

competitiontribunal
south africa

fax form

to	Legal Services Competition Commission	fax	44283
	Dr W Van Breda Raubenheimers Attorneys		044 878 1895
ref	103/CR/Dec06	date	04 February 2009
from	Tebogo Mputle	pages	9 (including this page)
re	Consent order		

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Attached please find the order in the above matter.

Regards

Tebogo Mputle

CC: Lulama Potwana - 44182

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 103/CR/Dec06

In the matter between:

The Competition Commission

Applicant

and

Lancewood Cheese (Pty) Ltd

Respondent

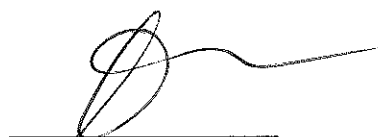
Panel : D Lewis (Presiding Member), N Manoim (Tribunal Member), and Y Carrim (Tribunal Member)

Heard on : 04 February 2009

Decided on : 04 February 2009

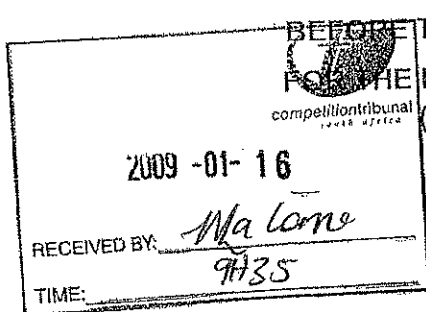
Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A", in terms of section 49D(2)(a) of the Competition Act .



D Lewis

Concurring: N Manoim and Y Carrim



CT Case No: 103/CR/Dec06
CC Case No: 2005Feb1424

In the matter between:

COMPETITION COMMISSION OF
SOUTH AFRICA

Applicant

and

CLOVER INDUSTRIES LIMITED

First Respondent

CLOVER SA (PTY) LTD

Second Respondent

PARMALAT (PTY) LTD

Third Respondent

LADISMITH CHEESE (PTY) LTD

Fourth Respondent

WOODLANDS DAIRY (PTY) LTD

Fifth Respondent

LANCEWOOD CHEESE (PTY) LTD

Sixth Respondent

NESTLÉ SA (PTY) LTD

Seventh Respondent

MILKWOOD DAIRY (PTY) LTD

Eighth Respondent

SETTLEMENT AGREEMENT

The applicant and the sixth respondent hereby agree that application be made to the Competition Tribunal to confirm the settlement agreement described below.

1. Definitions

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

1.1.1 "the Act" means the Competition Act No 89 of 1998 as amended;

1.1.2 "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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.1.3 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;

1.1.4 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B (1) of the Act under case number 2005Feb1424 , in which it is alleged that Lancewood (Pty) Ltd fixed milk procurement prices through price information exchanges in contravention of section 4(1)(b)(i) of the Act;

1.1.5 "Settlement Agreement" means this agreement duly signed and concluded between the parties to the agreement;

1.1.6 "Clover" means Clover Industries Limited and Clover SA Ltd;

1.1.7 "DTI" means the Department of Trade and Industry;

1.1.8 "Ladismith" means Ladismith Cheese (Pty) Ltd;

1.1.9 "Lancewood" means Lancewood Cheese (Pty) Ltd;

1.1.10 "Milkwood" means Milkwood Dairy (Pty) Ltd;

1.1.11 "Nestlè" means Nestlè (Pty) Ltd;

1.1.12 "Parmalat" means Parmalat (Pty) Ltd;

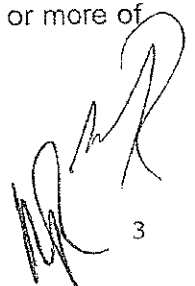


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- 1.1.13 "Parties to the agreement" means the Commission and Lancewood;
- 1.1.14 "Respondent" means Lancewood;
- 1.1.15 "Respondents" mean Clover, Parmalat, Ladismith Cheese, Woodlands Dairy, Lancewood, Nestlè and Milkwood Dairy;
- 1.1.16 "Tribunal" 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;
- 1.1.17 "Woodlands" means Woodlands Dairy (Pty) Ltd.

2. Background

- 2.1 During February 2005, the Commissioner initiated a complaint under Competition case number 2005Feb1424, against alleged prohibited practices in contravention of sections 4 and 8 of the Act, in the milk industry against Clover, Parmalat and Ladismith Cheese.
- 2.2 On 13 March 2006, the Commissioner initiated a further complaint against Lancewood, Parmalat, Ladismith and Clover under Competition Case number 2005Feb1424 for alleged prohibited practices in contravention of section 4 of the Act. This complaint was initiated in terms of section 49B(1) of the Act and was referred to the Competition Tribunal on 07 December 2006 in terms of section 50(1) of the Act.
- 2.3 The grounds of the complaint against Lancewood are that during at least the period from 1 January 2002 to 30 March 2006, Lancewood, Clover, Parmalat, Woodlands, Ladismith and Nestlè committed a prohibited practise in contravention of the provisions of Chapter 2 of the Act, in that, being firms in a horizontal relationship as contemplated in terms of section 4 of the Act in the relevant market, they directly or indirectly fixed the procurement prices of milk from producers through one or more of the following means of information exchange.



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2.4 Price information exchange occurred directly via telephone or e-mail communication between employees of the respondents at management level. The respondent companies also exchanged pricing data on procurement prices on an ongoing basis by means of circulating certain "fictitious" and certain actual scenarios requesting each party to provide a price for the scenario sketched.

2.5 Price movement requests regularly occurred in email correspondence between the respondents. The price movement requests related to past, current and in some instances future pricing.

2.6 Field officers of the some of the respondents regularly exchanged pricing information of their companies, which would then be communicated to the senior officials of their respective companies.

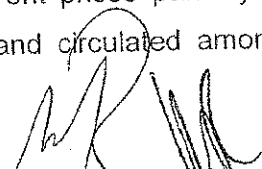
2.7 Some of the respondents, Lancewood excluded, individually appointed an independent Agricultural Economist to collect pricing data, which was collated in price comparison reports.

2.8 Although these reports were compiled for and submitted to the individual companies, it contained very specific pricing data relating to the factors used in the price determining formulas used by the different competitors. These reports were also in some instances circulated by the different companies.

3. **Material facts**

The further materials facts relied on by the Commission in referring the complaint against Lancewood are the following :

3.1 On 27 May 2004, an e-mail was circulated between Mr Berlo Coetzee, Group Manager of Parmalat, Mr Tobie de Villiers Chief: Procurement of Clover, Dr Hennie Kleynans CEO of Woodlands and Mr Kobus Lessing, Operational Manager of Lancewood, containing an annexure with tables setting out the different factors used by processors in the determination of the procurement prices of milk such as milk volume, transport distances, Protein %, Butterfat %, Somatic Cell Count (SCC) and the Bacteria count for four to six producers, with the different prices paid by the different processors on the stated scenario then inserted and circulated amongst



them with the request to respond with the corresponding price information for the respective companies.

- 3.2 Lancewood on one occasion requested and received aggregated pricing information from an independent third party pertaining to the Eastern Cape, an area in which Lancewood did not operate.
- 3.3 Lancewood received from competitors in the milk industry information on the pricing of milk and interacted with competitors in the milk industry where such interaction would not be expected.
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4. The Commission's findings

The Commission concluded that Lancewood had contravened section 4(1)(b)(i) of the Act in that it engaged in concerted practices that directly or indirectly fixed procurement prices of raw milk or other trading conditions.

5. Liability

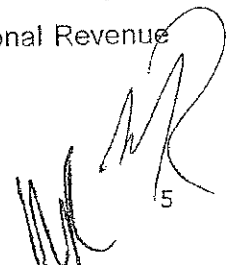
Lancewood admits that it was involved in price information exchanges as alleged by the Commission.

6. Administrative penalty

- 6.1 Having regard to the provisions of section 58(1)(a)(iii) read with sections 59(1)(a), 59(2) and 59(3) of the Act, Lancewood has agreed to pay an administrative penalty in the sum of R100 000,00 (One hundred thousand Rand).

- 6.2 This amount does not exceed 10% of Lancewood's annual turnover in the Republic and its exports from the Republic during the firm's preceding financial year.

Lancewood will pay the amount set out in paragraph 6.1 above to the Commission within six months from the date of confirmation of this settlement agreement by the Tribunal. This amount will be paid over by the Commission to the National Revenue Fund, referred to in section 59(4) of the Act.



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7. Future Conduct by Lancewood

7.1 Lancewood is not a party to any price fixing arrangements.

7.2 Lancewood will take steps to develop and implement a compliance programme incorporating corporate governance designed to ensure that its employees, management and directors do not engage in any conduct which constitutes a prohibited practise in terms of the Act, a copy of which shall be submitted to the Commission within 60 days of the date of confirmation of this agreement as a consent order by the Tribunal.

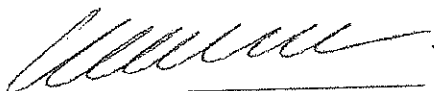
8. Co-operation

Lancewood will cooperate fully with the Commission in its prosecution of the remaining respondents. This cooperation shall include and shall not be limited to the provision of evidence, in any manner or form, and to providing witness testimony at the Tribunal proceedings if required by the Commission.

9. Full and final settlement

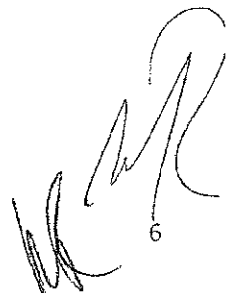
This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and Lancewood relating to any alleged contravention by Lancewood of the Act that is the subject of the Commission's referral under CC Case No: 2005Feb1424 and the Tribunal's case number CT; 103/CR/DEC06.

Dated and signed at *George* on the *18th* day of *December* 2008



Chief Executive Officer

Lancewood Cheese (Pty) Limited

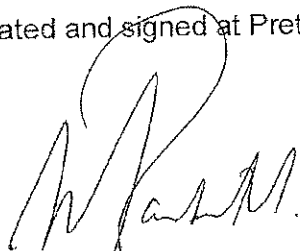

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Dated and signed at Pretoria

on the

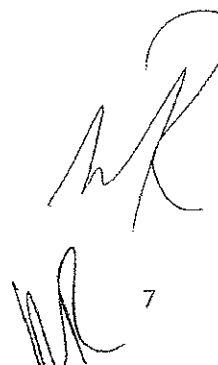
day of

2008



Commissioner

Competition Commission



* * * Communication Result Report (4. Feb. 2009 12:59) * * *

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