



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR125Nov14/SA189Oct18

In the matter between:

The Competition Commission

Applicant

And

Alcon Marepha (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member)
F Tregenna (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 23 January 2019

Date of last submission : 5 February 2019

Decided on : 6 February 2019

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Alcon Marepha (Pty) Ltd annexed hereto marked "Annexure A", as amended by the addendum hereto attached as "Annexure B".

**Presiding Member
Ms Yasmin Carrim**

6 February 2019
Date

Concurring: Prof. Fiona Tregenna and Mrs Medi Mokuena

"ANNEXURE A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT Case No: CR125 Nov 14/SA 8906E8

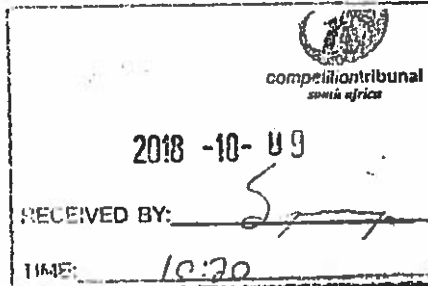
CC Case no. 2010 Mar 4981

In the matter between:

THE COMPETITION COMMISSION

And

ALCON MAREPHA PROPRIETARY LIMITED



Applicant

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND ALCON MAREPHA PROPRIETARY LIMITED 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 Alcon Marepha Proprietary Limited ("Alcon") 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 **"Alcon"** means Alcon Marepha Proprietary Limited, registration number 2001/020977/07;
- 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 Alcon;
- 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 Alcon;
- 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, Tullisa, Alvern and SOEW for possible contravention of section 4(1)(b) of the Act in the market for the supply of power cables.
- 2.2 The evidence 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, CBI-Electric: African Cables (Pty) Ltd ("African Cables"), Kewberg Cables and Braids (Pty) Ltd, Malesela Taihan Electric Cable (Pty) Ltd ("M-Tec"), 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 power 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 Alcon, Aberdare, African Cables and M-Tec tendered collusively in respect of tenders issued by Eskom by allocating specific product lines and agreeing on the price to be charged per product line. Alcon, Aberdare, African Cables and M-Tec implemented and sustained their agreement by providing each other with cover prices. The arrangement

was longstanding and was in place from at least 1994 until September 2008. The aforementioned conduct is in contravention of section 4(1)(b)(i)(ii) and (iii).

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

3 Admission

Alcon admits that it entered into the agreements detailed in paragraph 2.5.1 to 2.5.2 above with its competitors, Aberdare, African Cables and M-Tec in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

4 Agreement concerning future conduct

Alcon agrees to:

- 4.1 fully cooperate with the Commission in relation to the prosecution of the complaint. Without limiting the generality of the foregoing, Alcon 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, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions contained in this consent agreement.
 - 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 Alcon 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 Alcon, such training to be made available to all new employees joining Alcon. Furthermore, Alcon will update such training annually on an ongoing basis.
- 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 Alcon within 60 days from the date of confirmation of this consent agreement by the 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, Alcon accepts that it is liable to pay an administrative penalty.
- 5.2 The parties have agreed that Alcon will pay an administrative penalty in the amount of R1 378 107 69 (One Million, Three Hundred and Seventy Eight Thousand), which amounts to 1.5% of its turnover for its 2010 financial year, ending on 30 June 2010.
- 5.3 This amount does not exceed 10% of Alcon's total annual income in the Republic and its exports from the Republic for its 2017 financial year.

6 Terms of payment

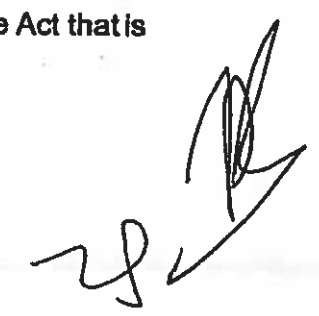
- 6.1 Alcon will pay the amount and interest set out above [in paragraph 5.2] to the Commission in twelve payments which is equivalent to three years, the first such payment of R 114 842 31 within 30 days from the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.2 Alcon will make the payment of R 114 842 31, on a quarterly basis until the fourth payment or instalment;
- 6.3 Alcon will make the fifth payment of R 128 134 01 which is inclusive of 10% per annum interest until the last final payment or instalment.
- 6.4 The penalty will 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: 2010MAR4981ALCON

- 6.5 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.

7 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 Alcon relating to the alleged contraventions of the Act that is the subject of this consent agreement.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.

Dated and signed at Birch Acres on the 18th day of September
2018

For Alcon Proprietary Limited

Edwin Phala 
[FILL IN NAME AND POSITION OF PERSON THAT IS SIGNING]

Dated and signed at Pretoria on the 3rd day of October
2018

For the Commission:


Tembinkosi Bonakele
Commissioner

"ANNEXURE B"

ADDENDUM TO THE CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND ALCON MAREPHA PROPRIETARY LIMITED

6. Terms of Payment

- 6.1 Alcon will pay the capital amount of the administrative penalty and interest accruing thereto set out in paragraph 5.2 to the Commission in twelve instalmentsover a period of 36 (thirty six) months..
- 6.2 For the first 12 (twelve) months, Alcon will pay the capital amount of the administrative penalty in 4 (four) equal instalments R 114 842 31 (**One Hundred and Fourteen Thousand Eight Hundred and Forty Two Rand Thirty One Cents**). The first such instalment shall be payable within 30 days from the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.2 Alcon will pay the 3 (three) subsequent instalments of R 114 842 31 (**One Hundred and Fourteen Thousand Eight Hundred and Forty Two Rand Thirty One Cents**), on a quarterly basis from the date of payment of the first instalment;
- 6.3 For the remaining 24 (twenty four) months, Alcon will pay the capital amount of the administrative penalty including interest that would have accrued thereto in 8 (eight) equal instalment of R 128 134 01 (**One Hundred and Twenty Eight Thousand One Hundred and Thirty Four Rand One Cent**), on a quarterly basis from the last payment of the initial 4 (four) instalments. (Payment schedule attached "A")
- 6.4 The penalty will 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: 2010MAR4981ALCON

A


Payment Schedule

PV 1 378 107,69
 N 3,00
 Interest 0
 fv 0
 pmt -R114 842,31 *per quarter in the 1st year*

PV R918 738,46
 N 2
 Interest 10%
 fv 0
 pmt -R128 134,01 *Per quarter in the remaining two years*

Amount 918 738,46
 Period 8
 Rate 0,03
 Payment R128 134,01

Quarter	Beginning	Payment	Interest	Principal	End
1	1 378 107,69	114 842,31	-	114 842,31	1 263 265,38
2	1 263 265,38	114 842,31	-	114 842,31	1 148 423,08
3	1 148 423,08	114 842,31	-	114 842,31	1 033 580,77
4	1 033 580,77	114 842,31	-	114 842,31	918 738,46
5	918 738,46	128 134,01	22 968,46	105 165,55	813 572,91
6	813 572,91	128 134,01	20 339,32	107 794,69	705 778,22
7	705 778,22	128 134,01	17 644,46	110 489,56	595 288,66
8	595 288,66	128 134,01	14 882,22	113 251,80	482 036,86
9	482 036,86	128 134,01	12 050,92	116 083,09	365 953,76
10	365 953,76	128 134,01	9 148,84	118 985,17	246 968,59
11	246 968,59	128 134,01	6 174,21	121 959,80	125 008,79
12	125 008,79	128 134,01	3 125,22	125 008,79	-


 18/09/2018