on which the respondent relies, will be deemed to have been admitted.

Please see Competition Tribunal Rule 15(2) for more information.

## Contacting the Tribunal

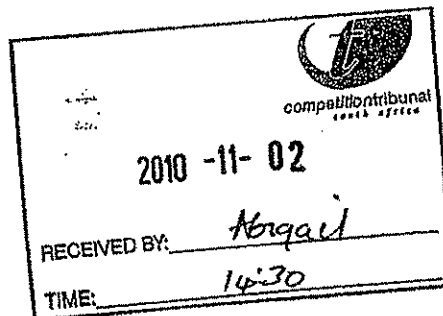
The Competition Tribunal  
Private Bag 924  
Sunnyside  
2012  
Republic of South Africa  
Tel: 27 012 3943300  
Fax: 27 012 3940159  
E-mail: [ccsa@comtrib.gov.za](mailto:ccsa@comtrib.gov.za)

## Referral of Complaint by Commission

The Competition Commission seeks an order granting the following relief:

(Concise statement of the order or relief sought:)

See attached Consent and Settlement agreement



☒ This referral is to proceed as a consent proceeding.

☐ This referral is to proceed as a contested proceeding. Attached is an affidavit setting out the grounds of this complaint, and a statement of the material facts and the points of law relevant to it, as required by Competition Tribunal Rule 15(2).

**Name and Title of person authorised to sign on behalf of the Competition Commission:**

Wendy Mkwanzani : Chief Legal Counsel

**Authorised Signature:**

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA  
HELD IN PRETORIA

In the matter between:

THE COMPETITION COMMISSION  
and  
PIONEER FOODS (PTY) LTD

Applicant

Respondent

In re: CC CASE NUMBERS:

2007MAR2844  
2008DEC4165  
2009APR4389  
2009APR4390  
2009APR4391  
2009NOV4744  
2009DEC4819  
2010MAY5133

In re:

CT CASE NO.: 10/CR/MAR10

THE COMPETITION COMMISSION  
and

Applicant

PREMIER FOODS (PTY) LTD & four others

Respondents

And

In re:

CT CASE NO.:15/CR/MAR10

THE COMPETITION COMMISSION

Applicant

and

PREMIER FOODS (PTY) LTD & sixteen others

Respondents

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**CONSENT AND SETTLEMENT AGREEMENT BETWEEN THE COMPETITION  
COMMISSION AND PIONEER FOODS (PTY) LTD IN REGARD TO CONTRAVENTIONS OF  
SECTIONS OF THE COMPETITION ACT 89 OF 1998, AS AMENDED**

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**PREAMBLE**

**WHEREAS** the Competition Commission ("Commission") is empowered to, *inter alia*, investigate alleged contraventions of the Competition Act No. 89 of 1998, as amended ("the Act");

**WHEREAS** the Commission is empowered to, *inter alia*, conclude consent agreements in terms of section 49D of the Act;

**WHEREAS** the purpose of the Act is to promote and maintain competition in South Africa in order to:

- Promote the efficiency, adaptability and development of the economy;
- Provide consumers with competitive prices and product choices;
- Promote employment and advance the social and economic welfare of South Africans;
- To expand opportunities for South African participation in world markets;
- Ensure that small and medium enterprises have an equitable opportunity to participate in the economy; and



- Promote greater spread of ownership, in particular increase the ownership stakes of historically disadvantaged persons;

**WHEREAS** the Commission and Pioneer Foods (Pty) Ltd ("Pioneer") have been engaged in discussions to settle various complaints involving Pioneer which are either under investigation by the Commission or before the Competition Tribunal ("Tribunal");

**NOW THEREFORE** the Commission and Pioneer hereby agree that application be made to the Tribunal for confirmation of this Consent and Settlement 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 Agreement the following definitions shall apply:**

- 2.1 "Act" means the Competition Act, 1998 (Act No.89 of 1998), as amended;
- 2.2 "Agreement" means this Consent and Settlement agreement duly signed and concluded between the Commission and Pioneer;
- 2.3 "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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 2.4 "CLP" means the Commission's Corporate Leniency Policy gazetted in Government Gazette number 31064 of 23 May 2008;
- 2.5 "Commissioner" means the Commissioner of the Competition Commission appointed in terms of section 22 of the Act;
- 2.6 "Respondents in the complaint referrals" means all the firms that are cited as Respondents in the Commission's complaint referrals filed under Competition Tribunal Case numbers 15/CR/MAR10 (maize milling) and 10CR/MAR10 (wheat milling) respectively, namely: Pioneer Foods (Pty) Ltd ("Pioneer"), Foodcorp (Pty)

Ltd ("Foodcorp"), Godrich Milling (Pty) Ltd ("Godrich"), Premier Foods (Pty) Ltd ("Premier"), Tiger Brands Ltd ("Tiger Brands"), Progress Mills (Pty) Ltd ("Progress Mills"), Pride Milling (Pty) Ltd ("Pride Milling"), Westra Milling (Pty) Ltd ("Westra Milling"), Brenner Mills (Pty) Ltd ("Brenner Mills"), Blinkwater Mills (Pty) Ltd ("Blinkwater Mills"), TWK Milling ("TWK Milling"), NTK Milling (Pty) Ltd ("NTK Milling"), Carolina Rollermeule (Pty) Ltd ("Carolina Rollremeule"), Isizwe Mills (Pty) Ltd ("Isizwe Mills") Bothaville Milling (Pty) Ltd ("Bothaville Milling"), Paramount Mills (Pty) Ltd ("Paramount Mills"), Keystone Milling (Pty) Ltd ("Keystone Milling"); and Pioneer, Foodcorp, Godrich, Premier and Tiger; and

- 2.7 "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.

#### A. THE COMMISSION'S INVESTIGATIONS AND FINDINGS

##### 3. *The maize milling complaint (Case number 2007Mar2844)*

- 3.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp, Pride Milling and Progress Milling in respect of alleged collusive activities in the maize milling industry. The initiation was subsequently amended to include other players in the maize milling industry, namely Blinkwater Mills, Godrich Milling, TWK Milling, Keystone Milling, Westra Milling, Carolina Rollermeule, Brenner Mills, Paramount Mills, NTK Milling, Kalel Mills, Bothaville Milling and Allem Brothers. The complaint was initiated after the Commission had received a corporate leniency application from Premier, in 2007, which was subsequently corroborated by a further leniency application from Tiger. This complaint was referred on 31 March 2010 to the Tribunal for determination.
- 3.2 The Commission's investigations revealed that at various stages during the period 1999 to at least 2007 the Respondents in the complaint referral, being firms in the same line of business, were involved in conduct in contravention of section 4(1)(b)(i) 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 agreed *inter alia*:

3.2.1.1 to fix the prices of white maize products;

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

3.2.1.3 to the timing of price increases and the implementation thereof.

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

3.2.3 During the period between 2003 to 2007 competitors at both national and regional level namely Pioneer, Tiger, Premier, Ruto, Godrich, Progress Milling, Pride Milling, Brenner Mills, Blinkwater, OTK, TWK, and Westra met to agree to the level and timing of price increases.

3.2.4 Pioneer also participated in meetings of the National Chamber of Milling ("NCM") which were attended by firms from across all regions namely Tiger, Pride, Brenner Mills, NTK, Thuso Mills, Progress Milling, Blinkwater Milling and Ruto Mills. The Commission's findings are that, after some of those meetings, discussions were held amongst Pioneer and its competitors relating to, amongst other things, the fixing of the selling prices and implementation dates of both wheat and maize products.

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

**4. The wheat milling complaint (Case number 2007Mar2844)**

4.1. On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp and Godrich Milling in respect of alleged collusive activities in the wheat milling industry. This complaint was also initiated after the Commission had received a corporate leniency application from Premier, in 2007, which was



subsequently corroborated by a further leniency application from Tiger. This complaint was on 15 March 2010 referred to the Tribunal for determination.

4.2. The Commission's investigations revealed that at various stages during the period 1998 to at least 2007 the Respondents in the complaint referral, being firms in the same line of business, were involved in conduct in contravention of section 4(1)(b)(i) and (ii) of the Act in that various representatives of the firms engaged in the following conduct:

4.2.1 Attended numerous meetings and held telephone discussions in which they agreed *inter alia*:

4.2.1.1 to fix the prices of milled wheat products;

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

4.2.1.3 to the timing of price increases and the implementation thereof; and

4.2.1.4 to allocate customers between themselves.

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

4.2.3 During the period between 2003 to 2007 competitors at both national and regional level namely Pioneer, Tiger Brands, Premier, Foodcorp, Godrich Milling, met to agree to the level and timing of price increases as well as allocating their customers.

4.3 Pioneer also participated in meetings of the NCM which were attended by firms from across all regions namely Tiger, Premier, Foodcorp and Godrich Milling. The Commission's findings are that after some of those meetings, discussions were held amongst Pioneer and its competitors relating to, amongst other things, the fixing of the selling prices and implementation dates of both wheat and maize products.

5. *The wheat milling and baking information exchange complaint (Case number 2009Nov4744)*

5.1. The Commission's investigation to date has revealed that the wheat milling industry is highly concentrated with four firms controlling approximately 97% of the industry. In turn, the four firms are further vertically integrated in baking and production of other foodstuffs such as cereals and pasta. They are the most significant players in the baking of products such as bread. These firms also interact in more than one market at the same time. In particular all four have extensive presence in a number of geographic markets and all four are also active on the downstream level of the value chain in the baking of bread. As well as being used in their own bakeries, flour is sold to independent bakeries (some of the largest being the in-store bakeries of the main supermarket chains) as well as to the retail market (such as cake flour for home baking).

5.2. The Commission initiated a complaint against Pioneer, Tiger Brands, Foodcorp, Godrich Milling and Premier who are all members of both the South African Chamber of Baking ("SACB") and of the NCM as well as all past and present members of the said Chambers, together with the Chambers themselves (collectively "the respondents"). The complaint was initiated after the Commission had observed that, although the prohibited conduct detailed in paragraphs 3 and 4 above had allegedly ceased, the market had seemingly not become more competitive.

5.3. The Commission's investigation revealed that the respondents submitted commercially sensitive information to the SACB and NCM in that:

5.3.1. They submit commercially sensitive trading information with regard to milled wheat products and bread to the SACB and the NCM which are trade associations that represent the interests of, inter alia, the producers of milled wheat products in South Africa; and

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- 5.3.2. The NCM collects disaggregated information from its members on a weekly and monthly basis in respect of the sales of milled wheat per product, pack size, province, customer category on a national level and exports as well as information pertaining to their annual production, packaging and distribution costs.
- 5.4. Members of the Chambers in return receive, for each category of information submitted to the Chambers an industry aggregated value.
- 5.5. The Commission's findings to date are that there are generally four broad types of information received by NCM members from the NCM. These are:
- 5.5.1. Industry weekly data concerning volumes of milled wheat products sold (based upon information submitted by each of the members by 12h00 every Monday and received back from the NCM at 14h00 that day);
- 5.5.2. Industry monthly production and sales volume data, disaggregated by product, pack size, province and customer category (based upon information submitted by the members on the 15th day of each month and received back from the NCM at the end of each month);
- 5.5.3. Average annual costing data (based upon information submitted by each member during January or February of each year and received back from the NCM during or about May of the relevant year); and
- 5.5.4. A selection of aggregated data published on the NCM website.
- 5.6. The SACB collects data for brown bread, white bread and total (all) bread on the sales per province and the tons of flour used per province from all its members. Similarly, the SACB collects from its members information relating to annual production, packaging and distribution costs. In turn members receive for each of the category of information supplied to the SACB an industry aggregate value.
- 5.7. The Commission has found that in respect of bread, there are three broad types of information received by SACB members from the SACB. These are:



- 5.7.1. Industry monthly production and sales volume data, disaggregated by product and province (based upon information submitted by the members on the 15th day of each month and received back from the SACB at the end of each month);
- 5.7.2. Average annual costing data (based upon information submitted by each member during January or February of each year and received back from the SACB during or about May of the relevant year); and
- 5.7.3. The SACB website contains a link to "industry statistics", essentially an estimate of total bread production based on flour sold.
- 5.8. The Commission is concerned that information exchanged through the industry associations could be used to sustain anticompetitive outcomes long after decisions by the competition authorities have been made regarding the face-to-face meetings and telephone calls to fix prices and allocate customers.
- 5.9. Given the regional dynamics of competition, in some regions the information would be highly transparent as there could be as few as two players in a given market. In such regions it would therefore be easy for competitors to effectively monitor market shares through the disaggregated information provided by the NCM to its members on a monthly basis. The Commission is therefore investigating whether the disaggregated information provided by the NCM to its members could therefore be a tool for facilitating ongoing coordination between firms. Moreover, the information exchange in and of its self could prevent hidden competition.
- 5.10. The Commission's investigation is still ongoing.

**6    *The white maize milling information exchange investigation (Case number 2009Dec4819)***

- 6.1    The Commission's investigation to date has revealed that the white maize milling industry is structurally different to that of the wheat industry. Deregulation of the

white maize industry has led to the growth of small and medium scale white maize millers in South Africa. White maize meal is the main product of the milling of white maize which is a relatively homogenous product. Unlike the wheat milling industry, there are many more firms active in white maize milling across the various provinces. Members of the NCM account for only approximately 57% of the total white maize milling industry in South Africa.

6.2 The Commission initiated a complaint against all white maize milling members of the NCM including Pioneer, Tiger, Foodcorp and Premier as well as the NCM itself (collectively "the respondents"). The complaint was initiated after the Commission had observed that, although the prohibited conduct detailed in paragraphs 3 and 4 above had allegedly ceased, the market had seemingly not become more competitive.

6.3 The Commission's investigation thus far has established that the NCM collects information from its members on sales of white maize as follows: monthly volumes of milled product, monthly sales per product, per province, per pack size, per customer category and exports. In addition, it collects information from its members relating to annual production, packaging and distribution costs. In turn members receive, for each category of information supplied to the NCM an industry aggregated value.

6.4 In respect of white maize, there are generally three broad types of information received by NCM members from the NCM. These are:

6.4.1 Industry monthly production and sales volume data, disaggregated by product, pack size, province and customer category (based upon information submitted by the members on the 15th day of each month and received back from the NCM at the end of each month);

6.4.2 Average annual costing data (based upon information submitted by each member during January or February of each year and received back from the NCM during or about May of the relevant year); and

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6.4.3 A selection of aggregated data published on the NCM website.

6.5 The Commission's investigation is still ongoing.

**7 The exclusionary conduct complaint (Case number 2008Dec4165)**

7.1 In December 2008, the Commission initiated a complaint against Pioneer in respect of allegations that it was engaged in exclusionary conduct. This was pursuant to a complaint received by the Competition Commission from Mossel Bay Bakery alleging that Pioneer trading as Sasko Bakeries engaged in a price war against it and was pricing its products very low in order to keep small independent bakeries from expanding in the market in contravention of section 8(c) and/or 8 (d) (iv) of the Act.

7.2 The Commission's investigation of this complaint revealed that:

7.2.1 Pioneer is dominant in the relevant markets i.e. Worcester, Mossel Bay, Oudsthoorn and Beaufort West;

7.2.2 According to the information received during the investigation, at various stages during the period 2002 to 2004 and during 2007 and through some members of its staff, Pioneer threatened competitors in the Worcester, Mossel Bay, Oudsthoorn and Beaufort West markets that it would engage in a price war if they did not close down their bakeries or adhere to fixed prices;

7.2.3 Sasko introduced fighting brands, namely Vita and Econo, in order to protect its market share or to try to gain volumes in those areas where Sasko was facing competition. Sasko's aggressive pricing strategy prevented competitors from entering into or expanding within the relevant markets; and

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7.2.4 Sasko engaged in this conduct in order to exclude small independent bakeries from competing effectively in the relevant markets and to build a reputation for aggressively fighting entry across markets and time.

**8 Poultry industry complaints (Case numbers 2009Apr4389; 2009Apr4390; 2009Apr4391)**

8.1 The Commission initiated complaints to investigate anti-competitive conduct in the market for poultry breeding stock and broiler production, poultry products as well as poultry feed following its poultry industry scoping report. The investigations were initiated against the South African Poultry Association, Animal Feed Manufacturers Association, Rainbow Chickens Ltd, Astral Foods Ltd, Pioneer, Country Bird Holdings Ltd and Afgri Ltd (collectively "the respondents").

8.2 The Commission is currently investigating the following allegations:

8.2.1 The respondents agreed not to compete in an open market but instead divided the market by allocating to each other territories and/or customers in contravention of section 4(1) (b) of the Act;

8.2.2 The respondents charged significantly higher prices than the independent or small manufacturers even though their cost bases are similar. Their prices were in some instances 25% higher than those of the smaller poultry feed producers. This conduct points to a contravention of section 4 (1) (b) alternatively 8(a) of the Act;

8.2.3 The respondents restrict broiler breeders from sourcing breeding stock from alternative suppliers in contravention of section 5(1) alternatively 8 (d) (i) and/or 8 ( c ) of the Act;

8.2.4 The respondents supply day-old chicks to independent broiler breeders on condition that they also purchase poultry feed from the relevant supplier or its subsidiary in contravention of section 8 (d) (iii) alternatively 8 ( c ) of the Act; and



8.2.5 The South African Poultry Association ("SAPA") and Animal Feed Manufacturers Association ("AFMA") collects commercially sensitive information such as a range of production, sales and industry related data as well as the respective market shares of the breeders.

8.3 The information submitted by the respondents to SAPA and AFMA and received in turn, as well as other potential opportunities for information exchange amongst the respondents may amount to a contravention of section 4(1) of the Act.

8.4 The Commission's investigation is still ongoing, however the preliminary findings are that Pioneer is not dominant in any of the markets detailed in paragraph 8.2 above. Pioneer has also applied for and been granted conditional leniency in respect of the conduct relating to contraventions of section 4(1)(b) of the Act.

## **9 Egg industry complaint (Case number 2010May5133)**

9.1 The Commission initiated a complaint to investigate anti-competitive conduct in the markets for the sale of whole fresh eggs, sale of the day old chicks to be reared as egg layers, sale of point of lay hens which are mature hens capable of laying eggs and sale of cull which are live chickens that are past their production cycle. The initiation pertained to alleged contraventions of sections 4(1)(a), 4(1)(b), 5(1) and 5(2) of the Act. The investigation was initiated against the following firms or trading entities: Nulaid, Hy-line South Africa, Avichick, Eggbert Eggs (Pty) Ltd, Highveld Egg Co-operative Ltd trading as Top Lay, Fair Acres Products (Pty) Ltd trading as Fair Acres, Heidel Eggs, Lund Eggs, Evan Joubert t/a Waterglen Pluimvee, Flink Wink Eindomme (Pty) Ltd trading as Parrdeberg Eggs, George Moerasrivier trading as Outeniqua Eggs, Succes Ventures t/a Golden York ND Lay Well, Paarl Poultry Enterprises CC trading as Rosendal Eggs, Nantes Eggs, Eikenhof Poultry Farms (Pty) Ltd tradings as Eikenhof Eggs, Elkana, Windmeul Eierboere (Pty) Ltd trading as Windmeul Eggs, Morningside, Sunrise Eggs Poultry Farm, Eden Rock and Cocorico (collectively "the respondents").

9.2 Pioneer applied for and was granted conditional leniency in respect of the role of its Nulaid division in conduct in contravention of section 4(1) (b) (i) and (ii) of the Act in



the markets for the sale of whole fresh eggs and the sale of day old chicks to be reared as egg layers.

- 9.3 The Commission's investigation into these allegations is still ongoing and no preliminary findings have been made against any firm.

## **B. AGREEMENTS**

### **10 Admissions**

- 10.1 In respect of the maize and wheat milling complaints referred to in paragraphs 3 and 4 above, Pioneer admits that it has contravened section 4(1)(b)(i) as set out in its answering affidavits in these matters.
- 10.2 In respect of the Commission's ongoing information exchange investigation described in paragraph 5 above, Pioneer admits that it has submitted information to and received information from the Chambers as detailed in paragraph 5.3, 5.4, 5.5, 5.6 and 5.7 above.
- 10.3 In respect of the Commission's ongoing information exchange investigation described in paragraph 6 above, Pioneer admits that it has submitted information to and received information from the Chamber as detailed in paragraph 6.3 and 6.4 above.
- 10.4 In respect of the exclusionary conduct complaint, Pioneer admits that in 2007, a representative of Sasko threatened the proprietor of Mossel Bay Bakery that Sasko would engage in a price war against Mossel Bay Bakery. Although Mossel Bay Bakery did not exit the market at the time, Pioneer concedes that Mossel Bay Bakery may have been impeded from expanding within the market in Mossel Bay, inter alia, as a result of such actions. Pioneer admits to a contravention of section 8(c) in this regard.
- 10.5 In respect of the Commission's ongoing information exchange investigation described in paragraph 8 above, Pioneer admits that it has submitted information

to and received information from SAPA and AFMA as detailed in paragraph 8.2.5 above.

## 11 Future conduct

11.1 Pioneer agrees to fully cooperate with the Commission in its prosecution of any other parties who are the subject of its investigations and referrals to the Tribunal. Without limiting the generality of the above, Pioneer specifically agrees to:

11.1.1 provide evidence, written or otherwise, which is in its possession or under its control concerning the contraventions contained in this Agreement;

11.1.2 testify as a witness for the Commission in any cases regarding the contraventions in this Agreement; and

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

11.3 Pioneer has currently ceased to engage in the conduct referred to in paragraphs 10.1, 10.2, 10.3 and 10.5 above, pending the outcome of the Commission's investigation and any further proceedings.

11.4 Pioneer undertakes in future, not to make any utterances to competitors that reasonably may be construed as a threat to enter into a price war in order to exclude competitors from the market or as an inducement to raise prices. For the avoidance of doubt, this undertaking does not preclude Pioneer from continuing to price competitively, and in so doing protect or increase its market share, in any market in which it participates.

10.5 In respect of the Commission's ongoing information exchange investigation described in paragraph 8 above, Pioneer admits that it has submitted information to and received information from SAPA and AFMA as detailed in paragraph 8.2.5 above.

## 11 Future conduct

11.1 Pioneer agrees to fully cooperate with the Commission in its prosecution of any other parties who are the subject of its investigations and referrals to the Tribunal. Without limiting the generality of the above, Pioneer specifically agrees to:

11.1.1 provide evidence, written or otherwise, which is in its possession or under its control concerning the contraventions contained in this Agreement;

11.1.2 testify as a witness for the Commission in any cases regarding the contraventions in this Agreement; and

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

11.3 Pioneer will cease to engage in the conduct referred to in paragraphs 10.1, 10.2, 10.3 and 10.5 above, pending the outcome of the Commission's investigation and any further proceedings unless and until the Commission makes a decision not to refer the complaint, or a final ruling is made that the conduct is not contrary to the provisions of the Act.

11.4 Pioneer undertakes in future, not to make any utterances to competitors that reasonably may be construed as a threat to enter into a price war in order to exclude competitors from the market or as an inducement to raise prices. For the avoidance of doubt, this undertaking does not preclude Pioneer from continuing to

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price competitively, and in so doing protect or increase its market share, in any market in which it participates.

## 12 Administrative Penalty

12.1 In accordance with the provisions of section 58(1)(a)(iii) as read with 59(1)(a) and 59(2), Pioneer will pay an administrative penalty in the sum of R500 000 000.00 (five hundred million rands).

12.2 This payment shall be made into the Commission's bank account, details of which are as follows:

Name: Competition Commission Fee Account  
Bank: ABSA Bank, Pretoria  
Account no. 4050778576  
Branch code: 323 345

12.3 The Commission will pay this sum to the National Revenue Fund in terms of section 59(4) of the Act.

## 13. Terms of Payment

13.1 Payment of the amount referred to in paragraph 12.1 above will be made as follows:

13.1.1 R66,666,667 (sixty six million six hundred and sixty six thousand six hundred and sixty seven rands) to be paid to the Commission within five days of confirmation of this Agreement as an order of the Tribunal ("the first payment date");

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page. The signature appears to be a combination of initials and a surname, possibly 'R. N.' or similar.

13.1.2 R216,666,667 (two hundred and sixteen million six hundred and sixty six thousand six hundred and sixty seven rands) to be paid to the Commission on the first anniversary of the first payment date; and

13.1.3 R216,666,667 (two hundred and sixteen million six hundred and sixty six thousand six hundred and sixty seven rands) to be paid to the Commission on the second anniversary of the first payment date.

#### **14 Pricing commitment**

Pioneer will adjust its pricing in the Comparative Period (as defined in Annexure B) in respect of a selection of defined wheaten flour and bread products, as detailed in Annexure B. The pricing commitment shall amount to a reduction of R160 000 000.00 (one hundred and sixty million rand) in gross profit when benchmarked against the Base Period (as defined in Annexure B).

#### **15 Capital Expenditure**

Pioneer undertakes that the committed capital expenditure detailed in Annexure C will not be reduced as a result of this Agreement, and further commits to increase the capital expenditure by a further R150 000 000.00 (one hundred and fifty million rands). The expenditure referred to in Annexure C is linked to certain anticipated capital programmes. The parties recognize that economic, market or other conditions may require that Pioneer depart from these programmes and specific investments. However, it is Pioneer's firm intention to retain the overall investment level as set out in Annexure C, together with the additional minimum spend of R150 000 000 referred to herein, to contribute to the creation of jobs.

#### **16 Full and final resolution**

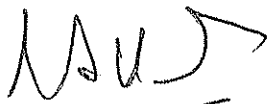
16.1 The total monetary value of the administrative penalty will amount to R500 000 000.00 (five hundred million rands). For the avoidance of doubt, this amount excludes the administrative penalty in the sum of R195 718 614 (one hundred and ninety five million, seven hundred and

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eighteen thousand, six hundred and fourteen rand) imposed by the Tribunal on Pioneer under Tribunal case number 15/CR/Feb07.

- 16.2 This Agreement is entered into in full and final settlement of and, upon confirmation as an order by the Tribunal, concludes all the investigations and proceedings between the Commission and Pioneer relating to any alleged contraventions by Pioneer of the Act that are the subject of the Commission's investigations under case numbers, 2007Mar2844, 2008Dec4165, 2009Apr4389, 2009Apr4390, 2009Apr4391, 2009Nov4744, 2009Dec4819 and 2010May5133, save for any conduct in respect of which Pioneer has been granted conditional leniency.

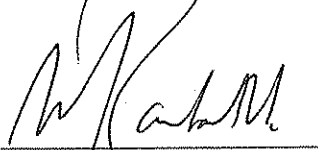
Dated at PRETORIA on this the 30th day of NOVEMBER 2010



Andre Hanekom

Chief Executive Officer: Pioneer Foods (Pty) Ltd

Dated at Pretoria on this the 30th day of November 2010



Shan Ramburuth

The Commissioner: Competition Commission