

Media Release

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Competition Commission settles with Pioneer Foods

The Competition Commission has reached a settlement with Pioneer Foods (Pty) Ltd (Pioneer Foods) in several cases under investigation by the Commission or before the Competition Tribunal. The cases relate to Pioneer Foods' activities in maize and wheat milling, baking, poultry and eggs.

In broad terms, anti-competitive conduct in these important food sectors has impacted negatively on consumers and the ability of small and medium firms to enter and grow in these markets. The consent and settlement agreement is designed with these effects in mind.

In terms of the agreement Pioneer is committed to:

- pay R250 million as an administrative penalty to National Revenue Fund;
- pay R250 million to create an *Agro-processing Competitiveness Fund* to be administered by the Industrial Development Corporation (IDC). The aim of this fund is to promote competitiveness, employment and growth in food value chains. The Fund will provide finance on favourable terms to small and medium enterprises;
- adjusting its pricing of flour and bread (i.e. 600g and 700g standard white and brown loaves) over a defined period such as to reduce its gross margin by R160 million when compared to the similar period in 2009/10 by;
- increasing its capital expenditure by R150 million over and above its currently approved capital expenditure (capex) budget;
- cooperating with the Competition Commission in the ongoing investigations and prosecutions of the cases that are the subject of this settlement; and
- stopping anti-competitive conduct and implementing a competition compliance programme.

These commitments excludes the R195,7 million penalty imposed on Pioneer by the Competition Tribunal in February 2010 over its involvement in the bread cartel.

The current agreement settles the following cases with Pioneer:

- price fixing and market allocation in flour and maize.
- collusion in flour, bread and maize, through information exchange involving the National Chamber of Milling and the South African Chamber of Baking.
- exclusionary conduct against small independent bakery in the Southern Cape.
- anti-competitive conduct at various levels throughout the poultry and egg supply chains.

Competition Commissioner Shan Ramburuth said: "This agreement has gone beyond just a penalty and includes price adjustment for the benefit of consumers and a Fund to promote competition in the agro-processing industry. The Commission welcomes Pioneer's approach, as evidenced in this agreement, to resolving the matters and agreeing to undertakings aimed at a more competitive and dynamic economy

in these crucial sectors.”

The settlement agreement is subject to confirmation by the Tribunal.

The Minister of Economic Development and the Industrial Development Corporation will announce details on the Agro-processing Competitiveness Fund following the confirmation of this agreement. The IDC will administer the funds in compliance with agreed criteria and its corporate governance protocols.

The Competition Commission will continue with its current investigations and prosecutions against the remaining respondents in the various cases.

Background

The Commission has since 2006 prioritised food and agro-processing because of the prevalence of cartels in the sector and the impact of anti competitive behaviour in this sector on consumers, especially the poor. The Commission’s work in this area involved research on selected markets and initiation of investigations where information uncovered indicated the likelihood of a contravention of the Competition Act. The Commission also received complaints from members of the public and information from firms who applied for corporate leniency for participating in cartels.

Following a decision of the Tribunal on 3 February 2010 where Pioneer Foods was found guilty of price fixing and market allocation for bread and an administrative penalty in the sum of R195.7million was imposed, the Commission filed a notice of appeal to the Competition Appeal Court to have the penalty revised upwards. Pioneer Foods, having paid the penalty, filed a cross appeal against the decision but also approached the Commission to settle all outstanding cases against it. The parties have since withdrawn the appeal and cross appeal on the bread matter.

The following are the cases that are outstanding involving Pioneer Foods and are the subject matter of the settlement discussions.

Flour Price Fixing and Market Allocation

During the investigation of the bread price fixing and market allocation cartel in 2006 the Commission received information that the firms involved in the bread cartel, who were also the county’s major wheat millers, were also involved in price fixing and market allocation for flour. The Commission initiated an investigation in March 2007 against Pioneer Foods and other millers for this conduct. Premier Foods (Pty) Ltd and Tiger Brands Limited confessed their involvement and provided the Commission with further evidence of this cartel and were granted conditional immunity for their role.

The investigation revealed that through meetings and telephone discussions the firms agreed to fix prices of milled wheat products; create uniform price lists for wholesale, retail and general trade customers; agreed on the timing of the price increases and the implementation; and allocated customers among themselves. Similarly the agreements were used to secure coordination at both national and regional level. On 15 March 2010 the Commission referred the case to the Tribunal for the contravention of section 4(1)(b)(i) and 4(1)(b)(ii) of the Competition Act. Pioneer has admitted a contravention of section 4(1)(b)(i).

Foodcorp (Pty) Ltd and Godrich Milling (Pty) Ltd are the only firms currently defending this case at the Tribunal.

White Maize Meal Price Fixing

The main milling companies, namely Pioneer Foods, Foodcorp, Tiger Brands and Premier were involved in a cartel in white maize meal in addition to wheat flour. The maize milling cartel, however, involves many more firms competing in various regions. Similar to the wheaten products cartel the investigation

revealed that during 1999 to at least 2007 competitors were involved in conduct that contravened section 4(1)(b)(i) by fixing prices of white maize products creating a uniform price lists for wholesale, retail and general trade customers; and by agreeing to the timing of the price increases and their implementation. These agreements were used to secure coordination at both national and regional levels. The Commission referred this contravention to the Tribunal on 31 March 2010. Premier and Tiger's conditional immunity includes this contravention. Pioneer has admitted a contravention of 4(1)(b)(i). The case against the rest of the respondents continues.

Collusion through information exchange on Bread and Flour

In 02 November 2009 (case 2009Nov4744) the Commission initiated an investigation against current and former members of the National Chamber of Milling and South African Chamber of Baking. The complaint was initiated after the Commission observed that, although prohibited practices cited above had allegedly ceased, the market had seemingly not become more competitive.

The Commission's investigation to date has revealed that firms in the industry submitted commercially sensitive information to the two chambers. In turn, the members received, for each category of information submitted to the chambers, an industry aggregate value. This included industry data on monthly sales volumes, disaggregated by product, pack size, province and customer category; and annual average costing data. The Commission contends that this type of information exchange enables members to sustain coordinated outcomes without the necessity of meeting.

The case is currently under investigation for the contravention of section 4 of the Competition Act. The Commission understands that the information exchange has now largely ceased as a result of the Commission's expressed concerns.

Collusion through information exchange on Milled Maize Products

This case addresses similar conduct to that for bread and flour. The case is still under investigation against current and former members of the Chamber of Milling for the contravention of section 4 of the Competition Act. The case was initiated on 8 December 2009 under case number 2009Dec4819. The Commission understands that the information exchange has now largely ceased as a result of the Commission's concerns.

Exclusionary Conduct against Independent Bakeries Complaint

The Commission received a complaint in December 2008 from an independent bakery in Mossel Bay alleging that Pioneer Foods, through its Sasko Division, had threatened it with a price war if it did not stick to the fixed prices. The investigations confirmed that Pioneer Food staff had threatened competitors with, and had engaged in, a price war in the areas of Worcester, Mossel Bay, Oudsthoorn and Beaufort West. One of the strategies used was the introduction of Sasko fighting brands, Vita and Econo, to undermine independent competitors who had entered in such areas. The Commission found that Pioneer Foods is dominant in the relevant markets and its aggressive behaviour prevented competitors from entering into or expanding within the markets. The object of this price war was to force these independent bakeries to charge prices similar to Pioneer, or failing which to force them out of the market, in either case to sustain supra-competitive prices in the medium term.

The Commission investigated this case as an abuse of dominance in contravention of section 8(c) and/or 8(d)(iv) of the Competition Act. Pioneer has admitted a contravention of 8(c).

Poultry Investigations

In April 2009 the Commission initiated complaints to investigate anti-competitive conduct in the market for poultry breeding stock and broiler production (case 2009Apr4389), poultry products (case 2009Apr4391) as well as poultry feed (case 2009Apr4390) following initial research that pointed to the

existence of anti-competitive behavior by firms and industry associations in the poultry industry. The investigations were initiated against the South African Poultry Association, Animal Feed Manufacturers Association, Rainbow Chickens Ltd, Astral Foods Ltd, Pioneer, Country Bird Holdings Ltd and Afgri Ltd. These investigations are currently ongoing and the main allegations against the respondents include:

- The respondents agreed not to compete in an open market but instead divided the market by allocating to each other territories and/or customers.
- As a result of the collusion the respondents charged significantly higher prices than the independent or small manufacturers even though their cost bases are similar. Their prices were in some instances 25% higher than those of the smaller poultry feed producers.
- Collusion is also reinforced and sustained through the sharing of extensive information sharing through above mentioned industry associations.
- The respondents restrict broiler breeders from sourcing breeding stock from alternative suppliers. They also supply day-old chicks to independent broiler breeders on condition that they also purchase poultry feed from the relevant supplier or its subsidiary.

These allegations are being investigated as collusion in contravention of section 4 and supply restraints in contravention of section 5(1) as well as abuse of dominance through excessive pricing and exclusionary conduct in contravention of section 8.

Pioneer Foods has applied for and been granted conditional immunity in respect of certain conduct relating to contraventions of section 4(1)(b) of the Competition Act. The Commission's preliminary findings are that Pioneer Foods is not dominant in the implicated markets.

Eggs Investigation

In May 2010 the Commission initiated an investigation for collusion and supply restraints in the markets for the sale of whole fresh eggs, sale of the day old chicks to be reared as egg layers, sale of point of lay hens which are mature hens capable of laying eggs and sale of cull which are live chickens that are past their production cycle. The investigation is against Nulaid, Hy-line South Africa, Avichick, Eggbert, Top Lay, Fair Acres, Heidel Eggs, Lund Eggs, Evan Joubert t/a Waterglen Pluimvee, Parrdeberg Flinkwink, Outeniqua Eggs Succes Ventures t/a Golden Yolk ND Lay Well, Rosendal, Nantes Eggs, Eikenhof, Elkana, Windmeul Eggs, Morningside, Sunrise Eggs, Eden Rock and Cocorico.

Pioneer Foods applied for and was granted conditional leniency in respect of the role of its Nulaid division in conduct in contravention of section 4(1)(b) in the markets for the sale of whole, fresh eggs and the sale of day old chicks to be reared as egg layers. The Commission's investigation into these allegations is still ongoing.

END

Further info:

Oupa Bodibe, Manager: Advocacy & Stakeholder Relations

012 394 3267 / 082 563 6970/ oupab@compcom.co.za

Keitumetse Letebele, Head: Communications

012 394 3183/082 783 3397/ keitumetsel@compcom.co.za