

competitiontribunal
SOUTH AFRICA

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR295Feb18/SA037May19

In the matter between:

The Competition Commission

Applicant

And

D&D Roof Insulation CC

Respondent

Panel : N Manoim (Presiding Member)
: M Mazwai (Tribunal Member)
: M Mokuena (Tribunal Member)

Heard on : 12 June 2019

Decided on : 12 June 2019

CONSENT AGREEMENT

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and D&D Roof Insulation CC annexed hereto marked "A".



**Presiding Member
Mr Norman Manoim**

**12 June 2019
Date**

Concurring: Ms Mondo Mazwai and Mrs Medi Mokuena

- 1.2. "**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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.3. "**Commissioner**" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4. "**Complaint**" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2016Sep0484;
- 1.5. "**Consent Agreement**" means this agreement duly signed and concluded between the Commission and D&D Roof Insulation CC;
- 1.6. "**D&D**" means D&D Roof Insulation CC, a close corporation incorporated in accordance with the company laws of the Republic of South Africa, with its principal place of business situated at 299 Henning Street, Silvertondale, Pretoria, South Africa;
- 1.7. "**Glasswool**" means an insulating material made from fibres of glass arranged using a binder into a texture similar to wool. It is most commonly known and used for insulation in ceilings of residential buildings;
- 1.8. "**Isover**" means Isover South Africa a division of Saint- Gobain Construction Products South Africa (Pty) Limited;
- 1.9. "**Parties**" means the Commission and D&D Roof Insulations CC;
- 1.10. "**Respondents**" means Saint-Gobain Construction Products South Africa (Pty) Limited and D&D Roof Insulation CC being respondents in the complaint referral under Competition Tribunal case number CR295FEB18;
- 1.11. "**Saint-Gobain**" means Saint-Gobain Construction Products South Africa (Pty) Ltd, a company incorporated in accordance with the laws of the of the Republic of South Africa, with its principal place of business situated at 1 Shale Road, N1 Business Park, Kosmosdal, Centurion, Pretoria;

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1.12. "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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. COMMISSION'S INVESTIGATION AND FINDINGS

2.1. On 19 September 2016, the Commissioner initiated a complaint against Saint-Gobain and D&D for price fixing and market division in contravention of section 4(1)(b)(i) and (ii) of the Act. The case was investigated under case number 2016Sep0480.

2.2. The investigation revealed the following:

2.2.1. On 01 April 2005, the Respondents entered into a Memorandum of Understanding ("MOU") in terms of which Isover, a division Saint-Gobain agreed, to manufacture a brand of finished glasswool for D&D. Saint-Gobain in addition to the manufacture of its own brands of finished glasswool products,

2.2.2. The Respondents recorded as one of the objectives of the MOU that "the products are to grow the glasswool insulation market and are not intended to displace one glasswool with another". In order to ensure that their respective products do not displace one another as per the MOU, the investigation found that the respondents further undertook the following:

2.2.2.1. The Respondents agreed that Saint-Gobain will give D&D a 5% discount off the wholesale price that Saint Gobain charges for its brand of finished glasswool. The discount was applicable only for the first 10 000 purchased by D&D from Saint-Gobain. This was intended to ensure that D&D's brand does not have a price advantage over Saint Gobain's brand beyond the 10 000 m² of monthly purchases.

2.2.2.2. On or about 2014, the Respondents reached an agreement



that D&D would stop importing base material for conversion into finished glasswool independently of Saint-Gobain. In terms of this agreement D&D was required to source finished glasswool products from Saint-Gobain. This agreement was entered into in order to ensure that all D&D finished glasswool products are subject to the Memorandum of Understanding and to the requirement that Saint-Gobain and D&D brands of finished glasswool products do not displace one another.

2.2.2.3. The Respondents discussed and agreed on prices charged to customers in respect of their respective brands of finished glasswool products to ensure that they do not compete in terms of price when supplying their customers.

2.2.2.4. The Respondents agreed that in the event that any of their respective brands has been specified by a customer neither of them will attempt to change the specifications to its own brand.

2.2.3. This conduct contravened sections 4(1)(b)(i) and (ii) of the Act.


3. ADMISSION

3.1. D&D admits that it engaged in prohibited practices in contravention of section 4(1)(b)(i) and (ii) of the Act, from or about April 2005 until no later than June 2014 as described in paragraph 2 above.

4. AGREEMENT REGARDING FUTURE CONDUCT

4.1. D&D agrees to:

4.1.1. Prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within thirty (30) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

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4.1.2. Refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future;

4.1.3. 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;

4.1.4. Submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of this Consent Agreement as an order by the Tribunal; and

4.1.5. Undertakes henceforth to engage in competitive practices.

5. ADMINISTRATIVE PENALTY

5.1. D&D agrees that it is liable to pay an administrative penalty in the amount of R 1,670,379.00 (**One Million Six Hundred and Seventy Thousand Three Hundred and Seventy-Nine Rand**). This amount does not exceed 10% of D&D's annual turnover for the financial year ended February 2018.

5.2. D&D will pay the administrative penalty set out in paragraph 6.1 above to the Commission over a period of three years, in 3 equal instalments of R 556 793.00 (**Five Hundred and Fifty-Six Thousand, Seven Hundred and Ninety-three Rands**).

5.2.1. The first instalment is payable on or before 30 June 2019;

5.2.2. The second instalment on or before 30 June 2020 and;

5.2.3. The last instalment on or before 30 June 2021.

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5.3. No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the Tribunal. Thereafter, interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended. At the time of the signature of this Consent Agreement, the applicable interest rate is 10,5%.

5.4. 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:	4087641778
Account type:	Current Account
Branch Code:	632005
Reference:	Case Number: 2016Sep0480/D&D Roof Insulations CC

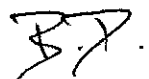
5.5. The penalty will then be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

6. MONITORING

6.1. All reports in relation to conditions set out in this agreement, including but not limited to compliance programmes, proof of payment(s) etc., shall be submitted to the Commission at CartelSettlements@compcom.co.za

7. FULL AND FINAL SETTLEMENT

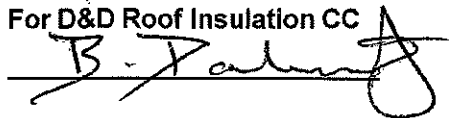
7.1. This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. 2016Sep0480 and concludes all proceedings between the Commission and D&D relating to the conduct that is the subject of the



Commission's investigation under Case No. 2016Sep0480 as described in paragraph 2 above.

Dated and signed at Pretoria on the 10th day of April 2019

For D&D Roof Insulation CC



Name in Full: Bryn Patrick Doherty
Position: Managing Member

For the Commission

Dated and signed at ISITHWANE on the 6th day of MAY 2019



Tembinkosi Bonakele
Commissioner