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**7 March 2017**

**Allens Meshco Group case reopened by the Competition Commission to provide clarity regarding issues of administrative penalty and where to direct the penalties**

The Competition Tribunal has approved the Competition Commission’s application to reopen the Allens Meshco case to provide the Tribunal with additional information on which of the Allens Mescho Group (AMG) of companies will be held liable if AMG is found to have contravened the Competition Act.

The issues to be argued are which year the administrative penalty should apply to, as the Allens Meshco companies reported a zero turnover by 2015, and determination of which firm or firms the penalty should be directed to as it appears from testimony heard by the Tribunal that some of the 10 firms have either merged with other companies, deregistered, or are in the process of deregistering.

The Tribunal in its decision, released on Monday, 6 March 2017, said as a body with statutory functions it “would be required to obtain the evidence and conduct the hearing in an inquisitorial manner” should the Competition Commission not be allowed to reopen its case. “Thus, whatever the process, the evidence must be presented so that we can determine the matter properly,” the Tribunal said in its reasons.

The case has a long history of litigation before the Tribunal, High Court, Supreme Court and the Constitutional Court, on a number of different grounds.

The companies involved are: 10 companies collectively referred to as the Allens Meshco Group -  Allens Meshco; Hendok; Wire Force; Agri Wire; Agri Wire North; Agri Wire Upington; Cape Wire; Forest Wire; Independent Galvanising and Associate Wire Industries - and a separate company Cape Gate. Cape Gate has cooperated with the Commission in the investigation.

The application to reopen the case against the Allens Meshco Group, was only one of five applications heard by the Tribunal. The Tribunal consolidated its decisions and orders to deal with all five.

The remaining four applications, all brought by the Allens Mescho Group, were dismissed. These included: having the merits and remedies of the complaint related to the Allens Meshco Group separated and striking out of an affidavit by a Cape Gate’s lawyer, as well as Cape Gate’s answering affidavit relating to an application by the Commission to amend its application to the Tribunal. The application to amend had been withdrawn by the Commission.

**Background**

In January 2007, the Commission referred a cartel case to the Tribunal against Allens Mescho, Wireforce Steelbar, Hendok, Galvwire, Independent Galvanising and Meshrite, alleging that the respondents directly or indirectly fixed a purchase or selling price in respect of lightly galvanised wire, nails, wire and various wire products.

Following this referral, during July 2008, Consolidated Wire Industries (CWI), a subsidiary of Scaw South Africa (Pty) Ltd, admitted that its employees participated in price-fixing meetings with their competitors namely Cape Gate, Allens Meshco and Hendok. They agreed on a national price list for wire and wire products, on adjustments to the national price list and in collusive tendering of cable armouring wire. CWI applied for leniency.

CWI and Cape Gate are alleged to have also agreed not to target each other’s customers. Evidence gathered by the Commission through its investigation confirms that, from about 2001 to 2008, the respondents contravened the Competition Act by engaging in price-fixing, market allocation and collusive tendering. The tenders involved include tenders from Harmony Gold, African Cables and Malasela Technologies.

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