

COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: 15/CR/Mar10

In the matter between:

The Competition Commission

Applicant

and

Carolina Rollermeule (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member) and A Wessels (Tribunal Member)

Heard on : 13 April 2011

Decided on : 13 April 2011

ORDER

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".



N Manoim

Concurring: Y Carrim and A Wessels

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CCCASENO: 2007MAR244
CT CASE NO.: 15/CR/MAR10

In the matter between:

COMPETITION COMMISSION
and
CAROLINA ROLLERMEULE (PTY) LTD

Applicant

Respondent

In re:

COMPETITION COMMISSION

Applicant

And

PIONEER FOODS (PTY) LTD
FOODCORP (PTY) LTD
GODRICH MILLING (PTY) LTD
PROGRESS MILLING (PTY) LTD
PRIDE MILLING (PTY) LTD
WESTRA MILLING (PTY) LTD
BRENNER MILLS (PTY) LTD
BLINKWATER MILLS (PTY) LTD
TWK MILLING (PTY) LTD
NTK MILLIN (PTY) LTD
CAROLINA MILLS (PTY) LTD
ISIZWE MILLS (PTY) LTD

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent
Ninth Respondent
Tenth Respondent
Eleventh Respondent
Twelfth Respondent

BOTHAVILLE MILLING (PTY) LTD t/a THUSO MILLS
PARAMOUNT MILLS (PTY) LTD
KEYSTONE MILLING CO.(PTY) LTD
PREMIER FOODS (PTY) LTD
TIGER BRANDS LIMITED

Thirteenth Respondent
Fourteenth Respondent
Fifteenth Respondent
Sixteenth Respondent
Seventeenth Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
CAROLINA ROLLERMEULLE (PTY) LTD IN REGARD TO ALLEGED
CONTRAVENTIONS OF SECTION 4 (1) (b) OF THE COMPETITION ACT 89 OF 1998**

The Competition Commission and Carolina Rollermeulle. (Pty) Ltd hereby agree that application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D as read with sections 58(1) (b) and 59(1) (a) of the Competition Act 89 of 1998, as amended, on the terms set out below. This settlement agreement is entered into in settlement of the price fixing and market allocation allegations in the white maize milling industry.

1. Definitions

1.1 For the purposes of this settlement agreement the following definitions shall apply:

1.1.1 "Act" means the Competition Act, 1998 (Act No.89 of 1998), as amended.

1.1.2 "'Blinkwater" means Blinkwater Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 10 SADC Street, Middelburg, Mpumalanga Province.



- 1.1.3 **"Bothaville"** means Bothaville Milling (Pty) Ltd t/a Thuso Mills, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively, its principal place of business at 10th Avenue, Industrial Site, Bothaville, Free State Province.
- 1.1.4 **"Brenner"** means Brenner Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 980 Park Street, Arcadia, Pretoria, Gauteng.
- 1.1.5 **"Carolina "** means Carolina Rollermeule (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 27 Voortrekker Street, Carolina, Mpumalanga Province.
- 1.1.6 **"CLP"** means the Commission's Corporate Leniency Policy gazetted in Government Gazette number 31064 of 2008.
- 1.1.7 **"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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa.
- 1.1.8 **"Commissioner"** means the Commissioner of the Competition Commission appointed in terms of section of 22 of the Act;
- 1.1.9 **"Foodcorp"** means Foodcorp (Pty) Ltd; a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office alternatively its principal place of business at 415 Mitchel Street, Pretoria West, Gauteng.
- 1.1.10 **"Godrich"** means Godrich Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with

its registered office, alternatively its principal place of business at Lanham Street, Extention Bronkhorstpruit, Mpumalang Province.

1.1.11 "**Kalel**" means Kalel Mills, now t/a Isizwe Mills (Pty) Ltd a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively, its principal place of business or whose last known address was 32 Watt Street, Industrial Area, Middelburg, Mpumalanga Province.

1.1.12 "**Keystone**" means Keystone Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively its principal place of business at 47 Lucas Street, Rustenburg, North West Province.

1.1.13 "**NTK**" means NTK Mills a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively, its principal place of business at 84 River Road, Modimole, Limpopo province.

1.1.14 "**Paramount**" means Paramount Mills (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively, its principal place of business at 4 Royan Road, Gately East London, Eastern Cape Province.

1.1.15 "**Pioneer**" means Pioneer Foods (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa with its registered office, alternatively its principal place of business at Markstraat 32, Paarl, Cape Town. Western Cape Province.

1.1.16 "**Premier**" means Premier Foods (Pty) Ltd a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Joint Street, Isando, Johannesburg, Gauteng.



- 1.1.17 **"Pride"** means Pride Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively principal place of business at Ground Floor, Block C, Futuram Office Park, 117 Lenchen Avenue, Centurion, Pretoria, Gauteng.
- 1.1.18 **"Progress Milling"** means Progress Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at No.1 20th Street, Industria Polokwane, Limpopo Province.
- 1.1.19 **"Respondents"** means all the firms that are cited in the complaint referral affidavit and which are individually named in this settlement agreement.
- 1.1.20 **"Settlement Agreement"** means this settlement agreement duly signed and concluded between the Commission and Carolina Rollermeule.
- 1.1.21 **"Tiger"** means Tiger Brands Limited, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 3010 William Nicol Drive, Bryanston, Johannesburg, Gauteng.
- 1.1.22 **"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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria.
- 1.1.23 **"TWK"** means TWK Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its registered office, alternatively its principal place of business at 13 Church Street, Piet Retief, Mpumalanga Province.
- 1.1.24 **"Westra"** means Westra Milling (Pty) Ltd, a company duly incorporated in accordance with the company laws of the Republic of South Africa, with its
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registered office, alternatively principal place of business at Stasie Straat,
Christiana, Northern Cape Province.

2. Complaint investigation and Commission's findings

2.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp, Pride and Progress Milling in respect of alleged collusive activities in the maize milling industries. The initiation was subsequently amended to include other players in the maize milling industry, namely Blinkwater, Godrich, TWK, Keystone, Westra, Carolina, Brenner, Paramount, NTK, Isizwe, Bothaville. The complaint was initiated after the Commission had received a corporate leniency application from Premier, in 2007, which was subsequently corroborated by a further leniency application from Tiger.

2.2 The Commission's investigation revealed that at various stages during the period 1998 to at least 2007 the Respondents, being firms in the same line of business, were involved in conduct in contravention of section 4(1)(b)(i) of the Act in that various representatives of the firms engaged in the following conduct:

2.2.1 Attended numerous meetings and held telephone discussions in which they agreed *inter alia*:

2.2.1.1 to fix the prices of milled white maize products;

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

2.2.1.3 the timing of the price increases and implementation thereof.

2.2.2 The agreements concluded at these meetings were used to secure co-ordination at both national and regional levels of the market and were mutually reinforcing.

2.2.3 During the period between 2005 to 2006 Carolina and its competitors in the Mpumalanga region namely Tiger, Blinkwater, Pride, Brenner, TWK, Godrich, Ruto Mills, Tiger, Isizwe and Carolina Mills met to agree to the level and timing of price increases.

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

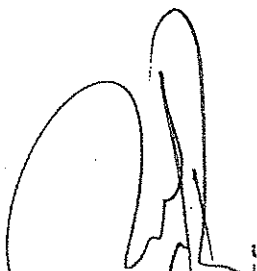
2.3 Carolina has not provided any new information to the Commission but it has indicated its willingness to co-operate with the Commission in its prosecution of the remaining respondents.

3. Admission

Carolina admits that it has contravened section 4 (1)(b)(i) of the Act, in that during or about 2005 to 2006 it was represented in a series of meetings between it and its competitors at which agreements to fix selling prices of milled white maize and the implementation dates of such prices were reached.

4. Agreement concerning future conduct

4.1. Carolina agrees to fully cooperate with the Commission in relation to the prosecution of any other respondents in this Complaint referral. Without limiting the generality of the above, Carolina specifically agrees to:



4.1.1. testify in support of the Commission's case regarding the contraventions in this settlement agreement; and

4.1.2. provide evidence, written or otherwise, which is in its possession or under its control concerning the contraventions contained in this settlement agreement.

4.2. Carolina agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that employees, management and directors within Carolina, its subsidiaries and business units do not engage in any contraventions of section 4 (1) (b) of the Act, a copy of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this consent agreement as an order by the Tribunal.

4.3. Carolina confirms that it has ceased engaging in and undertakes to not engage in conduct detailed in paragraph 3.

5. Administrative Penalty

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

5.2. The parties have agreed that Carolina will pay an administrative penalty in the sum of R4 417 546.00 (four million four hundred and seventeen thousand five hundred and forty six rands) being 5% of its total turnover for the 2009 financial year.

5.3. Carolina will pay the penalty amount to the Commission in two equal payments, the first such payment of R 2 208 773.00 (two million two hundred and eight thousand seven hundred and seventy three rands) to be made within seven (7) days of confirmation of this settlement Agreement as an Order of the Tribunal.



5.4. Carolina will make the second payment of R 2 208 773.00 (two million two hundred and eight thousand seven hundred and seventy three rands) within six (6) months of the confirmation of the Settlement Agreement as an Order of the Tribunal.

5.5. This amount shall be paid into the following bank account:

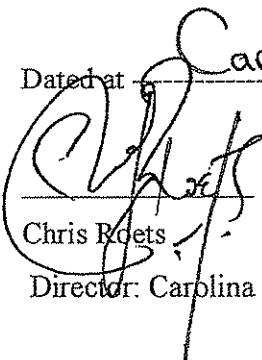
NAME	:	THE COMPETITION COMMISSION FEE ACCOUNT
BANK	:	ABSA BANK, PRETORIA
ACCOUNT NUMBER	:	4050778576
BRANCH CODE	:	323 345

5.6. The Commission will pay these sums to the National Revenue Fund in terms of section 59 (4) of the Act.

6. Full and final resolution

This Settlement Agreement is entered into in full and final settlement and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Carolina relating to any alleged contraventions by Carolina of section 4 (1) (b) of the Act that are the subject of the Commission's investigation under case number 2007Mar2844.

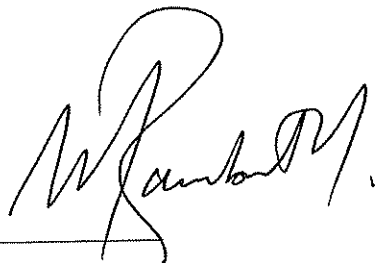
Dated at Carolina on this the 8 day of December 2010


Chris Roets

Director: Carolina Rollermeule Co. (Pty) Ltd

Dated at PRETORIA on this the 28th day of February 2010.





Shan Ramburuth

The Commissioner: Competition Commissioner

