

**COMPETITION TRIBUNAL**  
**REPUBLIC OF SOUTH AFRICA**

Case No: 33/CR/Jun10

**In the matter between:**

The Competition Commission

Applicant

and

Power Metals Recyclers (Pty) Ltd

Respondent

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Panel : N Manoim (Presiding Member), A Wessels (Tribunal Member), and M Madlanga (Tribunal Member)

Heard on : 14 July 2010

Decided on : 14 July 2010

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**Order**

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The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".



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N Manoim

A Wessels and M Madlanga concurring

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: 37/CR/Apr08

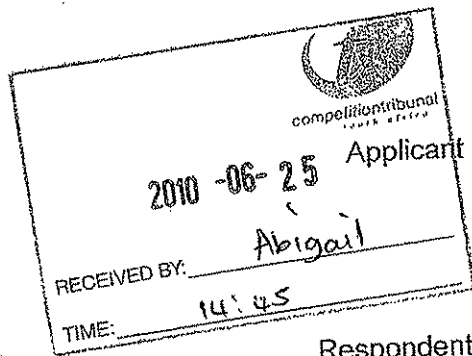
CC Case No: 2006Aug2447 and Case No: 2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

And

POWER METAL RECYCLERS (PTY) LTD



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CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND  
POWER METAL RECYCLERS (PTY) LTD IN TERMS OF SECTION 49D READ WITH  
SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED

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The Competition Commission of South Africa and Power Metal Recyclers (Pty) Ltd hereby agree that application be made to the Competition Tribunal for 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, on the terms set out below.

1. Definitions

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

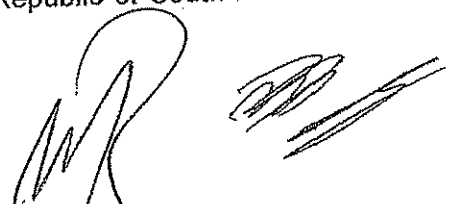
- 1.1. "Abeddac" refers to Abeddac Metals (Pty) Ltd, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa with its principal place of business at 15<sup>th</sup> Avenue, Benoni Gauteng and carrying on business as a dealer in ferrous scrap;
- 1.2. "the Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.3. "Amalgamated Metals" means Amalgamated Metals Recycling cc, a close corporation duly incorporated and registered in terms of the close corporation laws of the Republic of South Africa, with its principal place of business at 100 4<sup>th</sup> Street Booysens Reserve Johannesburg and carrying on business as a scrap dealer;
- 1.4. "Ben Jacobs" means Ben Jacobs Metals (Pty) Limited, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa with its principal place of business at 25 Plantation Road, Johannesburg. Where conduct is alleged to involve Ben Jacobs or Power Metals it must be read to involve either of them in the alternative. Ben Jacobs is a shareholder of Power Metals;
- 1.5. "Cisco" refers to Cape Town Iron and Steel Works (Pty) Limited, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its principal place of business at Fabriek Street, Kuilsrivier, Cape Town. Cisco is involved in the business of producing steel products from processed ferrous scrap which it requires as a raw material;
- 1.6. "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 1<sup>st</sup> Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.7. "Commissioner" means the Commissioner of the Competition
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Commission, appointed in terms of section 22 of the Competition Act;

- 1.8. "Complaints" means the complaint initiated by the Commissioner of the Commission in terms of section 49B of the Act under case number 2006Aug2447 (as extended by the Commission on 6 July 2007) and 2007Aug3121 and any other complaints of prohibited conduct arising from the conduct described in the Report or this Consent Order Agreement;
- 1.9. "Consent Agreement" means this agreement duly signed and concluded between the parties to the agreement;
- 1.10. "DTI" means the Department of Trade and Industry;
- 1.11. "Ferrous Scrap Metal" refers to metals that include iron and all iron derivatives;
- 1.12. "Non-Ferrous Scrap Metal" refers to metals or alloys that are free of iron;
- 1.13. "Inland area" refers to a territory defined as the provinces of Gauteng, Free State; North West; Northern Province; Mpumalanga and KwaZulu-Natal but excluding those parts of the province south of Newcastle, the states of Lesotho and Swaziland and all African states north of South Africa's boundaries, excluding Namibia;
- 1.14. "NSM" refers to National Scrap Metal (Cape Town) (Pty) Ltd, a company duly incorporated and registered in terms of the company laws of South Africa, with its principal place of business at Fabriek Street, Kuilsrivier, Cape Town. NSM is a company with limited liability, in which Reclam has 40% shareholding. NSM is engaged in the business of collecting and processing all types of scrap metal including ferrous and non-ferrous scrap;
- 1.15. "Parties to the agreement" refers to the Commission and Power Metals;

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- 1.16. "Reclam" means The New Reclamation Group (Pty) Limited, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its principal place of business at 263 Oxford Road, Illovo, Johannesburg. Reclam is engaged in the business of collecting and processing of scrap metal;
- 1.17. "Report" means the report on the investigation conducted by Reclam into its scrap metal activities, dated 31 January 2008;
- 1.18. "Respondent" or "Power Metals" means Power Metal Recyclers (Pty) Ltd;
- 1.19. "SAM" means SA Metal & Machinery Company (Pty) Ltd, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at 14 Christian Avenue, Epping Industria, and Cape Town. SAM is involved in the business of collecting ferrous and non-ferrous scrap metal for its own smelting purposes, for the sale to local smelters and for export markets;
- 1.20. "Scrap" means non ferrous scrap metal used as an input in the manufacture of steel and steel products;
- 1.21. "suppliers" means suppliers of scrap metal to consumers of scrap metal such as mills and foundries;
- 1.22. "Superyard" means a large yard capable of handling substantial volumes of scrap;
- 1.23. "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 3<sup>rd</sup> Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.24. "Universal" refers to Universal Recycling (Pty) Limited, a company duly registered in terms of the company laws of the Republic of South Africa

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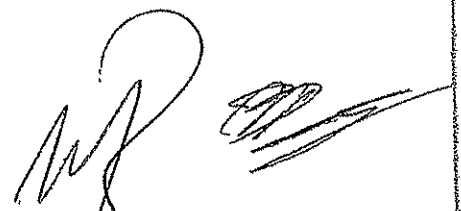
with its principal place of business at 4 Bompas Road, Dunkeld West Johannesburg. Universal is involved in the business of processing, trading and transportation of ferrous and non ferrous scrap metal.

## 2. The Complaints and the Commission's Investigation

- 2.1. During August 2006, the Commissioner initiated a complaint under Case number 2006Aug2447 in respect of alleged prohibited practices in contravention of sections 4 and 5 of the Act, against a number of scrap processors and merchants including 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, constituted price fixing, market allocation and exclusive dealing in contravention of section 4(1) (b) (i) and (ii) and 5(1) of the Act respectively in relation to ferrous and non- ferrous scrap metal.

### *Extension of the first complaint*

- 2.3. 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 No 2006Aug2447 to include collusive tendering in contravention of section 4(1)(b)(iii) against Reclam, NSM, SAM, LO Rall Scrap Dealers cc, Universal and Fine Trading cc.
- 2.4. On 20 July 2007, the Commission obtained search warrants and conducted search and seizure operations at the premises of Reclam in Johannesburg, Port Elizabeth and Durban. Soon thereafter, the

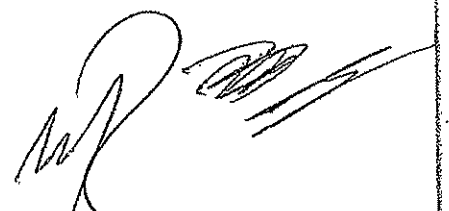
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Commission received information that Reclam; Abeddac Metals (Pty) Ltd; Amalgamated Metals Recycling; Ben Jacobs; Power Metals, SAM and Universal were engaged in price fixing and collusive tendering in respect of various types of non-ferrous scrap metal. The information showed that Reclam had sent an email to its competitors confirming that all of them agreed to maximum buying levels for millberry, berry, birch/cliff, heavy brass, Al cast and old rolled, all of which are different types of non-ferrous scrap.

2.5. On 8 August 2007 the Commission initiated another complaint (under case number 2007AUG3121) against the respondents referred to in paragraph 2.4 above. This complaint was initiated because the Commission had established that certain respondents and other firms were likely involved in specific contraventions of the Competition Act, which were not identified at the time of the initial initiation of the complaint. Based on evidence before the Commission, the Commission had reason to believe that Reclam; Abeddac Metals (Pty) Ltd; Amalgamated Metals Recycling; Ben Jacobs; Power Metals, SAM and Universal were engaged in price fixing and collusive tendering in contravention of sections 4(1) (b) (i) and 4(1) (b) (iii) of the Competition Act as amended in that these companies engaged in the following conduct:

- Agreeing on prices ("maximum buying levels") under which they will buy various types of scrap;
- Agreeing to fix maximum buying levels of various types of scrap metal/steel sold at auctions or in the open market.

2.6. On 22 October 2007, Reclam approached the Commission with a view of settling the above matters. Pursuant to a process of consultation with the Commission on 01 February 2008, Reclam submitted a report, which report was intended to deal with the subject matter of the complaints. On 4 April 2008, Reclam and the Commission concluded a settlement agreement which settled, as between them, the conduct which formed the



subject matter of the complaints and the conduct described above. In terms of the settlement agreement Reclam agreed that it will assist the Commission in pursuing the case against all the other respondents mentioned above.

- 2.7. The settlement agreement between Reclam and the Commission was subsequently confirmed by the Competition Tribunal on 07 May 2008.

### 3. The Commission's findings

- 3.1. The Commission found that in 2003 Power Metals and its competitors Reclam; Abbedac; Amalgamated Metals; SAM and Universal, who are suppliers and processors of non-ferrous scrap in the inland area, were involved in contraventions of section 4(1)(b)(i) in that they:

3.1.1. held numerous discussions, including discussions about the prices at which non-ferrous scrap should be sourced. For example, a list price was issued in late 2003 in respect of Gauteng buying prices. This was referred to as the "Gauteng price arrangement" or "JHB Pricing" or JHB NF Prices";

3.1.2. appointed a selling committee, whose responsibility was to set prices at which Greystone, a joint venture to be set up by the parties, was willing to pay ("purchase prices") to the shareholders for the various classes of non-ferrous scrap sold by the shareholders to Greystone. The selling committee also determined the prices at which various classes of non-ferrous scrap would from time to time be sold;

3.1.3. agreed to establish a non-ferrous Superyard and, in order to do so, formed a joint venture (Greystone). The sole business of Greystone





was the buying, selling, transporting and processing of non-ferrous scrap, including stainless steel and chrome steel scrap.

- 3.2. Although the shareholders of Greystone dissolved the joint venture in June 2004, the Commission's investigation found that the members continued to discuss buying levels on an informal basis until at least 29 May 2007.

#### 4. Admission of Liability

Power Metals admits that it has contravened section 4(1)(b)(i) of the Act in that it agreed with its competitors to fix prices in relation to certain non ferrous metals, namely Milberry, Berry, Birchcliff and Honey which are copper and brass products.

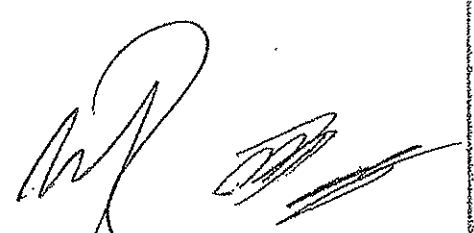
#### 5. Future Conduct

- 5.1. Power Metals confirms that the conduct under investigation has already ceased and it undertakes:

5.1.1. to refrain from engaging in the fixing of any trading condition in contravention of section 4(1)(b)(i);

5.1.2. not to enforce any of the restrictive clauses of the agreement or require any of the parties to abide by the aforesaid;

5.1.3. develop and implement a compliance programme, with corporate governance, designed to ensure that all its employees are aware of the provisions of the Act and do not contravene them;

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5.1.4. submit a copy of the compliance programme outlined above to the Commission within 60 days of the date of confirmation of this Agreement as an order of the Tribunal; and

5.1.5. Co-operate with the Commission in its ongoing investigation of the scrap metal sector and any subsequent prosecutions of parties to the agreements and arrangements which are the subject of this agreement. This co-operation includes and is not limited to the provision of evidence, documentary and oral pertaining to the contraventions detailed in this consent agreement and the provision of witnesses to testify to this conduct in proceedings before the Tribunal.

## **6. Administrative Penalty**

6.1. In terms of section 58(1) (a) (iii), and 59(2) and (3) of the Act, Power Metals is liable to pay an administrative penalty.

6.2. The parties have agreed that Power Metals should pay an administrative penalty in the amount of R12 773 587.55, being 5% of Power Metal's total annual turnover for the year ended February 2006.

6.3. The penalty amount will be paid by Power Metals within three months of the date of confirmation of this Settlement Agreement as an order of the Tribunal.

6.4. The Commission will pay these sums into the National Revenue Fund in terms of Section 59(4) of the Act.

## **7. Full and Final Settlement**

This agreement, upon confirmation as a consent order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the

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Commission and Power Metals and Ben Jacobs relating to any alleged contraventions by Power Metals and/or Ben Jacobs of the Act that are the subject of the Commission's investigations under case numbers 2006Aug2447 and 2007Aug3121.

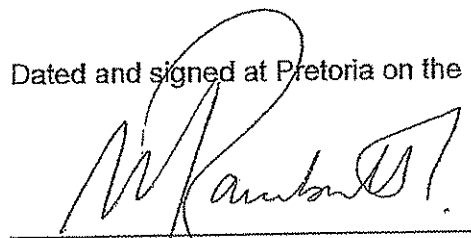
Dated and signed at GERMISTON on the 2 day of JUNE 2010



Chief Executive Officer

Power Metals (Pty) Ltd

Dated and signed at Pretoria on the 17 day of JUNE 2010



Mr Shan Ramburuth

Commissioner: Competition Commission

