



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 020073

In the matter between:

The Competition Commission

Applicant

and

Inca Concrete Products (Pty) Ltd

Respondent

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

Heard on : 03 December 2014

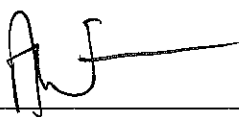
Addendum : 09 December 2014

received on

Decided on : 10 December 2014

Order

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



Presiding Member
Mr. A Wessels

10 December 2014
Date

Concurring: Mr. A Roskam and Prof. F Tregenna

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT CASE NO: _____
CC CASE NO: 2012Feb5783
CC CASE NO: 2012Jul5787

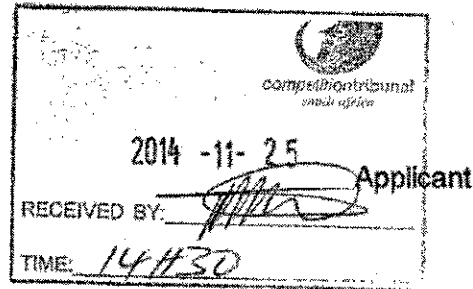
In the matter between:

THE COMPETITION COMMISSION

and

INCA CONCRETE PRODUCTS (PTY) LTD

Respondent



CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND INCA CONCRETE PRODUCTS (PTY) LTD, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i) AND (ii) OF THE COMPETITION ACT, 1998

Preamble

The Competition Commission ("Commission") and Inca Concrete Products (Pty) Ltd ("Inca") hereby agree that application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended (the "Act"), in respect of contraventions of section 4(1)(b)(i) and (ii) of the Act.

1. DEFINITIONS

For the purposes of this consent agreement the following definitions shall apply

- 1.1 **"Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.2 **"Business Rescue Practitioner"** means Mr Trevor Philip Glaum (RSA ID 6507165045087), an independent person appointed by the Companies and Intellectual Property Commission in terms of section 129(3)(b) of the Companies Act No. 71 of 2008 (the **"Companies Act"**) to serve as a business rescue practitioner in regard to the business rescue proceedings engaged by Inca;
- 1.3 **"CLP"** means the Commission's Corporate Leniency Policy (Government Gazette Notice no. 628 of 23 May 2008) published in Government Gazette no.31064 of 23 May 2008;
- 1.4 **"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;
- 1.5 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Inca;
- 1.6 **"Inca"** means Inca Concrete Products (Pty) Ltd (currently in business rescue) (reg. no. 2007/000037/07), a private company duly incorporated in accordance with the Company Laws of the Republic of South Africa

with its principal place of business at Ryneveld Street, Eersterivier, Cape Town.

- 1.7 "Parties" means the Commission and Inca;
- 1.8 "Respondent" means Inca; and
- 1.9 "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 dfti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION

The Commission has conducted investigations in relation to two complaints against Inca that are the subject of this consent agreement:

First Complaint

- 2.1 The first complaint relates to alleged anticompetitive conduct involving Inca, Columbia DBL (Pty) Ltd ("Columbia") and Cape Brick (Pty) Ltd ("Cape Brick") wherein these firms agreed to allocate customers of concrete and masonry products to each other. These firms also agreed on prices they would quote customers that belonged to the other in terms of the customer allocation agreement between them.
- 2.2 This complaint also involves an alleged arrangement and / or agreement between Columbia and Inca in terms of which they agreed that Inca will exit

the 50mm bond pavers market and source them from Columbia, in return, Columbia will exit the 80mm interlock market and source them from Inca. Columbia and Inca further agreed on prices at which each of Columbia and Inca will quote customers when enquiring about the allocated products, namely, 50mm bond pavers for Columbia and 80mm interlock for Inca. This conduct took place between 2001 and 2010.

- 2.3 The complaint was initiated by the Commissioner on 12 February 2012 and was investigated under case number: 2012Feb5783.

Second Complaint

- 2.4 The second complaint relates to an alleged agreement between Western Granite (Pty) Ltd ("Western Granite") and Inca in terms of which Inca undertook not to manufacture face brick products while Western Granite undertook not to enter the market for the manufacture and supply of paving bricks in the Western Cape. The agreement was allegedly reached around 2000 and has been in existence to date.

- 2.5 The complaint was initiated by the Commissioner on 27 June 2012 and was investigated under case number: 2012Jul5787.

3. THE COMMISSION FINDINGS

The Commission's investigation revealed the following that:

First Complaint

- 3.1 During or about the period 2001 to 2011, Inca, Columbia, Cape Brick and

Western Granite agreed to allocate customers of concrete and masonry products to each other. In order to sustain this arrangement, these firms also agreed on prices they would quote customers that belonged to the other in terms of the customer allocation agreement between them. This conduct amounts to allocation of customers and price fixing in contravention of section 4(1)(b)(i) and (ii) of the Act.

- 3.2 During the period 2001 and 2010 Columbia and Inca entered into an agreement in terms of which they agreed that Inca would exit the 50mm bond pavers market and source them from Columbia, in return, Columbia would exit the 80mm interlock market and source them from Inca. To sustain this arrangement, Columbia and Inca further agreed on prices at which each of Columbia and Inca would quote customers when enquiring about the allocated products, namely, 50mm bond pavers for Columbia and 80mm interlock for Inca. This conduct amounts to price fixing and allocation of customers in contravention of section 4(1)(b)(i) and (ii) of the Act.

Second Complaint

- 3.3 Western Granite and Inca have an arrangement in terms of which Inca undertook not to manufacture and supply face brick products while Western Granite undertook not to manufacture and supply pavers in the Western Cape. The Commission also found that in order to compensate Inca for not entering the face brick market, Western Granite also undertook to market its face brick together with Inca's concrete blocks as backing bricks. This conduct amounts

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to division of markets in contravention of section 4(1)(b)(ii) of the Act.

4. ADMISSION

Inca admits that it engaged in the conduct set out in paragraph 3 above in contravention of section 4(1)(b) (i) and (ii) of the Act.

5 CO-OPERATION

5.1 Inca confirms that it has ceased engaging in the conduct set out in paragraph 3 above.

5.2 Inca agrees to fully cooperate with the Commission in its investigation and prosecution of the remaining respondents in the second complaint. This cooperation includes, but is not limited to:

5.2.1 To the extent that it is in existence, the provision of evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement;

5.2.2 Testifying in the complaint referral (if any) in respect of the second complaint; and

5.2.3 Availing its employees and former employees to testify as witnesses for the Commission in the second complaint.

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6. FUTURE CONDUCT

- 6.1 Inca undertakes to refrain from engaging in conduct in contravention of section 4 (1)(b) of the Act in future;
- 6.2 Inca shall 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 mechanisms for the monitoring and detection of any contravention of the Act.
- 6.3 Inca shall circulate a statement summarising the contents of this Consent Agreement to all management and operational staff employed at Inca within 60 days from the date of confirmation of this Consent Agreement by the Tribunal.

7 ADMINISTRATIVE PENALTY

- 7.1 It is recorded that Inca is currently under business rescue in terms of Chapter 6 of the Companies Act ("**Business Rescue Process**") and is accordingly under the management of the Business Rescue Practitioner.
- 7.2 It is further recorded that the penalty amount is based on a negotiated settlement, which deviates from the fining and settlement guidelines and reflects what business rescue process can accommodate.
- 7.3 It is also recorded that the Commission believes that the failure of the business rescue process and the consequent liquidation of the respondent

would likely yield a lower penalty than the one offered under the business rescue process.

- 7.4 Inca agrees that it is liable to pay an administrative penalty of R800 000. 00 (Eight hundred thousand Rand). This amount is less than 10% of Inca's annual turnover for the year ended February 2014.
- 7.5 Inca shall pay the abovementioned R800 000.00 to the Commission in eight (8) monthly instalments of R100 000.00 (one hundred thousand Rand) per month. The first instalment shall be payable within 90 days after the date of the adoption of Inca's Business Rescue Plan and the balance shall be payable in seven equal consecutive instalments every month following the payment of the first instalment.
- 7.6 The payments shall be made into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4050778576
Account type:	Current Account
Branch Code:	323 345
Reference:	Case Number: 2009Feb5783/Inca.

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

8. FULL AND FINAL SETTLEMENT

This agreement is entered into in full and final settlement of the specific conduct set out in paragraph 3 of this consent agreement and, upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Inca in respect of such conduct.

For Inca



TREVOR PHILIP GLAUM

Business Rescue Practitioner

Inca Concrete Products (Pty) Ltd (in business rescue)

Dated and signed at Gqe Toon on the 21st day of November 2014

For the Commission



TEMBINKOSI BONAKELE

Commissioner

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

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