

# South Africa's Pioneer Settlement: an innovative way to remedy competition law violations in developing countries?

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## Abstract

The persistence of coordinated outcomes following extensive regulation and explicit collusion, as might be expected in many emerging economies suggests that higher prices, poor quality and low levels of innovation have been sustained over a longer period time. The Competition Commission uncovered and prosecuted cartels in both flour milling and bread supply, as well as conduct designed to exclude entrants in bread and information exchange continuing beyond the explicit cartels. In light of this, the Competition Commission reached settlement with one of the parties (Pioneer) in November 2011 on terms including an administrative penalty as well as reducing margins on the sale of flour and bread over an agreed period designed to stimulate rivalry while at the same time enabling smaller non-vertically integrated participants to compete in bread. The settlement agreement went beyond putting an end to the violation in a narrow sense and focussed on the restoration of competition *but for* the anticompetitive conduct. The paper will review the rationale for the settlement and its provisions as well as information on the impact of the settlement on the markets in question.

## 1. Introduction

The recent successful prosecution of the bread cartel and the milled wheat and white maize referrals to the Competition Tribunal ("Tribunal") for adjudication by the Competition Commission ("Commission") demonstrate that cartels have pernicious effects on poor consumers despite the obstacles created by legal prohibitions on collusion and individual firm's incentives to compete rather than to collude. For South African consumers, the vast majority of whom are poor, the direct cost of a cartel is plain: prices are high and there is reduced product choice (if there is customer allocation and/or if the cartelized product is differentiated) as a result of a cartel.

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The purpose of the administrative penalty and the remedies agreed between the Commission and one of the cartelists, Pioneer Foods (“Pioneer”) in the consent and settlement agreement were to restore competition in the relevant markets confirmed by the Tribunal on 30<sup>th</sup> November 2010. This included punishing Pioneer for its contraventions of the Act, compensating victims, disgorging illicit profits and deterring future misconduct by Pioneer and other firms. Restoring competition should not be interpreted as an attempt at reaching perfect competition which is practically unattainable but rather restoring the market to conditions that would have existed in the absence of the anticompetitive conduct.

The consent and settlement agreement has been praised by many as innovative and far reaching in its attempt to address the roots of the admitted competition law violation on the part of Pioneer. For example, the Minister of Economic Development pronounced proudly in Parliament that, *“This settlement shows the resolve of the competition authorities to act swiftly and effectively to promote a competitive food-processing sector. ... For this reason, both structural and behavioural measures are important to bring in new players along the value chain. The new, pro-active stance of the competition authorities, coupled with a strong investigative capacity, makes it harder for companies to escape with anti-competitive conduct.”*<sup>2</sup> This paper evaluates these claims by examining the rationale for the settlement and its provisions as well as information on the impact of the settlement on the markets in question.

Time has been relatively short since the adoption of the consent and settlement agreement to be able to proffer a well substantiated judgement on the success of this innovative settlement agreement. In order to make a relatively informed assessment of the consent and settlement agreement impact so far, we refer first to the example of soaring food prices globally, not only to add a comparative perspective but also because South Africa is not immune to global increases in food prices. South Africa is a relatively small player on the world market and maize and wheat are internationally traded, commodity prices are subject to global price movements after taking account of transport costs, with players generally following the import/export parity calculations to determine prices. Generally, South African is a net exporter for maize and prices tend to export parity. By comparison, wheat prices are around import parity, reflecting the fact that South Africa is a net importer of wheat. Secondly, we incorporate in our analysis recent developments in the relevant markets.

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<sup>2</sup> Statement by the Minister of Economic Development, Ebrahim Patel, to the National Assembly on Competition Commission investigations 2 Nov 2010, available at <http://www.info.gov.za/speech/DynamicAction?pageid=461&sid=14241&tid=23665>

This paper is organised as follows: Section 2 and 3 briefly discuss the roots of the Pioneer consent and settlement issues, particularly the anti-competitive conduct on the part of Pioneer and the consequent choice of settlement approach by the Commission. Section 4 critically reviews the effectiveness of the consent and settlement agreement focusing on the price reduction commitment. The final section concludes by pointing to the fit between the consent and settlement agreement and the theories of harm and questions the dissociation between remedies and theories of harm in general.

## **2. Background**

In order to understand and assess the impact of the Pioneer consent and settlement agreement, we briefly discuss the conduct and theories of harm which led to the adoption of the settlement and its specific provisions.<sup>3</sup> The design of the Pioneer consent and settlement agreement required a clear understanding of not only Pioneer's conduct but also the harm caused by the conduct.

Until the 1990s the marketing of agricultural products in South Africa, including grain products, was extensively regulated by the state through the Marketing Act of 1937 (consolidated in the Marketing Act of 1968).<sup>4</sup> After deregulation in 1996, while direct controls were removed, it appears that extensive private anti-competitive arrangements, replaced the public controls.

In December 2006 the Commission received information of an alleged bread cartel that was active in the Western Cape. The Commission initiated a complaint against Premier, Tiger Brands, Foodcorp and Pioneer, all of whom allegedly had been involved in the bread cartel. Premier Foods applied for leniency in terms of the Commission's Corporate Leniency Policy (CLP), during which it revealed that a bread and milling cartel operated in parts of South Africa. Premier's leniency application was corroborated by a further leniency application from Tiger Brands.

On 3 February 2010 the Competition Tribunal of South Africa ("Tribunal") ruled that Pioneer had engaged in fixing the price of bread products in the Western Cape province and nationally, imposing on Pioneer a penalty of R196 million. Following this Pioneer Foods approached the Commission with the intention of settling all the other cases that had been

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<sup>3</sup> See Competition Tribunal, case number 15/CR/Mar10, Competition Commission vs Pioneer Foods (Pty) Ltd, 30/11/2010, available at <http://www.comtrib.co.za/cases/consent-order/>

<sup>4</sup> Kirsten and van Zyl, 1996.

referred to the Tribunal for adjudication or that were currently under investigation by the Commission in which it was a respondent. The following is a brief description of some of the markets damaged by Pioneer's anti-competitive conduct which formed part of the agreement.

Of the several complaints that formed a part of the agreement, two had been referred by the Commission to the Tribunal for adjudication. The first referred complaint related to the white maize products cartel. The cartel included all the major players in the milling of white maize meal including Tiger Brands, Pioneer, Foodcorp and Premier. The Commission's investigation revealed that at various stages during the period 1998 to at least 2007 the respondents engaged in price fixing arrangements in contravention of section 4(1)(b)(i) of the Act. The respondents attended numerous meetings and held telephone conversations in which they agreed at both national and regional levels *inter alia* to fix the price of white maize products, to create uniform price lists for wholesale, retail and general trade customers and to the timing of price increases and the implementation thereof. Through these price fixing arrangements, Pioneer and its competitors prevented and/or limited price competition amongst themselves in relation to pricing of white maize products. Pioneer admitted that it contravened section 4 (1) (b)(i) of the Act.

The second referred complaint related to milled wheat products cartel. The Commission alleged that Premier, Tiger Brands, Pioneer Foods, Foodcorp and Godrich Milling had engaged in collusive activities in the wheat milling industry. Representatives of the firms had attended numerous meetings and held telephone discussions in which they agreed at both national and regional levels *inter alia* to fix the price of milled wheat products, to create uniform price lists for wholesale, retail and general trade customers, to the timing of price increases and the implementation thereof and the allocation of customers between the firms. This conduct was in contravention of section 4(1)(b)(i) and (ii) of the Act. The agreements concluded at these meetings were used by Pioneer Foods and its competitors to secure co-ordination at both national and regional levels and were mutually reinforcing. Pioneer admitted that it contravened section 4 (1) (b)(i) of the Act.

Following the uncovering of the cartels in bread and milling, the Commission also initiated an information exchange case involving the wheat milling members of the National Chamber of Milling (NCM) and the South African Chamber of Baking (SACB). The Commission was concerned that it was not observing competitive outcomes even after having uncovered cartels in the industry. The Commission's investigation revealed that the respondents, which

included Pioneer Foods, submitted to and received commercially sensitive information from the SACB and NCB. This investigation is currently on-going.

In December 2008 the Commission initiated a complaint against Pioneer in respect of allegations that it was engaged in exclusionary predatory pricing conduct. The initiation was pursuant to an initial complaint brought forward by Mossel Bay Bakery, an independent bakery. According to Mossel Bay Bakery, Pioneer engaged in a predatory price war with the intention of eliminating Mossel Bay Bakery from the market. The Commission's investigation revealed that Pioneer was dominant in several markets and that during 2002 to 2004 and during 2007 Pioneer had threatened competitors in several towns within the Western Cape Province. The Commission found that Pioneer had introduced fighting brands in order to protect its market share in areas where it was facing competition. This conduct excluded small independent bakeries from competing effectively and allowed Pioneer to build a reputation for fighting entry across markets and time. Pioneer admitted that its conduct may have impeded small independent bakeries from expanding within the market and competing effectively, in contravention of section 8 (c) of the Act.

The narrative of harm as a result of Pioneer's conduct is clear. For South African consumers, the vast majority of whom are poor, the direct cost of the conduct of Pioneer is plain: prices are high and there is limited product choice as a result of Pioneer's admitted anticompetitive conduct. The restoration of competition in the relevant markets is only feasible after having identified the effect of Pioneer's anti-competitive conduct which resulted in greater transparency and prolonged anti-competitive outcomes to the detriment of end-consumers. In the section 3 we critically discuss the design and objectives of the Pioneer consent and settlement agreement.

### **3. The Pioneer Consent and Settlement Agreement**

#### **3.1. Fines and Remedies**

The pursuit of corrective justice is eminently permissible if not compelled by South African law and its unique responsiveness to issues of distributional equity and fairness. The Commission has several special mandates, among others, to promote efficiency, adaptability and development of the economy; to provide consumers with competitive prices and product choices; to promote employment and advance the social and economic welfare; and to ensure that small and medium sized enterprises have an equitable opportunity to participate in the economy. When, as in the harm caused by the admitted conduct of Pioneer milled wheat and white maize meal products (white maize meal is a staple food while flour is the

major input into bread, another staple food), the interest to be served by enforcement of the public interest right is weighty, the Commission has the special obligation to find a way of practical enforcement.

Clearly the goal of South African competition law is not only to enhance total economic efficiency, in which case the pursuit of corrective justice would be by assumption a waste of resources. Competition policy is, at least in part, concerned with avoiding wealth transfers from consumers, of which the majority of South African consumers are poor, to cartel firms, in which case the pursuit of corrective justice through restoration of competition, compensation and disgorgement is a legitimate task for competition law enforcement.<sup>5</sup>

Institutional differences with the United States and Europe, may also explain the different remedy mixtures in different jurisdictions<sup>6</sup> and the appropriateness of the Pioneer consent and settlement agreement in the South African context. The situation in many developing countries is that corporate fines are the only sanction used to deter cartel violations, that is, that they are not combined with fines on individuals, imprisonment or other individual sanctions, nor with private damages. Moreover, private enforcement of competition law is weak.

Fines are an important instrument in deterring cartel violations. Fines contribute to deterrence in several ways. For instance, fines may have a deterrent effect, by creating a credible threat of being prosecuted and fined. This raises the expected costs of a cartel above the expected benefits. In addition, fines may at the same time have a moral effect, in that they send a message to the spontaneously law-abiding, reinforcing their moral commitment to the competition law prohibitions (see Wils, 2006). While fines normally have disgorgement of the unjust profits as one of their effects, the proceeds of fines normally go to into the public budget rather than to the victims of the cartel violations, and fines could thus at most be said to contribute to the pursuit of corrective justice through compensation in an abstract and indirect way, of course if one assumes that the restoration of competition will benefit the general public (see Wils, 2006).

Concerns about the inadequacy of fines are currently the object of an intense debate within the competition policy circles (see Harrington 2004, OECD 2003, Motta 2008). Fines are

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<sup>5</sup> Corrective justice could be pursued through disgorgement, by taking from the violator any benefits from the violation. Corrective justice could also be pursued through compensation, by making the violator compensate those who have innocently suffered the consequences of the violation (Wils, 2006).

<sup>6</sup> For example, in the US civil remedies are not available for infringements of sections 1 and 2 of the Sherman Act.

usually much lower than the collusive gains and in many cases do not represent a credible threat to deter collusion. Deterrence through the use of fines will work if, and only if, from the perspective of the company contemplating whether or not to commit a violation, the expected fine exceeds the expected gain from the violation (Wils, 2006). This assumes, as Jenny (2009) points out, that persons engaging in illegal practices are rational individuals who consider the expected cost and benefit to them of violating a law and will engage in such a violation if it pays. The OECD found that on a sample of 11 cartels discovered in different countries, the proportion of sanctions to gains ranged from 3% to 189%. Seven cartels had sanctions much lower than the gains while none received a fine as large as three times the gains, which is considered by many experts to be the optimum level (see OECD 2003, p28). Concerns have also been raised about the efficacy of administrative fines because they do not directly benefit the consumer and may lead to higher prices for consumers as cartel firms attempt to recoup the fines by increasing their prices (see Muzata and Mnisi 2010, Motta 2008).

From a deterrence point of view, Jenny (2009) rightly observes that, “it makes no difference whether payments are made to the state budget or to consumers. Thus the current discussion in the EU on private enforcement should take into account the fact that even if the purpose of private enforcement is to compensate victims rather than to punish violators, the possibility of adding compensatory damages to administrative (or criminal) sanctions increases the overall cost of being caught for violators and therefore increases the deterrent effect of the enforcement system. This means that when considering whether an enforcement system is over deterrent or under deterrent (and when considering whether more or less resources should be devoted to public enforcement), one should take into account the effect of the interaction between public and private enforcement.”

Remedies, on the other hand, have both a deterrence and desistance effect (see Motta and Polo (2003)). Desistance arises because the competition authority is able to increase the intensity of competition by imposing structural and behavioural remedies (once firms have been proven guilty and/or at least temporarily). Remedies have a direct effect on the market decisions of firms and are monitored by the competition authorities for some time after the final decision. The desistance effects of remedies are confirmed in empirical studies by Bizjak and Coles (1995). Bizjak and Coles (1995) study the implications for shareholders of antitrust litigation in the US and show the threat of monetary fines has little power to explain the settlement, while the central concern of the defendants is the potential prohibition of profitable business through injunction reliefs.

### **3.2. Design and Objectives**

Section 49D(1) of the Act provides that, if the Commission and a respondent “agree on the terms of an appropriate order”, the Tribunal may confirm the agreement as a consent order. An “appropriate” consent order is one which is “suitable”, that is, “suitable in the sense that it is an agreement that suits the contending interests of the Commission, as the proxy of the public interest, and the respondent, and in that sense, can be appropriate as between themselves”.<sup>7</sup> In our view, the Pioneer consent and settlement agreement is directed at repairing the markets damaged by Pioneer’s conduct. It seeks to promote competition in pursuit of the objectives and purposes of the Act. It is therefore innovative and appropriate in the circumstances of Pioneer’s conduct.

Pioneer undertook in terms of the proposed consent and settlement agreement to:

- Desist from the conduct which infringed or might infringe the Competition Act, continue its compliance programme to prevent future infringements and co-operate with the Commission in its prosecution of others.
- Pay an administrative penalty of R500 million to the National Revenue Fund. In addition, the Competition Commission, National Treasury and the Economic Development Department separately agreed that the Economic Development Department would submit a budgetary proposal and business case motivating for the creation of an Agro-processing Competitiveness Fund of R250 million drawn from the penalty to be administered by the Industrial Development Corporation (IDC).
- Adjust the prices of certain of its products for an agreed period of time so as to reduce its gross profit by an amount of R160 million.
- Maintain its capital expenditure and increase it by an amount of R150 million.

The administrative penalty of R500 million amounted to about 5.6 % of Pioneer’s Sasko turnover in 2009. The penalty was in essence in respect of Pioneer’s admitted involvement in the white maize meal and milled wheat products cartels. In respect of the exclusionary conduct case, Pioneer admitted to the conduct as being in contravention of section 8(c), for which there would be no penalty for a first contravention. Pioneer’s admitted anti competitive conduct involved products affecting all South Africans and especially the poorest of the poor, for whom bread and maize meal are staple products. The effect of the conduct was inherently harmful to consumer welfare.

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<sup>7</sup> The Competition Commission v SAA and others. Case number 83/CR/Oct04 paragraph 47.

Pioneer's conduct affected the structure of the relevant markets. This conduct, coupled with the legacy of the previous regime with its sanctioned cartels, created an environment which did not encourage or facilitate entry. The Commission regarded it as its mandate, not just to address the cartel conduct through punishment and deterrence, but also the address of structure of these markets through the Special Agro-Competitiveness Fund ("Agri-fund"). The Agri-fund is aimed at facilitating new entry into the value chain in the agro-processing industry and specifically by small to medium enterprises which are also the domain of historically disadvantaged South Africans. This fund thus enables the Commission to meet a number of its policy objectives: creating a more efficient and effective agro-processing sector and ensuring the participation of historically disadvantaged South Africans in the economy.

Although the bread baking industry in South Africa is characterised by low exogenous barriers to entry, the existence of the cartel in flour mitigated the ability of independent bakers to enter and expand within the industry. Predatory conduct was also used to create artificial barriers to entry. The crafting of the remedy is thus set out to undermine the anti-competitive environment created by cartel conduct involving Pioneer. It aims to introduce competition and instability into historically stable markets to the benefit of consumers, the vast majority of whom are poor

The pricing reduction commitment was intended to not only compensate consumers but also to undermine the effects of Pioneer's admitted anti-competitive conduct on prices in the relevant markets. Prices of flour, maize meal and bread products went up as a result of collusion and strategic behaviour and have been sticky downwards following the uncovering of this anticompetitive behaviour as has been evident particularly with regards to bread prices (see Figure 1 in section 4).

The anticompetitive outcomes observed following the uncovering of the cartels have been aided by the exchange of commercially sensitive information through the industry bodies. This resulted in increased transparency within the relevant markets. In concentrated markets, transparency can harm consumers if it enables firms to tacitly collude to increase prices, share or allocate markets or if it makes it easier for co-operating firms to detect and therefore punish deviating firms. Such negative impact is likely in markets already prone to anti-competitive coordination because of their structural characteristics."

The Commission sought to achieve through the pricing reduction commitment, a direct benefit to consumers as well as to stimulate more intense rivalry in the market. The pricing

reduction commitment was also designed to stimulate rivalry while at the same time enabling smaller non-vertically integrated participants in bread.

The commitment to increase approved capital expenditure by an additional amount of R150m was aimed at increasing Pioneer's output for certain product lines as well as to contribute to the creation of jobs.

Section 58(1)(a) does not provide an exhaustive list of the kinds of orders which the Tribunal may make, the only prescription being that whatever it makes must be "appropriate". The Tribunal is however required to be satisfied, when confirming a consent and settlement agreement. The Pioneer consent and settlement agreement has, as its primary purpose, enhancing competition in the markets prevented by Pioneer's admitted anti-competitive conduct. The consent and settlement agreement seeks to do so through an administrative penalty, behavioural and structural remedies in pursuit of the objectives of the South African competition Act.

In sum, the settlement agreement had the following key features flexibility, uncertainty and was not transparent to rivals.

#### **4. The Impact of the Pioneer Price Reduction Commitment**

While the success of the price reduction commitment not only requires monitoring of compliance on the part of Pioneer but also monitoring of pass-through on the part of retailers, it was carefully crafted, as the Commission took a quasi-regulatory role. Bread prices have been viewed historically as being sticky downwards and recently underpinned by sharing of commercial sensitive information. The manager of Pioneer's subsidiary division, Sasko, indicated in testimony to the Tribunal as part of the bread cartel hearings that bread prices were never reduced when input costs declined because consumers apparently did not appreciate fluctuations in bread prices. Indeed as is depicted below in figure 1 bread prices have been flexible upwards, yet prices have effectively never fallen.

##### **4.1. Implementation Mechanism**

The mechanism was designed in such a way that the average realised gross profit for the selected products over the base period would be compared with the average realised profit over the comparative period. The comparative period was defined as the period under review during the implementation of the pricing commitment. The pricing commitment

amounted to a gross profit reduction of R160 million when compared with an agreed comparative period in 2009/2010, the base period.

Minimum levels of gross profit reductions were set for each identified product category to ensure that the reductions had a meaningful effect for consumers.<sup>8</sup> The stipulated minimum levels related to national averages over the comparative period per specified product category on white bread flour, brown bread flour and cake flour together with the selected 600g and 700g white and brown bread categories. This allowed Pioneer the ability to manage the supply and demand dynamics that would emerge from the anticipated increased demand for its products.

A further stipulation was included to mitigate the likelihood of any predatory outcomes as a result of reductions in bread prices. Thus a minimum realised gross profit threshold was imposed on any price reductions on selected bread products. The aim of the pricing reduction commitment was thus to redress the impact of the bread and milling cartels. To benefit end consumers who had been subjected to anti-competitive prices. The Commission committed to monitoring bread and flour product prices while independent auditors were required to verify the gross profit reduction.

#### **4.2. The Current Impact**

In thinking about a potential impact of this pricing commitment, it is worth discussing in general recent global developments in food prices. There are several factors contributing to increases in food prices especially increasing prices of wheat, as well as energy including fuel. The value of the currency impacts on the Rand value of these international developments. Global food prices have been reported as being at their highest since 1990 with the UN Food and Agriculture Organisation food price index recorded above the 200 mark for the first quarter of 2011.<sup>9</sup> Prior to the implementation of the Pioneer consent and settlement agreement the Commission observed that the wheat price had been increasing, South Africa is a net importer of wheat. This trend was reflected in the steady increase in bread prices from May 2010 to November 2010 as reported by Statistics South Africa.

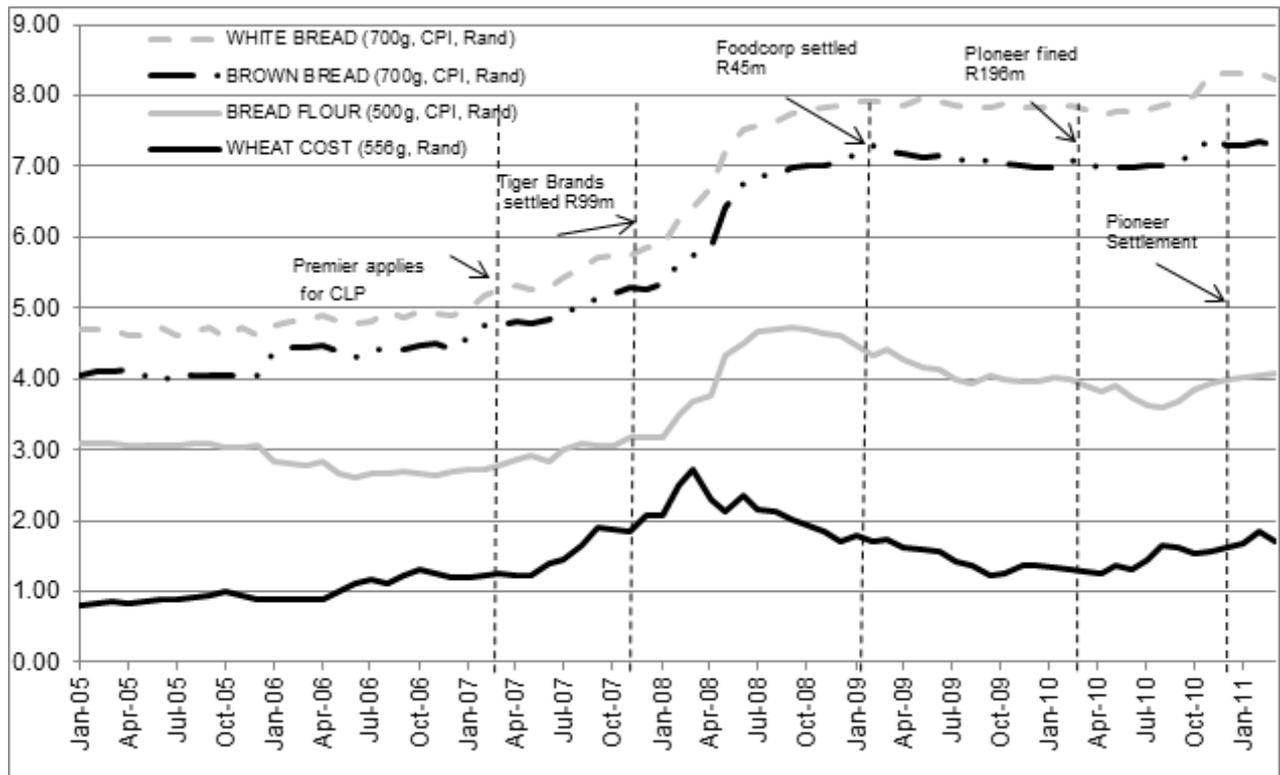
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<sup>8</sup> Pioneer made a commitment with respect to flour to adjust its pricing in its external sales to third parties of white bread, brown bread and cake flour products. It also committed to adjusting its pricing on all of its standard 600g and 700g bread products which it sold mainly to large retailers and a number of informal retail outlets making up between 85-90% of Pioneer bread sales. These pricing reductions were to be in addition to any and all promotional discounts that Pioneer offered to its customers.

<sup>9</sup> Financial Mail article titled "*Slim Pickings*" May 6, 2011.

Following the implementation of the consent and settlement agreement, wheat prices continued to show an upward trajectory impacting on the price of flour. This however has not seemed to translate into increased bread prices as had previously been the case. South Africa has been shielded from higher food prices, in part because of the Pioneer consent and settlement agreement.

**Figure1: National bread and flour prices**



Source: Statistics South Africa, SAFEX

Figure1 provides an indication of bread price behaviour from January 2005 to March 2011. Included are the dates showing when companies either received fines, Premier's CLP application and the Pioneer settlement. The price reductions on bread prices have been largely evident in the brown bread category which has shown the largest reductions. As shown in figure 1, bread prices had been sticky downwards even with the successful prosecution of the bread cartel.

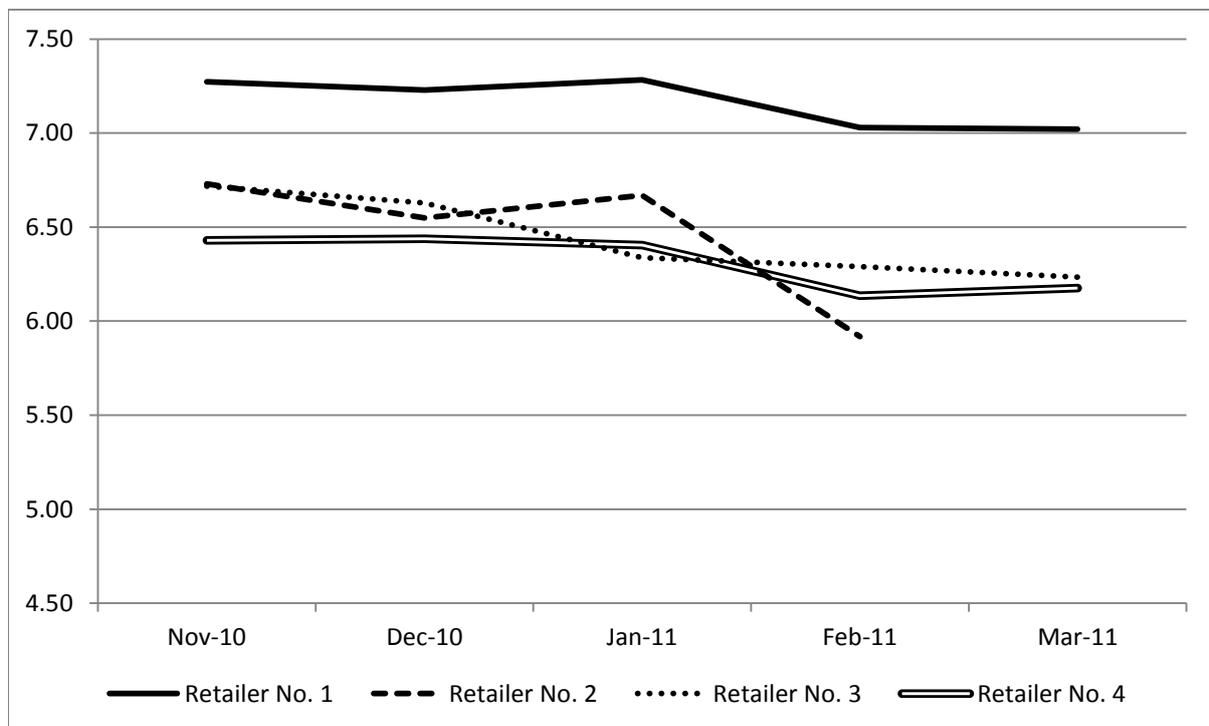
According to recent business analysis, Pioneer has reportedly, following the implementation of the agreement, increased its volume growth at the expense of competitors<sup>10</sup>. Competitors such as Tiger Brands have publicly acknowledged that trading volumes have been

<sup>10</sup> Business Report (National) 21 February 2011, p. 19

negatively impacted, particularly in flour, as a result of the highly competitive trading environment. An article by the Business Report in February noted how Tiger Brands' Albany bread was losing market share to Pioneer Foods' Sasko bread<sup>11</sup>.

Pricing data from selected retailers in relation to bread products purchased from the major bread suppliers, namely Pioneer, Premier Foods, Foodcorp and Tiger Brands, shows the extent of the pricing commitment and the pass through to end-consumers. Figures 2 and 3 provide an indication of the impact the change in Pioneer's pricing policy has had on the wholesale price of 700g bread loafs. The results indicate that following the implementation of Pioneer's pricing commitment the average wholesale price of white and brown 700g bread decreased, with a substantial reduction being observed in brown bread flour.

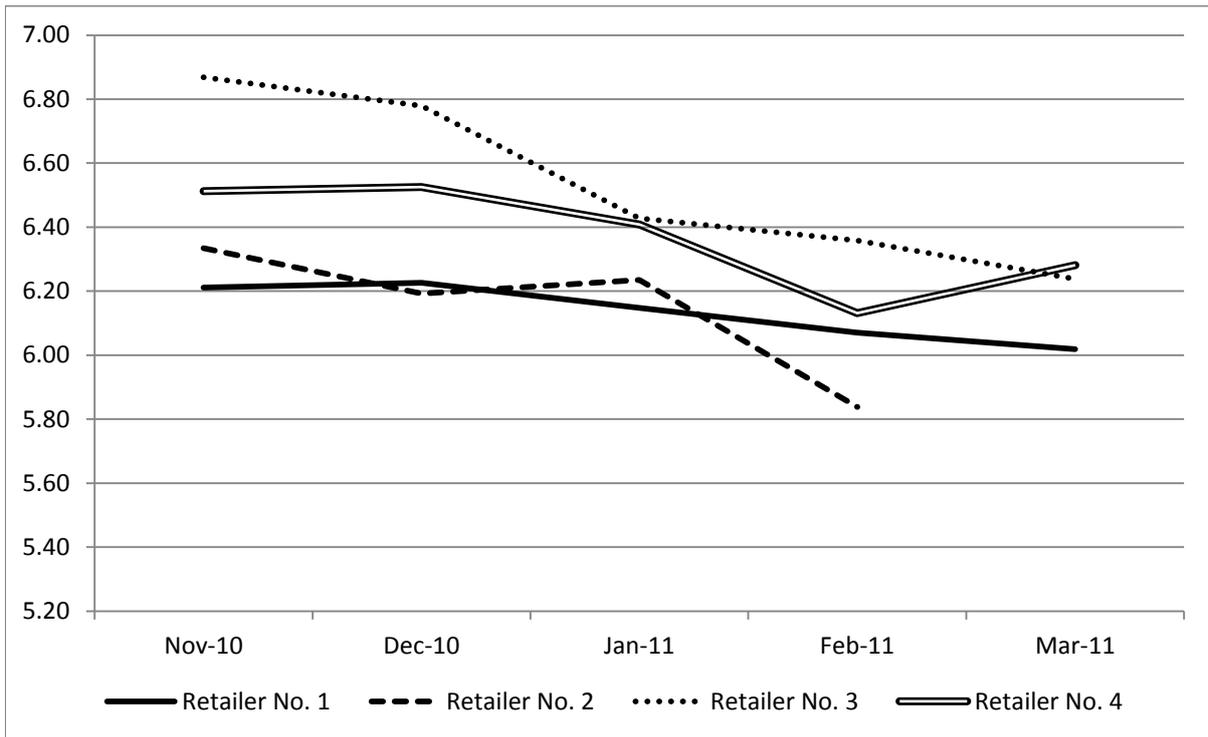
**Figure 1: Average wholesale price from all suppliers per retailer, white bread 700g**



Source: Selected retail outlets

<sup>11</sup> Business Report (National) 21 February 2011, p. 19

**Figure 2: Average wholesale price from all suppliers per retailer, brown bread 700g**



Source: Selected retail outlets

Pricing data from retailers indicates that the price reductions made by Pioneer have translated into cheaper bread prices for end-consumers. In light of the recent increasing global inflationary pressures on food prices and South Africa’s position as a net-importer of wheat, the settlement agreement has to-date yielded positive results for consumers.

Since November 2010, the national price of brown bread decreased by around 11 cents per loaf, and stabilised at a lower level of around R7.30/loaf (nominal CPI up to March 2011), while the national price of white bread has been stable at around R8.31/loaf in March 2011. Had it not been for the interventions of the Competition Authorities, consumers would have been faced with higher prices. In other words, given the global pressure on food prices, price increases are to be expected, however due to the increased competition in this sector as a result of the adoption Pioneer consent and settlement agreement, this is less than would have otherwise been the case.

The achieved bread price reductions experienced following the implementation of the settlement agreement are almost unprecedented in light of the historic nature of bread prices in the South African market. In particular the large price reductions observed on basic brown

bread products. This has induced responses from Pioneer's competitors resulting in even wider gains for consumers than Pioneer's own pricing commitment.

## **5. Conclusion**

In this paper we have shown that the Pioneer consent and settlement agreement is designed to address the negative impact of cartel activity. It provides for the opportunity to redress the anti-competitive environment created by long running cartels which may not be addressed solely by administrative penalties as indicated above in Figure 1. We have shown that the remedies relate to the restoration of competition. The creation of the Agri-fund aims to lower the barriers to entry into the agro processing industry, while the price reduction and capital expenditure terms seek to constrain Pioneer, compensate and disgorge some of its profits to the benefit of affected consumers and improve the competitive dynamics of the relevant markets. These commitments and the administrative penalty excluded the administrative penalty of about R196 million imposed by the Tribunal on Pioneer in relation to Pioneer Foods' involvement in the bread cartel.

What makes the Pioneer consent and settlement agreement innovative and far reaching, is that Pioneer's admitted anticompetitive conduct was clearly identified together with the theories of harm. The identification of the specific theories of harm led to the identification of the appropriate and sufficient remedies. Because sufficient time has not lapsed since its adoption, the impact of the combined Pioneer consent and settlement agreement is outside the scope of this paper and will be the subject of future research.

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