



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CO047May18

In the matter between:

The Competition Commission

Applicant

And

NCS Resins (Pty) Ltd

Respondent

Panel : M Mazwai (Presiding Member)
A Ndoni (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 16 May 2018

Decided on : 16 May 2018

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and NCS Resins (Pty) Ltd annexed hereto marked "A".


Presiding Member
Ms Mondo Mazwai

16 May 2018
Date

Concurring: Ms Andiswa Ndoni and Prof. Fiona Tregenna

"A"

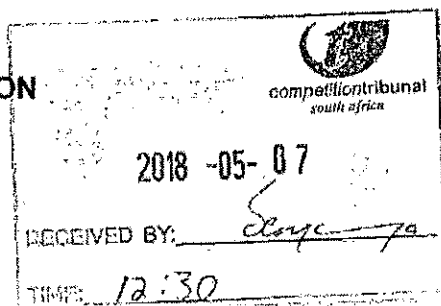
IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
(HELD IN PRETORIA)

CT Case No. C0047 May 18

CC Case No: 2017 Jul 0015

In the matter between

COMPETITION COMMISSION



Applicant

and

NCS RESINS PROPRIETARY LIMITED

Respondent

CONSENT AGREEMENT 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, BETWEEN THE COMPETITION COMMISSION AND NCS RESINS PROPRIETARY LIMITED, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) (i) AND (ii) OF THE COMPETITION ACT, 1998

Preamble

The Competition Commission and NCS Resins 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 Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b) (i), 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, Act No. 89 of 1998, as amended;
- 1.2. **"Ancillaries"** means all gel coats, pool coats, flow coats, pigments, bonding pastes;
- 1.3. **"Catalysts"** means the catalyst products '*M50 catalyst*' and '*279 catalyst*';
- 1.4. **"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 Mulayo Building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.5. **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6. **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number **2017JuI0015**;

1.7. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and NCS Resins Proprietary Limited;

1.8. **"NCS Resins"** means NCS Resins Proprietary Limited, a company duly registered and incorporated under the laws of South Africa with its principal place of business at 9 Pineside Road, New Germany, KwaZulu-Natal, South Africa.

1.9. **"Parties"** means the Commission and NCS Resins Proprietary Limited;

1.10. **"Respondents"** means NCS Resins Proprietary Limited and Scott Bader South Africa Proprietary Limited;

1.10 **"Scott Bader"** means Scott Bader South Africa Proprietary Limited; and

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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. BACKGROUND TO THE COMMISSION'S INVESTIGATION AND FINDINGS

2.1. On 05 July 2017, the Commissioner initiated a complaint in terms of section 49(B)(1) of the Act whereby it is alleged that the respondents entered into an agreement and / or engaged in a concerted practice to fix the price of resins and certain ancillaries and divide the market by allocating customers in contravention of section 4(1)(b)(i) and (ii) of the Act. In addition, in isolated instances there were discussions between representatives of NCS and Scott Bader in relation to the supply of catalysts to certain specific customers.

2.2. The Commission's investigation under Case No. 2017Mar0021 revealed the following:

2.2.1. During the period from approximately 2012 to approximately August 2016, the respondents agreed to fix the price of resins, ancillaries and catalysts and divide the market by allocating customers.

2.2.2 During this period, certain employees of the respondents regularly exchanged prices and customer information which they used to determine prices at which they sell resins, ancillaries and catalysts to their mutual customers, as well as determine future price increases of resins and ancillaries and catalysts.

2.2.3 In addition, the respondents also agreed to not supply customers which had overdue accounts with either or both respondents,

2.2.4 Further, the respondents agreed not to target each other's potential

customers and not undercut each other in respect of their mutual customers.

- 2.3 This agreement amounts to price fixing and market division in contravention of section 4(1)(b)(i) and (ii) of the Act.

3. ADMISSION

- 3.1 NCS Resins admits that it has acted in contravention of sections 4(1)(b)(i) and (ii) of the Act as described in paragraph 2 above.

4. CO-OPERATION

- 4.1. NCS Resins agrees to fully cooperate with the Commission in its investigation of the matter. This cooperation includes, but is not limited to:

4.1.1. To the extent that it is in existence, the provision of evidence, written or otherwise, which is in the possession of NCS Resin or under NCS Resin's control (excluding the work product of external counsel), concerning the alleged contravention of section 4(1)(b) as set out in this Consent Agreement.

4.1.2. Using its best endeavours, to the extent that it may be necessary, to procure the attendance at any Tribunal hearing of any current employee or former employee of NCS Resins who may be required to testify during the hearing of the complaint (subject to their rights

against self-incrimination), if any, in respect of the contravention of section 4(1)(b) as set out in this Consent Agreement.

5. AGREEMENT REGARDING FUTURE CONDUCT

5.1. NCS Resins agrees to:

- 5.1.1. Prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within thirty (30) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 5.1.2. Refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future;
- 5.1.3. 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;
- 5.1.4. Submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of this Consent Agreement

as an order by the Tribunal; and

5.1.5. Undertakes henceforth to engage in competitive practices.

6. ADMINISTRATIVE PENALTY

6.1. NCS Resins agrees that it is liable to pay an administrative penalty of R29 701 689.76 (Twenty nine million, seven hundred and one thousand, six hundred and eighty-nine rand and seventy six cents). This amount does not exceed 10% of NCS Resins' annual turnover for the financial year ended December 2016.

6.2. NCS Resins will pay the administrative penalty set out in paragraph 6.1 above to the Commission over a period of three years in 3 equal instalments of R9 900 563.25 (Nine million, nine hundred thousand, five hundred and sixty-three rand and twenty-five cents).

6.2.1 The first installment is payable on or before **30 June 2018**;

6.2.2 The second installment on or before **30 June 2019** and;

6.2.3 The last installment on or before **30 June 2020**.

6.3. No interest will be levied upon the administrative penalty for the first year from the date on which this Consent Agreement is made an order of the Tribunal. Thereafter, interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State as prescribed by the Minister

of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1 of 1999 as amended. At the time of the signature of this Consent Agreement, the applicable interest rate is 10,25%.

6.4 The payments shall be made into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4087641778
Account type:	Current Account
Branch Code:	632005
Reference:	Case Number: 2017Jul0015/NCS RESINS

6.4. The penalty will then 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

7.1. This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. 2017Jul0015, and concludes all proceedings between the Commission and NCS Resins relating to the conduct that is the subject of the Commission's investigation under Case No. 2017Jul0015 as described in paragraph 2 above.

For NCS Resins Proprietary Limited

Dated and signed at PINETOWN on the 20 day of APRIL 2018




Managing Director

Name in Full: TREVOR ANDREW I'ONS

For the Commission

Dated and signed at PRETORIA on the 4th day of MAY 2018



Tembinkosi Bonakele
Commissioner