



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR087Mar10/SA203Oct18

In the matter between:

The Competition Commission

Applicant

And

TWK Milling (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member)
F Tregenna (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 14 November 2018

Decided on : 14 November 2018

Settlement Agreement

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



Presiding Member
Mr Norman Manoim

14 November 2018
Date

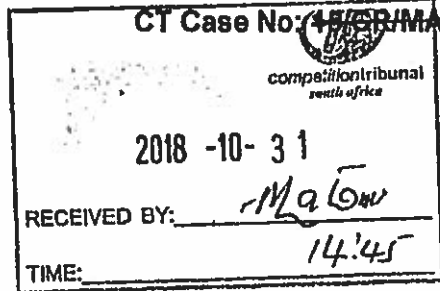
Concurring: Ms Fiona Tregenna and Mrs Medi Mokuena

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

CR087Mar10/SA2030ct18

CC Case No: 2007Mar2844

CT Case No: 15/SP/MAR10



In the matter between

THE COMPETITION COMMISSION

Applicant

and

TWK MILLING

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 TWK MILLING IN RESPECT OF ALLEGED CONTRAVENTIONS OF THE COMPETITION ACT, 1998.

1. PREAMBLE

The Competition Commission ("the Commission") and TWK Milling hereby agree that an application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Consent 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 ("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 27 Voortrekker Street, Carolina, Mpumalanga;
- 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 on terms of section 49B(1) of the Act under CC case number: 2007Mar2844 and CT case number: 15/CR/MAR10;
- 2.10. **"Days"** means business days;
- 2.11. **"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;
- 2.12. **"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 Bronkhorstspurt, Mpumalanga Province;
- 2.13. **"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;
- 2.14. **"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;
- 2.15. **"NTK"** means NTK 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 84 River Road, Modimolle, Limpopo Province;

- 2.16. **"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;
- 2.17. **"Parties"** means the Commission and TWK Milling;
- 2.18. **"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;
- 2.19. **"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;
- 2.20. **"PRGM"** means Piet Retief Grain & Malt (Pty) Ltd, at the time of the contravention a company duly incorporated in accordance with the applicable laws of the Republic of South Africa under registration number 1999/0014168/07, with its principal place of business at 13 Church Street, Piet Retief, Mpumalanga;
- 2.21. **"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;
- 2.22. **"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;
- 2.23. **"Respondents"** means all the firms that are cited in the complaint referral;

Two handwritten signatures in black ink, one larger and more stylized, the other smaller and more legible.

- 2.24. **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and TWK Milling;
- 2.25. **"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;
- 2.26. **"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;
- 2.27. **"TWK"** means TWK Milling, the milling business of TWK Agri (Pty) Ltd, the activities of which were conducted through PRGM at the time of the contravention;
- 2.28. **"TWK Agri"** means TWK Agri (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 31a Market St, Piet Retief, Mpumalanga Province;
- 2.29. **"Westra"** means Westra 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 Stasie Straat, Christiana, Northern Cape.

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, 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.

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 the period 2004 to 2006, representatives of TWK attended about six meetings with TWK's competitors (being millers of white maize products) at which agreements were reached on the prices of various maize meal products and dates of implementation of price adjustments.

3.4 Given its market position, TWK did not implement the agreements reached, but:

3.4.1 TWK benefited from information gleaned from attendance at the meetings; and



3.4.2 Representatives of TWK did not distance themselves from the agreements reached at the meetings with its competitors.

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

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

4. ADMISSION OF LIABILITY

4.1 TWK admits that, in the period between 2004 and 2006, it was represented in certain meetings between competitors in the white maize milling market, at which agreements were reached to fix the selling price of milled white maize products, and on the dates when such price increments were to be implemented.

5. FUTURE CONDUCT

5.1 TWK 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;



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5.2 TWK 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 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, TWK accepts that it is liable to pay an administrative penalty.**
- 6.2 The parties agreed that TWK will pay an administrative penalty in the total amount of R1 845 863.75 (one million, eight hundred and forty five thousand, eight hundred and sixty three Rand and seventy five cents), being 5% of TWK's affected turnover for the 2007 financial year.**
- 6.3 TWK will pay the amount over a period of 1 (one) year, in two (2) equal annual instalments of not less than 50% of the administrative penalty amount, which equals to R922 931.86 (nine hundred and twenty two thousand, nine hundred and thirty**



one Rand and eighty six cents) each. The first payment shall be paid within one (1) month from the date of confirmation of this settlement by the Tribunal. The balance shall be paid six (6) months from the date of the first payment.

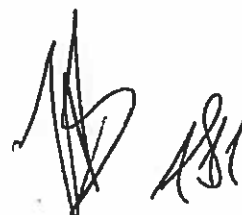
6.4 No interest will be levied upon the administrative penalty for the 12 (twelve) months from the date on which this Settlement Agreement is made an order of the Tribunal. Thereafter, interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act No.1 of 1999, as amended ("PFMA").

6.5 Notwithstanding the provisions of clause 6.3 above, it is expressly recorded that TWK has the right to pay the administrative penalty amount earlier if its financial position allows it to do so. In the event of TWK paying the administrative penalty earlier, any interest payable in terms of this Settlement Agreement will be adjusted accordingly, subject to the terms of section 80(1) of the PFMA.

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

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4050778576
Account type:	Current Account
Branch Code:	323345
Reference:	Case number 2007Mar2844/ TWK Milling

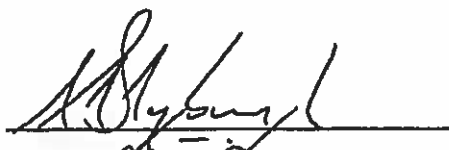
6.7 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

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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 TWK in respect of the conduct contemplated under the Commission's complaint case number: 2007Mar2844.

Dated and signed at Piet Retief on the 24 day of October 2018.


TWK Mining

Name in Full: Andries Stephanus Myburgh

Authority: CEO

For the Commission

Dated and signed at PRETORIA on the 30th day of October 2018.


Tembinkosi Bonakele

The Commissioner: Competition Commission