



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 020081

In the matter between:

The Competition Commission

Applicant

and

ATC (Proprietary) Limited

Respondent

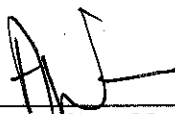
Panel : A Wessels (Presiding Member)
A Roskam (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 03 December 2014

Decided on : 03 December 2014

Order

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and ATC (Pty) Ltd, annexed hereto marked "A".



Presiding Member
Mr. A Wessels

03 December 2014
Date

Concurring: Mr. A Roskam and Prof. F Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT Case No:

CC Case no: 2010Mar4981


Application for confirmation of a consent agreement

In the matter between:

THE COMPETITION COMMISSION

and

ATC (PROPRIETARY) LIMITED

 competition tribunal south africa	
2014 -11- 25	
RECEIVED BY:	<i>Malomo</i>
TIME:	<i>15:15</i>

Applicant

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND ATC (PTY) LTD IN RESPECT OF ALLEGED CONTRAVENTIONS OF SECTIONS 4 (1)(b)(i),(ii) and (iii) OF THE COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

Preamble

The Competition Commission and ATC hereby agree that application be made to the Competition Tribunal for confirmation of this Consent agreement as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, in respect of alleged contraventions of sections 4(1)(b)(i),(ii) and (iii) of the Act, on the terms set out below.

1 Definitions

For the purposes of this *Consent Agreement* the following definitions shall apply:

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "AECMSA" means the Association of Electric Cable Manufacturers of South Africa;
- 1.3 "ATC" means ATC (Proprietary) limited, registration number 1955/003773/07;
- 1.4 "CLP" means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);
- 1.5 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.6 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.7 "Complaints" means the complaints initiated by the Commissioner in terms of section 49B of the Act under case number 2010Mar4981;
- 1.8 "Consent Agreement" means this agreement duly signed and concluded between the Commission and ATC;
- 1.9 "Cover Pricing" means collusive tendering conduct wherein one or more firms agree that they will submit tenders in such a way that a designated winner will submit the lowest or most favourable bid and the other(s) will submit artificially high bids that are not intended to win the contract;
- 1.10 "Parties" means the Commission and ATC;
- 1.11 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its principal place of business at 3rd Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 The Complaint and Complaint Investigation

- 2.1 On 16 March 2010, the Commissioner, acting in terms of section 49B(1) of the Act, initiated a complaint under case number 2010MAR4981 against Aberdare Cables (Pty) Ltd ("Aberdare"), Tulisa Cables (Pty) Ltd, Alvern Cables (Pty) Ltd

and South Ocean Electric Wire Company (Pty) Ltd for possible contravention of section 4(1)(b) of the Act in the market for the supply of electric cables (which for the purpose of this consent order shall exclude high voltage cables).

- 2.2 The information obtained by the Commission through its investigation indicated that other companies, which were not part of the initial investigation, may also have been involved in the alleged conduct in contravention of the Act.
- 2.3 On 28 May 2010, the Commission expanded its investigations to include these firms: Alcon Marepha (Pty) Ltd, ATC (Pty) Ltd, Kewberg Cables and Braids (Pty) Ltd, Malesela Taihan Electric Cable (Pty) Ltd, Norco Cables (Pty) Ltd, Cabcon Technologies (Pty) Ltd Phoenix Power Cables (Pty) Ltd, Silcom (Pty) Ltd and the Association of Electric Cable Manufacturers of South Africa ("AECMSA") as being party to price fixing, market division and collusive tendering in the electric cable market.
- 2.4 In the course of its investigation the Commission further amended its complaint initiation on 14 May 2012 to include further information and particulars in respect of the alleged conduct in contravention of the Act.
- 2.5 The Commission's investigation revealed that:
- 2.5.1 ATC and Aberdare agreed to tender collusively in respect of tenders issued by municipalities by allocating customers and specific product lines and agreeing on the price to be charged per product line of electric cables. ATC and Aberdare implemented and sustained their agreement by providing each other with Cover Prices. The agreement was longstanding and was in place from at least 1998 until January 2010. The municipalities affected by this collusive agreement were *inter alia* the City of Tshwane Municipality, Nelson Mandela Municipality, Buffalo City Municipality, Polokwane Municipality, Mbombela Municipality, the City of Cape Town, Dundee Municipality, Mogale City Municipality, eThekweni Municipality and Kouga Municipality. The aforementioned conduct is in contravention of section 4(1)(b)(i), (ii) and (iii).
- 2.5.2 ATC and Aberdare agreed to divide markets by allocating customers in the mining industry. The agreement was longstanding and was in place from at least 1998 until August 2009. Aberdare and ATC maintained and reinforced the market allocation agreement by providing Cover Prices in relation to tenders or when customers tested the market for pricing in respect of electric cables. The mining companies affected by this agreement include *inter alia*

Anglo American Platinum Limited, Impala Platinum Holdings Limited, Gold Fields Limited, Lonmin Plc, Debswana Diamond Company (Pty) Ltd, Mine Kumba Iron Ore, a business unit of Anglo American and De Beers Consolidated Mines. Many contracts with mining companies are long term contracts. The aforementioned conduct is in contravention of section 4(1)(b)(ii) and (iii) of the Act.

2.5.3 ATC, Aberdare, M-Tech and Alcon Marepha agreed to tender collusively in respect of tenders issued by Eskom by allocating specific product lines and agreeing on the price to be charged per product line of electric cable. ATC, Aberdare, M-Tech and Alcon Marepha implemented and sustained their agreement by providing each other with Cover Prices. The agreement was longstanding and was in place from at least 1994 until September 2008. The aforementioned conduct is in contravention of section 4(1)(b)(ii) and (iii) of the Act.

2.5.4 Members of AECMSA, including ATC discussed and agreed, under the auspices of AECMSA, on a quotation basis which was used to escalate prices when bidding for short and long term tenders to supply electric cabling products. This conduct continued from at least 2001 to August 2012. This conduct constitutes price fixing in contravention of section 4(1)(b)(i) of the Act.

3 Admission

ATC admits that it entered into the agreements detailed in paragraph 2.5.1 to 2.5.4 above with its competitors, Aberdare, Alcon Marepha and M-Tech in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

4 Agreement concerning future conduct

ATC agrees to:

4.1 fully cooperate with the Commission in relation to the prosecution of the complaint.

Without limiting the generality of the foregoing, ATC specifically agrees to:

4.1.1 testify in the complaint referral (if any) in respect of alleged contraventions covered by this Consent Agreement; and

- 4.1.2 to the extent that it is in existence and known to ATC's senior management as at the time of signature date of this Consent Agreement, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement, excluding such evidence as may be privileged.
- 4.1.3 desist from the conduct described above.
- 4.1.4 develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include the following:
- 4.1.4.1 the identification by ATC of competition risks relevant to its business and the monitoring thereof; and
- 4.1.4.2 provision of specific training on aspects of competition law of particular relevance to ATC, such training to be made available to all new employees joining ATC. Furthermore, ATC will update such training annually for a period of 3 (three years).
- 4.2 to submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order by the Competition Tribunal;
- 4.3 to circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at ATC within 60 days from the date of confirmation of this Consent Agreement by the Competition Tribunal;

5 Administrative Penalty

- 5.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, ATC accepts that it is liable to pay an administrative penalty.
- 5.2 The parties have agreed that ATC will pay an administrative penalty in the amount of R80 737 050 (Eighty Million, Seven Hundred and Thirty Seven Thousand, Fifty

Rands), which amounts to 5% of its turnover for its 2010 financial year, ending on 30 September 2010.

- 5.3 This amount does not exceed 10% of ATC's total annual income in the Republic and its exports from the Republic for its 2013 financial year.
- 5.4 ATC shall pay the amount set out in paragraph 5.2 above to the Commission in three equal instalments over a period of two years, the first instalment being payable within 30 days from the date of confirmation of this Consent Agreement as an order of the Tribunal; the second instalment on or before the first anniversary of the confirmation of this Consent Agreement as an order of the Tribunal, and the third instalment on or before the second anniversary of the confirmation of this Consent Agreement as an order of the Tribunal.
- 5.5 The penalty shall be paid into the Commission's bank account which is as follows:

NAME: THE COMPETITION COMMISSION FEE ACCOUNT

BANK: ABSA BANK, PRETORIA

ACCOUNT NUMBER: 4050778576

BRANCH CODE: 323 345

REF NO: 2010MAR4981ATC

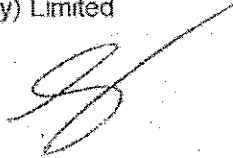
- 5.6 The penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

6 Full and Final Settlement

This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes the proceedings between the Commission and ATC relating to the alleged contraventions of the Act that is the subject of this Consent Agreement, for the period ending on the date of the signature of this Consent Agreement.

Dated and signed at SANDTON on the 14TH day of NOVEMBER 2014

For ATC (Pty) Limited



GW Eddey

Director

Dated and signed at PRETORIA on the 24th day of NOVEMBER 2014

For the Commission:



Tembinkosi Bonakele

Competition Commissioner