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south africa

COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: CR087Mar10/SA115Jul17

In the matter between:

The Competition Commission

Applicant

and

Brenner Mills (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member)
AW Wessels (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on : 02 August 2017

Decided on : 02 August 2017

Settlement Agreement

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



Presiding Member
Mr N Manoim

02 August 2017
Date

Concurring: Mr Andreas Wessels and Mrs Mondo Mazwai

"A"

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

Case No: 2007MAR2844

Case No: ~~25/CR/MAR16~~

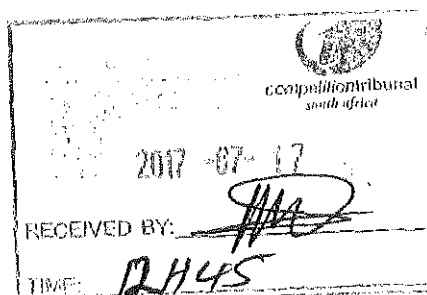
CR087MARIO/SAIISJULIT

In the matter between:

The Competition Commission

And

Brenner Mills (Pty) Ltd



Applicant

Respondent

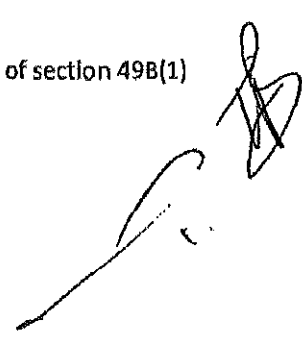
SETTLEMENT AGREEMENT IN TERMS OF SECTION 27(1)(d) READ WITH SECTIONS 58(1)(a)(iii) AND 59(1)(a) OF THE COMPETITION ACT, 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND BRENNER MILLS (PTY) LTD, IN RESPECT OF THE CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, 1998.

PREAMBLE

The Competition Commission ("Commission") and Brenner Mills (Pty) Ltd ("Brenner Mills") 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) of the Competition Act, 1998, on the terms set out below.

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 "Affected turnover" means turnover for the sale of white maize meal for human consumption for the financial year ending in 2007
- 1.3 "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;
- 1.4 "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;
- 1.5 "Brenner Mills" 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;
- 1.6 "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;
- 1.7 "CLP" means the Commission's Corporate Leniency Policy gazetted in Government Gazette number 31064 of 2008;
- 1.8 "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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria;
- 1.9 "The Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.10 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2007MAR2844 (15/CR/Mar10);
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- 1.11 "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;
- 1.12 "Godrich" mean Godrich 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 Lanham Street, Extension Bronkhorstspuit, Mpumalanga Province;
- 1.13 "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 know address was, 32 Watt Street, Industria Area, Middelburg, Mpumalanga;
- 1.14 "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;
- 1.15 "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;
- 1.16 "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;
- 1.17 "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 Markstraat, Paarl, Cape Town, Western Cape;
- 1.18 "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;
- 1.19 "Prescribed Rate of Interest Act" means Prescribed Rate of Interest Act 55 of 1975
- 1.20 "Pride Milling" 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;

- 1.21 "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;
- 1.22 "Respondents" means all the firms cited in the complaint referral.
- 1.23 "Tiger" means Tiger Brands Limited, company duly incorporated as such 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;
- 1.24 "Parties" means the Commission and Brenner Mills;
- 1.25 "Settlement Agreement" means this agreement duly signed and concluded between the Commission and Brenner Mills;
- 1.26 "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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.27 "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
- 1.28 "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.

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 Milling and Progress Milling in the maize milling industries. The initiation was



subsequently amended to include other players in the milling industry, namely Bothaville, Godrich, TWK, Keystone, Westra, Carolina Mills, Brenner, Paramount, NTK, Kalel, Blinkwater Mills and Allem Brothers. The complaint was initiated after the Commission had received a corporate leniency application from Premier in 2007, which was corroborated by a further leniency application filed by Tiger in the same year.

2.2 The Commission's investigations revealed that 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 respondents engaged in the following conduct:

2.2.1 Attended numerous meetings and held telephone discussions in which they reached agreement in contravention of section 4(1)(b)(i) of the Act; and in such meetings and telephone discussions, the respondents, *inter alia*, agreed to:

2.2.1.1 fixing prices of milled white maize products;

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

2.2.1.3 the timing of price increases and implementation thereof.

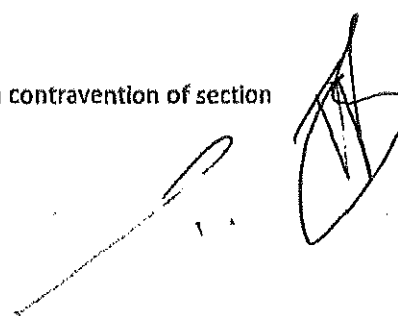
2.3 The agreements concluded at these meetings were used to ensure coordination at both a regional and national level and were mutually reinforcing.

2.4 Brenner Mills and its competitors, i.e. the millers of white maize products, acting through their representatives in meetings and telephone discussions, agreed to:

2.4.1 directly fix the prices of milled white maize products; and

2.4.2 directly fixed dates on which such agreed price increments were to be implemented.

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

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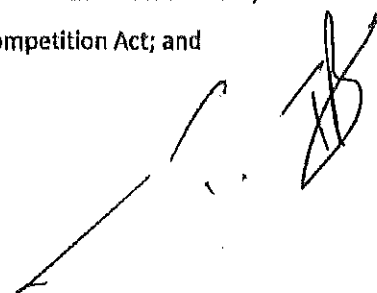
- 2.6 Through these price fixing arrangements, Brenner Mills and its competitors prevented and/or limited price competition amongst themselves, in relation to pricing of milled white maize products.

3. ADMISSION OF LIABILITY

Brenner Mills admits that it has contravened section 4(1)(b)(i) of the Competition Act in that it agreed with its competitors to directly and indirectly fix the selling price of milled white maize products, as well as agreeing on the dates upon which these prices would be implemented.

4. FUTURE CONDUCT

- 4.1 Brenner Mills confirms that it has ceased the conduct referred to above during 2006 and 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:
- 4.1.1 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;
- 4.2 Brenner Mills further agrees and undertakes to:
- 4.2.1 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;
- 4.2.2 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



- 4.2.3 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.

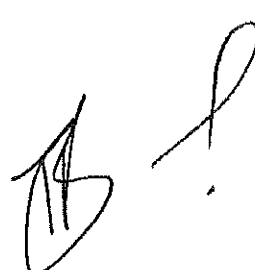
5. ADMINISTRATIVE PENALTY

- 5.1 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, Brenner Mills accepts that it is liable to pay an administrative penalty.
- 5.2 The parties have agreed that Brenner Mills will pay an administrative penalty in the amount of R12, 000, 872.00 (Twelve million, Eight hundred and seventy two rands, no cents), which amount is equal to 5% of the affected turnover for the 2007 financial year.
- 5.3 Brenner Mills will pay the amount over a period of 4 (four years), in four equal instalments in the amount of R3, 000, 218.00 (Three million, Two hundred and Eighteen Rand, no cents). The first instalment is to be paid within the first the first year of the date of confirmation of this settlement agreement by the Tribunal i.e on or before 30 June 2018, and the last instalment to be paid on or before 30 June 2021.
- 5.4 The administrative penalty amount remaining after the first year of confirmation of this settlement agreement, will accrue interest and such interest will be levied in accordance with the Public Finance Management Act 1 of 1999;
- 5.5 The penalty 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 : XXXXXXXXXX
BRANCH CODE : 632005
PAYMENT REF : 2007MAR2884 -BRENNER MILLS

6. FULL AND FINAL SETTLEMENT

This Settlement Agreement is entered into in full and final settlement of the complaint set out in paragraph 2 above, and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Brenner Mills in respect of the conduct contemplated under Commission's complaint case number 2007Mar2844.



Signed at PRETORIA on this 5 day of JULY 2017.

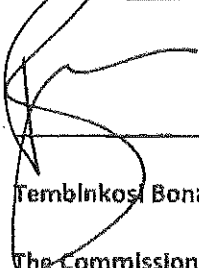


BRENNER MILLS (Pty) Ltd

Name: E. GOLDBLUM

Authority: CHAIRMAN

Signed at PRETORIA on this 12 day of JULY 2017.



Tembinkosi Bonakele

The Commissioner: Competition Commission