Market access and oligopoly: Food and Agro-processing

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12 March 2015
Some highlights of the Commission’s record
- Mergers
- Cartels
- Abuse of dominance

Case studies
- Timelines in terms of cartel in the grain industry
- Bread cartel
- Flour cartel
- Maize meal cartel
- Strategic barriers created by the cartel
- Pioneer Foods settlement
- Wal-Mart/Massmart Merger
Some highlights

• Food and agro-processing sector was prioritised by the Commission in 2008
  o Significant value-add opportunities
  o high labour absorption potential

• Food products produced in the sector are essential products bought by all consumers and make up a high proportion of household expenditure especially the poor households.
  o Basic food products affecting the poor (uncovering cartels in bread, maize meal, baking flour, milk, eggs)
  o Preventing abuse of dominance
  o Innovative remedies such as the Wal-mart/Massmart merger
  o Blocking anticompetitive mergers such as Pick ‘n Pay/Fruit & Veg merger

• Anti-competitive conduct in the sector has a grievous ramifications
  o Spread of ownership of the economy, particularly the poor
  o Consumer welfare and the poor
  o Employment
Commission’s extensive investigations into this sector have seen administrative penalties to the value of about **R986 million** being paid by firms for anti-competitive conduct in the period from 2004 to 2013.

- About R294.5 million paid between 2004 and 2008
- About R691.5 million paid between 2009 and 2013

### Some highlights

<table>
<thead>
<tr>
<th>Industry</th>
<th>Fines in each period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2004 - 2008</td>
</tr>
<tr>
<td>Poultry</td>
<td></td>
</tr>
<tr>
<td>Wheat, White Maize Milling and Bread</td>
<td>R294 503 483.90</td>
</tr>
<tr>
<td>Fisheries</td>
<td>R36 871 450.00</td>
</tr>
<tr>
<td>Rainbow Farms</td>
<td>R1 000 000.00</td>
</tr>
<tr>
<td>Total for the sector</td>
<td>R294 503 483.90</td>
</tr>
</tbody>
</table>
The main objection to collusion is that it leads to a transfer of wealth and to inefficiencies.

- Prices under the cartel are higher and firms are able to appropriate some of the consumer surplus that would go to consumers in competitive markets.
- There is a decrease in the aggregate quantity produced which causes total welfare to decrease.
Cartels in the grain industry

• Industry background
  
  o Under the apartheid regime, markets for most agricultural products were regulated
  
  o While liberalisation removed direct controls, the subsequent uncovering of cartels suggests that extensive anti-competitive arrangements replaced direct regulated control
Market structure in the wheat to flour value chain

- Structural factors of a market can be conducive to successful collusion and can sharpen the accuracy of inferences on the ultimate question of whether firms are engaging in collusive conduct

- Bread market
  - Homogenous product
  - Multi-market contact
  - History of collusion
  - Market transparency
  - Greater similarity on any dimension

- Flour market
  - Highly concentrated
    - 4 major firms in the milling industry namely Pioneer Foods, Tiger Brands, Premier Foods and Foodcorp
    - All involved through their various divisions, in the wheat milling and baking industries.
    - These four firms account for more than 90% of all milled wheat sales.
  - Homogenous product
  - Multi-market contact
  - History of collusion
  - Market transparency
  - Greater similarity on any dimension
  - High barriers to entry
Bread and Flour Cartels

• Bread cartel

• Cartel members included Premier Foods, Tiger Brands, Pioneer Food and Foodcorp
  o Premier Foods granted leniency for disclosing its role in the bread cartel, flour cartel and maize meal cartel.
  o Tiger Brands granted leniency for proving further evidence on the flour cartel and maize meal cartel.
  o For the bread cartel:
    o 2007 – Premier Foods (R\text{0} million) received immunity.
    o 2009 – Foodcorp (R45 million).
    o 2010 – Pioneer Foods (R196 million) after a contested hearing.

Flour cartel

• Cartel members included Premier Foods, Tiger Brands, Pioneer Food and Foodcorp
  o fixing price and market division through customer allocation.
  o The matter was referred to the Tribunal in March 2010
  o Tiger Brands and Premier Foods granted immunity.
In December 2007, the Commission received a complaint from Mossel Bay Bakery.

- Mossel Bay Bakery alleged that Sasko owned by Pioneer Foods (Pty) Ltd engaged in predatory pricing.
- Mossel Bay Bakery alleged further that, Sasko threatened it with price wars if it did not increase its price of bread.
- In February 2010, after contested proceedings, the Tribunal found that Pioneer Foods had been involved in a conspiracy to fix the prices of bread as well as market allocation in the Western Cape province and nationally.
Pioneer Foods undertook in terms of the proposed settlement agreement to:

- Pay a fine of R500 million to the National Revenue Fund.
- Further, an Agro-processing Competitiveness Fund of R250 million drawn from the penalty was conceptualized.

### A summary of Agro-processing competitiveness fund

<table>
<thead>
<tr>
<th>STATUS</th>
<th>No. OF CLIENTS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-track</td>
<td>23</td>
<td>146 647 720</td>
</tr>
<tr>
<td>Under supervision</td>
<td>7</td>
<td>61 373 750</td>
</tr>
<tr>
<td>Legal action</td>
<td>1</td>
<td>4 400 000</td>
</tr>
<tr>
<td>Ceased operations</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>31</td>
<td>212 421 470</td>
</tr>
</tbody>
</table>

### Geographical spread of APCF

<table>
<thead>
<tr>
<th>PROVINCE</th>
<th>VALUE (Rand)</th>
<th>NO. OF DEALS</th>
<th>JOBS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mpumalanga</td>
<td></td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>Western Cape</td>
<td>39 125 000</td>
<td>10</td>
<td>120</td>
</tr>
<tr>
<td>Gauteng</td>
<td>68 305 042</td>
<td>9</td>
<td>283</td>
</tr>
<tr>
<td>Eastern Cape</td>
<td>13 885 000</td>
<td>4</td>
<td>746</td>
</tr>
<tr>
<td>Limpopo</td>
<td>35 716 428</td>
<td>4</td>
<td>224</td>
</tr>
<tr>
<td>Kwa-Zulu Natal</td>
<td>16 900 000</td>
<td>5</td>
<td>69</td>
</tr>
<tr>
<td>Northern Cape</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>North West</td>
<td>5 500 000</td>
<td>1</td>
<td>19</td>
</tr>
<tr>
<td>Free State</td>
<td>35 857 120</td>
<td>5</td>
<td>873</td>
</tr>
<tr>
<td>Total</td>
<td>215 288 590</td>
<td>38</td>
<td>2 334</td>
</tr>
</tbody>
</table>

Interest is at 0%, total refinements of R7.5 million achieved. All refinements will be invested in new clients.
Pioneer Foods undertook in terms of the proposed settlement agreement to:

- Reduce the prices of certain of its products for an agreed period of time up to the total value of R160 million.
- Increase its capital expenditure budget by R150 million.

Average wholesale and retail prices for Pioneer Foods’ standard white bread, 06/2010 - 06/2011
Entry of Wal-Mart into SA

Some background

- Worlds largest corporation, revenue larger than SA GDP
- About three times bigger than the closet retail rival
- History of a bad relationship with trade unions
- Controversy over its effect on local communities
- Entry preceded by retrenchments at the target firm
- Poor Engagement with stakeholders upon entry
- AND
- Government growth path sets employment targets

Responses

- Government concerned that Wal-Mart will use its global reach to source products globally, displacing local manufacturers and jobs
- Tried to negotiate a ‘Social Accord’ with Wal-Mart covering local procurement and labour issues
- Wal-Mart objected to being subjected to local procurement requirements on discriminatory basis
- Wal-Mart argued that its entry will bring prices down
- Denied that it had a global sourcing strategy – argued that its strength lied in leveraging on its logistics efficiencies
- Offered to create a local supplier development fund of about $10 million

- When negotiations failed, government belatedly intervened in the proceedings before the Competition Tribunal, joining trade unions
In May 2011, the merger was approved with conditions:

- No retrenchments from the merged entity’s operations in South Africa for a period of two years.

- The parties must reinstate the 503 employees that were retrenched during 2009 and June 2010 (no time period specified for this condition).

- The merged entity must honour the existing labour agreements with SACCAWU for at least 3 years.

- Massmart must establish a Supplier Development Fund (SDF) by February 2013.

- R242 million was set aside as SDF which was envisaged to operate for 5 years.

- The purpose of the fund is to assist eligible South African Small and Medium Enterprises, particularly black-owned, black-empowered or local manufacturers.

- Enabling Massmart to increase and diversify its local procurement capacity.
A summary of the investment forecast of resources to beneficiaries over the funds 5 year duration

<table>
<thead>
<tr>
<th>Programme</th>
<th>Fund investment spend forecast (over 5 year duration)</th>
<th>Value available to commit per investment area as at September 2013</th>
<th>Value of disbursements per investment area as at September 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ezemvelo Direct Farm Programme</td>
<td>R67 760 000</td>
<td>R18 332 440</td>
<td>R16 859 827</td>
</tr>
<tr>
<td>Manufacturing SMEs</td>
<td>R96 800 000</td>
<td>R92 876 311</td>
<td>R773 689</td>
</tr>
<tr>
<td>Service projects</td>
<td>R9 680 000</td>
<td>R8 236 524</td>
<td>R721 738</td>
</tr>
<tr>
<td>Service to suppliers</td>
<td>R19 360 000</td>
<td>0</td>
<td>R775 630</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>R193 600 000</strong></td>
<td><strong>R119 445 275</strong></td>
<td><strong>R19 130 884</strong></td>
</tr>
</tbody>
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THANK YOU