



competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR084Dec06/SA101Sep19

In the matter between:

The Competition Commission

Applicant

And

Senwes Limited

First Respondent

Tradevantage Grains (Pty) Ltd

Second Respondent

Panel : E Daniels (Presiding Member)
: Y Carrim (Tribunal Member)
: A Roskam (Tribunal Member)

Heard on : 06 November 201

Decided on : 04 December 2019

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Senwes Limited; Tradevantage Grains (Pty) Ltd annexed hereto marked "A".

**Presiding Member
Mr Enver Daniels**

04 December 2019

Date

Concurring: Ms Yasmin Carrim and Mr Anton Roskam



Annexure 'A'

competitiontribunal south africa

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: 17-Sep-2019 **File #** CR084/Dec 06/SA/10/Sep/19

To: The registrar of the Competition Tribunal

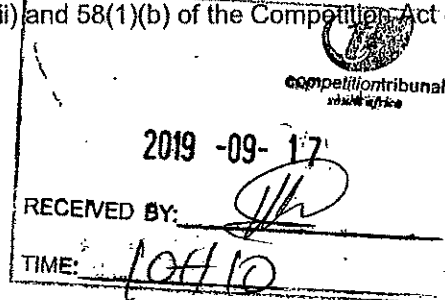
Concerning the matter between:

COMPETITION COMMISSION (Applicant)

and SENWES LIMITED AND ANOTHER (Respondent)

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

Confirming the attached Settlement Agreement entered into between the Applicant and the Respondents as an order of the Tribunal in terms of sections 58(1)(a)(iii) and 58(1)(b) of the Competition Act 89 of 1998, as amended.



Name and Title of person authorised to sign:

Mr Bukhosibakhe Majenge: Chief Legal Counsel

Authorised Signature:

Date:

[Signature]

17/09/2019

For Office
Use Only:

Tribunal file number:

Date filed:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD AT PRETORIA)

CC CASE: 2004Dec1332

CT CASE: CR084Dec06/BRE157Aug17

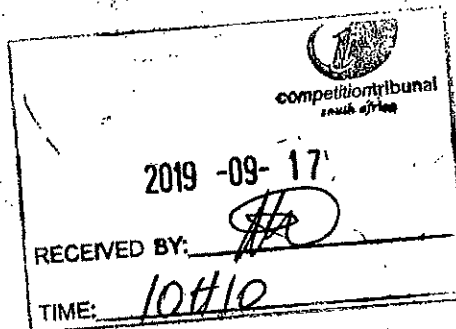
In the matter between:

THE COMPETITION COMMISSION

and

SENWES LIMITED

TRADEVANTAGE GRAINS (PTY) LTD



Applicant

First Respondent

Second Respondent

FILING SHEET

PLEASE TAKE NOTICE THAT the Applicant herewith files the following:

1. CT6 Notice of Motion; and
2. Settlement Agreement entered into between the Applicant and the Respondents.

Dated at **PRETORIA** on this the 17 day of September 2019.

COMPETITION COMMISSION

DTI Campus

77 Meintjies Street

Sunnyside, Pretoria

Tel: 012 394 5816

Ref: Nelly Sakata/ Nokuphiwa Kunene

E-mail: [NokuphiwaK@compcom.co.za/](mailto:NokuphiwaK@compcom.co.za)

MayaS@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

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

And to: Cliffe Dekker Hofmeyr Inc

First and Second Respondents' Attorneys

Cnr Fredman and Protea Place

Sandton

Johannesburg

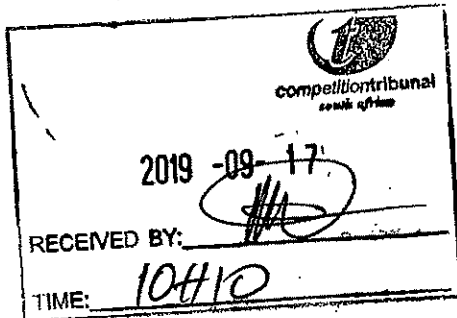
2196

Tel: 011 562 1092/082 376 9237

Email: andries.legrange@cdhlegal.co.za

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA



CC Case No: 2004Dec06

CT Case No: CR084Dec06/BRE157Aug17

In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

SENWES LIMITED

First Respondent

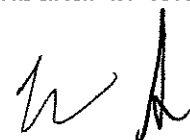
TRADEVANTAGE GRAIN (PTY) LTD

Second Respondent

SETTLEMENT AGREEMENT IN TERMS OF SECTION 27(1)(d) READ WITH SECTIONS 58(1)(b) AND 59(1)(c) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND, SENWES LIMITED AND TRADEVANTAGE GRAIN (PTY) LTD

1. PREAMBLE

The Competition Commission ("**the Commission**") and, Senwes Limited ("**Senwes**") and Tradevantage Grain (Pty) Ltd ("**Tradevantage**") hereby agree that an application be made to the Competition Tribunal ("**the Tribunal**") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of

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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 agreement the following definitions shall apply:

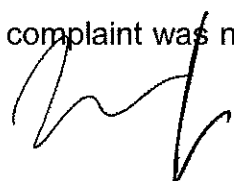
- 2.1 "**Act**" means the Competition Act, Act No. 89 of 1998, as amended;
- 2.2 "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 2.3 "**Commissioner**" means the Competition Commissioner of South Africa, the Chief Executive Officer of the Commission appointed by the Minister of Trade and Industry in terms of section 22 of the Act;
- 2.4 "**Competition Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act with principal place of business at the DTI Campus, Block C, Mulayo Building, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 2.5 "**Consent Order**" means the Tribunal Order decided on 15 May 2013 under case number 110/CR/Dec06 in relation to a section 8(c) complaint brought against Senwes in 2006 under the Competition Act and confirmed by the Competition Tribunal;



- 2.6 **"First Respondent"** and **"Senwes"** means Senwes Limited, a public company with registration number 1997/005336/06, duly registered in accordance with the company laws of the Republic of South Africa with principal place of business at 1 Charel De Klerk Street, Klerksdorp, North West Province, South Africa;
- 2.7 **"Second Respondent"** and **"Tradevantage"** means Tradevantage Grain (Pty) Ltd, a company duly registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at 1 Charel De Klerk Street, Klerksdorp, North West Province, South Africa;
- 2.8 **"Newco"** means TradeVantage Grain (Pty) Ltd;
- 2.9 **"Parties"** means the Commission and, Senwes Limited and TradeVantage Grain (Pty) Ltd;
- 2.10 **"Respondents"** means the First Respondent and the Second Respondent; and
- 2.11 **"This Agreement"** means the agreement set out herein, duly signed by the Commissioner and the First and Second Respondents.

3. BACKGROUND

- 3.1 On 12 of October 2015 Farmwise (Pty) Ltd (**"Farmwise"**) laid a complaint with the Competition Commission that employees of Tradevantage had access to their competitively sensitive information, which was alleged to constitute a contravention of the Competition Act. This complaint was non-



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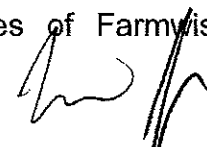
referred by the Commission as far as section 4(1)(a) of the Act is concerned as the Commission found that the information was disclosed on the basis of a conclusion of a commercial transaction, and did not amount to a contravention of section 4(1)(a) of the Act.

- 3.2 The Commission however launched an application to seek relief against Senwes and Tradevantage, alleging that they had allegedly breached the terms of the Consent Order of the Tribunal dated 15 May 2013, in that Senwes and Tradevantage had exchanged competitively sensitive information of a third party. In addition, the Commission alleged that Tradevantage's board of directors had not been constituted in accordance with provisions of the Consent Order.

Exchange of information

- 3.3 The exchange of the information between Senwes and Tradevantage occurred in the context of a commercial arms' length transaction in terms of which Tradevantage had successfully won a tender issued by Farmwise to acquire sunflower seeds from Farmwise. The Respondents alleged that Farmwise's employees struggled to provide Tradevantage with the appropriate information regarding the relevant contract number or folio number ("account number") under which sunflower seeds were stored at Senwes.

- 3.4 This information was required to make payment for the sunflower seeds which Tradevantage had purchased. In the light of various discussions and correspondence between the respective employees of Farmwise and



Tradevantage, an administrative employee of Tradevantage submitted that she believed that she had obtained the necessary consent from Farmwise to assist it to request the relevant information from Senwes by confirming that the sunflower seeds were indeed stored with Senwes and as such actually existed. However, Farmwise's management subsequently contended that such consent had not been provided.

- 3.5 Senwes and Tradevantage hold the view that this constituted a *bona fide* and technical contravention of the Consent Order.

Directors

- 3.6 Tradevantage's board of directors included a non-executive director that was not affiliated to Senwes. The Respondents contend that this is in accordance with the wording of clause 4.1.1.6 of the Consent Order dated 15 May 2013. The Commission contended that this was not sufficient in the circumstances as the Consent Order contemplated that the boards of Senwes and Tradevantage be separate and distinct. The Commission however conceded that the wording of clause 4.1.1.6 of the Consent Order dated 15 May 2013 is unclear and does not seek a remedy in the present proceedings.

4. ADMISSION

In the circumstances and in order to settle the matter, Senwes and Tradevantage are prepared to acknowledge, and hereby acknowledge, that a once-off contravention of the Consent Order occurred in relation to the exchange of



information between Senwes and TradeVantage, in breach of clause 4.1.1.7 of the Consent Order of 15 May 2013.

5. ADMINISTRATIVE PENALTY

In light of the circumstances surrounding the alleged breach of the Consent Order, the Commission seeks no administrative penalty against Senwes and TradeVantage.

6. FULL AND FINAL SETTLEMENT

This agreement, upon confirmation thereof as a consent order by the Tribunal, concludes all proceedings between the Commission and the First and Second Respondents in relation to any alleged contraventions of the Act under case number: CR084Dec06/BRE157Aug17 and the Commission's investigations under this case number.

For the First Respondent:

Dated and signed at Sandton on this the 21 day of August 2019.

Signature: 

Name in full: AM K. Grogan on behalf of First Respondent

Authority: Legal representative



For the Second Respondent:

Dated and signed at Sandton on this the 21 day of August 2019.

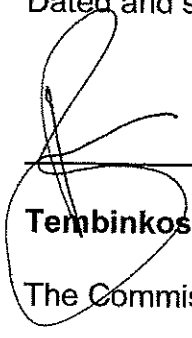
Signature: _____

Name in full: _____

Authority: _____

For the Commission:

Dated and signed at TSHWANE on this the 10th day of SEPTEMBER 2019.



Tembinkosi Bonakele

The Commissioner: Competition Commission

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