

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 15/CR/Feb09

In the matter between:

The Competition Commission

Applicant

and

Flo-tek Pipes and Irrigation (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member), A Wessels (Tribunal Member) and M Mokuena (Tribunal Member)

Heard on : 27 October 2010

Decided on : 27 October 2010

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".



Presiding Member
Y Carrim

Concurring: A Wessels and M Mokuena

"Annexure A"

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

CCCASENO: 2008MAR3596

CT CASE NO.: 15/CR/FEB09

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

FLO-TEK PIPES AND IRRIGATION (PTY) LTD

Respondent

In re:

THE COMPETITION COMMISSION

Applicant

and

DPI PLASTICS (PTY) LTD

First Respondent

PETZETAKIS AFRICA (PTY) LTD

Second Respondent

MARLEY PIPE SYSTEMS (PTY) LTD

Third Respondent

SWAN PLASTICS CC

Fourth Respondent

AMITECH SOUTH AFRICA (PTY) LTD

Fifth Respondent

FLO-TEK PIPES AND IRRIGATION (PTY) LTD

Sixth Respondent

MACNEIL MOULDING (PTY) LTD

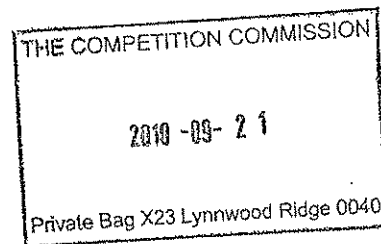
Seventh Respondent

ANDRAG (PTY) LTD

Eighth Respondent

GAZELLE PLASTICS (PTY) LTD

Ninth Respondent



SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
FLO-TEK PIPES AND IRRIGATION (PTY) LTD IN REGARD TO CONTRAVENTIONS
OF SECTION 4 (1) (b) OF THE COMPETITION ACT 89 OF 1998

The Competition Commission and Flo-Tek Pipes and Irrigation (Pty) Ltd hereby agree that an application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Tribunal in terms of sections 58 (1)(a)(iii) and 59(1) (a) of the Competition Act 89 of 1998, on the terms set out below:

1. **Definitions**

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

- 1.1. **"Act"** means the Competition Act no. 89 of 1998 as amended;
- 1.2. **"Amitech"** means Amitech South Africa (Pty) Ltd, a public company registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 33 Potgieter Street, Alrode;
- 1.3. **"Andrag"** means Andrag (Pty) Ltd, a public company registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business at La Belle Road, Bellville;
- 1.4. **"CLP"** means the Corporate Leniency Policy prepared and issued by the Commission as a guideline to clarify the Commission's policy approach on matters falling within its jurisdiction in terms of the Act;
- 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 place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, South Africa;
- 1.6. **"Commissioner"** means the Commissioner of the Competition Commission appointed in terms of section 22 of the Act;

- 1.7. **"Complaint Referral"** means the Complaint referred to the Tribunal by the Commission under Tribunal case number 15/CR/Feb09;
- 1.8. **"DPI"** means DPI Plastics (Pty) Ltd, a public company registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Setchell Road, Roodekop, Germiston;
- 1.9. **"FLO-TEK"** means FLO-TEK Pipes and Irrigation (Pty) Ltd, a public company registered and incorporated in accordance with laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 320 Ida street, Menlo Park, Gauteng;
- 1.10. **"Gazelle"** means Gazelle Plastics (Pty) Ltd, a public company registered and incorporated in accordance with the laws of the Republic of South Africa, with its registered office, alternatively principal place of business at Panorama Office Estate Unit 3, Kudu Street Allensnek, Gauteng;
- 1.11. **"HDPE"** means High Density Polyethylene, which is the pipe product that is harder and more opaque and can withstand somewhat higher temperature.
- 1.12. **"Macneil"** means Macneil Moulding (Pty) Ltd, a public company registered and incorporated in accordance with laws of the Republic of South Africa, with its registered office alternatively principal place of business at Noland House, River Park, Cape Town.
- 1.13. **"Marley Pipes"** means Marley Pipes Systems (Pty) Ltd, a public company registered in accordance with laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Brickley Road, Pretoriusstad, Nigel;

- 1.14. **"Petzetakis"** means Petzetakis Africa (Pty) Ltd, a public company registered in accordance with laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 1 Piet Pretorius Street, Rosslyn;
- 1.15. **"PVC"** means Polyvinylchloride, a thermoplastic polymer pipe product which is used in construction.
- 1.16. **"Swan Plastics"** means Swan Plastics CC, a close corporation registered and incorporated in accordance with laws of the Republic of South Africa, with its registered office, alternatively principal place of business at 251 Point Road, Durban;
- 1.17. **"Settlement Agreement"** means this settlement agreement duly signed and concluded between the Commission and FLO-TEK;
- 1.18. **"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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria.
2. **Complaint investigation and Commission's findings**
- 2.1. On 12 October 2007, the first respondent filed an intermediate merger notification with the Commission. It intended to merge with Incledon Cape (Pty) Ltd.
- 2.2. During the course of the merger investigation the Commission found *inter alia* that the merging parties were involved in collusive activities in contravention of the Act. The merger was subsequently prohibited.

2.3. Prior to the prohibition of the merger, the first respondent applied for immunity from prosecution and fines in terms of the Commission's Corporate Leniency Policy. In its application submitted on 08 January 2008, the first respondent furnished the Commission with evidence of the existence of collusion in the markets for pipe products involving itself and the other respondents. The alleged collusion involved:

- 2.3.1. Price fixing;
- 2.3.2. Bid rigging; and
- 2.3.3. Allocation of markets and/ or customers.

2.4. The Commission initiated and conducted an investigation as a result of which it found that all respondents had contravened section 4 (1) (b) of the Act as follows:

2.4.1 The respondents agreed to fix the discounts that each would give to customers in contravention of section 4(1) (b) (i) of the Act.;

2.4.2 The respondents agreed to submit uniform prices in response to tenders and allocate tenders to one another on rotational basis in contravention of sections 4 (1)(b)(ii) and (iii) of the Act.;

2.4.3 On 02 February 2009 the Commission referred its findings to the Tribunal under CT case number 15/CR/Feb09.

3. Settlement discussions

3.1. Subsequent to the complaint referral and just prior to the commencement of the hearing, Flo-tek Pipes admitted that it had contravened the Act as alleged therein in that during the period 2007, Flo-Tek Pipes and the other respondents, in respect of PVC pipes products:

3.1.1. attended a series of meetings wherein agreements, arrangements and/or understandings to fix prices and/or price increases and/or price discounts in respect of the PVC pipes products were reached, in contravention of section 4 (1) (b) (i) of the Act.

3.2. The conduct referred to above occurred in *inter alia*:

3.2.1. The Western Cape.

3.3. This Settlement Agreement is the result of the engagement between the Commission and Flo-tek.

4. Admissions

FLO-TEK admits that it has contravened section 4 (1)(b) (i) of the Act as detailed in paragraph 3 above.

5. Agreement concerning future conduct

5.1. FLO-TEK agrees to fully cooperate with the Commission in relation to the prosecution of any other respondents in this Complaint referral. Without limiting the generality of the above, FLO-TEK specifically agrees to:

5.1.1. testify in support of the Commission's case regarding the contraventions in this settlement agreement; and

5.1.2. provide evidence, written or otherwise, concerning the contraventions contained in this settlement agreement.

5.2. FLO-TEK agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that employees, management and directors within FLO-TEK, its subsidiaries and business

units do not engage in any contraventions of section 4 (1) (b) of the Act, a copy of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this settlement agreement as an order by the Tribunal.

6. Administrative Penalty

6.1. Having regard to the provisions of section 58(1) (a) (iii), read with sections 59(1) (a), 59(2) and (3) of the Act, FLO-TEK accepts that it is liable to pay an administrative penalty.

6.2. The parties have agreed that FLO-TEK will pay an administrative penalty in the sum of R 5 049 433.26 (Five Million and Forty-Nine Thousand Four Hundred and Thirty-Three Rands, Twenty-Six Cents) being 6% of FLO-TEK's total turnover in the 2007 financial year.

6.3. FLO-TEK will pay the penalty amount to the Commission in two equal payments as follows:

6.3.1 FLO-TEK will make the first payment within six (6) months of confirmation of this Settlement Agreement by the Tribunal and;

6.3.2 FLO-TEK will make the second payment within twelve (12) months of payment of the first installment.

6.4. This amount shall be paid into the following bank account:

NAME:	THE COMPETITION COMMISSION FEE ACCOUNT
BANK:	ABSA BANK, PRETORIA
ACCOUNT NO:	4050778576
BRANCH CODE:	323 345

6.5. The Commission will pay these sums to the National Revenue Fund in terms of section 59 (4) of the Act.

7. Full and final resolution

This settlement agreement is entered into in full and final settlement and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and FLO-TEK relating to any alleged contraventions by FLO-TEK of section 4 (1) (b) of the Act that are the subject of the Commission's investigation under case number 2008Mar3596 and its complaint referral under CT case number 15/CR/Feb09.

Dated at Olifantfontein on this the 20 day of September 2010.

Chakrapani

Chakrapani Bandaru

Financial Officer: FLO-TEK Pipes And Irrigation (Pty) Ltd

Dated at Pretoria on this the 6 day of October 2010.

Shan Ramburuth

Shan Ramburuth

The Commissioner, Competition Commission