

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 15/CR/Feb09

In the matter between:

The Competition Commission

Applicant

and

Swan Plastics CC

Respondent

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and A Wessels (Tribunal Member)

Heard on : 24 November 2010

Decided on : 24 November 2010

Order

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



N Manoim
Presiding Member

Concurring: Y Carrim and A Wessels

"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
and
SWAN PLASTICS CC**

**Applicant

Respondent**

In re:

**THE COMPETITION COMMISSION
and
DPI PLASTICS (PTY) LTD
PETZETAKIS AFRICA (PTY) LTD
MARLEY PIPE SYSTEMS (PTY) LTD
SWAN PLASTICS CC
AMITECH SOUTH AFRICA (PTY) LTD
FLO-TEK PIPES AND IRRIGATION (PTY) LTD
MACNEIL MOULDING (PTY) LTD
ANDRAG (PTY) LTD
GAZELLE PLASTICS (PTY) LTD**

**Applicant

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent
Seventh Respondent
Eighth Respondent
Ninth Respondent**

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
SWAN PLASTICS CC IN REGARD TO CONTRAVENTIONS OF SECTION 4 (1) (b) OF
THE COMPETITION ACT 89 OF 1998**

The Competition Commission and Swan Plastics CC 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 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 49 Jeffels Road, Prospecton, Durban;
- 1.17. **"Settlement Agreement"** means this settlement agreement duly signed and concluded between the Commission and Swan Plastics;
- 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 commencement of the hearing, Swan Plastics admitted that it had contravened the Act as alleged

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therein in that during the period between 2005 to 2007, Swan Plastics and the other respondents, in respect of PVC and HDPE 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 and the HDPE pipes products were reached, in contravention of section 4 (1) (b) (i) of the Act;

3.1.2. attended a series of meetings wherein agreements, arrangements and understandings to divide markets for pipes products in the respective areas (KwaZulu-Natal, Gauteng and Eastern Cape) were reached, in contravention of section 4(1)(b)(ii) of the Act; and

3.1.3. agreed to allocate/share contracts amongst themselves in accordance with agreed upon percentage shares of the markets for PVC and HDPE pipes products and fixing the prices at which quotations were offered to contractors in order to secure such contracts, in contravention of section 4(1) (b) (iii) of the Act.

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

3.2.1 KwaZulu- Natal;

3.2.2 Gauteng; and

3.2.3 Eastern Cape.

3.3. This Settlement Agreement is the result of the engagement between the Commission and Swan Plastics.

4. Admissions

Swan Plastics admits that it has contravened section 4 (1)(b) (i),(ii) and (iii) of the Act as detailed in paragraph 3 above.

5. Agreement concerning future conduct

5.1. Swan Plastics 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, Swan Plastics specifically agrees to:

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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. Swan Plastics agrees to develop and implement a compliance programme incorporating corporate governance, designed to ensure that employees, management and directors within Swan Plastics, 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, Swan Plastics accepts that it is liable to pay an administrative penalty.

6.2. The parties have agreed that Swan Plastics will pay an administrative penalty in the sum of R7 649 414,40 (Seven Million Six Hundred and Forty-Nine Thousand Four Hundred and Fourteen Rands, Forty Cents) being 6% of Swan Plastics' total turnover in the 2007 financial year.

6.3. Swan Plastics will pay the penalty amount to the Commission in two equal payments as follows:

6.3.1 Swan Plastics will make the first payment within thirty (30) days of confirmation of this Settlement Agreement by the Tribunal;

6.3.2 Swan Plastics will make the second and final installment payment within six (6) 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

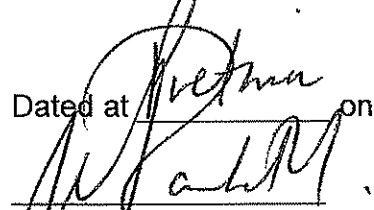
This settlement agreement is entered into in full and final settlement and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Swan Plastics relating to any alleged contraventions by Swan Plastics of section 4 (1) (b) of the Act that are the subject of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

Dated at DURBAN on this the 20 day of SEPTEMBER 2010.



Michael Vernon Swanson
Managing Member: Swan Plastics CC

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



Shan Ramburuth
The Commissioner, Competition Commission