



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR125Nov14/SA011Apr16

In the matter between:

The Competition Commission

Applicant

And

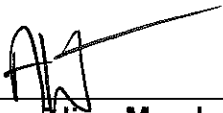
Association of Electric Cable
Manufacturers South Africa

Respondent

Panel	:	AW Wessels (Presiding Member) A Ndoni (Tribunal Member) M Mokuena (Tribunal Member)
Heard on	:	04 May 2016 and 23 August 2017
Addendum received on	:	24 April 2018
Decided on	:	04 May 2018

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Association of Electric Cable Manufacturers South Africa annexed hereto marked "A", together with addendum market "A1".



**Presiding Member
Mr AW Wessels**

04 May 2018
Date

Concurring: Ms A Ndoni and Mrs M Mokuena

"A"

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

CT Case No. 019968


CC Case No. 2010Mar4981

In the matter between

COMPETITION COMMISSION

and

**ASSOCIATION OF ELECTRIC CABLE
MANUFACTURERS SOUTH AFRICA**

 competition tribunal south africa	
2016-04-19	
RECEIVED BY:	<i>MaLw</i>
TIME:	12:19

Applicant

Respondent

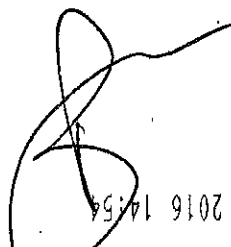

SETTLEMENT AGREEMENT

**BETWEEN THE COMPETITION COMMISSION AND THE AECMSA IN RESPECT OF
AN ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION
ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED**

The *Competition Commission* and Association of Electric Cable Manufacturers South Africa ("*AECMSA*") hereby agree that application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Competition Tribunal in terms of section 27(1)(d) read with section 58(1)(a)(iii) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, on the terms set out below.

1. Definitions

For the purposes of this *Settlement Agreement* the following definitions shall apply:

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- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "AECMSA" means the Association of Electric Cable Manufacturers of South Africa;
- 1.3 "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 1st Floor, Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5 "Complaint" means the complaint (as amended) initiated by the Commissioner of the Competition Commission in terms of section 49B of the Act under case number 2010Mar4981;
- 1.6 "Indices" measure relative price changes of input costs from one time to another and are used in price adjustment formulas;
- 1.7 "Parties" means the Commission and AECMSA;
- 1.8 "Power Cable Manufacturers" means the first to twelfth Respondent;
- 1.9 "Price Adjustment Formula" means any formula used to calculate the future prices of power cables which were quoted on present prices to accommodate fluctuations in prices of the input costs;
- 1.10 "Settlement Agreement" means this agreement duly signed and concluded between the Commission and AECMSA;

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.

2. The Complaint and Complaint Investigation

2.1 On 16 March 2010, the Commissioner, acting in terms of section 49B(1) of the Act, initiated a complaint under case number 2010Mar4981 against Aberdare, Tullsa, Alvern and SOEW for possible contravention of section 4(1)(b) of the Act in the market for the supply of power cables.

2.2 The evidence obtained by the Commission through its investigation indicated that other companies, which were not part of the initial investigation, may also have been involved in the alleged conduct in contravention of the Act.

2.3 On 28 May 2010, the Commission expanded its investigations to include these firms: Alcon Marepha (Pty) Ltd, CBI-Electric: African Cables (Pty) Ltd, Kewberg Cables and Braids (Pty) Ltd, Cabcon Technologies (Pty) Ltd, Phoenix Power Cables (Pty) Ltd, Silcom (Pty) Ltd and AECMSA as being party to price fixing, market division and collusive tendering in the power cable market.

2.4 The Commission's investigation relating to AECMSA revealed that:

2.4.1 All the members of AECMSA, including the Power Cable Manufacturers, agreed on, alternatively engaged in a concerted practice in respect of, the input prices or costs in respect of raw material inputs required during the process of manufacturing power cables, based upon which indices were calculated and subsequently applied in a price adjustment formula. Price adjustment formulas were used primarily by AECMSA members, including the Power Cable Manufacturers, who are involved in long-term and short

term quotations and/or tenders. The commencement of the above conduct pre-dates the Competition Act and endured until August 2012.

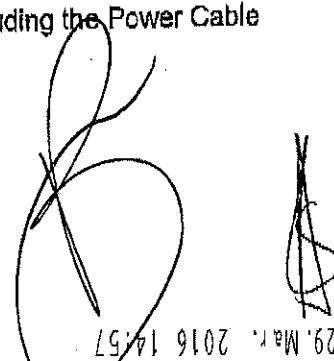
2.4.2 The prices or costs of the following raw material inputs were reflected in the indices:

- 2.4.2.1 Copper;
- 2.4.2.2 Lead;
- 2.4.2.3 Aluminium;
- 2.4.2.4 SIMAG Redraw Rod;
- 2.4.2.5 XLPE;
- 2.4.2.6 Steel tape, Polyethylene and non-halogenated compound;
- 2.4.2.7 Fully galvanised wire;
- 2.4.2.8 PVC cable compound;
- 2.4.2.9 Rubber, Neoprene CR sheath, CM sheath, EPM insulation and silicone;

2.4.3 The prices of these raw material inputs fluctuate on a monthly basis.

2.4.5 At monthly, alternatively, regular meetings of the commercial committee of AEMCSA, the Power Cable Manufacturers agreed on, or engaged in a concerted practice in respect of, the indices that are used as an input into a price adjustment formula. Members of AEMCSA, including the Power Cable Manufacturers, agreed, alternatively engaged in a concerted practice, to use the indices when quoting for long-term and short-term or tender contracts issued by various tender customers.

2.4.6 After adoption of the decision of the commercial sub-committee, circulars known as "quotation base circulars" were distributed to the members of AEMCSA on a monthly basis via email, and these quotation base circulars recorded the indices which were adopted by AEMCSA by agreement, alternatively concerted practice of its members, including the Power Cable Manufacturers.



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2.4.7 The conduct of the respondents described above contravenes section 4(1)(b)(i) of the Act in that it constitutes a decision by an association, and/or an agreement, alternatively a concerted practice, between firms in a horizontal relationship to directly or indirectly fix the price of power cables, alternatively a trading condition relating to the sale of power cables.

2.5 The Commission referred the above complaint to the Tribunal on 13 November 2014.

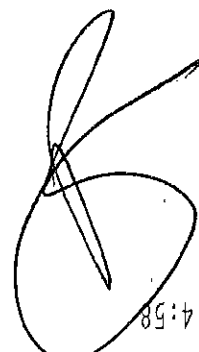
3. Admission

3.1 AECMSA admits that setting the Indices by way of decisions by AECMSA, directly or indirectly fixed the selling price of power cables. These indices were referred to by AECMSA as the "Quotation Base or Quotation Bases", and were circulated to all members monthly from at least 2001 to August 2012 in contravention of section 4(1)(b)(i) of the Competition Act.

3.2 To avoid any misunderstanding and notwithstanding the Commission's findings relating to AECMSA's members in paragraph 2.4 above, AECMSA's decision to settle the complaint referral does not amount to a settlement or acknowledgment of any contravention by any member of AECMSA. Accordingly, the settlement is not attributable to any of AECMSA's members, which members will decide independently whether to admit or deny the alleged contravention/s and/or settle with the Commission in the manner and on the terms they individually deem fit.

4. Agreement concerning the Respondent's future conduct

4.1 AECMSA agrees to:



4.1.1 Fully cooperate with the Commission in relation to the prosecution of the complaint referral. Without limiting the generality of the foregoing, AECMSA specifically agrees to:

4.1.1.1 Testify in the complaint referral in respect of alleged contraventions covered by this Settlement Agreement; and

4.1.1.2 To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contravention contained in this Settlement Agreement.

4.1.2 Desist from the conduct described above.

4.1.3 Develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme will include the following:

4.1.3.1 The identification by AECMSA of competition risks relevant to its business and the monitoring thereof;

4.1.3.2 The provision of specific training on competition law aspects particularly relevant to AECMSA;

4.1.3.3 Ensuring that such training will be made available to all new members joining AECMSA. Furthermore, AECMSA will update such training annually in an effort to ensure on an on-going basis that it and its members

cannot engage in any anti-competitive activities

4.1.4 To submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Settlement Agreement as an order by the Competition Tribunal;

4.1.5 To circulate a statement summarising the contents of this Settlement Agreement to all management, operational staff and members of AECMSA within 60 days from the date of confirmation of this Settlement Agreement by the Tribunal.

5. Administrative Penalty

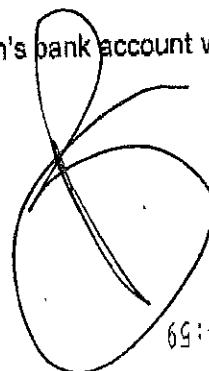
5.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, AECMSA accepts that it is liable to pay an administrative penalty.

5.2 The parties have agreed that AECMSA will pay an administrative penalty in the amount of **R14 853.67 (Fourteen Thousand Eight Hundred and Fifty Three Rand and Sixty Seven Cents)**;

5.3 This amount is equal to 1% of AECMSA's 2010 membership fees which was in the amount of R1 485 367.00 and therefore does not exceed 10% of AECMSA's total annual income in the Republic and its exports from the Republic for its 2010 financial year;

5.4 AECMSA will pay the amount set out in paragraph 5.2 above to the Commission within three months from the date of confirmation of this Settlement Agreement by the Tribunal.

5.5 The penalty must be paid into the Commission's bank account which is as



follows:

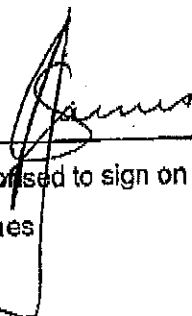
NAME: THE COMPETITION COMMISSION
BANK: ABSA BANK BUSINESS BANK
ACCOUNT NUMBER: 40-8764-1778
BRANCH CODE: 632005
PAYMENT REF: 2010Mar4981AECMSA

6. Full and Final Settlement

6.1 This agreement, upon confirmation as an order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and AECMSA relating to any alleged contravention of the Act by the respondent that is the subject of the Commission's complaint referral to the Tribunal under CT Case No. 019968.

Dated and signed at ALBERTON on the 29 day of March 2016.

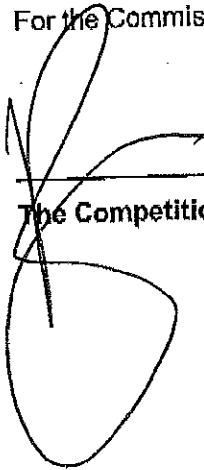
For AECMSA



Duly authorised to sign on behalf of AECMSA
Mr M Dames
Director

Dated and signed at 15-04-16 on the _____ day of
_____ 2016

For the Commission

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

The Competition Commissioner

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

**CT Case No. 019968
CC Case No. 2010Mar4981**

In the matter between

COMPETITION COMMISSION

Applicant

and

**ASSOCIATION OF ELECTRIC CABLE
MANUFACTURERS SOUTH AFRICA**

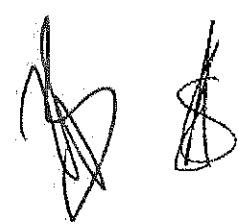
Respondent

**ADDENDUM TO THE SETTLEMENT AGREEMENT BETWEEN THE
COMPETITION COMMISSION AND THE ASSOCIATION OF ELECTRIC CABLE
MANUFACTURERS SOUTH AFRICA DATED 15 APRIL 2016 IN RESPECT OF AN
ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION
ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED**

1 Terms and abbreviations used in this document ("the Addendum") shall have the meaning assigned to them in the parties' settlement agreement dated 15 April 2016 ("the Settlement Agreement").

2 The parties agree to supplement the Settlement Agreement as follows –

2.1 Meaning of "Indices"

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- 2.1.1 The term "Indices", as defined in clause 1.6 and used in clauses 2.4.1, 2.4.2, 2.4.5, 2.4.6 and 3.1 of the Settlement Agreement, does not connote the conventional meaning ascribed to the term "index" in economics, where the base value (typically of 100) is adjusted by a percentage from time to time to indicate the change in value of the underlying item monitored by the index.
- 2.1.2 Instead, the term "Indices" refers to the various raw material items and their individual Rand values as listed from time to time on a document entitled "Quotation Bases", an example of which is annexed as "QB" ("the Quotation Bases").
- 2.1.3 The AECMSA previously compiled and circulated the Quotation Bases to its members, to the Steel and Engineering Industries Federation of South Africa ("SEIFSA") and to the industry in general. It did so on a monthly basis but since August 2012 no longer produces such a document.
- 2.1.4 Different electric cables are constituted of different raw materials in the Quotation Bases.
- 2.1.5 Tenders for term contracts for the supply of electric cables often incorporate price adjustment formulas, which may allow for changes in the cost of one or more of the raw materials listed in the Quotation Bases.

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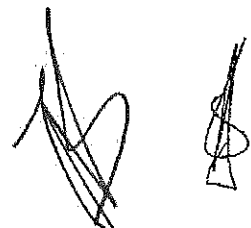
2.1.6 In order to simplify the process of proving and agreeing the change in cost of a raw material, a contract may use the change in value recorded in the Quotation Bases for the relevant raw materials as a proxy for the actual change in cost: the values recorded at the time of bidding for the tender and at the time/s of determining adjustment/s would constitute the "bases" of the price adjustment calculation.

2.1.7 It is in this sense that the raw materials itemized in the Quotation Bases functioned as "indices".

2.2 Compliance Monitoring

2.2.1 The AECMSA ceased compiling and circulating the Quotation Bases during or about August 2012 and has agreed in clause 4.1.2 of the Settlement Agreement to desist from such conduct in the future.

2.2.2 The Commission may annually request that the AECMSA submits a report to the Commission confirming compliance with paragraph 4.1.2 of the Settlement Agreement during the preceding calendar year.



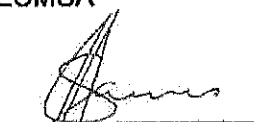
2.2.3 Following receipt of such a report, the Commission may request copies of, or access to, the minutes of the AECMSA's Commercial Committee during the period covered by the relevant report.

2.2.4 The AECMSA will work with, liaise and seek guidance from the Commission on the question of what conduct related to indices is acceptable.

3 This Addendum forms an amendment to and an integral part of the Settlement Agreement, the terms of which remain otherwise unchanged.

Dated and signed at BRITS on the 26 day of MARCH 2018

For AECMSA




Duly authorised to sign on behalf of AECMSA

Mr M Dames

Director

Dated and signed at PRETORIA on the 10th day of APRIL 2018

For the Commission



The Competition Commissioner

Tembinkosi Bonakele