

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: 60/LM/Jun12
(015172)

In the matter between:

**Industrial Development Corporation
of South Africa Limited**

Primary Acquiring Firm

and

**Scaw South Africa (Pty) Ltd and
Consolidated Wire Industries (Pty) Ltd**

Primary Target Firms

Panel : Y Carrim (Presiding Member)
A Wessels (Tribunal Member)
A Ndoni (Tribunal Member)


Heard on : 01 and 02 October 2012

Order date : 09 October 2012

ORDER

Further to the recommendation of the Competition Commission in terms of section 14A(1)(b) of the Competition Act 89 of 1998, as amended ("the Act"), the Competition Tribunal orders that –

1. The merger between Industrial Development Corporation of South Africa Limited and the primary acquiring firms, namely Scaw South Africa (Pty) Ltd and Consolidated Wire Industries (Pty) Ltd be approved in terms of section 16(2)(b) of the Act subject to the conditions in **Annexure A**; and
2. A Merger Clearance Certificate be issued in terms of Competition Tribunal Rule 35(5)(a).


Presiding Member

Y Carrim

Concurring: A Wessels and A Ndoni

ANNEXURE A

Proposed merger involving the Industrial Development Corporation of South Africa Limited and the primary target firms, namely Scaw South Africa (Pty) Ltd and Consolidated Wire Industries (Pty) Ltd

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CONDITIONS

1. DEFINITIONS

The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding means –

- 1.1. "AMSA" means ArcelorMittal South Africa;
- 1.2. "the Commission" means the Competition Commission of South Africa;
- 1.3. "Conditions" means these conditions;
- 1.4. "CWI" means Consolidated Wire Industries (Pty) Ltd;
- 1.5. "IDC" means the Industrial Development Corporation of South Africa Limited;
- 1.6. "Merger" means the acquisition of control over Scaw SA and CWI by the IDC;
- 1.7. "Merging Parties" means the IDC, Scaw SA and CWI;
- 1.8. "Scaw SA" means Scaw South Africa (Pty) Ltd;

2. CONDITIONS TO THE APPROVAL OF THE MERGER

- 2.1. The IDC shall not appoint the same person(s) to the Board of Directors of Scaw SA/ CWI and AMSA for as long as the IDC has a shareholding in AMSA.
- 2.2. The IDC shall from the date of the order of the Competition Tribunal ("the Order"), as confirmed by its legal representatives at the hearing of the matter, ensure that the sharing of competitively sensitive non-public information in respect of Scaw SA and AMSA does not take place between the management teams responsible for such interests within the IDC. Competitively sensitive non-public information shall include, but not be limited to, any and all such information relating to:
 - 2.2.1. Pricing – including, but not limited to, pricing of specific products, prices/ discounts/ rebates offered to specific clients and planned reductions or increases;
 - 2.2.2. Margin information by product or client;
 - 2.2.3. Cost information for particular products;
 - 2.2.4. Information on specific clients and client strategy, including information with respect to the sales volumes of clients;
 - 2.2.5. Marketing strategies;
 - 2.2.6. Budgets and business plans; and
 - 2.2.7. Agreements and other (non-standard) terms and conditions relating to the supply and distribution of steel products.
- 2.3. As soon as possible after the date of the Order and within 6 (six) months of the date of the Order, the IDC shall develop and adopt/implement a policy to ensure that the sharing of competitively sensitive non-public information in respect of Scaw SA and AMSA does not take place between the management teams responsible for such interests within the IDC as set out in condition 2.2 above. The policy shall be implemented for as long as the IDC has a shareholding in AMSA and shall be submitted to

and agreed with the Commission prior to its implementation as provided in paragraph 3.1 below.

3. MONITORING OF THE CONDITIONS

3.1. With respect to the contained policy referred to in 2.3 above –

3.1.1. Not less than 2 (two) months prior to the expiry of the 6 (six) month period referred to in paragraph 2.3, the IDC shall submit a copy of the policy to be adopted to the Commission for its approval. The Commission shall provide the IDC with its written views/recommendations/decision within 20 (twenty) business days of such submission; and

3.1.2. Within 10 (ten) business days upon the approval by the Commission and the adoption/implementation of the policy by the IDC, the IDC shall submit an affidavit by a senior official attesting to the establishment and implementation of the policy described above. The IDC will at the same time, also submit to the Commission a copy of the policy document signed by the management teams responsible for the management of the IDC's interests in both Scaw SA and AMSA respectively, acknowledging their understanding of the provisions of the policy document.

3.2. Should the IDC dispose of its interest in Scaw SA or AMSA, the IDC shall inform the Commission of the disposal within 1 (one) month of concluding the final sale agreement relating thereto and shall submit a signed copy of such final sale agreement to the Commission as proof thereof.

3.3. In addition to the foregoing, should any entity acquire control of Scaw SA, to the extent that it constitutes a notifiable transaction under and in terms of the Competition Act 89 of 1998, the IDC undertakes that such acquisition will be notified to the competition authorities under and in terms of the Competition Act.
