COMPETITION TRIBUNAL REPUBLIC OF SOUTH AFRICA

Case No: 84/CR/Dec10

In the matter between:

The Competition Commission	Applicant
and	
Aveng (Africa) Ltd t/a Steeledale	Respondent

Panel	:	N Manoim (Presiding Member), Y Carrim (Tribunal Member) and A Wessels (Tribunal Member)
Heard on	:	06 April 2011
Decided on	:	06 April 2011

ORDER

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

N Manoim

Concurring: Y Carrim and A Wessels

"A"

competitiontribunal
south africa

2011 -02- 28

RECEIVED BY: Malom

TIME: 9H45

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD AT PRETORIA

In re Application for Confirmation of the Settlement Agreement:

COMPETITION COMMISSION Applicant

and

AVENG (AFRICA) LIMITED t/a STEELEDALE Respondent

CC Case number: 2009JAN4247
CT Case number: 84/CR/Dec09

In the matter between:

THE COMPETITION COMMISSION Applicant

and

AVENG (AFRICA) LIMITED trading as STEELEDALE First Respondent
REINFORCING MESH SOLUTIONS (PTY) LTD Second Respondent
VULCANIA REINFORCING (PTY) LIMITED Third Respondent
BRC MESH REINFORCING (PTY) LIMITED Fourth Respondent

CC Case number: 2009Jan4242
CT Case number: 08/CR/Feb11

In the matter between:

COMPETITION COMMISSION Applicant

and

AVENG (AFRICA) LTD t/a STEELEDALE	1st Respondent
REINFORCING MESH SOLUTIONS (PTY) LTD	2nd Respondent
BEST FORCE REINFORCING (PTY) LTD	3rd Respondent
APEX REBAR AND MESH CC	4th Respondent
DYNAMIC (PTY) LTD	5th Respondent
SILVERTON REINFORCING AND WIRE PRODUCTS (PTY) LTD	6th Respondent
WITBANK REINFORCING AND WIRE PRODUCTS (PTY) LTD	7th Respondent
KOEDOESPOORT REINFORCING STEEL (PTY) LTD	8th Respondent
DOMESTIC REINFORCING STEEL (PTY) LTD	9th Respondent
CIRCLE REINFORCING (PTY) LTD	10th Respondent
FOREST WIRE (PTY) LTD	11th Respondent
REINFORCING AND WIRE PRODUCTS (PTY) LTD	12th Respondent
BARKER REINFORCING (PTY) LTD	13th Respondent
HULSE REINFORCING (PTY) LTD	14th Respondent
SIYAZAMA REINFORCING (PTY) LTD	15th Respondent
ALERT STEEL (PTY) LTD	16th Respondent
KOPANONG REINFORCING STEEL CONTRACTORS (PTY) LTD	17th Respondent
MAC-FELL LADUMA REINFORCING (PTY) LTD	18th Respondent
REINFORCING STEEL CONTRACTORS (PTY) LTD	19th Respondent
SOUTH AFRICAN REINFORCING CONCRETE ENGINEERS' ASSOCIATION	20th Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND AVENG (AFRICA) LTD t/a STEELEDALE IN RESPECT OF ALLEGED CONTRAVENTIONS OF SECTION 4(1)(b)(i), (ii) AND (iii) OF THE COMPETITION ACT NO. 89 OF 1998 AS AMENDED

The Competition Commission and Aveng (Africa) Limited t/a Steeledale hereby agree that application be made to the Competition Tribunal to confirm this Settlement Agreement as an order of the Tribunal in terms of section 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 **'Aveng'** means Aveng (Africa) Limited, a company with various business units and divisions within the Aveng group, including Steeledale. Steeledale is a business unit of the Aveng Manufacturing operating group of Aveng.

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 and gazetted in Government Gazette number 31064 of 28 May 2008.

1.3 **'Mesh'** means welded mesh fabric reinforcement products used in some civil engineering structures and which increases the tensile strength of concrete.

1.4 **'Mesh complaint'** means the Commission's complaint initiated under CC case number 2009Jan4247 and referred to the Tribunal under Tribunal case number 84/CR/Dec09.

1.5 **'Parties'** means the Commission and Aveng (Africa) Limited t/a Steeledale.

1.6 **'Rebar'** means steel reinforcing bars often used to reinforce concrete structures.

1.7 **'Rebar complaint'** means the Commission's complaint initiated under case CC case number 2009Jan4242 and referred to the Tribunal under Tribunal case number 08/CR/Feb11.

1.8 **'Settlement Agreement'** means this settlement agreement duly signed and concluded between the Commission and Aveng.

1.9 **'the Act'** means the Competition Act, 89 of 1998, as amended.

1.10 **'the Commission'** means the Applicant, 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 Building C, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria.

1.11 **'the Commissioner'** means the Commissioner of the Commission, appointed in terms of section 22 of the Act.

1.12 **'the 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 Mentjies Street, Sunnyside, Pretoria.

2. THE CONDUCT AND BACKGROUND

MESH REFERRAL

2.1 On 26 January 2009, the Commissioner initiated the mesh complaint in terms of section 49B(1) of the Act, following an application for leniency received from Murray and Roberts Steel (Pty) Ltd ("M&R"), filed on behalf of its subsidiary, BRC Mesh Reinforcing (Pty) Ltd ("BRC"). In the corporate leniency application, M&R submitted information which indicated that as early as 2001 to at least 2008, Reinforcing & Mesh Solution (Pty) Ltd ("RMS"), Aveng (Africa) Limited t/a Steeledale ("Steeledale"), Vulcania Reinforcing ("Vulcania"), and BRC had engaged in the prohibited practices of fixing prices and dividing markets by allocating customers, in contravention of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act.

2.2 The Commission duly conducted an investigation into the mesh complaint, as a result of which it found that Steeledale, RMS, Vulcania and BRC had entered into agreements, arrangements and/or understandings which contravened sections 4(1)(b)(i) and (ii) of the Act. The Commission found that the respondents were members of an industry body, the South African Fabric Reinforcing Association ("SAFRA"), in which suggested price lists (or recommended price lists)

as well as periodic adjustments to these price lists, were calculated and circulated. In addition to the formal meetings at SAFRA, the respondents met informally and had telephonic discussions for purposes of agreeing on the levels of discounts to be offered to different categories of customers in the mesh market. The respondents also discussed how to handle price increases of reinforcing mesh, including the date these increases would be effected on customers, how much prices would increase by and how to collectively implement such price increases.

2.3 The Commission's investigation also revealed that there was a clear understanding between the respondents that certain customers in the mesh market belonged to certain competitors, and that targeting such customers would result in retaliation against the offending cartel member. For this purpose, a customer sheet was prepared by cartel members identifying which customer belonged to which competitor, as well as which customers were 'free game' for all to supply.

REBAR COMPLAINT

2.4 On 26 January 2009, the Commissioner initiated the rebar complaint in terms of section 49B(1) of the Act, following an application made to the Commission on 09 October 2008 by M&R on behalf of its subsidiary Reinforcing Steel Contractors (Pty) Ltd for corporate leniency in terms of the CLP. On 31 January 2011, on the basis of additional information received in the investigation, the Commissioner amended the initiation to include certain additional rebar suppliers. In the corporate leniency application, M & R Steel provided information to the Commission indicating that RSC and its competitors, *inter alia*, Steeledale, Silverton Reinforcing and Wire Products (Pty) Ltd, Reinforcing Mesh Solutions (Pty) Ltd, Koedoespoort Reinforcing Steel (Pty) Ltd, Witbank Reinforcing and Wire Products (Pty) Ltd, Dynamic (Pty) Ltd, and Bestforce Reinforcing (Pty) Ltd, in the market for the supply, cutting, bending and sale of rebar may have entered into agreements, arrangements or understandings which possibly contravened sections 4(1)(b)(i),(ii) and (iii) of the Act.

2.5 The Commission duly conducted an investigation into the rebar complaint, as a result of which it found that two or more of the following firms in various

combinations entered into agreements, arrangements and understandings which contravened sections 4(1)(b)(i), (ii) and (iii) of the Act: Steeledale, RMS, Best Force Reinforcing (Pty) Ltd, Apex Rebar and Mesh CC, Dynamic (Pty) Ltd, Silverton Reinforcing and Wire Products (Pty) Ltd, Witbank Reinforcing and Wire Products (Pty) Ltd, Koedoespoort Reinforcing Steel (Pty) Ltd, Domestic Reinforcing Steel (Pty) Ltd, Circle Reinforcing (Pty) Ltd, Forest Wire (Pty) Ltd, Reinforcing and Wire Products (Pty) Ltd, Barker Reinforcing (Pty) Ltd, Hulse Reinforcing (Pty) Ltd, Siyazama Reinforcing (Pty) Ltd, Alert Steel (Pty) Ltd, Kopanong Reinforcing Steel Contractors (Pty) Ltd, Mac-Fell Laduma Reinforcing (Pty) Ltd, Reinforcing Contractors (Pty) Ltd and the South African Reinforcing Concrete Engineers' Association.

2.6 The Commission found that the cartel conduct of the respondents in the rebar complaint took place in five regions – Gauteng, KwaZulu-Natal, Mpumalanga, Limpopo and Western Cape. The Commission's investigation concluded that although the aforesaid conduct took place in five regions, it was part of a single overall national conduct involving common participants, similar *modus operandi* and the same object of fixing prices, allocating customers, and collusive tendering. There were discussions, meetings, or contacts between the respondents to discuss prices, margins, tenders/projects as well as customers. In most instances, the respondents used an agreed price list to determine prices/cover pricing and an agreed allocation sheet to allocate customers and collude on tenders.

3. SETTLEMENT DISCUSSIONS

3.1 The Commission referred its findings on the mesh complaint on 02 December 2009. Immediately thereafter, Steeledale approached the Commission with the view of settling the mesh complaint referral. At the time of this approach, the Commission was finalising its investigation of the rebar complaint and it invited Steeledale to settle both complaints as both cartels involved Steeledale's operations.

3.2 Steeledale has not disputed that it has contravened the provisions of the Act as alleged by the Commission in its mesh complaint referral affidavit. However,

due to the fact that the Commission had not finalised its investigation of the rebar complaint, Steeledale was not in a position to settle without knowing what the Commission's findings were in that matter. The parties were therefore unable to reach agreement on an appropriate penalty in respect of the mesh complaint.

3.3 In February 2011, the Commission referred its findings in the rebar complaint. Shortly thereafter, Steeledale approached the Commission with a view to settling both the mesh and rebar complaints.

4. ADMISSIONS

Mesh

4.1 Steeledale admits that it entered into agreements, arrangements and understandings with its competitors in the mesh market as detailed in clause 2.2 and 2.3 above in which it:

4.1.1 fixed the price of mesh in contravention of section 4(1)(b)(i) of the Act; and

4.1.2 divided the market by allocating customers in contravention of section 4(1)(b)(ii) of the Act.

Rebar

4.2 Steeledale admits that it entered into agreements, arrangements and understandings with its competitors in the rebar market as detailed in 2.5 and 2.6 in which it:

4.2.1 fixed the price of rebar in contravention of section 4(1)(b)(i) of the Act;

4.2.2 divided the market of rebar by allocation customers in contravention of section 4(1)(b)(ii) of the Act; and

4.2.3 engaged in collusive tendering in respect of rebar tenders in contravention of section 4(1)(b)(iii) of the Act.

5. AGREEMENT CONCERNING FUTURE CONDUCT

5.1 Aveng agrees and undertakes:

5.1.1 to prepare and circulate a statement summarising the content of this Settlement Agreement to its directors and shareholders within 30 days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;

5.1.2 refrain from engaging in any conduct in contravention of sections 4(1)(b)(i), (ii) and (iii) of the Act and to take reasonable steps to make sure that none of its divisions or subsidiaries is engaged in similar conduct or any other conduct that contravenes any of the provisions of chapter 2 of the Act;

5.1.3 commit to continue implementing Aveng Group's compliance programme designed to ensure that its employees, management, directors and/or subsidiaries and divisions do not engage in any conduct which constitutes a prohibited practice in terms of the Act.

6. COOPERATION

6.1 Steeledale undertakes to cooperate fully with the Commission in its prosecution of the remaining respondents in the mesh and rebar complaint referrals, respectively.

6.2 This cooperation 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 mesh and rebar complaint referrals.

6.2.2 ensuring that all Steeledale current employees, and to the extent possible, former employees, who have knowledge of the meetings and discussions between Steeledale and its competitors, referred to above, are available to and cooperate with the Commission, both for purposes of consultation and to give evidence in proceedings before the Tribunal.

6.3 Aveng further commits to cooperate in the Commission's Construction Fast Track Settlement Process.

7. ADMINISTRATIVE PENALTY

7.1 In accordance with the provisions of section 58(1)(a)(iii) as read with sections 59(1)(a) and 59(2), Steeledale is liable for and has agreed to pay an administrative penalty ("penalty") in the sum of **R 128 904 640 (one hundred and twenty eight million nine hundred and four thousand six hundred and forty rands only**) which represents 8% of Steeledale's total annual turnover for the 2008 financial year.

7.2 This payment shall be made into the Commission's bank account, details of which are as follows:

Name:	Competition Commission Fee Account
Bank:	ABSA Bank, Pretoria
Account no.	4050778576
Branch code:	323 345

7.3 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. TERMS OF PAYMENT

8.1 Steeledale will make the payment of the penalty referred to in paragraph 7.1 to the Commission within 24 (twenty-four) months from the date of confirmation of this settlement agreement by the Tribunal, in 4 (four) equal instalments.

8.1.1 The first instalment of R32 226 160 (thirty two million two hundred and twenty six thousand one hundred and sixty rands) shall be payable within seven days from the date of the confirmation of this settlement agreement by the Tribunal;

8.1.2 The second instalment of R32 226 160 (thirty two million two hundred and twenty six thousand one hundred and sixty rands) shall be payable within eight (8) months from the date of payment of the first instalment;

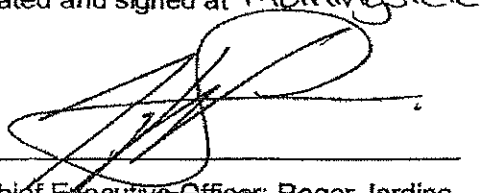
8.1.3 The third instalment of R32 226 160 (thirty two million two hundred and twenty six thousand one hundred and sixty rands) shall be payable within eight (8) months from the date of payment of the second instalment; and

8.1.4 The fourth and final instalment of R32 226 160 (thirty two million two hundred and twenty six thousand one hundred and sixty rands) shall be payable within eight (8) months from the date of payment of the third instalment.

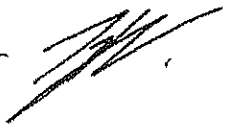
9. FULL AND FINAL SETTLEMENT

9.1 This settlement agreement, upon confirmation thereof as an order of the Tribunal, concludes all proceedings between the Commission and Steeledale relating to the alleged contraventions of the Act by Steeledale that are the subject of the Commission's investigation and referrals under CC Case Number 2009Jan4247/CT Case Number 84/CR/Dec09 and CC case Number 2009Jan4242/CT case Number 08/CR/Feb11.

Dated and signed at Morningside on this the 28th day of February 2011.

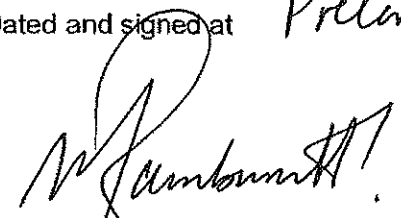


~~Chief Executive Officer: Roger Jardine~~
Financial Director: Kobus Verster
Aveng Group



duly authorised

Dated and signed at Pretoria on this the 28th day of February 2011.



Shan Ramburuth
Commissioner
Competition Commission

Tebogo Mputle

From: Tebogo Mputle
Sent: Wednesday, April 06, 2011 4:31 PM
To: 'bakhem@compcom.co.za'; Desmond Rudman; 'albert.aukema@dlacdh.com'; 'Nicholas Altini'; 'cleo@chrisart.co.za'; 'lmtanga@bowman.co.za'; 'wd1@wdattorneys.co.za'; 'patrick@drsreinforcing.co.za'; 'charmaine@tnk.co.za'; 'pieter@bieldermans.co.za'; 'dvoges@macrobert.co.za'; Nelly Sakata
Cc: Songezo Ralarala; Lerato Motaung
Subject: Competition Commission vs Aveng (Africa) Limited - 84/CR/Dec09 and 08/CR/Feb11
Attachments: 20110406171826960.tif

Dear Sirs

Please see attached the consent order in the above matter and kindly confirm receipt.

Kind Regards

Tebogo Mputle
Registry Administrator
***competition* tribunal** *south africa*
Tel No: +27 (12) 394 3354
Fax No: +27 (12) 394 4354
Mobile: +27 (82) 557 6897
Email: tebogom@comptrib.co.za
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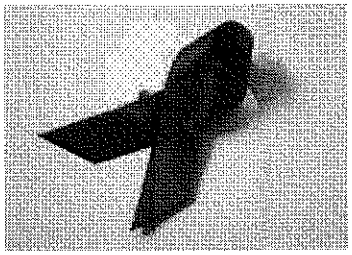

Tracking:

Tebogo Mputle

From: Tebogo Mputle
Sent: Wednesday, April 06, 2011 4:34 PM
To: 'l.mtanga@bowman.co.za'
Subject: FW: Competition Commission vs Aveng (Africa) Limited - 84/CR/Dec09 and 08/CR/Feb11
Attachments: 20110406171826960.tif

From: Tebogo Mputle
Sent: Wednesday, April 06, 2011 4:31 PM
To: 'bakhem@compcom.co.za'; Desmond Rudman; 'albert.aukema@dlacdh.com'; 'Nicholas Altini'; 'cleo@chrisart.co.za'; 'lmtanga@bowman.co.za'; 'wd1@wdattorneys.co.za'; 'patrick@drsreinforcing.co.za'; 'charmaine@tnk.co.za'; 'pieter@bieldermans.co.za'; 'dvoges@macrobert.co.za'; Nelly Sakata
Cc: Songezo Ralarala; Lerato Motaung
Subject: Competition Commission vs Aveng (Africa) Limited - 84/CR/Dec09 and 08/CR/Feb11

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