



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR047Aug10/SA067Jul15

In the matter between:

The Competition Commission

Applicant

and

SA Metal Group (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member)
I Valodia (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 12 August 2015

Decided on : 12 August 2015

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and SA Metal Group (Pty) Ltd attached hereto marked "A", read with addendum marked "B".



Presiding Member
Ms Y Carrim

13 August 2015
Date

Concurring: Prof. I Valodia and M Mokuena

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: 51/CR/Aug10

CC Case No: 2006Aug2447

CC Case No: 2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

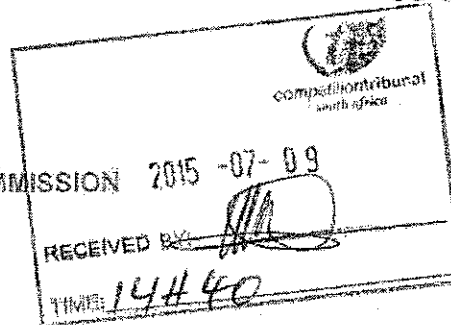
2015-07-09

Applicant

And

SA METAL GROUP (PTY) LTD

Respondent



CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND SA
METAL GROUP (PTY) LTD IN RESPECT OF THE ALLEGED CONTRAVENTION OF
SECTIONS 4(1)(b)(i) and (ii) OF THE COMPETITION ACT NO 89 OF 1998, AS
AMENDED

The Competition Commission of South Africa and SA Metal Group (Pty) Ltd 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 section 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, between the Competition Commission and SA Metal Group (Pty) Ltd on the terms set out below.

1. Definitions

For purposes of this consent order agreement, the following definitions shall apply:

1.1. "Abeddac" means Abeddac Metals (Pty) Ltd;

1.2. "Act" means the Competition Act, No. 89 of 1998, as amended;

1.3. "Amalgamated Metals" means Amalgamated Scrap Metals Recycling cc;

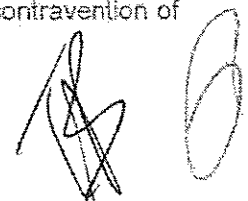
- 1.4. "Applicant" means the Competition Commission of South Africa;
- 1.5. "Ben Jacobs" means Ben Jacobs Metals (Pty) Limited and includes PMR;
- 1.6. "Ben Jacobs Iron and Steel" means Ben Jacobs Iron and Steel (Pty) Ltd;
- 1.7. "Cisco" means Cape Town Iron and Steel Works (Pty) Limited;
- 1.8. "Cisco supply agreement" means the supply agreement entered into between Cisco and NSM on 16 September 1999 and any amendments thereto, which records therein that it terminates on 31 October 2010;
- 1.9. "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;
- 1.10. "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.11. "Complaints" means the complaint initiated by the Commissioner of the Commission in terms of section 49B of the Act under case numbers 2006Aug2447 and 2007Aug3121;
- 1.12. "Complaint referral" means the Commission's referral to the Tribunal under case number 51/CR/Aug10;
- 1.13. "Consent Agreement" means this agreement set out herein, duly signed and concluded between the Commission and SAM;
- 1.14. "Designated area" means the Western Cape, Northern Cape and Namibia;
- 1.15. "DTI" means the Department of Trade and Industry;
- 1.16. "NSM" means National Scrap Metal (Pty) Ltd;
- 1.17. "the Parties" means the Commission and SA Metal Group (Pty) Ltd;
- 1.18. "PMR" means Power Metal Recyclers (Pty) Ltd and includes Ben Jacobs;
- 1.19. "Reclam" means The New Reclamation Group (Pty) Limited;

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- 1.20. "Respondent" means SA Metal Group (Pty) Ltd;
- 1.21. "SAM" means SA Metal Group (Pty) Ltd;
- 1.22. "SAM supply agreement" means the agreement entered into between SAM, NSM, Reclam and Cisco on 2 October 2000 and any amendments thereto also referred to as the Memorandum of Agreement;
- 1.23. "Scaw" means Scaw South Africa (Pty) Ltd;
- 1.24. "Scaw Metals" means Scaw Metals Group (Pty) Ltd;
- 1.25. "Scrap" means ferrous scrap metal and non-ferrous scrap metal;
- 1.26. "Suppliers" means suppliers of scrap metal to consumers of scrap metal such as mills and foundries;
- 1.27. "Ton Scrap" means Ton Scrap (Pty) Ltd;
- 1.28. "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;
- 1.29. "Universal" means Universal Recycling (Pty) Limited;

2. The Commission's Investigation

- 2.1. On 11 August 2006 the Commissioner initiated a complaint under Competition case number 2006Aug2447 in respect of alleged prohibited practices, against Reclam, SAM, NSM and Cisco.
- 2.2. The initiation was based on allegations that certain arrangements submitted on 21 October 2005 to the Commission in respect of a large merger filing in which Reclam proposed to acquire the businesses of SAM and its associated company Waste Control (Pty) Ltd ("Waste Control"), constituted market allocation, price fixing and exclusive dealing in contravention of section 4(1)(b)(i) and (ii) and restrictive vertical practices in contravention of

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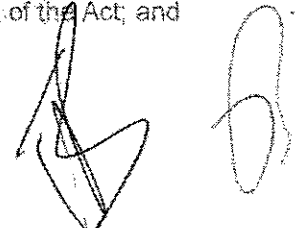
section 5(1) of the Act in relation to ferrous and non-ferrous scrap metal.

3. Extension of the first complaint

- 3.1. During the course of the investigation, the Commissioner acting in terms of section 49A of the Act, issued summons against Reclam. On the basis of the information submitted by Reclam to the Commission, the Commission expanded the scope of the investigation under case number 2006Aug2447 to include collusive tendering in contravention of section 4(1)(b)(iii) of the Act against Reclam, NSM, SAM, LO Rall Scrap Dealers CC, Universal and Fine Trading CC.
- 3.2. On 20 July 2007, the Commission obtained search warrants and conducted search and seizures at the premises of Reclam in Johannesburg, Port Elizabeth and Durban. Soon thereafter the Commission received information that Reclam, Abeddoo, Amalgamated Metals, Ben Jacobs, PMR, SAM and Universal were engaged in price fixing and collusive tendering in respect of various types of non-ferrous scrap metal. Based on this, on 8 August 2007 the Commissioner initiated another complaint under case number 2007Aug3121 in terms of the alleged conduct and respondents referred to in this paragraph.

4. The Commission's findings

- 4.1. Following its investigation of the above allegations, the Commission found that:
- 4.1.1. The respondents are suppliers of scrap metal in that they collect and process scrap metal and are therefore in the same line of business and consequently in a horizontal relationship for purposes of section 4(1)(b) of the Act;
- 4.1.2. Reclam, SAM, Glisco and NSM entered into agreements, arrangements or understandings to divide the market and fix trading conditions in respect of both ferrous and non-ferrous scrap metal in contravention of section 4(1)(b)(i) and (ii) of the Act; and

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4.1.3. Reclam, PMR and/or Ben Jacobs and SAM entered into agreements, arrangements or understandings to fix prices and divide the market in respect of non-ferrous scrap metal in contravention of section 4(1)(b)(i) and (ii) of the Act.

4.2. In terms of the agreements, arrangements and/or understandings in relation to Reclam, SAM and NSM in contravention of section 4(1)(b)(i) and (ii) of the Act, the Commission found that:

4.2.1. SAM, NSM, Reclam and Cisco entered into a Memorandum of Agreement ("MOA") in October 2000 which led to the agreements, arrangements and/or understandings that:

4.2.1.1. SAM would exclusively supply all its shredded ferrous scrap (other than such shredded ferrous scrap which SAM requires for its own melting activities which did not exceed 6000MT per month) sourced within the designated area to NSM for onward supply to Cisco thus preventing SAM from supplying other customers within and outside the designated area;

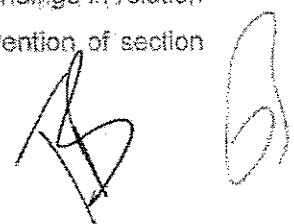
4.2.1.2. NSM would not purchase unprocessed ferrous scrap arising in the designated area other than from SAM;

4.2.1.3. SAM would not to purchase ferrous scrap outside of the designated area;

4.2.1.4. Reclam and SAM would not to compete with each other in respect of the purchase of ferrous scrap from the designated area unless Reclam acquired scrap for export purposes; and

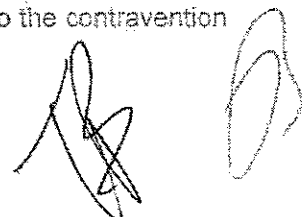
4.2.1.5. SAM would be permitted to sell any surplus scrap not required by NSM to specific areas outside the designated areas at prices and on conditions specified by NSM.

4.3. In terms of the agreements, arrangements and/or understandings in relation to Reclam, PMR and/or Ben Jacobs and SAM in contravention of section

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4(1)(b)(i) and (ii) of the Act, the Commission found that:

- 4.3.1. SAM, Reclam, PMR and Ben Jacobs all of which are suppliers and processors of non-ferrous scrap metal entered into a price fixing agreement or arrangement in 2006 wherein they agreed to fix the maximum price for six grades of non-ferrous scrap in the Gauteng region; and
- 4.3.2. The same respondents agreed to distribute, from time to time, a formal list with the prices of the maximum price of non-ferrous scrap. Once the formal list ceased being distributed the same respondents continued to discuss buying levels of non-ferrous scrap on an informal basis.
- 4.4. On 4 April 2008, prior to the Commission's referral of these complaints, Reclam and the Commission concluded a settlement agreement wherein it admitted the contravention of section 4(1)(b)(i) and (ii) of the Act in relation to complaints under case numbers 2006Aug2447 and 2007Aug3121. This agreement was confirmed by the Tribunal on 7 May 2008.
- 4.5. In June 2010, prior to the Commission's referral of these complaints PMR and Ben Jacobs also concluded a settlement agreement wherein they admitted to the contravention of section 4(1)(b)(i) of the Act in relation to the complaint under case number 2007Aug3121.
- 4.6. Following the Commission's referral of these complaints, the Commission has settled with:
 - 4.6.1. Universal in October 2010, wherein it admitted to the contravention of section 4(1)(b)(i) and (ii) of the Act in relation to the complaints under case numbers 2006Aug2447 and 2007Aug3121;
 - 4.6.2. NSM in November 2010, wherein it admitted to the contravention of section (4)(1)(b)(ii) of the Act in relation to the complaint under case number 2007Aug3121;
 - 4.6.3. Abbedac in October 2010, wherein it admitted to the contravention



of section 4(1)(b)(i) of the Act in relation the complaint under case number 2007Aug3121; and

- 4.6.4. Amalgamated Metal in October 2010 wherein it admitted to the contravention of section 4(1)(b)(i) of the Act in relation to the complaint under case number 2007Aug3121.

5. Settlement discussions

SAM has been seeking to settle with the Commission prior to the Commission's referral; however an agreement between it and the Commission was only reached in May 2015. This Consent Agreement is a product of the various engagements between the Commission and SAM.

6. Admission of Liability

SAM admits that it has contravened sections 4(1)(b)(i) and (ii) of the Act in that it agreed with its competitors to fix prices and divide markets in relation ferrous and non-ferrous scrap metal as described in paragraph 4 above.

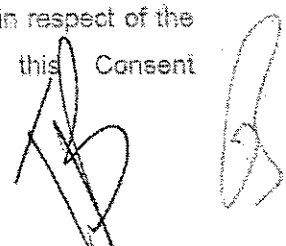
7. Future Conduct

- 7.1. SAM confirms that the conduct under investigation has already ceased and agrees to:

- 7.1.1. Fully cooperate with the Commission in its prosecution of the remaining Respondent in this referral complaint. This cooperation includes, but is not limited to:

- 7.1.1.1. Providing documentary evidence, which is in its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement; and

- 7.1.1.2. Availing employees of SAM, and using reasonable endeavours to contact past employees of SAM, to assist the Commission in the complaint referral in respect of the alleged contraventions covered by this Consent

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Agreement.

8. Future Conduct

8.1. SAM agrees to:

8.1.1. Prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within fourteen (14) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

8.1.2. Refrain from engaging in the conduct described in paragraph 4 above in contravention of section 4(1)(b)(i) and (ii) of the Act;

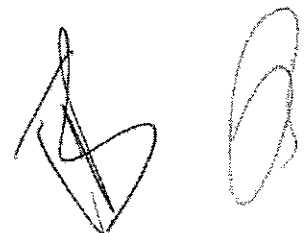
8.1.3. Develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act; and

8.1.4. 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 Tribunal.

9. Administrative Penalty

9.1. 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, SAM is liable to pay an administrative penalty.

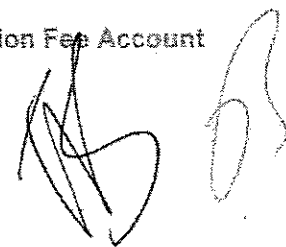
9.2. SAM agrees and undertakes to pay an administrative penalty in the amount of R22 430 000 (*twenty two million four hundred and thirty thousand Rand*) representing 5% of SAM's total relevant ferrous and non-ferrous annual turnover for the financial year ended December 2005.

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- 9.3. This amount does not exceed 10% of SAM's annual turnover in the Republic and its exports from the Republic for its financial year ending December 2014.
- 9.4. SAM will pay the total amount set out in paragraph 9.2 above to the Commission within twenty-four months from the date of confirmation of this Consent Agreement by the Tribunal. To this end SAM will make:
- 9.4.1. The first instalment payment in the amount of R5 607 500 (five million and six hundred and seven thousand and five hundred Rand) within six months of the date on which the Consent Order is granted by the Tribunal;
- 9.4.2. The second instalment payment in the amount of R5 607 500 (five million and six hundred and seven thousand and five hundred Rand) within twelve months of the date on which the Consent Order is granted by the Tribunal;
- 9.4.3. The third instalment payment in the amount of R5 607 500 (five million and six hundred and seven thousand and five hundred Rand) within eighteen months of the date on which the Consent Order is granted by the Tribunal; and
- 9.4.4. The fourth instalment payment in the amount of R5 607 500 (five million and six hundred and seven thousand and five hundred Rand) within twenty-four months of the date on which the Consent Order is granted by the Tribunal.
- 9.5. SAM agrees that interest will be applicable to the instalments referred to in paragraphs 9.4.3 and 9.4.4 above, *calculated from the first anniversary of the date of the Consent Order*, in terms of section 80(1)(b) of the Public Finance Management Act No. 1 of 1999, as amended read with Government Gazette 37999 No. 805 of 2014.
- 9.6. The penalty must be paid into the Commission's bank account which is as follows:

NAME:

The Competition Commission Fee Account



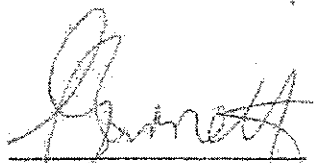
BANK: ABSA Bank, Pretoria
ACCOUNT NUMBER: 4050778576
BRANCH CODE: 323 345
REFERENCE: 2006Aug2447 and 2007Aug3121 SAM

9.7. 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.

10. Full and Final Settlement

This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and SAM relating to any alleged contravention of the Act that is the subject of the Commission's investigation under Commission Case Numbers 2006Aug2447 and 2007Aug3121.

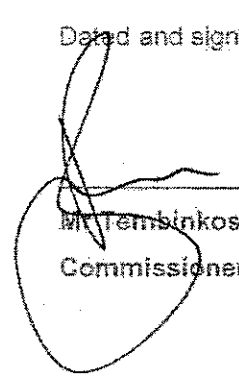
Dated and signed at *Cape Town* on the *2nd* day of *July* 2015



Chief Executive Officer
SA Metal Group (Pty) Ltd



Dated and signed at Pretoria on the *7th* day of *July* 2015



Mr Tembinkosi Bonakele
Commissioner, Competition Commission

"B"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No: 51/CR/Aug10

CC Case No: 2006Aug2447

CC Case No: 2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

SA METAL GROUP (PTY) LTD

Respondent

FIRST ADDENDUM TO THE SETTLEMENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTION 58(1)(a)(iii) and 58(1)(b) OF THE COMPETITION ACT NO 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND SA METAL (PTY) LTD IN RESPECT OF CONTRAVENTIONS OF SECTIONS 4(1) and 5(1) OF THE COMPETITION ACT NO 89 OF 1998, AS AMENDED.

This amendment to the settlement agreement, which was concluded between the Competition Commission of South Africa ("Commission") and SA Metal (Pty) Ltd, signed by SA Metal Group (Pty) Ltd on 2 July 2015 and by the Commission on 7 July 2015 and presented for confirmation by the Competition Tribunal on 12 August 2015, sets out the terms on which the parties to the settlement agreement have agreed to amend the settlement agreement:

Clause 4.2.1.4 of the Settlement Agreement is amended by deleting the word "to" and the amended clause 4.2.1.4 shall read as follows:

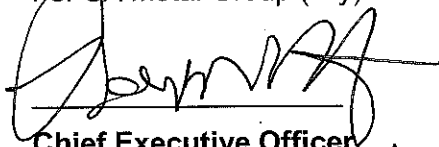
"4.2.1.4 *Reclam and SAM would not compete with each other in respect of the purchase of ferrous scrap from the designated area unless Reclam acquired scrap for export purposes*".

Clause 9.3 of the Settlement Agreement is amended and a reference in the clause to the financial year ending in December 2014 is deleted and the amended clause 9.3 shall read as follows:

"9.3 This amount does not exceed 10% of SAM's annual turnover in the Republic and its exports from the Republic for its financial year ending December 2005."

Dated and signed at Pretoria on the 12th day of Aug 2015.

For SA Metal Group (Pty) Ltd



Chief Executive Officer

Name in Full: Graham Burnett

Dated and signed at Pretoria on the 12th day of August 2015.

For the Competition Commission



Mr Tembinkosi Bonakele

Commissioner: Competition Commission