



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR087Mar10/SA072Jul20

In the matter between:

Competition Commission

Applicant

And

Westra Milling (Pty) Ltd

Respondent

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

Heard on : 05 August 2020

Additional information
received on : 05 August 2020

Decided on : 06 August 2020

Settlement Agreement

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

**Presiding Member
Mr Andreas Wessels**

**06 August 2020
Date**

Concurring: Ms Mondo Mazwai and Mr Enver Daniels

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: CR087Mar10/SA072Jul20CC

CASE NO: 2007Mar2844

In the matter between:

COMPETITION COMMISSION

Applicant

and

WESTRA MILLING (PTY) LTD

Respondent

FILING SHEET

PLEASE TAKE NOTICE that the Commission herewith files the following:

1. CT 6 Notice of Motion; and
2. Consent Agreement entered into between the Applicant and the Respondent.

DATED at PRETORIA on this the 21 day of **July 2020**.



COMPETITION COMMISSION

DTI Campus

77 Meintjies Street

Sunnyside, Pretoria

Tel: 078 225 6390

Ref: Ms N Kunene/ Mrs N Sakata

E-mail: NokuphiwaK@compcom.co.za

NellyS@compcom.co.za

To: THE REGISTRAR

Competition Tribunal

3rd Floor, Mulayo Building

The DTI Campus

77 Meintjies Street

Sunnyside, Pretoria

Tel: (012) 394-3300/55

Ref:

E-mail address: Registry@comptrib.co.za

And to: Mrs Selome Jordaan

Respondent's Head of Legal Division

De Villiers Street

Douglas, Northern Cape

Tel: 053 - 298 8200

Ref: Mrs Selome Jordaan/ Mr Juan Kotze

E-mail: selomej@gwk.co.za/ JuanK@gwk.co.za



Form CT 6

About this Form

- This Form is issued in terms of the Competition Tribunal Rules.
- Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.
- If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: _____ **File #** _____

To: The registrar of the Competition Tribunal

Concerning the matter between:

_____ (Applicant)

and

_____ (Respondent)

Take notice that the _____
intends to apply to the Tribunal for the following order:

Name and Title of person authorised to sign:

Authorised Signature:

Date:

**For Office
Use Only:**

Tribunal file number:

Date filed:

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

CC Case No: 2007Mar2844

CT Case No: 15/CR/MAR10

In the matter between

THE COMPETITION COMMISSION

Applicant

and

WESTRA MILLING (PTY) LTD

Respondent

SETTLEMENT AGREEMENT IN TERMS OF SECTION 27(1)(d) READ WITH SECTIONS 58(1)(a)(iii) AND 59(1)(a) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND WESTRA MILLING (PTY) LTD IN RESPECT OF ALLEGED CONTRAVENTIONS OF THE COMPETITION ACT, 1998.

1. PREAMBLE

The Competition Commission ("**the Commission**") and GWK Farm Foods (Pty) Ltd ("GWK Farm Foods") hereby agree that an application be made to the Competition Tribunal ("**the Tribunal**") for the confirmation of this Consent Agreement as an order of

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the Tribunal in terms of section 27(1)(d) read with sections 58(1)(a)(iii) and 59(1)(a) of the Competition Act 89 of 1998, as amended ("**the Act**") on the terms set out below:

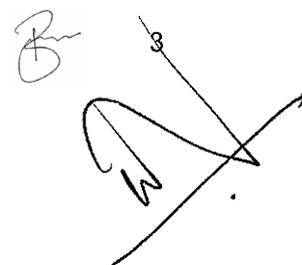
2. DEFINITIONS

For the purposes of this Settlement Agreement the following definitions shall apply:

- 2.1. "**Act**" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 2.2. "**Affected turnover**" means turnover for the sale of white maize meal for human consumption for the financial year ending in 2007;
- 2.3. "**Blinkwater Milling**" means Blinkwater Mills (Pty) Ltd, a company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 57 Walter Sisulu Street, Middelburg, Mpumalanga;
- 2.4. "**Bothaville**" means Bothaville Milling (Pty) Ltd t/a Thuso Mills, a company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 10th Avenue, Industria Site, Bothaville, Free State Province;
- 2.5. "**Brenner**" means Brenner Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 980 Park Street, Arcadia, Pretoria, Gauteng;

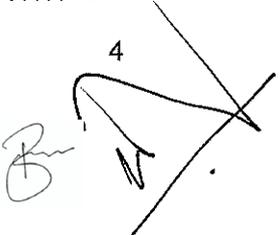
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- 2.6. "**Carolina Mills**" means Carolina Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 27 Voortrekker Street, Carolina, Mpumalanga Province;
- 2.7. "**CLP**" means the Commission's Corporate Leniency Policy in Government Gazette number: 31064 of 2008;
- 2.8. "**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;
- 2.9. "**Complaint**" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under CC case number: 2007Mar2844 and CT case number: 15/CR/MAR10;
- 2.10. "**Curions**" means Curions (Pty) Ltd, which became a subsidiary of GWK Limited in 2008;
- 2.11. "**Days**" means business days;
- 2.12. "**Foodcorp**" means Foodcorp (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 415 Mitchell Street, Pretoria West, Gauteng;

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- 2.13. "**Godrich**" means Godrich Milling (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Lanham Street, Extension Bronkhorstspuit, Mpumalanga Province;
- 2.14. "**GWK Farm Foods**" means GWK Farm Foods (Pty) Ltd, formerly known as Westra Nywerhede (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Stasie Straat, Christiana, Northern Cape;
- 2.15. "**GWK Limited**" means Griekwaland Wes Korporatied Limited, which is the holding company of GWK Farm Foods;
- 2.16. "**Kalel**" means Kalel Mills, now t/a Isizwe Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, whose last known business address was at 32 Watt Street, Industria Area, Middelburg, Mpumalanga;
- 2.17. "**Keystone**" means Keystone Milling (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 47 Lucas Street, Rustenburg, North West Province;
- 2.18. "**NTK Business**" means the maize milling business of NTKLA which was acquired from NTK Koöperasie in 2003;
- 2.19. "**NTK Koöperasie**" means the cooperative known as NTK Koöperasie or Northern

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Transvaal Cooperative Limited, which operated the NTK Business prior to 2003;

2.20. "**NTKLA**" means NTK Limpopo Agri (Proprietary) Limited, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa under registration number: 1980/008381/06, with its principal place of business at 84 Limpopo Street, Modimolle, Limpopo Province;

2.21. "**Paramount**" means Paramount Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 4 Royan Road, Gately East London, Eastern cape;

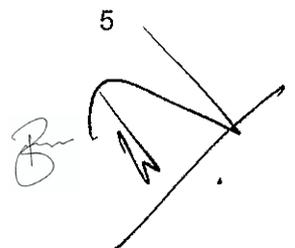
2.22. "**Parties**" means the Commission and GWK Farm Foods;

2.23. "**Pioneer**" means Pioneer Foods (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 32 Markstraat, Paarl, Cape Town, Western Cape;

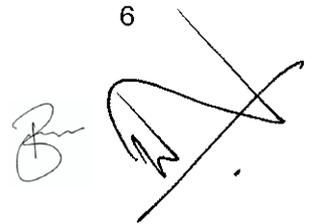
2.24. "**Premier**" means Premier Foods (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 1 Joint Street, Isando, Johannesburg, Gauteng;

2.25. "**Pride Milling**" means Pride Milling (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at Ground Floor, Block C, Futuram Office Park, 117 Lenchen Avenue, Centurion, Pretoria, Gauteng;

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- 2.26. "**Progress Milling**" means AM Alberts (Pty) Ltd, trading as Progress Milling, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at No. 1 20th Street, Industria Polokwane, Limpopo Province;
- 2.27. "**Respondents**" means all the firms that are cited in the complaint referral;
- 2.28. "**Settlement Agreement**" means this agreement duly signed and concluded between the Commission and GWK Farm Foods;
- 2.29. "**Suidwes Nywerhede**" means Suidwes Nywerhede (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, which operated Westra Industries and the Westra milling business operations until 1 September 2005;
- 2.30. "**Tiger**" means Tiger Brands Limited, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 3010 William Nicol Drive, Bryanston, Johannesburg, Gauteng;
- 2.31. "**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;
- 2.32. "**TWK**" means TWK Milling, the milling business of TWK Agri (Pty) Ltd;
- 2.33. "**TWK Agri**" means TWK Agri (Pty) Ltd, a company duly incorporated in

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accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 31a Market St, Piet Retief, Mpumalanga Province;

2.34. "**Westra Industries**" means Westra Industries (Pty) Ltd, which was a wholly owned subsidiary of Suidwes until 1 September 2005. Westra Industries changed its name to GWK Farm Foods and is now a subsidiary of GWK Limited through Curions; and

2.35. "**Westra milling**" means the maize milling business of Westra Industries (Pty) Ltd, which was operated by Suidwes until 1 September 2005. Westra milling is now operated by GWK Farm Foods, a subsidiary of GWK Limited through Curions.

3. **BACKGROUND AND THE COMMISSION'S INVESTIGATIONS AND FINDINGS**

3.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp, Pride Milling and Progress Milling in the maize milling industry, under CC case number: 2007Mar2844. The initiation was subsequently amended to include other players in the maize milling industry namely, Bothaville, Godrich, TWK, Keystone, Westra, Carolina Mills, Brenner, Paramount, NTK Milling (Pty) Ltd, Kalel, and Blinkwater. The complaint was initiated after the Commission had received a corporate leniency application from Premier in 2007, which was corroborated by a further corporate leniency application by Tiger in the same year.

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3.2 The Commission's investigation revealed that at various stages during the period 1999 to 2007 the respondents were involved in price fixing of white milled maize in contravention of section 4(1)(b)(i) of the Act in that various representatives of the firms cited as respondents engaged in the following conduct:

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

3.2.1.1 To fix the prices of milled white maize products;

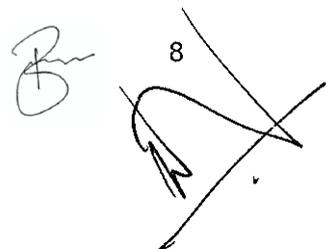
3.2.1.2 To create uniform price lists for wholesale, retail and general trade customers; and

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

3.2.2 The agreements concluded at these meetings were used to secure coordination at both regional and national levels and were mutually reinforcing.

3.3 During or about February 2004, representatives of Westra Industries attended a meeting with Westra Industries' competitors (being millers of white maize products) at which they agreed to:

3.3.1 Directly fix the selling price of milled white maize products;

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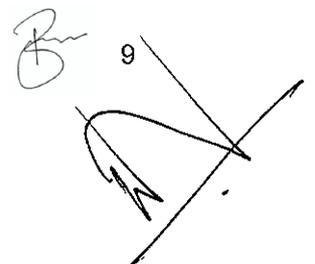
3.3.2 Directly fix dates on which such agreed price increments were to be implemented; and

3.3.3 Exchanged information about their pricing structures.

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

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

3.6 Prior to 1 September 2005, Westra Industries (now called GWK Farm Foods) was the maize milling division, and dormant subsidiary, of Suidwes. With effect from 1 September 2005, Curions acquired 100% shareholding in Westra Industries from Suidwes and sold 50% of its shareholding to GWK Limited. GWK Limited later acquired 100% shareholding in Curions in October 2008. After acquiring Curions, GWK Limited sold its 50% shareholding in Westra Industries back to Curions in May 2009, GWK Limited. Westra Industries subsequently changed its name to GWK Farm Foods. As a result, GWK Limited indirectly holds 100% shareholding in GWK Farms Foods (formerly Westra Industries) through Curions.

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4. ADMISSION OF LIABILITY

4.1 GWK Farm Foods admits that it contravened section 4(1)(b)(i) of the Act in that during or about February 2004, it agreed with its competitors in the white maize milling market to directly and indirectly fix the selling price of milled white maize products, agreed on the dates upon which these prices were to be implemented, and exchanged information about their pricing structures.

5. FUTURE CONDUCT

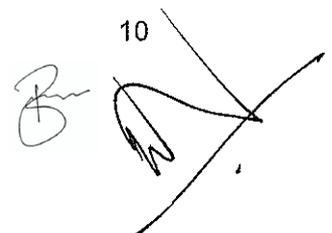
5.1 GWK Farm Foods confirms that the conduct referred to above has ceased, and it agrees to fully cooperate with the Commission in the prosecution of the remaining respondents under the Complaint referral. This cooperation includes, but is not limited to:

5.1.1 Providing such documentary evidence in its possession or under its control concerning the alleged contraventions contained in the Settlement Agreement, as well as to assist the Commission in the prosecution of the alleged contraventions covered by the Settlement Agreement;

5.2 GWK Farm Foods further agrees and undertakes to:

5.2.1 Prepare and circulate a statement summarising the content of this Settlement Agreement to its managers and directors within 14 (fourteen) days of the date

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of confirmation of this Settlement Agreement as an order of the Tribunal;

5.2.2 Develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act; and

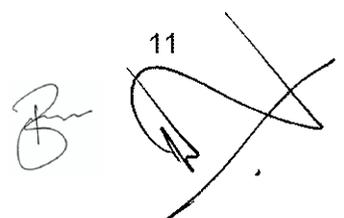
5.2.3 Submit a copy of such compliance programme outlined above to the Commission within 60 (sixty) days of the date of confirmation of the Settlement Agreement as an order of the Tribunal.

6. ADMINISTRATIVE PENALTY

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

6.2 The parties have agreed that GWK Farm Foods will pay an administrative penalty in the total amount of R1000 000 (one million Rand), being approximately [REDACTED] % of GWK Farm Foods' affected turnover for the 2007 financial year.

6.3 GWK Farm Foods will pay the total amount of the administrative penalty within 30

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days from the date of the confirmation of this Settlement Agreement as an order of the Tribunal.

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

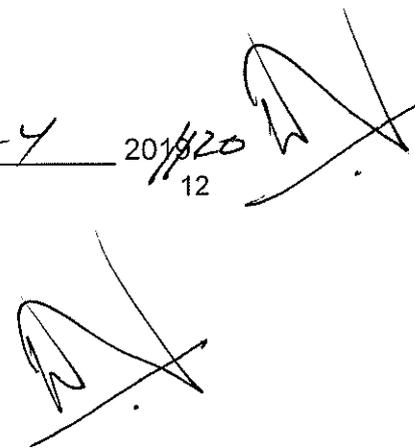
Bank name: Absa Bank
Branch name: ABS COMM PUBL NR
Account holder: The Competition Commission
Account number: 40-8764-1778
Account type: Current Account
Branch Code: 638056
Reference: Case number 2007Mar2844/ Westra milling

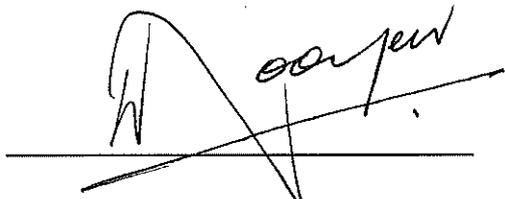
6.5 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

7. FULL AND FINAL SETTLEMENT

This agreement is entered into in full and final settlement of the complaint set out in paragraph 3 above, and upon confirmation as an order of the Tribunal, concludes all proceedings between the Commission and GWK Farm Foods in respect of the conduct contemplated under the Commission's complaint case number: 2007Mar2844.

Dated and signed at DOUGLAS on the 15th day of JULY 2018/20
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GWK Farm Foods/ GWK Limited

Name in Full: WILHELM VAN ROOYEN

Authority: DIRECTOR FARM FOODS
RESOLUTION

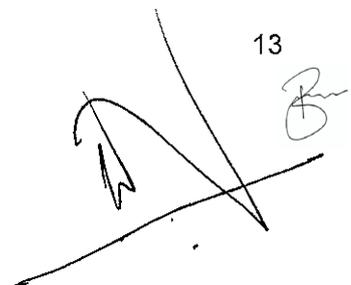
For the Commission

Dated and signed at **PRETORIA** on the 17TH day of JULY ~~2019~~ 2020



Tembinkosi Bonakele

The Commissioner: Competition Commission



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