

**IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE
ESTABLISHED IN TERMS OF SECTION 10(3) OF THE FINANCIAL
SERVICES BOARD ACT, NO.97 OF 1990**

CASE NO: EC 37/2017

In the matter of:

THE DIRECTORATE OF MARKET ABUSE First Applicant

FINANCIAL SERVICES BOARD Second Applicant

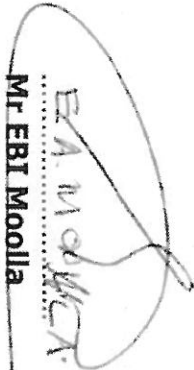
and

CARGILL RSA (PTY) LIMITED Respondent

ORDER

1. WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine that the Respondent contravened Section 80(1)(a) read with section 81 (1) of the Financial Markets Act, No. 19 of 2012.
2. I hereby impose an administrative penalty of R362, 000, 00 (Three hundred and sixty two thousand rand), inclusive of investigation costs.
3. The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

Signed at **DURBAN** on the ...^{13TH}... day of **DECEMBER 2017**

A handwritten signature in black ink, appearing to read 'E.A. Moolla', is written over a horizontal line. The signature is stylized and somewhat cursive.

Mr EBI Moolla
Deputy Chairperson of the Enforcement Committee

IN THE PROCEEDINGS BEFORE THE ENFORCEMENT COMMITTEE ESTABLISHED IN
TERMS OF SECTION 10(3), READ WITH 10A OF THE FINANCIAL SERVICES BOARD
ACT, NO 97 OF 1990

CASE NO: 37/2017

In the matter of:

DIRECTORATE OF MARKET ABUSE	FIRST APPLICANT
FINANCIAL SERVICES BOARD	SECOND APPLICANT
and	
CARGILL RSA (PTY) LTD	RESPONDENT

SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B (7)(a) OF THE FINANCIAL
INSTITUTIONS (PROTECTION OF FUNDS) ACT, NO 28 OF 2001

1. Introduction


- 1.1. The Directorate of Market Abuse ("DMA") exercised its powers in terms of section 85 (1)(c) read with section 84(2) of the Financial Markets Act, No 19 of 2012 ("FMA") and investigated the Respondent for possible contraventions of section 80 and section 81 of the FMA.
- 1.2. The parties commenced settlement discussions during the investigation and they agree that the matter be dealt with by way of an agreed penalty.
- 1.3. The terms of the parties' agreement are as set out herein.



A handwritten signature in black ink, followed by the initials 'JPT' written below it.

2. Parties to the agreement

- 2.1. The First Applicant is the DMA, a committee of the Financial Services Board ("FSB") established in terms of section 85 of the FMA. The DMA exercises the powers of the FSB to investigate any matter relating to a market abuse offence.
 - 2.2. The Second Applicant is the FSB, a juristic person established in terms of section 2 of the Financial Services Board Act, No 97 of 1990. The functions of the FSB are *inter alia* to supervise and enforce compliance with the laws relating to financial institutions and the provision of financial services.
 - 2.3. The Respondent is Cargill RSA (Pty) Ltd, a private company duly incorporated in terms of the laws of South Africa, with registration number 1998/020303/07, of Cedar View Office Park, Fourways, Johannesburg.
- ## 3. Background facts and contravention
- 3.1. Cargill Incorporated and its affiliates (of which the Respondent is one) ("Cargill"), is an international company operating in 70 countries around the globe. Cargill competes in four major segments: agriculture, food, financial and industrial.
 - 3.2. Cargill's primary business in the agricultural segment, specifically in South Africa, is originating, storing, transporting, distributing, exporting, importing, and trading in commodities. Cargill buys and sells commodities such as white and yellow maize.


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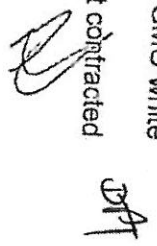
3.3. Although South Africa usually has a surplus maize production the general view in the market during May / June 2015 was that there would be a significant shortage of maize in South Africa due to the severe drought experienced in 2015. The Respondent estimated that the national crop of white & yellow maize in 2015 would be approximately 10 million metric tons, but the consensus in the market was that the national crop would only be about 8 million metric tons.

3.4. During May 2015 the Cargill office in Mexico indicated to the Respondent that there was a surplus of white maize in Mexico of between 500,000 and 1,000,000 metric tons.

3.5. The Respondent's view at the time was that the South African market was approaching import parity and the Respondent therefore started to consider importing white maize. The Respondent accordingly applied for and obtained an import permit, which was issued by the Department of Agriculture on 2 June 2015, for import of a total of 500,000 metric tons of seed for milling from Mexico.

3.6. The Respondent initially intended to import up to 300,000 metric tons of white maize from Mexico, made up of six shipments of 50,000 metric tons each. The decision on the final quantity to import would be subject to the prevailing economic data, the Respondent's and the market's estimates of crop size, currency fluctuations, local and international maize prices, shipping costs and other relevant factors impacting import parity.

3.7. On or about 26 June 2015, the Respondent contracted with Cargill in Mexico for a shipment of 50,000 metric tons of Mexican grade one, non-GMO white maize to South Africa. (On or about 10 July 2015 the Respondent contracted



with Cargill in Mexico and booked a second shipment of 50,000 metric tons of Mexican grade one, non-GMO white maize for import to South Africa.)

3.8. On 1 July 2015, after receipt of independent confirmation that the Mexican white maize met South African grade one, non-GMO standards, the Respondent communicated its intention to the market to import up to 300,000 metric tons of Mexican grade one, non-GMO white maize, and from 1 July 2015 it extended several offers to its customers.

3.9. In its communications to the market and the offers sent to customers, the Respondent confirmed that the first shipment of 50,000 metric tons of white maize had already been booked and stated that it expected to import a further 5 shipments of maize between September and December 2015, without explicitly mentioning any factors that would lead to it not importing all 300,000 metric tons. The offers to its customers was for maize for arrival during August, September and October 2015. In certain instances the Respondent indicated to its customers that maize for arrival during a particular month had already been sold out, whereas orders for all months at that stage in actual fact were fulfilled from the first 50,000 metric ton shipment which had not been sold out yet.

3.10. These communications constitute 'publications' by the Respondent as defined in the FMA. The Respondent concedes that these publications, although not intentionally so, may have created the impression that the Respondent had contracted for the import of a total of 300,000 metric tons of white maize from Mexico, and was offering the maize for delivery in the month when each of the shipments will arrive.



3.11. The Respondent concedes that a reasonable person in its position ought to have known that the specific publications and communications were possibly misleading and/or deceptive and therefore, in the circumstances detailed above, the Respondent admits that it contravened section 81(1) of the FMA.

4. Mitigating Circumstances

The Parties record that the following constitute mitigating circumstances which have been taken into consideration in determining an appropriate penalty:

- 4.1. The Respondent did not intentionally set out to publish any misleading and/or deceptive statements;
- 4.2. The Respondent and its employees have fully co-operated during the investigation and took a pro-active role to reach a settlement, thereby saving resources and time of the Applicants and the Enforcement Committee;
- 4.3. The Respondent has not been found to have breached any provisions of the FMA before;
- 4.4. The Respondent has accepted responsibility for the actions of its employees.

5. The Agreed penalties

- 5.1. The Respondent hereby tenders to pay a penalty of R362,000.00 (THREE HUNDRED AND SIXTY TWO THOUSAND RAND) inclusive of the investigation costs of the Applicants.



5.2. The Applicants have accepted the amount offered by the Respondent subject to the approval of the Enforcement Committee.

5.3. In the premises the parties humbly request that the honourable Enforcement Committee make this agreement an order as envisaged in section 6B (7)(b) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001 ("FIA").

6. **Other Conditions**

6.1. The parties acknowledge that this agreement is subject to the approval of the Enforcement Committee and the parties further specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement. In such an event this agreement will be null and void and neither party will have any rights or obligations in terms hereof nor will this document be capable of being used against either party in any proceedings.

6.2. No leniency or postponement given by the Applicants to the Respondent or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties.

6.3. The agreement constitutes the whole agreement between the parties in respect of the offer to pay an administrative penalty.

6.4. The parties select the addresses below as their *domicilium citandi et executandi* for the purposes of service of the Enforcement Committee order and for any notice or pleading related to a breach of this agreement. However the notice contemplated on terms of section 6E of the FIA shall be delivered


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by electronic mail. For the purpose of this agreement the parties' respective addresses shall be:

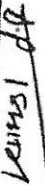
6.4.1. The Applicants

Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens
Pretoria

6.4.2. The Respondent

Cargill building
Cedar View Office Park
Fourways
Johannesburg

Signed at PRETORIA on this the 11th day of December 2017.



FOR AND ON BEHALF OF THE
APPLICANTS

Signed at JOHANNESBURG on this the 7th day of December 2017.



Brendan De Boer
FOR AND ON BEHALF OF THE
RESPONDENT