**OUTCOME OF TRIBUNAL ROLL FOR WEDNESDAY, 16 NOVEMBER 2016**

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| Type of matter | Parties involved | Competition Commission’s recommendation to Tribunal |
| Settlement agreement | Competition Commission and Arcelormittal South Africa Ltd | Settlement agreement |
| Variation order | Anheuser-Busch InBev SA/NV And Competition Commission; The Minister of Economic Development; Distell Group Ltd; Heineken South Africa (Pty) Ltd; Food and Allied Workers Union; Re Ja Rotlhe Taverners Association; South African SMME Forum; Agency for New Agenda and Black Business Forum; Grain SA | Variation order |
| Large merger | Unitrans Automotive No 1 And Koos Nel Group Comprising Nel Auto (Pty) Ltd | Approval without conditions |
| Large merger | FPT Group (Pty) Ltd and Tradekor Holdings (Pty) Ltd | Approval without conditions |
| Large merger | Redefine Properties Ltd And Pivotal Fund Ltd | Approval without conditions |
| Large merger | EOH Intelligent Infrastructure (Pty) Ltd And PIA Solar SA (Pty) Ltd | Approval without conditions |

**Variation to Acelormittal settlement agreement approved**

The Tribunal has confirmed the settlement agreement between the Competition Commission and ArcelorMittal South Africa Ltd (“ArcelorMittal”), but has made two amendments.

The Competition Commission reached a settlement agreement with ArcelorMittal South Africa Limited on 22 August 2016. In terms of the agreement, AcelorMittal admitted having been involved in the long steel and scrap metal cartels, and agreed to pay an administrative penalty of R1.5 billion.

AcelorMittal agreed to remedies relating to complaints against its pricing conduct without admitting that its pricing conduct constituted a contravention of the Competition Act. In this regard, AcelorMittal has undertaken that for a period of five years it will limit its EBIT (earnings before interest and tax) margin to a cap of 10% for flat steel products sold in South Africa.  AcelorMittal also committed to a R4.6 billion capital expenditure over the next five years. The Commission, in turn, agreed that the settlement would cover all pending cases against AcelorMittal, including those that were still under investigation.

In the agreement confirmed on Wednesday, 16 November the Tribunal removed a clause that contained as a condition that AcelorMittal be entitled to exceed the EBIT margin percentage cap of 10% up to a maximum EBIT margin percentage gap of 15% if the Raw Materials Basket has been or is forecast (based on AcelorMittal’s forecasts) to be exceeded USD350 per ton for any three months.

A new clause was also inserted that says: “AMSA undertakes to engage in any future exchange with government departments and interested stakeholders regarding the promotion of steel imports, including risks of anti-dumping duties on such exports, in an open and transparent manner, subject always to compliance with the Competition Act”.

In addition, AcelorMittal committed to a R4.6 billion capital expenditure over the next five years. The Commission, in turn, agreed that the settlement would cover all pending cases against AcelorMittal, including those that were still under investigation.

 Cases in the amended settlement agreement are:

     The flat steel complaint – in which AcelorMittal and Highveld reached an understanding on volume of exported goods to certain countries, dividing export sales volumes.

     The long steel complaint – found AcelorMittal had exchanged information regarding selling prices and discount prices, reached agreements on pricing for certain products and divided up markets.

      Scrap metal complaint – AcelorMittal, along with Columbus stainless steel, Cape Gate and SCAW South Africa had acted as a buyers’ cartel, collaborated and acted in tandem with upstream cartel of scrap merchants, among other contraventions.

     Excessive pricing case – the Commission has yet to make a finding on the matter.

The settlement excludes complaints submitted to the Competition Commission by Barnes and Dunrose. Barnes and Dunrose said on Wednesday 16 November that it reserves its right to bring a review application of the agreement.

**Variation to order involving merger Anheuser Busch InBev SA/NV and SAB Miller Plc approved**

**(Note: a copy of the original agreement can be found on** [**www.comptrib.co.za**](http://www.comptrib.co.za)**)**

The Tribunal has approved amendments to certain clauses of the Anheuser-Busch InBev and SABMiller conditions to the merger. None of the parties listed as respondents in the main hearing (listed in table above) have objected to the variation.

The amendments include 17.1.1, which deals with the agricultural development funds. It originally said that AB InBev must “develop the capacity of 800 new emerging Farmers, and further develop the capacity of 20 new Commercial Farmers to “add” 450000 tonnes of barley to be malted”.

The paragraph should read that “barley production would be increased to a “total” of 450000”.

In paragraph 1.2.34, which outlines what input products are required, only beer was mentioned. The conditions have now been amended to include reference to beer and cider.

The other corrections were not substantive in nature.

**Proposed merger between Unitrans Automotive and The Koos Nel Group approved**

The Tribunal has approved the merger of Unitrans Automotive and Koos Nel Group.

Unitrans Automotive represents Pepkor Trading’s automotive retail activities and its key product and service offerings are the sale of new and pre-owned passenger and light commercial vehicles, parts and accessories and after-market services.

The Koos Nel Group operates three motor vehicle dealerships in Mokopane, in the Limpopo Province and sells new, pre-owned and light commercial vehicles. It also has a service offering including the sale of parts, after-sale maintenance services and intermediary services for vehicle finance sales.

**FPT Group and Tradekor Holdings merger to go ahead**

The proposed merger between FPT Group, part of the Capespan Group, and logistical services company Tradekor has been approved by the Tribunal without conditions.

FPT is wholly-owned by Capespan which is turn ultimately controlled by Zeder Investments Limited. FPT is involved in the sale and marketing of fresh fruit produce to the international market, as well as logistical services. Its services are broken down into: the terminal operations business of FPT, the fruit marketing business of Capespan and the farm businesses of Capespan.

Tradekor provides logistical services in the commodities industry, specialising in trading, in-land warehousing, containerising and shipping of manganese, chrome and iron ore.

**Redefine Properties and Pivotal Fund merger approved**

Tribunal has approved, without conditions, the large merger whereby Redefine will acquire Pivotal.

The Redefine Group is a property investment group which owns a portfolio of office, residential (student accommodation), retail, hospital, gymnasium, hotel and industrial properties located throughout South Africa.

Pivotal is a property investment and development fund with a portfolio comprising retail, office and industrial properties and vacant land located in the Gauteng, Western Cape and Free State Provinces.

**EOH Intelligent Infrastructure and PIA Solar South Africa merger approved**

Competition Tribunal has approved the merger of EOH and target firm. The merger will give EOH Intelligent Infrastructure control of PIA Solar South Africa.

EOH is an investment and management company which engages in developing business and IT strategies. It provides services in consulting, technology and outsourcing services.

PIA manufactures, supplies and installs photovoltaic (PV) substructures used to fix solar panels on surfaces such as roofs, building facades, or the ground.

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