



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: FTN154Nov16

In the matter between:

The Competition Commission

Applicant

And

Macsteel Service Centres SA (Pty) Ltd

First Respondent

Unique Ventilation & Support Systems (Pty) Ltd

Second Respondent

Panel : AW Wessels (Presiding Member)
M Mazwai (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on : 21 February 2018

Decided on : 21 February 2018

Settlement Agreement

The Competition Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Macsteel Service Centres SA (Pty) Ltd; Unique Ventilation & Support Systems (Pty) Ltd annexed hereto marked "A".


Presiding Member
Mr Andreas Wessels

21 February 2018
Date

Concurring: Ms Mondo Mazwai and Ms Andiswa Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CASE NO: FTN154NOV16

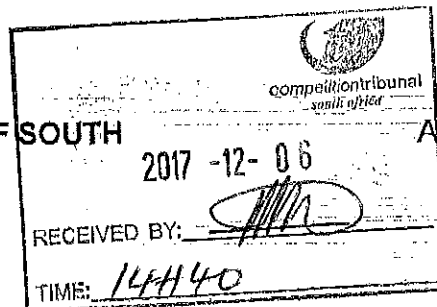
In the matter between:

THE COMPETITION COMMISSION OF SOUTH AFRICA

And

**MACSTEEL SERVICE CENTRES SA
PROPRIETARY LIMITED**

**UNIQUE VENTILATION & SUPPORT SYSTEMS
PROPRIETARY LIMITED**



Applicant

First Respondent

Second Respondent

**CONSENT AGREEMENT IN TERMS OF SECTION 49D OF THE
COMPETITION ACT, NO. 89 OF 1998 (AS AMENDED), BETWEEN THE
COMPETITION COMMISSION OF SOUTH AFRICA, MACSTEEL SERVICE
CENTRES SA PROPRIETARY LIMITED AND UNIQUE VENTILATION &
SUPPORT SYSTEMS PROPRIETARY LIMITED**

The Competition Commission, Macsteel Service Centres SA Proprietary Limited and Unique Ventilation & Support Systems Proprietary Limited hereby agree that an application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of Section 49D as read with Sections 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of an alleged contravention of sections 13A(1) and 13(A)(3) of the Act, on the terms set out below.

1. DEFINITIONS

For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1 **"Act"** means the Competition Act, No. 89 of 1998, as amended;
- 1.2 **"Brokrew"** means Brokrew Industrial Proprietary Limited, a private company duly incorporated under the laws of the Republic of South Africa, and placed under final liquidation by final winding up order granted on 29 November 2011.
- 1.3 **"Brokrew Acquisition"** means the acquisition of the business of Brokrew by UVSS pursuant to a sale of business, which sale took effect on 22 March 2012.
- 1.4 **"Business Day"** means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa.
- 1.5 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal business address at 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.6 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.7 **"Consent Agreement"** means this Agreement duly signed and concluded between the Commission and the Respondents;

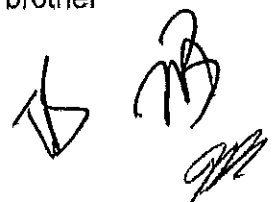


- 1.8 **"Macsteel"** means Macsteel Services Centres SA Proprietary Limited, a private company duly incorporated under the laws of the Republic of South Africa, with its principal business address at 7 Brook Road, Lillanton Industrial Sites, Lillanton, Boksburg, Gauteng.
- 1.9 **"Macsteel Transaction"** means the acquisition by Macsteel of 50% of the shares in UVSS, pursuant to which it acquired joint control of UVSS and its subsidiaries, UCEV and VSA;
- 1.10 **"Mr Olevano"** means Mr Cesare "Ollie" Olevano, an adult male and Managing Director of UVSS and trustee of UCT;
- 1.11 **"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 3rd Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.12 **"Respondents"** mean Macsteel and UVSS;
- 1.13 **"Ricoco"** means Ricoco Proprietary Limited, a shelf company duly incorporated under the laws of the Republic of South Africa and whose name was later changed to UVSS;
- 1.14 **"Parties"** mean the Commission and the Respondents;
- 1.15 **"UCT"** means the Unique Clamp Trust, a trust duly registered in terms of the laws of the Republic of South Africa with masters reference number IT 10426/97, having its principal business address at Skoolplaas Factory, Hennenman, Free State;



- 1.16 **"UCEV"** means Unique Clamp Engineering and Ventilation Proprietary Limited, a private company duly incorporated under the laws of the Republic of South Africa, with its principal business address at Skoolplaas Factory, Hennenman, Free State;
- 1.17 **"UVSS"** means Unique Ventilation and Support Systems Proprietary Limited, a private company duly incorporated under the laws of the Republic of South Africa, with its principal place of business at 1 Resnick Street, Factoria, Krugersdorp, 1760, and initially incorporated as Ricoco Proprietary Limited.
- 1.18 **"Videx"** means Videx Wire Products Proprietary Limited, a private company duly incorporated under the laws of the Republic of South Africa, with its principal business address at Corner Lantern and Bream Roads, Wadeville, Germiston; and
- 1.19 **"VSA"** means Ventilation and Support Africa Proprietary Limited, a private company duly incorporated under the laws of the Republic of South Africa, with its principal business address at 25 Vanadium Street, Ext. 9 Industrial Area, Rustenburg.

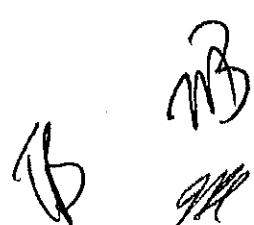
2. BACKGROUND TO THE COMMISSION'S INVESTIGATION

- 2.1 The Commission's investigation stems from the Brokrew Acquisition. During March 2012, the Commission received a complaint from Videx alleging that UVSS (known then as Ricoco) had acquired control over Brokrew and UCEV and that the shareholders of UVSS were Macsteel and two brothers, namely Mr Olevano and his brother
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Mr Peppie Olevano. Videx alleged that Macsteel and UVSS had contravened section 13(A) of the Act by implementing a merger without the approval of the competition authorities.

2.2 Brokrew was involved in the manufacture and installation of finished steel products and a long-standing customer of Macsteel. At the time that Brokrew was placed in liquidation, its debts to Macsteel exceeded R22 million. UCT, whose subsidiaries, UCEV and VSA, sold mining ventilation and support products to the same or similar customers as Brokrew, wished to acquire Brokrew to compliment UCT's existing business. Mr Olevano approached Macsteel for funding. Macsteel agreed to fund the Brokrew Acquisition with the objective of potentially recouping some of the debt owed to it. Following completion of the bidding process by the liquidators, UCT was selected as the preferred bidder.

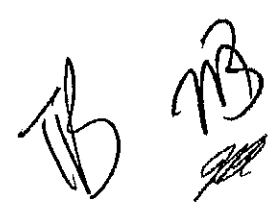
2.3 Mr Olevano and Macsteel agreed that the Brokrew business would be acquired through UVSS, then named Ricoco. Mr Olevano also approached Macsteel for assistance with various administrative tasks relating to the Brokrew Acquisition. Macsteel agreed to provide administrative services to assist UVSS, which services included VAT registration, the setting up of a bank account and other activities carried out by administrative and operational personnel of Macsteel. At the time of the Brokrew Acquisition, UCT owned 100% of the shares in UVSS. UVSS in turn acquired the Brokrew business with effect from 22 March 2012.



- 2.4 The Brokrew Acquisition constituted a small merger and was therefore not initially notified to the Commission. However, in June 2012, the Commission directed the merging parties to notify the Brokrew Acquisition. The Brokrew Acquisition was subsequently filed with the Commission on 4 July 2012. The Commission unconditionally approved the Brokrew Acquisition on 28 September 2012, after concluding that it would not raise any competition or public interest concerns and that it was indeed a small merger.
- 2.5 Following the Commission's approval of the Brokrew Acquisition, Macsteel notified the Commission of its intention to acquire 50% of the shares in UVSS by converting the loan granted to UCT for the Brokrew Acquisition into equity in UVSS. As part of the Macsteel Transaction, UCT agreed to transfer the businesses of its two other subsidiaries, UCEV and VSA, into UVSS. The Macsteel Transaction was filed with the Commission on 20 September 2012 and unconditionally approved by the Commission on 11 December 2012.
- 2.6 The Commission, however, continued to investigate the allegation made by Videx that Macsteel and UVSS contravened section 13A of the Act by implementing a merger without the approval of the competition authorities.


3. THE COMMISSION'S FINDINGS

- 3.1 After concluding its investigation, the Commission found that prior to the notification and approval of the Macsteel Transaction, Macsteel was involved in the operations and affairs of UVSS.

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3.2 The Commission concluded that the following factors supported its findings in this regard. Prior to the approval of the Macsteel Transaction:

- 3.2.1 Representatives of Macsteel were involved in discussions on whether or not to change the name of the Brokrew business and Ricoco and offered its recommendation after Mr Olevano sought advice from Macsteel in this regard;
- 3.2.2 Macsteel and Mr Olevano engaged in various discussions regarding the purchase of Ricoco as a shelf company and special purpose vehicle to be used for the Brokrew Acquisition;
- 3.2.3 Macsteel's Chief Financial Officer at the time of the Brokrew Acquisition was involved in the day-to-day operations of UVSS;
- 3.2.4 Upon registration and incorporation of Ricoco, UCT and Macsteel initially nominated two directors to the board of Ricoco, who in turn appointed KPMG auditors and a representative of Macsteel as the company secretary; and
- 3.2.5 A representative of Macsteel performed company secretarial functions and provided administrative support to UVSS in its day-to-day operations.

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3.3 The Commission referred its case to the Tribunal and applied for an order in the following terms:

3.3.1 declaring that the Respondents contravened the provisions of section 13A(1) and 13A(3) of the Act, and

3.3.2 imposing an administrative penalty against the Respondents, jointly and severally, of an amount not exceed 10% of the Respondents turnover in the Republic and their exports from the Republic in the preceding financial year in terms of section 59(1)(d)(i) and 59(1)(d)(iv) of the Act.

3.4 The Respondents opposed the Commission's application on various grounds. The Parties subsequently entered into settlement negotiations pursuant to which this Consent Agreement was concluded. The Respondents have agreed to enter into this Consent Agreement in the interests of resolving this matter expeditiously.

4. ADMISSION OF CONDUCT

4.1 The Respondents admit the following in respect of the Commission's findings:

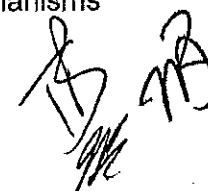
4.1.1 Given its role as funder for UCT's acquisition of Brokrew, Macsteel engaged in discussions with Mr Olevano regarding the acquisition of a shelf company for purposes of the Brokrew Acquisition;

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- 4.1.2 Macsteel engaged with Mr Olevano and offered its recommendation on changing the name of Ricoco and the appointment of KPMG as auditors of Ricoco;
- 4.1.3 Two representatives of Macsteel were appointed to the board of directors of Ricoco, but were removed prior to any decisions affecting the business of Ricoco being taken; and
- 4.1.4 Macsteel performed certain administrative services for UCT, including company secretarial duties, as part of a service agreement concluded between UCT and Macsteel.
- 4.2 The Respondents acknowledge that the above conduct may constitute the implementation of a notifiable merger prior to the approval of the Commission in contravention of section 13(A) (1) and 13(A) (3) of the Act, and for this reason, has agreed to settle this matter.

5. FUTURE CONDUCT

- 5.1 The Respondents hereby undertake to:
- 5.1.1 not engage in any contravention of the Act;
- 5.1.2 develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms

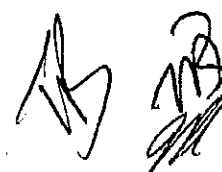


for the identification, prevention, detection and monitoring of any contravention of the Act; and

- 5.1.3 submit a copy of such compliance programme to the Commission within 60 (sixty) Business Days from the date of confirmation of this Consent Agreement as an order by the Tribunal.

6. SETTLEMENT AMOUNT

- 6.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(d), 59(2) and 59(3) of the Act, the Respondents agree to pay a settlement amount on the basis of joint and several liability, the one paying, the other being absolved.
- 6.2 The Parties agree that the settlement amount to be paid by the Respondents will be R1 000 000 (One Million rand).
- 6.3 The Respondents will make payment of the abovementioned settlement amount in the following manner:
- 6.3.1 **R250 000** to be paid within 10 Business Days of the agreement being confirmed by the Competition Tribunal; and
- 6.3.2 **R75 000** to be paid every month thereafter, for a period of 10 (ten) months.
- 6.4 The monthly payments will be made by the 5th day of each month. Since the payment period will not exceed 12 months, the settlement amount will not attract any interest.



- 6.5 The settlement amount shall be paid into the Commission's bank account, details of which are as follows:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 323 345

Ref: FTN154NOV16

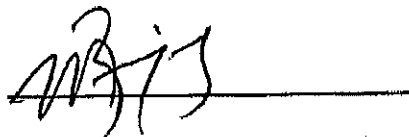
- 6.6 The settlement amount will be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

7. FULL AND FINAL SETTLEMENT

This Consent Agreement is entered into in full and final settlement and concludes all proceedings between the Commission and the Respondents relating to any alleged contravention of the Act by the Respondents, that is the subject of the Commission's investigation referred to the Tribunal under case number FTN154NOV16.

For: Macsteel Services Centres SA Proprietary Limited

Date and signed at Boksburg on the 4TH day of December 2017.



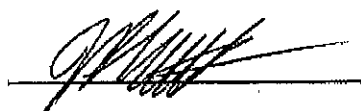
Name in full: Michael John Benfield



Designation: Director

For: Unique Ventilation and Support Systems Proprietary Limited

Date and signed at Boksburg on the 4th day of December 2017.



Name in full: Johannes Petrus Lodewikus van der Walt

Designation: Director

For the Commission

Date and signed at PRETORIA on the 4th day of DECEMBER ~~NOVEMBER~~ 2017.



TEMBINKOSI BONAKELE
COMPETITION COMMISSIONER

