



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR087Mar10/SA209Oct17

In the matter between:

The Competition Commission

Applicant

and

Godrich Flour Mills (Pty) Ltd

First Respondent

Second Respondent

Panel : E Daniels (Presiding Member)
M Mokuena (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 01 November 2017

Decided on : 01 November 2017

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Godrich Flour Mills (Pty) Ltd annexed hereto marked "A".



**Presiding Member
Mr Enver Daniels**

**01 November 2017
Date**

Concurring: Mrs Medi Mokuena and Prof Fiona Tregenna

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

CPOT/MA/10/22090-177

Case No: 2007MAR2844

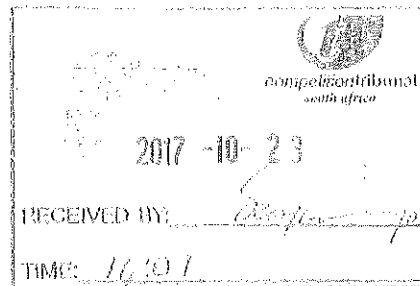
Case No: 15/CR/MAR10

In the matter between:

The Competition Commission

And

Godrich Flour Mills (Pty) Ltd



Applicant

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, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND GODRICH FLOUR MILLS (PTY) LTD, IN RESPECT OF THE CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, 1998.

PREAMBLE



The Competition Commission ("Commission") and Godrich Flour Mills (Pty) Ltd ("Godrich") hereby agree that application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Settlement Agreement as an order of 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, in respect of the contravention of section 4(1)(b)(i) in the milled white maize meal; and section 4(1)(b)(i) and (ii) in relation to the milled white wheat products of the Competition Act, 1998, on the terms set out below.

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1. DEFINITIONS

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



- 1.1 "Act" means the Competition Act, 89 of 1998, as amended;
- 1.2 "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;
- 1.3 "Blinkwater Mills" 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 St, Middelburg, Mpumalanga;
- 1.4 "Brenner" means Brenner Mills (Pty) Ltd, company duly incorporated as such 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;
- 1.5 "Carolina Mills" means Carolina Mills (Pty) Ltd, company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 27 Voortrekker Street, Carolina, Mpumalanga;

- 1.6 "CLP" means the Commission's Corporate Leniency Policy gazetted in Government Gazette number 31064 of 2008;
- 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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria;
- 1.8 "The Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.9 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2007MAR2844 (15/CR/Mar10);
- 1.10 "Foodcorp" means Foodcorp (Pty) Ltd, company duly incorporated as such 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;
- 1.11 "Godrich" mean Godrich Flour Mills (Pty) Ltd, company duly incorporated as such 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;

 
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- 1.12 "Kalel" means Kalel Mills, now t/a Isizwe Mills (Pty) Ltd, company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business, of whose last known address was, 32 Watt Street, Industria Area, Middelburg, Mpumalanga;
- 1.13 "Keystone" means Keystone Milling (Pty) Ltd, company duly incorporated as such 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;
- 1.14 "NTK" means NTK Mills, company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 84 River Road, Modimole, Limpopo Province;
- 1.15 "Paramount" means Paramount Mills (Pty) Ltd, company duly incorporated as such 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;
- 1.16 "Pioneer" means Pioneer Foods (Pty) Ltd, company duly incorporated as such in accordance with the applicable laws of the Republic of South

Africa, with its principal place of business at 32 Marksstraat, Paarl, Cape Town, Western Cape;

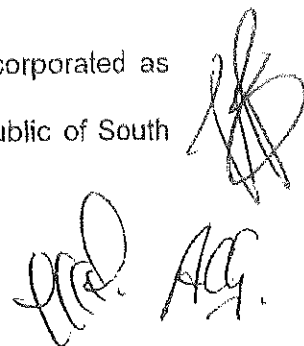
1.17 "Premier" means Premier Foods (Pty) Ltd, company duly incorporated as such in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 1 Joint Street, Isando, Johannesburg, Gauteng;

1.18 "Pride" means Pride Milling (Pty) Ltd, company duly incorporated as such 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;

1.19 "Progress Milling" means Progress Milling (Pty) Ltd, company duly incorporated as such 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;

1.20 "Respondents" means all the firms cited in the complaint referral for the milled white maize case and all those firms cited in the milled white wheat.

1.21 "Tiger" means Tiger Brands Limited, company duly incorporated as such in accordance with the applicable laws of the Republic of South

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Africa, with its principal place of business at 3010 William Nicol Drive,
Bryanston, Johannesburg, Gauteng;

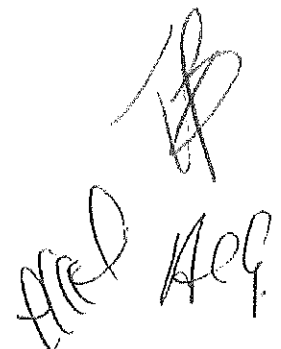
1.22 "Parties" means the Commission and Godrich;

1.23 "Settlement Agreement" means this agreement duly signed and
concluded between the Commission and Godrich;

1.24 "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 Mulayo Building (Block C), the DTI Campus, 77
Meintjies Street, Sunnyside, Pretoria, Gauteng;


1.25 "TWK" means TWK Milling (Pty) Ltd, company duly incorporated as
such in accordance with the applicable laws of the Republic of South
Africa, with its principal place of business at 13 Church Street, Piet
Retief, Mpumalanga Province; and

1.26 "Westra" means Westra Milling (Pty) Ltd, company duly incorporated
as such in accordance with the applicable laws of the Republic of South
Africa, with its principal place of business at Stasie Straat, Christiana,
Northern Cape.

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2. BACKGROUND AND THE COMMISSION'S INVESTIGATIONS AND FINDINGS

- 2.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp, Pride and Progress Milling in the market for the milling of wheat and white maize milled products for the fixing of selling prices of milled wheat and maize products. The initiation was subsequently amended and the scope of initiation was expanded to include other respondents in the milling industry, namely Bothaville, Godrich, TWK, Keystone, Westra, Carolina Mills, Brenner, Paramount, NTK, Kalel, Blinkwater Mills and Allem Brothers.
- 2.2 The initiation of the complaint was based on information submitted to the Commission through its Corporate Leniency Policy, which in terms thereof, in 2007 the Commission granted immunity to Premier Foods and to Tiger Brands in 2007, consecutively.
- 2.3 The complaint was with regard to cartel activity in the markets for white milled maize and wheat products.
- 2.4 In March 2010, the Commission referred the matter to the Tribunal, for determination against the above mentioned firms with the exception of the Allem Brothers.


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3. THE WHITE MILLED MAIZE COMPLAINT

3.1 The Commission's investigations revealed that in the market for white milled maize, the firms mentioned in paragraph 2.1.(excluding the Allen Brothers), during the period 1999 to 2007 participated in meetings at which fixing of the selling prices and trading conditions for maize and wheat were discussed and agreed on.

3.2 Although Godrich did not implement any of the decisions taken at the meetings relating to fixing selling prices of white milled maize products it understands that its failure to disassociate itself from decisions taken at these meetings would constitute a contravention of Section 4(1)(b)(i) of the Act.

4. THE WHITE MILLED WHEAT COMPLAINT

4.1 With regard to the milling of white wheat maize, the Commission's investigation revealed that five firms being, Godrich, Foodcorp, Tiger Brands, Pioneer and Premier participated at meetings at which selling price and trading conditions of maize and as discussed and agreed as well as discussions and agreements on market allocations.

4.2 Although Godrich did not implement any of the decisions taken at the meetings relating to fixing selling prices and market allocation agreements of white milled wheat products it understands that its

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failure to disassociate itself from discussions taken at these meetings would constitute a contravention of Section 4(1)(b)(i) and (ii) of the Act.

5. ADMISSION OF LIABILITY




Milled white maize products and Milled white wheat products

Godrich admits that in relation to white milled maize products it has contravened section 4(1)(b)(i) of the Act, and in relation to white milled wheat products it has contravened section 4(1)(b)(ii) by virtue of what is set out in paragraphs 3 and 4 above.

6. FUTURE CONDUCT

6.1 Godrich confirms that it has ceased the conduct referred to above and agrees to fully cooperate with the Commission in the prosecution of the remaining respondents under the maize complaint referral. This cooperation includes, but is not limited to:

6.1.1 Providing documentary evidence, which is 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;

6.2 Godrich further agrees and undertakes to:

- 6.2.1 Prepare and circulate a statement summarising the content of this Settlement Agreement to its managers and directors within 14 (fourteen) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;
- 6.2.2 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 Competition Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Competition Act; and
- 6.2.3 Submit a copy of such compliance programme outlined above to the Commission within 60 days of the date of confirmation of the Settlement Agreement as an order of the Tribunal.

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7. ADMINISTRATIVE PENALTY

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

7.2 The parties have agreed that Godrich will pay an administrative penalty for the contravention in the milled maize meal in the amount of R4 354 467.00 (Four Million, Three Hundred and Fifty Four Thousand, Four Hundred and Sixty Seven Rand) ("*the penalty*") for its participation in the milled white maize and white wheat cartel, which is detailed, above.

7.3 Godrich will pay the penalty over a period not exceeding 5 years in monthly instalments of R100,000.00 (One Hundred Thousand Rand) commencing 7 (seven) days after confirmation of the settlement by the Tribunal. Godrich shall be entitled to pay the full balance owing at any time prior to the expiry of the period of 5 years.

7.4 The administrative penalty amount will accrue interest in terms of the provisions of section 80(1) of the Public Finance Management Act 1 of 1999 for any amounts not paid within a year from the date of confirmation of this settlement by the Tribunal.


ACG.

7.5 The penalty and such interest as may become payable in terms of 7.4 above must be paid into the Commission's bank account which is as follows:

NAME : THE COMPETITION COMMISSION FEE
ACCOUNT
BANK : ABSA BANK, PRETORIA
ACC NR : 408 764 1778
BRANCH CODE : 632005
PAYMENT REF : 2007MAR2884 -GODRICH MILLING

8. FULL AND FINAL SETTLEMENT

This Settlement Agreement is entered into in full and final settlement of the complaints set out in paragraph 3 and 4 above, and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Godrich in respect of the conduct contemplated under Commission's complaint referral cases for the milled white wheat and milled white maize.

Signed at Bronkhorstspruit on this 14th day of OCTOBER 2017.

A.C. Godrich
Godrich Milling (Pty) Ltd

Name: A.C. GODRICH

Authority: DIRECTOR



Signed at Prethoria on this 20th day of
October 2017.



Tembinkosi Bonakele
The Commissioner: Competition Commission