

# COMPETITION TRIBUNAL

REPUBLIC OF SOUTH AFRICA

Case No: 114/CR/Dec12

016139

## In the matter between:

The Competition Commission

Applicant

and

Trident Steel (Pty) Ltd

Respondent

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Panel : N Manoim (Presiding Member), M Mokuena (Tribunal Member) and T Madima (Tribunal Member)

Heard on : 19 December 2012

Decided on : 19 December 2012

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## Order

1. The Tribunal hereby confirms the agreement as agreed to and proposed by the Competition Commission and the respondent annexed hereto marked "A", subject to the proviso contained in paragraph 2 of this order.
2. The Commission and the respondent have further agreed that the administrative penalty referred to in paragraph 6.1 of the agreement must be paid to the Commission within three months of the date of this order. .

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Presiding Member

N Manoim

**Concurring:** M Mokuena and T Madima

A'

**IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA**

**HELD AT PRETORIA**

**CT Case No:**

**CC Case No. 2009Jun4478**

In the matter between:

**THE COMPETITION COMMISSION**

Applicant

And

**TRIDENT STEEL (Pty) LIMITED**

Respondent

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**AGREEMENT BETWEEN THE COMPETITION COMMISSION AND TRIDENT STEEL (Pty) Ltd ON THE TERMS OF AN APPROPRIATE ORDER IN TERMS OF SECTION 49D OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED**

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The Competition Commission ("Commission") and Trident Steel (Pty) Ltd in the above matter hereby agree that application be made to the Competition Tribunal to have this Agreement confirmed as a Consent Order as provided for in terms of section 58(1)(b) as read with section 49D of the Act.

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## 1. DEFINITIONS

1.1 For the purposes of this agreement the following definitions shall apply:

1.1.1 **"Act"** means the Competition Act No. 89 of 1998, as amended.

1.1.2 **"this Agreement"** means the agreement set out herein, duly signed by the Commissioner and the Respondent.

1.1.3 **"Trident"** means Trident Steel (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Marthunisen Road, Roodekop, Germiston, Gauteng.

1.1.4 **"Macsteel"** means Macsteel Service Centres SA (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa with its principal place of business at 14 Wolverhampton St, Apex, Benoni, South Africa.

1.1.5 **"Highveld"** means Evraz Highveld Steel and Vanadium Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business Old Pretoria Road Portion 93 of the farm, Schoongezicht No.

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308 JS Emalahleni, Mpumalanga

- 1.1.6            **"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.
- 1.1.7            **"Applicants"** means the Competition Commission of South Africa
- 1.1.8            **"Commissioner"** means the Competition Commissioner of South Africa, the Chief Executive Officer of the Commission appointed by the Minister of Trade and Industry in terms of section 22 of the Act.
- 1.1.9            **"Competition Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act.
- 1.1.10           **"Complaint"** means the complaint initiated by the Commissioner against Macsteel and Trident in the complaint referral under case number 2009Jun4478.
- 1.1.11           **"the Republic"** means the Republic of South Africa
- 1.1.12           **"CLP"** means the Commission's Corporate Leniency Policy

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## 2. THE COMPLAINT

2.1 On 24 June 2009, the Commission received an application for leniency in terms of the CLP from Macsteel. Macsteel alleged that it was involved in an agreement or concerted practice with Trident to fix prices and trading conditions in contravention of section 4(1)(b)(i) and 4(1)(b)(ii) in respect of steel products manufactured by Highveld. The steel products were destined for export into the Africa Overland Market ("AOM").

2.2 Macsteel furthermore alleged that it had an arrangement with Highveld to charge a premium to domestic resellers or wholesalers who on-sold steel products sourced from Highveld.

2.3 On the basis of the information submitted the Commissioner initiated an investigation against Macsteel and Trident in January 2010. Macsteel was granted conditional immunity on 23 February 2010.

## 3. THE COMMISSION'S FINDINGS

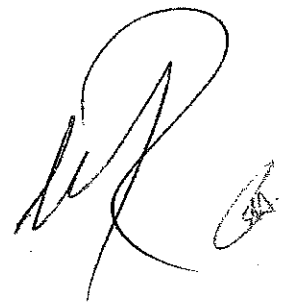
Upon completion of its investigation into the *Complaint*, the *Commission* found that Trident had engaged in the following prohibited practices –

3.1 Highveld manufactures a range of steel products for sale in the domestic and export markets. These include beams, columns, heavy angles, channels, joists and coil

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plate. During the period July 2002 and April 2008 both Macsteel and Trident acted as distributors of Highveld for its steel products sold in the AOM.

- 3.2 Macsteel and Trident agreed to sell all steel products manufactured by Highveld and sold into the AOM at a set price in contravention of section 4(1)(b)(i) of the Act.
- 3.3 Macsteel and Trident were party to the stock replacement scheme offered by Highveld. The scheme offered to Macsteel and Trident an incentive to export to the AOM in exchange for the replacement of their respective exported stock at favourable prices. Macsteel and Trident sold some of their stock to domestic resellers or wholesalers. This stock was sold to resellers on the understanding that they would export the stock to their customers in the AOM and provide proof of export to Macsteel and Trident. Highveld would then replenish the two companies' stock in accordance with the scheme upon being furnished with proof of export of the steel products.
- 3.4 Often the resellers would on-sell the steel products meant for export into the domestic market and as such would not be able to provide proof of export. Without proof of export MacSteel and Trident lost the benefit of the replacement scheme. To address this common problem Macsteel and Trident agreed on a premium to charge all domestic resellers and wholesalers who on-sold steel products manufactured by Highveld. By agreeing to fix the premium charged to resellers and wholesalers Macsteel and Trident contravened section 4(1)(b)(i) of the Act.

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**4. ADMISSION OF LIABILITY**

Trident admits that it engaged in the price fixing in contravention of section 4(1)(b)(i) of the Competition Act, as set out in paragraph 3 above.

**5. AGREEMENT CONCERNING CONDUCT OF THE RESPONDENT**

5.1 Trident cooperated with the Commission in its investigation of the matter and provided information that assisted the Commission in concluding its investigation.

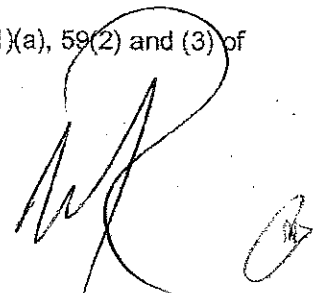
5.2 Trident agrees to refrain from engaging in price fixing or fixing of trading conditions in contravention of section 4(1)(b)(i) of the Act.

5.3 In terms of the Consent Order, dated 6 April 2011, Aveng committed to implementing a Group wide compliance program, incorporating corporate governance designed to ensure that its employees and directors are informed of their obligations under competition law and the provisions of the Act. The compliance program was implemented throughout the Aveng Group, which includes Trident, following the Tribunal's hearing into the Aveng (Africa) Limited trading as Steeleedale matter, under Tribunal Case Number: 84/CR/Dec10.

5.4 A copy of the program was furnished to the Commission as part of the Steeleedale Consent Order. Trident undertakes to continue with this program

**6. ADMINISTRATIVE PENALTY**

6.1 In terms of section 58(1)(a)(iii) of the Act read with section 59(1)(a), 59(2) and (3) of

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the Act, Trident agrees to pay an administrative penalty in the amount of R8 563 835.65 (eight million, five hundred and sixty three thousand, eight hundred and thirty five rands and sixty five cents). This amount represents 2% of Trident Steel's affected turnover for the 2007/2008 financial year.

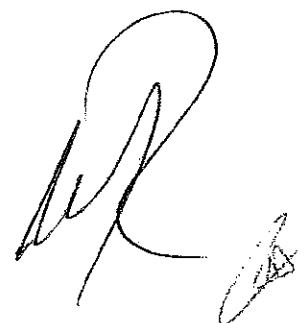
- 6.2 The penalty amount is to be paid into the bank account of the Commission.  
The Commission's banking details are as follows:

**Bank:** ABSA Bank  
**Name of Account:** The Competition Commission Fees  
**Branch Name:** Pretoria  
**Branch Code:** 323345  
**Account Number:** 4050778576

- 6.3 The Commission will pay over the penalty amount to the National Revenue Fund referred to in Section 59(4) of the Act.

## **7. FULL AND FINAL RESOLUTION**

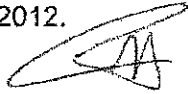
This Agreement, upon confirmation thereof as a Consent Order by the Competition Tribunal, concludes all proceedings between the Commission and the Trident, in relation to any alleged contraventions of the Act that are the subject of the Commission's investigation under case number: 2009Jun4478.

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**FOR THE RESPONDENT:**

Dated and signed at RosdeLop on this the 12<sup>th</sup> day of December  
2012.



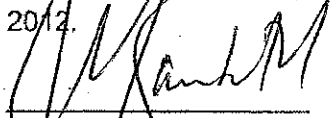
Signature

Name: H.A. Aucamp

Duly Authorized Representative of Trident Steel (Pty) Ltd

**FOR THE COMMISSION:**

Dated and signed at Return on this the 13 day of December  
2012.



Shan Ramburuth

Commissioner

Competition Commission of South Africa