

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 65/CR/Sep09

In the matter between:

The Competition Commission
and

Applicant

Aveng (Africa) Ltd t/a Duraset

Respondent

Panel : A Wessels (Presiding Member), M Mokuena (Tribunal Member), and T Orleyn (Tribunal Member)

Heard on : 25 August 2010

Decided on : 25 August 2010

Order

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



A Wessels
Presiding Member

Concurring: M Mokuena and T Orleyn

"A"

BEFORE THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)


CT CASE NO: 65/CR/SEP09
CC CASE NO: 2009JAN4243

In the matter between:

COMPETITION COMMISSION

and

AVENG (AFRICA) LTD T/A DURASET

 competitiontribunal south africa	
2010 -08- 10	
RECEIVED BY:	<i>M. Comi</i>
TIME:	<i>13H45</i>

Applicant

Respondent


SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
AVENG (AFRICA) LTD T/A DURASET IN RESPECT OF CONTRAVENTIONS OF
SECTION 4(1)(b) OF THE COMPETITION ACT NO 89 OF 1998

The Competition Commission and Aveng (Africa) t/a Duraset hereby agree that application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Tribunal in terms of sections 58(1)(a)(iii) and 59(1)(a) of the Competition Act No.89 of 1998, as amended, on the terms set out below:


1. Definitions

In this Settlement Agreement, unless the context indicates otherwise, the following definitions shall apply:

1.1. "the Act" means the Competition Act No. 89 of 1998, as amended;

- 1.2. "**CLP**" means the Corporate Leniency Policy issued by the Commission in terms of the Act to clarify the Commission's policy approach on matters falling within its jurisdiction in terms of the Act;
- 1.3. "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act as a juristic person, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 1.4. "**Commissioner**" means the Commissioner of the Commission appointed in terms of section 22 of the Act;
- 1.5. "**Complaint**" means the complaint initiated by the Commissioner in terms of section 49 B of the Act against RSC, Duraset, DSI and Videx for alleged contravention of section 4(1)(b) of the Act under case number 2009Jan4243;
- 1.6. "**DSI**" means Dywidag-Systems International (Pty) Ltd, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa with registration number: 2000/025943/07, with its principal place of business at 30 North Reef Road, Elandsfontein, Gauteng;
- 1.7. "**Duraset**" means Aveng (Africa) Ltd t/a Duraset a company duly incorporated and registered in terms of the company laws of the
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Republic of South Africa, with its principal place of business at Steeledale House, 670 Power Street, Germiston;

- 1.8. "**Mining roof bolts**" means a mining support product which provides roof and wall support in mines to enhance a mine's structural stability and to reduce the risk of cave-ins or other mine failures;
- 1.8. "**M & R Steel**" means Murray and Roberts Steel (Pty) Ltd a company duly incorporated and registered in terms of the company laws of the Republic of South Africa with registration number: 1995/011191/07, with its principal place of business at 30 Industry Road, Clayville Ext 4, Olifantsfontein (Gauteng);
- 1.9. "**RSC**" means RSC Ekusasa Mining (Pty) Ltd ("RSC"), a company duly incorporated and registered in terms of the laws of the Republic of South Africa, with its principal place of business at 2 Osborn Road, Wadeville, Germiston;
- 1.10. "**Tribunal**" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act as a Tribunal of record, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria;
- 1.11. "**Videx**" means Videx Wire Products (Pty) Ltd ("Videx"), a company duly registered in terms of the company laws of the Republic of South Africa with registration number: 1984/009466/07, with its principal place of business at corner Lantern and Bream Roads, Wadeville, Gauteng;
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- 1.12. "**Settlement Agreement**" means this consent and settlement agreement duly signed and concluded between the Commission and Duraset;

2 Complaint investigation and findings

- 2.1. On 8 September 2008, the Commission granted a Marker to RSC, a subsidiary of M & R Steel, in terms of the Commission's CLP following an application for a Marker made by M & R Steel on behalf of RSC. Subsequently, on 26 September 2008, M & R Steel, acting on behalf of RSC, submitted an application for corporate leniency in terms of the Commission's CLP. In the CLP application, M & R Steel submitted information and documents to the Commission indicating, *inter alia*, that RSC, and its competitors - Duraset, DSI and Videx - held meetings and discussions as a result of which they, *inter alia*, agreed to:

2.1.1. divide the market for mining roof bolts in contravention of section 4(1)(b)(ii) of the Act; and

2.1.2. engage in collusive tendering for tenders for the supply of mining roof bolts in contravention of section 4(1)(b)(iii) of the Act.

- 2.2. As a result of M & R Steel's application for corporate leniency, on 26 January 2009 the Commissioner initiated a complaint in terms of section 49B(1) of the Act. The Commission duly conducted an

investigation into the complaint, as a result of which it found that RSC, Duraset, DSI and Videx had entered into agreements, arrangements and understandings involving:

2.2.1. dividing the market for mining roof bolts in contravention of section 4(1)(b)(ii) of the Act; and

2.2.2. collusive tendering for mining roof bolts tenders in contravention of section 4(1)(b)(iii) of the Act.

3. Settlement discussions

3.1. On 18 September 2008 Duraset applied for a Marker in terms of the Commission's CLP in respect of contravention of section 4(1)(b)(ii) and (iii) of the Act in the market for mining roof bolts, but Duraset's Marker application was not granted by the Commission on account of the fact that RSC was the first company to apply for a Marker.

3.2. Duraset co-operated with the Commission's investigation of the complaint by, *inter alia*, providing additional information including extracts of diary entries; a spreadsheet reflecting allocation of mining roof bolts tenders; e-mail communication; details of meetings and facilitated interviews between the Commission and its ex-employees.

3.3. Shortly before the referral of the complaint to the Tribunal, Duraset met with the Commission with a view of settling the matter. As a sequel to this meeting, Duraset made a settlement proposal to the Commission in a letter dated 16 September 2009. Consequently, the Commission

and Duraset engaged in settlement discussions, the outcome of which is this Settlement Agreement.

4. Admissions

4.1. Duraset admits that that it has entered into agreements, arrangements and understandings with RSC, DSI and/or Videx:

4.1.1. dividing the market for mining roof bolts in contravention section 4(1)(b)(ii) of the Act; and

4.1.2. involving collusive tendering for mining roof bolts tenders in contravention of section 4(1)(b)(iii) of the Act.

5. Agreement concerning future conduct

Duraset agrees and undertakes:

5.1. to prepare and circulate a statement summarising the content of this Settlement Agreement to its employees who are managers and to its directors and relevant corporate governance structures within 30 days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;

5.2. refrain from engaging in market allocation and collusive tendering in contravention of sections 4(1)(b)(ii) and (iii) of the Act; and

5.3. continue implementing the compliance programme developed and implemented pursuant to the consent agreement entered into between

the Commission and Aveng (Africa) in relation to its Infraset business unit, under case number 24/CR/Feb09.

6. Co-operation

6.1. Duraset undertakes to co-operate fully with the Commission in its prosecution of the remaining respondents in the complaint referral.


6.2. This co-operation includes, but is not limited to:

6.2.1. providing the Commission with all relevant evidence available to it that might assist the Commission in its prosecution of the remaining respondents in the complaint referral;

6.2.2. ensuring that all Duraset's current employees, and to the extent possible, former employees, who have knowledge of the meetings and discussions between RSC, Duraset, DSI and Videx, referred to above, are available to and co-operate with the Commission, both for purposes of consultation and to give evidence in proceedings before the Tribunal.

7. Administrative penalty

7.1. Duraset is liable for an administrative penalty in terms of sections 58(1)(a)(iii), 59(2) and (3) of the Act in the amount of R 21 900 000. The administrative penalty represents 5% of Duraset's total annual turnover for the financial year ending 2008.

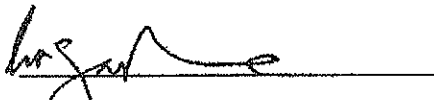


7.2. The administrative penalty will be paid by Duraset to the Commission within ninety (90) days after the date of confirmation of this Settlement Agreement as an order of the Tribunal. The penalty will be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

8. Full and final settlement

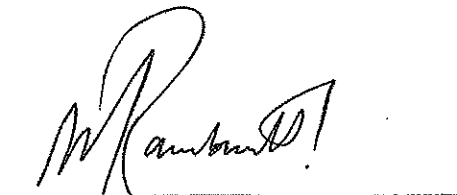
This Settlement Agreement, upon confirmation thereof as a consent order by the Tribunal, concludes all proceedings between the Commission and Duraset in relation to the contravention of section 4(1)(b)(ii) and (iii) of the Act, investigated under the Commission's case number: 2009Jan4243.

DATED at Morningside on this the 4th day of August 2010.



Duly authorised signatory of Duraset

DATED at Pretoria on this the 5th day of August 2010.



Shan Ramburuth

Commissioner, Competition Commission

Tebogo Mputle

From: Tebogo Mputle
Sent: Wednesday, August 25, 2010 3:55 PM
To: 'rraath@werksmans.com'; Nompucuko Nontombana
Cc: Mahashane Shabangu; Lerato Motaung
Subject: Competition Commission v Aveng (Africa) Ltd - 65/CR/Sep09
Attachments: 20100825153548698.tif

Dear all

Please see attached consent order.

Regards

Tebogo Mputle
Registry Administrator
competition tribunal south africa
Tel No: +27 (12) 394 3354
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