



COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CO157Feb20

In the matter between:

The Competition Commission of South Africa

Applicant

And

Rebel Packaging (Pty) Ltd; Mpact Ltd; Seyfert
Corrugated Western Cape (Pty) Ltd; West
Coast Paper Traders (Pty) Ltd; Box Boyz SA
(Pty) Ltd; Right Corrugated Containers (Pty) Ltd;
Lomina VYF (Pty) Ltd; The Pretoria Box
Manufacturing Partnership; Rusmar Packaging
(Pty) Ltd; Corocraft (Pty) Ltd

Respondents

Panel:	A Wessels (Presiding Member)
	L Mncube (Tribunal Member)
	G Budlender (Tribunal Member)
Heard on:	23 August 2024
Decided on:	26 August 2024

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement concluded between the Competition Commission and Rebel Packaging (Pty) Ltd and Mpact Ltd annexed hereto.

Presiding Member
Mr Andreas Wessels

26 August 2024

Date

Concurring: Prof. Liberty Mncube and Adv. Geoff Budlender SC

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CC Case No: 2016Apr0040

& 2017Apr0040

CT Case No: CO157Feb20

In the matter between:

THE COMPETITION COMMISSION

APPLICANT

AND

REBEL PACKAGING (PTY) LTD

FIRST RESPONDENT

MPACT LIMITED

SECOND RESPONDENT

SEYFERT WESTERN CAPE (PTY) LTD

THIRD RESPONDENT

WEST COAST PAPER TRADERS (PTY) LTD

FOURTH RESPONDENT

BOX BOYZ SA (PTY) LTD

FIFTH RESPONDENT

RIGHT CORRUGATED CONTAINERS (PTY) LTD

SIXTH RESPONDENT

LOMINA VYF (PTY) LTD

SEVENTH RESPONDENT

THE PRETORIA BOX MANUFACTURING PARTNERSHIP

EIGHTH RESPONDENT

RUSMAR PACKAGING (PTY) LTD

NINTH RESPONDENT

COROKRAFT (PTY) LTD

TENTH RESPONDENT

CONSENT AGREEMENT IN TERMS OF SECTION 49D, READ WITH SECTION 58(1)(b) OF THE COMPETITION ACT, NO. 89 OF 1998 AS AMENDED, RELATING TO ALLEGED CONTRAVENTIONS OF SECTION 4(1)(b), SECTION 13A(1) AND SECTION 13A(3) OF THE COMPETITION ACT

1. PREAMBLE

- 1.1 The Commission and Rebel and Mpact agree that application be made to the Tribunal for the confirmation of this settlement agreement as a consent order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act, on the terms set out below.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this document the following expressions bear the meanings assigned to them below and related expressions bear corresponding meanings —

2.1.1 “**Agreement**” means this agreement duly signed and concluded between the Commission and Mpact and Rebel that will be referred to the Tribunal for confirmation as a consent order;

2.1.2 “**Box Boyz**” means Box Boyz SA (Pty) Ltd (Registration Number 2000/018549/07). Box Boyz is incorporated in terms of the laws of South Africa and has its principal place of business at 23 Fields Street, Boksburg, South Africa;

2.1.3 “**Commission**” means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the DTI campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

2.1.4 “**Competition Act**” means the Competition Act 89 of 1998, as amended;

- 2.1.5 “**Commissioner**” means the Competition Commissioner of South Africa, appointed in terms of section 22 of the Competition Act;
- 2.1.6 “**Complaint**” means the complaint against the Respondents initiated by the Commissioner on 19 April 2017 in terms of section 49B of the Competition Act under case number 2016Apr0040.
- 2.1.7 “**Confirmation Date**” means the date upon which the Tribunal confirms this Agreement as a consent order in terms of section 49D, read with section 58(1)(b) of the Act;
- 2.1.8 “**Corokraft**” means Corokraft (Pty) Ltd, Registration Number 1997/011611/07, which has its principal place of business at Unit 3, 17 Chelsea Avenue, New Germany, Durban;
- 2.1.9 “**Days**” means any business day being a day which is not a Saturday, Sunday or an official holiday in South Africa;
- 2.1.10 “**Farmpak**” means Lomina Vyf (Pty) Ltd, Registration Number: 1996/016932/07. Farmpak has its principal place of business at 3 Station Street, Low’s Creek, near Malelane in Mpumalanga;
- 2.1.11 “**Mpact**” means Mpact Limited (“**Mpact**”) and all of its subsidiaries and entities controlled by it. Mpact is incorporated in terms of the laws of South Africa and has its principal place of business at 4th Floor, 3 Melrose Boulevard, Melrose Arch, Gauteng, South Africa;
- 2.1.12 “**Parties**” means the Commission and the Respondents collectively;
- 2.1.13 “**Pretoria Box**” means Pretoria Box Manufacturers Partnership which was an unincorporated partnership between Rebel and Reef Packaging (Pty) Ltd and had its principal place of business at 424 Van Riebeeck Street, Hermanstad, Pretoria;
- 2.1.14 “**Rebel**” means Rebel Packaging (Pty) Ltd, Registration Number: 1991/004534/07. Rebel is an indirectly wholly-owned subsidiary of Mpact and has its principal place of business at 4th Floor, 3 Melrose

Boulevard, Melrose Arch, Gauteng, South Africa;

- 2.1.15 “**Respondents**” means the first to tenth Respondents being Rebel, Mpact, Seyfert, West Coast Paper Traders, Box Boyz, Right Corrugated, Farnpak, Pretoria Box, Rusmar and Corokraft;
- 2.1.16 “**Right Corrugated**” means Right Corrugated Containers (Pty) Ltd, Registration Number: 1994/009163/07. Right Corrugated is incorporated in terms of the laws of South Africa and has its principal place of business at 411 All Black Road, Anderbolt, Boksburg, Gauteng, South Africa.
- 2.1.17 “**Rusmar**” means Rusmar Packaging (Pty) Ltd, Registration Number: 1991/000541/07, which has its principal place of business at 1093 Anvil Road, Robertville, Johannesburg, 1709;
- 2.1.18 “**Seyfert**” means Seyfert Corrugated Western Cape (Pty) Ltd (Registration Number 1995/010478/07). Seyfert has its principal place of business at the corner of Henshilwood Road and Neil Hare Road, Atlantis, Cape Town, Western Cape, South Africa;
- 2.1.19 “**Tribunal**” means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act;
- 2.1.20 “**West Coast Paper Traders**” means West Coast Paper Traders (Pty) Ltd (Registration Number 1996/009216/07). West Coast Paper Traders has its principal place of business at Meridian House, Greenford Office Estate, Punters Way, Kenilworth, Cape Town, Western Cape, South Africa.

3. RECORDAL

- 3.1 The transactions discussed below took place when Mpact was still a part of the Mondi Group. In 2011, Mondi unbundled its packaging business in South Africa to create Mpact as a separately listed company on the Johannesburg Stock Exchange.

3.2 CONDUCT IN RELATION TO PRIOR IMPLEMENTATION

- 3.2.1 Mpact disclosed to the Commission that it had, through Rebel, acquired shareholdings in each of Box Boyz, Right Corrugated, Seyfert and West Coast Paper Traders and that these acquisitions resulted in Rebel acquiring joint control of these entities.
- 3.2.2 These transactions constituted mergers and were notifiable in terms of section 13A of the Act. However, Mpact implemented these transactions without prior approval and therefore contravened section 13A(3) of the Act of section. Following the disclosure, the Commission requested Mpact to notify each of these transactions.
- 3.2.3 Mpact (through Rebel) notified the Commission of its prior implemented acquisition of a ■■■% shareholding in West Coast Paper Traders which became effective on 1 November 2010. Further, Mpact increased its shareholding in West Coast Paper Traders to ■■■% and this transaction was notified and approved by the Tribunal on 19 December 2018.
- 3.2.4 On 21 December 2018, Mpact (through Rebel) notified the Commission of its prior implemented acquisition of ■■■% shareholding in Seyfert, which became effective on 1 January 2011. On 20 March 2019, the Commission prohibited this merger on the grounds that Mpact allegedly used the merger to collude with Seyfert.
- 3.2.5 On 4 April 2019, Rebel submitted a Request for Consideration to the Tribunal in respect of the Commission's prohibition of this merger and the merger was approved conditionally by the Tribunal on 1 December 2023.
- 3.2.6 On 21 June 2019, Mpact (through Rebel) notified the Commission of its prior implemented acquisition of a 49% shareholding in Box Boyz, which became effective on 1 January 2006. The

Commission prohibited this merger. Mpact submitted a Request for Consideration to the Tribunal in respect of the Commission's prohibition of this merger and the merger was approved by the Tribunal on 1 December 2023.

3.2.7 On 25 June 2019, Mpact (through Rebel) notified the Commission of its prior implemented acquisition of a 49% shareholding in Right Corrugated, which became effective on 1 January 2006. The Commission prohibited this merger and Mpact submitted a Request for Consideration to the Tribunal in respect of the Commission's prohibition of this merger and the merger was approved by the Tribunal on 1 December 2023.

3.2.8 With respect to the other respondents:

3.2.8.1 Rebel acquired a ■■■% shareholding in Farmpak with effect from 1 November 2003. This transaction did not meet the thresholds for merger notification that were applicable at the time and was not, therefore, a notifiable merger;

3.2.8.2 Rebel acquired a 40% shareholding in Corokraft with effect from 1 December 2001. This transaction did not meet the thresholds for merger notification that were applicable at the time and was not, therefore, a notifiable merger;

3.2.8.3 Pretoria Box and Kohler's Corrugated Division were in a 50 / 50 partnership. This partnership existed prior to Mondi (Mpact's predecessor) acquiring Kohler's Corrugated Division. The transaction between Pretoria Box and Kohler's Corrugated Division was approved by the Competition Board. Mondi subsequently acquired Kohler's Corrugated Division and thereby

acquired Kohler's partnership interest in Pretoria Box. This transaction was implemented in 2001.

- 3.2.8.4 In 1997, Rebel acquired a 50% shareholding in Rusmar. This acquisition preceded the commencement of the Competition Act.

3.3 CONDUCT IN RELATION TO SECTION 4(1)(B) OF THE ACT

- 3.3.1 On 16 May 2016, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against Mpact and New Era for price fixing, market division and collusive tendering in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act in the market for the manufacture and supply of corrugated packaging products. The complaint was investigated under case number: 2016May0232. The Commission referred this matter to the Tribunal on 15 April 2019. The prosecution proceedings in this matter are ongoing.

- 3.3.2 On 26 May 2016, the Commission conducted a search and seizure operation at the premises of Mpact and New Era. Following the search and seizure operation, Mpact applied for leniency for various arrangements, one of which related to its acquisition of minority interests in various sheet plants. These sheet plants were Seyfert, Box Boyz, Right Corrugated, Farmpak, Corokraft, Pretoria Box and Rusmar.

- 3.3.3 Following this leniency application, on 19 April 2019, the Commissioner initiated a complaint in terms of section 49B(1) of the Act against Mpact and the sheet plants for price fixing, market division and collusive tendering in the market for the manufacture and supply of finished corrugated packaging paper products in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act. The Commission's case number for this complaint is: 2017Apr0040.

- 3.3.4 At the time that Mpact acquired these minority interests, Mpact was the primary supplier of corrugated sheet board to the relevant sheet plants. The sheet plants used the sheet board to produce

finished corrugated products (in other words, there was a vertical relationship between the parties). However, Mpact through its Corrugated Division also produced certain finished corrugated products in competition with these sheet plants.

3.4 This agreement relates to Mpact's arrangements with the sheet plants. Mpact has disclosed to the Commission that, during the period of time that Mpact jointly-controlled the sheetplants and was the primary supplier of sheetboard to them:

3.4.1 There was an understanding between Mpact and each of the sheet plants that Mpact would not target customers of the sheet plants and the sheet plants would in turn not target customers of Mpact's own Corrugated Division;

3.4.2 In certain instances, Mpact and the sheet plants would allocate customers to each other (with Mpact referring customers with smaller orders to the sheet plants);

3.4.3 In certain instances, representatives of Mpact and the sheet plants discussed the prices at which they quoted to customers, or the prices offered by the sheet plants to customers;

3.4.4 Mpact would, through its involvement as shareholder and supplier to the sheet plants, have insight into the costs and pricing of the sheet plants as well as the specific customers which the sheet plants are targeting; and

3.4.5 Where the sheet plants were involved in tender processes, they would occasionally seek advice and assistance from Mpact in relation to the prices at which they should tender (Mpact was the source of the sheetboard which they would use for the purpose of supplying material to the customer).

3.5 Mpact further disclosed to the Commission that:

3.5.1 The agreements with the sheet plants were bilateral; and

3.5.2 Mpact also had a representative who sat on the board of directors of certain of the sheet plants.

3.6 The arrangement between Mpact and the sheet plants could conceivably amount to price fixing, division of markets involving allocating customers and collusive tendering which could contravene sections 4(1)(b)(i),(ii) and (iii) of the Act.

4. ADMISSION

4.1 Mpact agrees that the conduct described in paragraphs 3.4 and 3.5 above could conceivably be construed as a contravention of sections 4(1)(b)(i),(ii) and (iii) of the Act.

4.2 Mpact admits that the implementation of the transactions listed in paragraphs 3.2.3, 3.2.4, 3.2.6 and 3.2.7 above contravened section 13A(3) of the Act.

5. AGREEMENT REGARDING FUTURE CONDUCT

5.1 For purposes of regularising its relationship with the sheet plants and to avoid any debate about whether its conduct, described in paragraphs 3.4 and 3.5 above, contravenes section 4 of the Competition Act, Mpact undertakes to cease engaging in the conduct involving the sheet plants described in paragraphs 3.4 and 3.5 above.

5.2 Mpact further undertakes to develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act;

5.3 Mpact further undertakes to submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Settlement Agreement as an order by the Tribunal.

6. ADMINISTRATIVE PENALTY

6.1 In terms of section 58(1)(a)(iii) of the Competition Act read with sections

59(1)(a), 59(2) and (3) of the Competition Act, Mpact agrees to pay an administrative penalty in the amount of R7 000 000 (seven million rand).

6.2 The above amount does not exceed 10% of Mpact's annual turnover for the 2023 financial year.

6.3 The Commission will allocate this as follows:

6.3.1 R4 000 000 in respect to the failure to notify and the prior implementation of the mergers in respect of Box Boyz, Right Corrugated, West Coast Paper Traders and Seyfert; and

6.3.2 R3 000 000 in respect of the alleged contravention of section 4.

6.4 The administrative penalty shall be paid within 30 Days from the date of confirmation of this Agreement by the Tribunal.

6.5 The administrative penalty will be paid into the Commission's bank account.

6.6 The Commission's banking details are as follows:

Bank: ABSA Bank

Name of Account: The Competition Commission Penalties Account

Branch Name: Pretoria

Branch Code: 632005

Account Number: 4087641778

6.7 The Commission will pay the administrative penalty amount into the National Revenue Fund in compliance with section 59(4) of the Competition Act.

7. FULL AND FINAL SETTLEMENT

7.1 This Consent Agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and the Respondents relating to (i) the failure to

notify any of the transactions in terms of which Rebel acquired a controlling interest in any of the other Respondents and implemented its acquisition of such controlling interests without receiving the prior approval of the Competition Authorities (where required); (ii) the alleged contravention of section 4(1)(b) (i), (ii) & (iii) of the Competition Act that is the subject of the Commission's investigation under Commission Case Number 2017Apr0040; and (iii) Rebel's acquisition of control of Seyfert, Box Boyz and Right Corrugated.

Dated and signed at Johannesburg on the 30th day of July 2024.

For the First and Second Respondent:

Signature: 

Name: Bruce William Strong

Capacity: CEO

Dated and signed at Pretoria on the 21st day of August 2024.

For the Commission:

Signature: 

Name: Doris Tshepe

Capacity: Commissioner

Rebel Settlement Agreement (execution version) 29 July 2024 (002)

Final Audit Report

2024-07-30

Created:	2024-07-30
By:	Ivona Heck (iheck@mpact.co.za)
Status:	Signed
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