



Black Sash Submission to the Competition Commission Tribunal

The consent order agreement between the Competition Commission and Pioneer Foods in regard to alleged contraventions of Sections 4 1)(b)(i) and 4 1)(b)(ii) of the Competition Act 1998 (Act No 89 of 1998) on 28 November 2007.

Introduction

The Black Sash herewith makes a submission to the Competition Tribunal in respect of the consent order agreement between the Competition Commission and Pioneer Foods.

We make the submission because the issue influences the work we do and concerns ordinary consumers most of which are social grants recipients – children receiving the Child Support Grant, elders receiving the Older Persons Grant, and many other poor and unemployed who rely on these grants to buy food for their families. The Black Sash educates and informs individuals and groups of their rights to enable them to take action to access these rights within the area of social protection (social assistance, social insurance, social services and subsidies) and consumer protection (debt and credit).

The Black Sash advocates for legislation, policy and delivery systems, supported by appropriate budgets that promote comprehensive social and consumer protection for vulnerable members of our population in South Africa. We further enable individuals and Groups to exercise their Socio- Economic Rights as prescribed by the law in South Africa through our advice giving.

Our Concerns submissions

The Black Sash welcomes the fact that the Competition Commission has finally reached a settlement with Pioneer Foods. However, we are deeply disappointed that the total penalty of nearly R1 billion is considerably less than the initial amount recommended by the Commission, in that it does not cover 10% of the Pioneer Food Group's annual turnover for the financial year ending September 2009.

Although the R1 billion fine is the biggest ever imposed on a South African company, it must be remembered that Pioneer Foods has been less than co-operative since allegations of price fixing first emerged nearly four years ago. They initially denied any wrongdoing and then vigorously resisting prosecution and the payment of any penalties. Most importantly, it must be remembered that the company's ongoing collusive activities have impacted heavily, and directly, on the poorest and most vulnerable members of our society. Not only did Pioneer Foods fix the price of bread – a staple food - but it inflated and profited illegally from the sale of other basic goods, including wheat, maize, poultry and eggs.

The Black Sash would again like to express its anger and disappointment that food prices – especially those of basic goods - continue to skyrocket despite the fact that so many companies have been found guilty of collusion and price-fixing over the past three years. We submit that the Competition Tribunal must ensure that the terms of the settlement, including the fines, translate into affordable bread prices for the consumers. The terms of the settlement must ensure that as a country we achieve a competitive environment in which the entire population of bread consumers, especially those struggling families who have been forced to go hungry, can once more afford to buy bread at competitive prices and from different competing bakeries.

We welcome the fact that the settlement agreement, has gone beyond just a penalty and includes a price adjustment for the benefit of consumers. We urge the Competition Tribunal to take into account the fact that it is over four years now that the issue of cartels in the bread industry has been before the Competition Authorities and to this day ordinary consumers have not benefited from a competitive environment in the industry in the form of fair prices. As far

back as November 2007, we made submissions to the Competition Tribunal on the Tiger Brand bread price fixing.

In May 2008 we made submissions to the Competition Tribunal Hearing, with respect to Tiger Brands Company, Adcock Ingram Critical Care Ltd, which had admitted that they had engaged in anti-competitive behaviour.

In all our submissions we argued that this collusion disproportionately affected the quality of care to the poor and the sick. We called for stricter penalties on the company, prosecution of individuals responsible and the exclusion of the company from state tender processes.

In September 2009 we were invited to participate in the Third Annual Competition Conference and to contribute an article for publication in a commemorative book reflecting on the work of the Competition Authorities over the last decade.

The conference confirmed that cartels are prevalent in SA with an average of three companies applying for Corporate Policy Leniency a month. This translates into more than 20 applications this year, mainly in major sectors such as Food (bread, milk, milling, fats and oils, pelagic fish) and Intermediate Industrial (fertiliser, tins, bitumen, fuel). Discussion focused on the potential of public interest legislative provisions of competition law.

We welcomed the 2009 amendment of the Competition Act which introduced criminal liability of, among others, “directors” or “management authority” of companies who must have caused or “knowingly acquiesced” in prohibited activities. However, we have recently expressed frustration over the announcement of a delay in its implementation.

In 2009, we noted that there is an emerging voice of civil society organizations that is calling for class action in light of the increasing number of companies that are involved in cartel activities. The decisions handed down by the Competition Tribunal serve as basis of a class action as they provide the basic evidence needed on how and when the companies contravened the law.

Today, we urge the Competition Tribunal to speed up its decision on this case and to provide us with certification documents, which we seek to use to support a class action in the Cape Town High Court against Pioneer Foods and other bread companies. The reality today is that the companies involved continue to make huge profits while evidently cutting corners on competition regulations.

The outcome of the investigations by the Competition Authorities, upon which the merits of the case are based, confirm what we already suspected and feared: that the increase on bread prices was not some unfortunate occurrence caused by unpredictable weather patterns or the fluctuating price of fuel.

Finally, the Black Sash would like to express its frustration over the recent announcement of yet another delay in the implementation of the new Consumer Protection Act, the Companies Amendment Act, and the Competition Amendment Act. We are among those that advocated for the amendments and expressed an urgent need for such a body of consumer legislation to better protect poor and vulnerable consumers in South Africa. The Competition Amendment Act specifically will provide two significant deterrents to anti-competitive behavior, making it possible to jail company directors and managers for contraventions, and blocking guilty companies from benefiting from State tenders.

Our demands:

- a) We call for imposition of a fine based on the full period of the price fixing.
- b) We call for tougher legislative measures and actions to stamp out this kind of unethical and unscrupulous corporate business practice behaviour. We urge the Commission to explore various international penalties and reparative measures for similar unethical practices.
- c) We ask for an aggressive implementation of the Competition Commissions policy on corporate leniency in this light and for the maximum fine to be applied.

For further information regarding this submission or any queries, please contact:

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