



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR087Mar10/SA227Dec18

In the matter between:

The Competition Commission

Applicant

And

NTK Limpopo Agri (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member)
M Mazwai (Tribunal Member)
I Valodia (Tribunal Member)

Heard on : 06 February 2019

Decided on : 06 February 2019

Settlement Agreement

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

Presiding Member
Ms Yasmin Carrim

06 February 2019
Date

Concurring: Ms Mondo Mazwai and Prof. Imraan Valodia

"A"

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

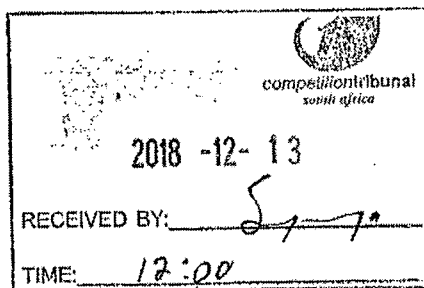
CC Case No: 2007Mar2844

CT Case No: ~~15/CR/MAR18~~

CR087Mario/SA227Dec18

In the matter between

THE COMPETITION COMMISSION



Applicant

and

NTK LIMPOPO AGRI (PTY) LTD

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 NTK LIMPOPO AGRI (PTY) LTD IN RESPECT OF ALLEGED CONTRAVENTIONS OF THE COMPETITION ACT, 1998.

1. PREAMBLE

The Competition Commission ("the Commission") and NTK Limpopo Agri (Pty) Ltd ("NTKLA") 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

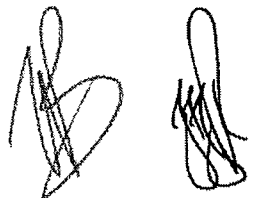
1

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

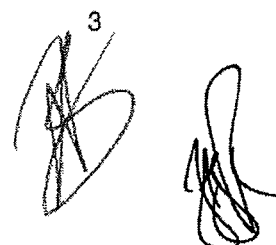
For the purposes of this Settlement Agreement the following definitions shall apply:

- 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 980 Park Street, Arcadia, Pretoria, Gauteng;



- 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 in 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

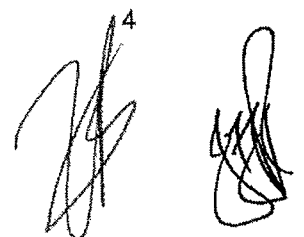
3



principal place of business at Lanham Street, Extension Bronkhorstspuit, 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 Business**" means the maize milling business of NTKLA which was acquired from NTK Koöperasie in 2003;
- 2.16. "**NTK Koöperasie**" means the co-operative known as NTK Koöperasie or Northern Transvaal Cooperative Limited, which operated the NTK Business prior to 2003;
- 2.17. "**NTKLA**" means NTK Limpopo Agri (Proprietary) Limited, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa under registration number: 1980/008381/06, with its principal place of business at 84 Limpopo Street, Modimolle, Limpopo Province;
- 2.18. "**Paramount**" means Paramount Mills (Pty) Ltd, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its

4



principal place of business at 4 Royan Road, Gately East London, Eastern cape;

2.19. "**Parties**" means the Commission and NTKLA;

2.20. "**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;

2.21. "**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;

2.22. "**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;

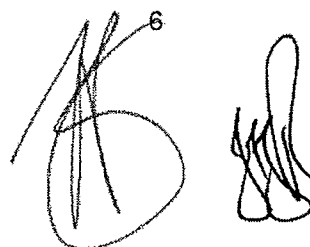
2.23. "**Progress Milling**" means AM Alberts (Pty) Ltd, trading as Progress Milling, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at No. 1 20th Street, Industria Polokwane, Limpopo Province;

2.24. "**Respondents**" means all the firms that are cited in the complaint referral;

2.25. "**Settlement Agreement**" means this agreement duly signed and concluded between the Commission and NTKLA;

- 2.26. **"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;
- 2.27. **"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;
- 2.28. **"TWK"** means TWK Milling, the milling business of TWK Agri (Pty) Ltd;
- 2.29. **"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;
- 2.30. **"VKB Group"** means VKB Beleggings (Proprietary) Limited, a company duly incorporated in accordance with the applicable laws of the Republic of South Africa, with its principal place of business at 31 President CR Swart Street, Reitz, 9810;
- 2.31. **"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.

6

The block contains a handwritten number '6' and two sets of handwritten signatures or initials. The first signature is a large, stylized 'B' with a long horizontal stroke extending to the left. The second signature is a smaller, more compact set of initials.

3. BACKGROUND AND THE COMMISSION'S INVESTIGATIONS AND FINDINGS

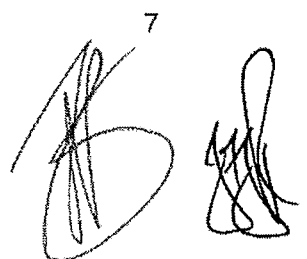
3.1 On or about 14 March 2007, the Commission initiated a complaint against Tiger, Pioneer, Foodcorp, Pride Milling and Progress Milling in the maize milling industry, under CC case number: 2007Mar2844. The initiation was subsequently amended to include other players in the maize milling industry namely, Bothaville, Godrich, TWK, Keystone, Westra, Carolina Mills, Brenner, Paramount, NTK Milling (Pty) Ltd, Kalef, 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;

7



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.

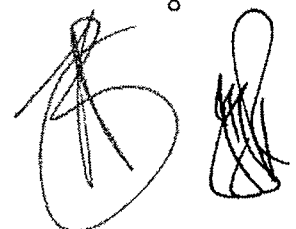
3.3 In March 2003, NTK Koöperasie sold the NTK Business to NTKLA. In 2008, the VKB Group acquired NTKLA.

3.4 During 2006, representatives of NTKLA attended a number of meetings with NTKLA's competitors (being millers of white maize products) at which they agreed to:

3.4.1 Directly fix the selling price of milled white maize products;

3.4.2 Directly fix dates on which such agreed price increments were to be implemented;

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, NTKLA and its competitors prevented and/ or limited price competition amongst themselves in relation to pricing of milled white maize meal products.

3.7 The VKB Group does not admit any liability on its part as it was not party to the abovementioned collusive conduct and merely acquired NTKLA in 2008 which, unbeknownst to the VKB Group, was party to the collusive conduct. In this regard, in the sale agreement, the sellers warranted that NTKLA had not breached the Act.

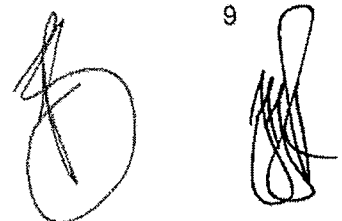
4. ADMISSION OF LIABILITY

NTKLA admits that it (through the NTK Business) contravened section 4(1)(b)(i) of the Act in that during the period between 1999 to 2007, it agreed with its competitors in the white maize milling market to directly and indirectly fix the selling price of milled white maize products, as well as agreeing on the dates upon which these prices were to be implemented.

5. FUTURE CONDUCT

5.1 NTKLA 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:

9



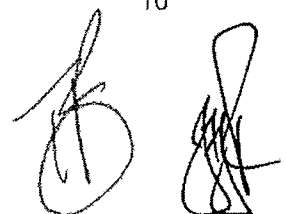
5.1.1 Providing such documentary evidence in its possession or under its control concerning the alleged contraventions contained in the Settlement Agreement, as well as to assist the Commission in the prosecution of the alleged contraventions covered by the Settlement Agreement;

5.2 NTKLA 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, NTKLA accepts that it is liable to pay an administrative penalty.
- 6.2 The parties have agreed that NTKLA will pay an administrative penalty in the total amount of R1 364 360 (one million, three hundred and sixty four thousand, three hundred and sixty Rand), being 5% of NTKLA's affected turnover for the 2007 financial year.
- 6.3 NTKLA will pay the total amount of the administrative penalty within 30 days from the date of confirmation of this Settlement Agreement as an order of the Tribunal.
- 6.4 The penalty must be paid into the Commission's bank account which is as follows:

Bank name: Absa Bank

Branch name: ABS COMM PUBL NR

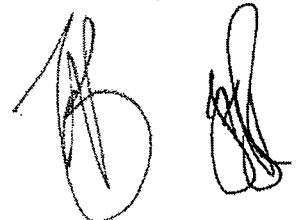
Account holder: The Competition Commission

Account number: 40-8764-1778

Account type: Current Account

Branch Code: 638056

Reference: Case number 2007Mar2844/ NTKLA

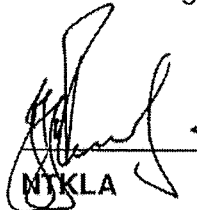


6.5 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

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

Dated and signed at REITZ on the 28th day of NOVEMBER 2018.

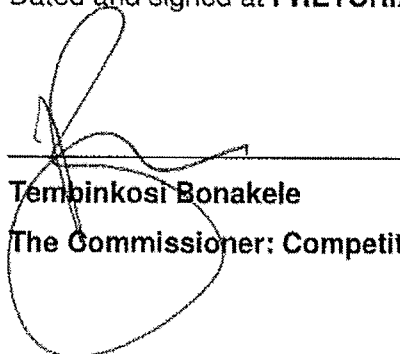

NTKLA

Name in Full: JACOBUS FREDERIK JANSE VAN RENSBURG

Authority: CEO UKB GROUP

For the Commission

Dated and signed at **PRETORIA** on the 6th day of December 2018.


Tembinkosi Bonakele
The Commissioner: Competition Commission