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THE COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR053Aug10/INS079Sep12 &
CR053Aug10/DSC073Aug12

In the application of:

Goodyear South Africa (Pty) Ltd	**Applicant**
The Competition Commission	**Respondent**

And

In the application of:

Continental Tyres South Africa (Pt) Ltd	**Applicant**
The Competition Commission	**Respondent**

In *re* the complaint referral between:

The Competition Commission	**Applicant**
Apollo Tyres South Africa (Pty) Ltd	**First Respondent**
Goodyear South Africa (Pty) Ltd	**Second Respondent**
Continental South Africa (Pty) Ltd	**Third Respondent**
Bridgestone South Africa (Pty) Ltd	**Fourth Respondent**
South African Tyre Manufacturers Conference (Pty) Ltd	**Fifth Respondent**

Panel	:	Yasmin Carrim (Presiding Member) Medi Mokuena (Tribunal Member) Andreas Wessels (Tribunal Member)
Heard on	:	17 March 2016
Last submission received on	:	11 April 2016
Order issued on	:	25 May 2016
Reasons issued on	:	25 May 2016

DECISION AND ORDER

[1] On 17 March 2016 the Competition Tribunal of South Africa ("the Tribunal") heard two applications filed by Goodyear South Africa (Pty) Ltd ("Goodyear") and Continental Tyres South Africa (Pty) Ltd ("Continental") (also referred to as the "applicants"). The applications were brought in terms of High Court Rule 35(12)[1] against the Competition Commission of South Africa ("the Commission") in relation to documents which the applicants alleged were referred to by the Commission in its founding affidavit and supplementary affidavit of a complaint referral.

[2] This matter has a long and convoluted history dating as far back as 2010 when the Commission conducted an investigation into the conduct of the applicants.

[3] We discuss only the salient and relevant facts for purposes of this decision.

[4] The Commission initiated an investigation into the applicants and others following a complaint lodged by a Mr Parsons during October 2006. Aspects of the Commission's investigation involved a leniency application filed by Bridgestone Tyres South Africa (Pty) Ltd ("Bridgestone") and raids that had been conducted by the Commission on the offices of Apollo Tyres South Africa (Pty) Ltd ("Apollo") and the industry association, the South African Tyre Manufacturers Conference (Pty) Ltd ("SATMC").

[5] The Commission's referral under section 50 of the Competition Act[2] ("the Act") was filed with the Tribunal on 31 August 2010. In the complaint referral the Commission alleges that the applicants together with Bridgestone, Apollo and the SATMC discussed and agreed to fix the prices of passenger, light truck, bus, off-the-road, agricultural and earthmover tyres over a period of years from 1999 to 2007.

[1] HCR 35(12)
[2] Act 89 of 1998 as amended

[6] Almost six years later, Continental and Goodyear have failed to file their respective answering affidavits. The apparent reason for their failure to file their answering affidavits, as can be gleaned from the correspondence to date is that they require certain documents from the Commission which they allege they are entitled to on the basis of *inter alia* HCR 35(12).[3]

[7] Prior to these applications being lodged, and over the last number of years, numerous requests for documents by Goodyear and Continental have been met by the Commission.

[8] Significantly the Commission has handed over to the applicants a copy of the Bridgestone leniency application together with all annexures thereto which amounts to a voluminous 111 items.

[9] Prior to the hearing of these two applications a number of additional documents sought by Continental and Goodyear, have been provided by the Commission. In order to assist the evaluation of the remaining requests the parties were asked to draw up schedules of outstanding requests which schedules were then reconciled by the Commission with the list of documents that had already been provided. The reconciled schedules were submitted to the Tribunal by the Commission on 11 April 2016 and are attached hereto as Annexures A ("Goodyear Schedule") and B ("Continental Schedule") respectively.

[10] The Commission has refused to hand over any more documents on the basis that the applicants are not entitled to them prior to them filing their answering affidavits (i.e. for purposes of pleading). The Commission submits that it will only discover any further documents as part of the pre-trial discovery process and that Goodyear and Continental are pursuing these requests as a dilatory tactic.

[11] The Commission argued further that the applicants are not entitled to bring an application in terms of HCR 35(12) without first seeking leave of the Tribunal.

[3] Continental had previously relied on rule 14 and 15 of the Commission's Rules but declined to persist with this after the ruling in the Group Five Ltd vs Competition Commission: case number: CR229Mar15/DSC124Sep15 Tribunal decision.

Legal Framework

[12] The Commission argued that the applicants were not permitted to rely on HCR 35(12) because the Tribunal's rules in relation to complaint procedures under Part 4 of the Competition Tribunal Rules ("CT Rules") made no provision for discovery of documents prior to the filing of answering affidavits as provided in CT Rule 16. If parties wished to rely on any other rule or procedure not provided for in the CT Rules they should first seek leave from the Tribunal. The Commission asked that we should establish a principle in this matter that parties could not as a matter of entitlement bring applications under HCR 35(12) without first seeking the leave of the Tribunal.

[13] The applicants argued that they were entitled to rely on HCR 35(12) as a matter of right because the Tribunal has previously granted applications brought under it as permitted by section 55 and Tribunal Rule 55(1). HCR 35(12) did not require the applicants to show relevance for a discovery request and nor should the Tribunal consider whether these were necessary documents for purposes of pleading. This is because, as a matter of right, once the Commission referred to a document in its founding and supplementary affidavits in support of an allegation, the provisions of HCR 35(12), as applied in the high courts, required that these documents must be handed over.

[14] In our view there is no need for us to make a decision such as that requested by the Commission nor is it necessary for us to apply HCR 35(12) in the manner urged by the applicants.

[15] Tribunal Rule 55(1)(b) confers a discretion on this Tribunal to have regard to the high court rules if a question arises as to the practice or procedure to be followed in cases not provided for in the Tribunal Rules. The Tribunal has previously exercised this discretion but in so doing has emphasised that it is in the first instance discretionary and in the second requires us only to "have regard". In other words the rule does not require us to adopt without due consideration to the *sui generis* nature of our proceedings, the application and jurisprudence pertaining

to a rule as applied in the high courts.[4] This is because we enjoy a wide discretion in the conduct of our proceedings. Our proceedings are adversarial in form but we are vested with inquisitorial powers to arrive at the truth. We are required to conduct our proceedings with fairness and to guard against elevating form over substance. Fairness is context driven and we must have regard to the circumstances of each case to make such a determination.

[16] Thus in the context of our proceedings high court rules in relation to discovery, which include HCR 35(12), are not rights-based but serve to provide guidance to the Tribunal in its assessment of fairness to the parties when requests for documents are made.

[17] This has been the approach adopted by the Tribunal in *Allens Meshco*,[5] *BMW South Africa vs Fourier Holdings*[6] and more recently in *Group Five*[7].

[18] In relation to a request for discovery prior to the filing of answering affidavits, the Tribunal in *Allens Meshco* established two principles. The first principle is that where a document is relied on to support a relevant allegation in a pleading it should be provided. The allegation may quote from or make references to specific contents of such documents or may even summarize the content of the document. If the document is not provided as an annexure or an attachment to the pleading, it should be handed over when requested by a respondent.

[19] The second principle is that the inference of the existence of a document is not sufficient to create an obligation to disclose such a document.

[20] Both these principles are reflected in HCR 35(12). We turn to consider the specific requests made by the applicants which remain in dispute.

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[4] See in general Allens Meshco & others vs Competition Commission & Others, page 4, paragraph 6, case number: 63/CR/Sep09; BMW South Africa (Pty) Ltd t/a BMW Motorrad vs Fourier Holdings (Pty) Ltd t/a Bryanston Motorcycles, page 7, paragraph 22; case number: 97/CR/Sep08, and Group Five Ltd vs Competition Commission, page 8, paragraph 21: case number: CR229Mar15/DSC124Sep15 Tribunal decisions.

[5] Allens Meshco & others vs Competition Commission & Others, page 4, paragraph 6 case number: 63/CR/Sep09.

[6] BMW South Africa (Pty) Ltd t/a BMW Motorrad v Fourier Holdings (Pty) Ltd t/a Bryanston Motorcycles, page 7, paragraph 22, unreported judgment of 1 February 2011, 97/CR/Sep08 [2011] ZACT.

[7] Group Five Ltd vs Competition Commission, page 8, paragraph 21: case number: CR229Mar15/DSC124Sep15.

Goodyear Schedule (with reference to Annexure A)

[21] In relation to the request pertaining to paragraph 22 of the Commission's Founding Affidavit ("FA") the application is refused for the following reasons. In paragraph 22, the Commission states as follows -

> *"22. As a result of the complaint filed by Parsons, the applicant applied for and was granted a search warrant for the premises of Bridgestone, Apollo and the SATMC. The search was conducted on 4 April 2008 and numerous documents were seized. The investigation revealed the following:"*
>
> *22.1 Representatives of the tyre manufacturers discussed the reduction of dealer price list;*
>
> *22.2 Tyre manufacturers discussed and agreed on the timing for requesting price adjustments from the STB;*
>
> *22.3 That during 2006 representatives of the tyre manufacturers discussed price increases; and*
>
> *22.4 The tyre manufacturers coordinated the percentage and timing of price increases.*

[22] The Commission's FA is structured in a number of sections each with its own heading. In this paragraph read in context of the entire FA, what the Commission is doing is merely providing a description of the steps it took in its investigation as a whole. As prefaced by the heading of the section, the Commission lists the steps it took in its investigation following the complaint by Parsons. These steps involved obtaining warrants, searches of premises and the seizure of "numerous documents". It then goes on to conclude what "*the investigation*" revealed in paragraphs 22.1-22.4. The remarks in para 22.1-22.4 summarise the broad findings of the Commission's the *investigation* - and not what the numerous *documents* - revealed. The investigation of the Commission is clearly broader than the raids it had conducted. It includes as gleaned from these paragraphs the complaint by Parson, and presumably any statements or documents he may have provided to the Commission, as well as product of the raids conducted by the Commission. The concluding remarks in 22.1-22.4 are couched at the level of

generality and no reference to any particular document, whether seized in the raid or provided by Parsons, is made.

[23] We see then that the Commission's *specific findings* and further details are then pleaded in the subsequent paragraphs under the sections "Application for Immunity" and "Contraventions of the Act". In relation to these specific findings and allegations the Commission has already discovered a raft of documents which include the application for leniency, all the annexures thereto, including witness statements.

[24] Applying the first principle articulated in *Allens Meshco* the request relating to para 22 of the FA, we find that Goodyear is not entitled, as a matter of fairness, to the "numerous documents" that were seized in the raids conducted by the Commission simply because the Commission does not rely upon them to make its concluding general remarks about its investigative process. The Commission's investigation is broader than the raids it had conducted. The mere fact that an investigation may be premised on documents does not suffice to trigger a request for productions of those documents.

[25] The position would be the same if we had regard to the jurisprudence pertaining to HCR 35(12). The intention of that rule is quite clear. It is meant to cover a situation where an averment flows from or is related to something contained in a document. However inspection cannot be demanded of documents not referred to but the existence of which can be inferred from an affidavit or pleading. This was clearly stipulated in *Nedbank Limited vs Jean-Pierre Jordaan*[8] wherein the court held that the wording of HCR 35(12) is clear in that it only refers to "documents referred" to by a party in an affidavit. We are of the view that in relation to paragraph 22 of the Commission's FA there is no "reference to a document" as contemplated in HCR 35(12) which warrants production as argued by the applicants.

[26] Our conclusion on Goodyear's request in relation to para 22 of the Commission's founding affidavit also applies to the request made by Continental under item 2 of its Schedule (see our discussion on Continental's application below).

[8] Nedbank Limited vs Jean-Pierre Jordaan N.O, page 5, paragraph 9-10: Case no: 16335/2014.

[27] The request in relation to paragraphs 6, 7, 9, 11 and 13 of the Commission's Supplementary Affidavit ("CSA")[9] are denied. Goodyear has couched its requests as "the price increase announcements" referred to in these paragraphs. However in these paragraphs the Commission makes no reference to price increase announcements or that these were contained in documents. All that is alleged is that the manufacturers "agreed to increase prices".

[28] The requests in relation to paragraphs 16 and 18 of the CSA are denied. In both these paragraphs the Commission details dates on which tyre manufacturers "announced price increases" pursuant to their agreement. The Commission does not allege that these announcements were in writing. In some paragraphs the increases are stated as a range between two percentages, in others, the word "approximately" is used, both suggesting the Commission was not relying on any documents to plead these allegations but very likely the testimony of a witness. On the same basis the requests in relation to paragraphs 25, 26, 27 and 28 of the CSA are denied.

[29] Notwithstanding the fact that no obligation arises on the part of the Commission to hand over any documents in relation to the averments made in any of the abovementioned paragraphs, the Commission has, in a spirit of co-operation, already handed over to Goodyear a number of price increase letters which have to date come into its possession in the course of the leniency application. The Commission has indicated in the third column of the Goodyear Schedule where it has handed over relevant price increase letters in its possession to date. Thus Goodyear is already in possession of a number of documents which the Commission has indicated would serve to support the allegations in these paragraphs.

Continental Schedule (with reference to Annexure B)

[30] In relation to items 1 and 3 of the Continental Schedule, the Commission has already provided a copy of the search warrant.

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[9] The CSA was filed by the Commission in response to an exception by SATMC that the FA did not disclose a cause of action against the SATMC. In its Supplementary Affidavit the Commission seeks to make its case out against the SATMC.

[31] In relation to item 2 of the Continental Schedule, we have already decided in our discussion regarding the same request made by Goodyear above that paragraph 22 of the FA does not give rise to any obligation on the part of the Commission to hand over the numerous documents that were seized in the raids conducted simply because the Commission places no reliance on any specific document in arriving at its concluding remarks about its broader *investigative* process.

[32] In item 4 of the Schedule, Continental requests a copy of the agreement referred to in paragraph 26 of the FA. In this para the Commission states that "*The tyre manufacturers have contravened section 4(1)(b)(i) in that they entered into an agreement, in terms of which..:*". The Commission does not allege that the agreement was in writing. On the contrary, the allegations that follow in the subsequent sub-paragraphs suggest that there was no written agreement but that such agreement came into existence through meetings and discussions. By no stretch of the imagination can the Commission be ordered to produce a document it has not alleged to be in existence.

[33] In item 5, Continental requests a copy of the escalation formula referred to in para 26.15 of the FA. In that paragraph the allegation is that '*the tyre manufacturers discussed and agreed on the escalation components to be inserted into the escalation formula*". Once again there is no reference to a document in the allegation and no suggestion that the Commission relies upon the escalation formula itself to allege an agreement on the escalation components of it. Again no obligation arises on the part of the Commission to provide a document that may or may not exist and on which the Commission does not rely to make its allegation.

[34] In items 6 and 7 of the schedule requests are made for "electronic mail discussions" and "electronic communication" respectively. Continental alleges that the Commission has partially provided these. It has received copies of SATMC and Apollo emails but requires "all electronic mail discussions and electronic communications referred to in paragraphs 4.3 and 4.4 of the CSA. We agree that a reference to "electronic mail discussions" and "electronic communication" might *prima facie* suggest that these exist and the Commission has had sight of them. The Commission has already provided the applicants with copies of some email communications. To the extent that the Commission has copies of any other

electronic mail discussions and electronic communications it should provide these. If it is not in possession of any other such communications/discussions at this stage, it should state this under oath.

[35] The request under item 8 of the Schedule is for the "standard format for reporting industry statics" referred to in paras 12 and 15 of the CSA. However we see that in para 12 the emphasis is on the "agreement" arrived at among named individuals to have a standard format for reporting industry statistics. There is no reference to a document containing industry statistics. In para 15 the allegation is that named individuals exchanged price lists in pursuance of their earlier agreement to "*have a standard format for reporting industry statistics*". This is clearly not a reference to a document in existence but rather that there was an agreement reached amongst tyre manufacturers to produce such standard format. This is not to say that a standard format reporting document exists at all which may or may not be in the possession of the Commission or for that matter the Applicants. But what is clear from the wording in these paragraphs is that the Commission is not relying on any document when it alleges that the named individuals agreed to "*have a standard format for reporting industry statistics*". There is no obligation for the Commission to provide a copy of a document it has not referred to in making its allegations in paras 12 and 15 of the CSA.

[36] In items 9 and 10 of the Schedule the request is for the "price lists" referred to in the aforesaid paras 12 and 15 of the CSA. The Commission argues that it has not relied on any documents and that it is merely recording the fact that the named individuals *exchanged* price lists pursuant to their agreement to have a standard format for reporting industry statistics. However the ordinary meaning of a price *list* clearly contemplates some written form, in hard or soft copy, of a firm's prices. To the extent that the Commission is in possession of these it should provide them, and if it is not, it should file an affidavit to that effect.

[37] The request under item 11 has already been complied with as indicated by the Commission in the last column of the Schedule.

Conclusion

[38] In light of the above, the application by Goodyear is dismissed. The application by Continental is granted only in relation to items 6, 7, 9 and 10 of the Continental Schedule.

[39] We note however that Goodyear and Continental both know what case the Commission is alleging against them, as can be gleaned from the contents of the Commission's founding affidavit and its supplementary affidavit, as well as from the myriad of documents that have been handed over to them by the Commission, as reflected in annexures A and B. Both applicants have already been placed in a position by the Commission that would enable them to file their answering affidavits and thereby permit the matter to proceed to trial. This matter has been dragging on for a considerable period of time. Any further delays in the applicants' filing of their answering affidavits would not be in accordance with the principles of justice. In order to prevent any further delays we have included in our order provisions for the further conduct of proceedings.

ORDER

[40] The application for documents in respect of all items listed on the Goodyear Schedule is dismissed.

[41] The application in relation to items 1, 2, 3, 4, 5, 8 and 11 of the Continental Schedule is dismissed.

[42] The application in relation to items 6, 7, 9 and 10 of the Continental Schedule is granted and the following documents must be provided by the Commission within 10 business days of this order:

42.1. All electronic mail discussions or electronic communications referred to in paras 4.3 and 4.4 of the Commission's Supplementary Affidavit (items 6 and 7 of the Continental Schedule);

42.2. All price lists referred to in paras 12 and 15 of the Commission's Supplementary Affidavit (items 9 and 10 of Continental's Schedule).

[43] In the event that the documents in paras 42.1 and 42.2 above do not exist or are not in the possession of the Commission this should be stated under oath within 10 business days of this order.

[44] Goodyear and Continental must file their answering affidavits within 20 business days of receipt of the documents or the affidavit, as the case may be, referred to in paragraph 42 and 43 above.

[45] The Commission may if it so elects file its replying affidavit within 10 days thereafter.

[46] There is no order as to costs.

Ms Yasmin Carrim

25 May 2016
DATE

Ms Medi Mokuena and Mr Andreas Wessels concurring

Tribunal Researcher:	Caroline Sserufusa
For Goodyear Tyres:	Adv. Gotz instructed by Judin Combrinck Inc.
For Continental Tyres:	Adv. Engelbrecht instructed by Bowman Gilfillan
For the Commission:	Adv. Daniel Berger instructed by the State Attorney

ANNEXURE "A"

Goodyear's schedule of outstanding documents

COMMISSION'S INITIAL REFERRAL AFFIDAVIT

Paragraph	Allegation	Documents	Commission's Response to Goodyear
22	Numerous documents were seized.	No	Not provided. Subject to confidentiality claims. See para 70 of Commission's answering affidavit.

COMMISSION'S SUPPLEMENTARY AFFIDAVIT

Paragraph	Allegation	Documents	Item on Commission's Schedule provided on 6 March 2016
6	On or about 29 July 1999 representatives of the tyre manufacturers agreed to increase prices between 3% and 5% with effect from the second half of 1999. The agreement was reached in discussion between Wustmann, Martin of Goodyear and representatives of Continental and Dunlop.	No	The Commission did not allege any price increase announcements in this paragraph. Please refer to items 41; 42 and 43 of the Commission's schedule. Please refer to paragraphs 22; 22.1 and 22.2 of Shaun Wustmann's statement and Annexures A and B thereto.

Paragraph	Allegation	Documents	Item on Commission's Schedule provided on 6 March 2016
7	On 27 January 2000, in a meeting attended by the Managing Directors and certain representatives of Bridgestone (Yamamoto and Wustmann), Apollo (Dreyer), Goodyear (Murdock) and Continental (Swart), the tyre manufacturers agreed to increase prices between 4.5 and 9% with effect from February 2000.	No	The Commission did not allege any price increase announcements in this paragraph. Please refer to items 41; 45 and 46 of the Commission's schedule. Please refer to paras 24 and 30 of Shaun Wustmann's statement and Annexures D and E thereto.
9	On 5 April 2000 the manufacturers' representatives met and agreed to increase prices between 5% and 12% with effect from June 2000.	No	The Commission did not allege any price increase announcements in this paragraph. Please refer to items 41; 42 and 47 of the Commission's schedule. Please refer to paragraphs 32 and 33 of Shaun Wustmann's statement and Annexures A and F thereto.
11	On 7 August and 3 October 2000 the manufacturers' representatives met and agreed on a third price increase for 2000. The price increase agreed upon was in the region of 3 to 5% to be effected in November 2000.	No	The Commission did not allege any price increase announcements in this paragraph. Please refer to items 41; 42; 50 and 51 of the Commission's schedule. Please refer to para 42 of Shaun Wustmann's statement and Annexures A; I and J thereto.

Paragraph	Allegation	Documents	Item on Commission's Schedule provided on 6 March 2016
13	On 22 November 2000, the manufacturers' representatives met and agreed to increase prices in January 2001. The price increases agreed upon were between 10% and 12% and were implemented in March 2001.	No	The Commission did not allege any price increase announcements in this paragraph. Please refer to items 41 and 42 of the Commission's schedule. Please refer to paragraphs 14.3.1 and 45 of Shaun Wustmann's statement and Annexure A thereto.
16.	In meetings and through telephone discussions in the period May to June 2001, including 9 May, 1 June, 11 June, and 15 June, the manufacturers' representatives agreed on price increases between 4 % to 10% to be effective in August or September 2001. In pursuance of this agreement, the tyre manufacturers announced increases as follows:		
16.1.	Bridgestone – On 31 July 2001 announced an increase between 6% and 10% with effect from 1 August 2001;	No	Provided. Item 42 of the Commission's schedule. Please refer to Annexure A of Shaun Wustmann's statement.

16.2.	Continental – on 23 July 2001 announced increases of "approximately" 7% and "approximately" 10% with effect from 1 August 2001.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
16.3.	Goodyear – on 25 July 2001 announced an increase between 3% and 10.3%.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
18.	On 30 January 2002, the manufacturers' representatives agreed to increase prices between 12% and 15% for the first half of 2002. In pursuance of the agreement, the tyre manufactures announced increases as follows:		

18.1	Apollo – on 4 February 2002 announced average increases of 12% and 15% with effect from 1 March 2002.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
18.2	Continental – on 7 February 2002 announced an average increase between 14% and 16% with effect from 1 March 2002.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
	A further increase between 12% and 14% was announced on 29 October 2002 with effect from 1 January 2003.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
18.3	BFSA – on 25 February 2002 announced an increase between 12 and 15% with effect from 1 April 2002	No	Provided. Items 42 and 61 of the Commission's schedule. Please refer to Annexures A and T of Shaun Wustmann's statement.
18.4	Goodyear – announced an increase of 11% with effect from 1 February 2002	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.

22 and 23	On or about October 2002, the manufacturers' representatives agreed to increase their prices between 12 and 16% with effect from 1 January 2003. Pursuant to this agreement, the manufacturers announced their price increases.	No	Provided. Items 41 and 62 of the Commission's schedule. Please refer to para 62 of Shaun Wustmann's statement and Annexure U thereto.
24	In the first quarter of 2004, the manufacturers' representatives agreed to and increased their prices within a range between 5 and 7%. They then went on to implement their price increases within the range as follows:		
24.1	Continental – on 24 April 2004 announced average increases of 5% and 7% with effect from 1 July 2004.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
24.2	Apollo – on 30 April 2004 announced increases between 5% and 10% with effect from 1 June 2004 and 5%-8% with effect from 1 July 2004.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
24.3	Goodyear – on 4 May 2004 announced increases of between 3%-7% with effect from 1 June 2004.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
24.4	Bridgestone – on 26 May 2004 announced increases between 3% and 7% with effect from 1 July 2004.	No	Provided. Item 42 of the Commission's schedule. Please refer Annexure A of Shaun Wustmann's statement.

25	On or about February and March 2005, the manufacturers' representatives agreed to increase prices within a range between 5 and 7% for the first half of 2005. Pursuant to this agreement, the tyre manufacturers announced price increases as follows:		
25.1	Continental – on 23 February 2005 announced average increases of 5% and 7% with effect from 1 April 2005.	Item 68 of the Commission's Schedule	Provided. Item 68 of the Commission's schedule. Please refer to Annexure SW5 of Shaun Wustmann's supplementary affidavit.
25.2	Goodyear – on 25 February 2005 announced average price increases of 6% and 7% with effect from 1 April 2005	Item 67 of the Commission's Schedule	Provided. Item 67 of the Commission's schedule. Please refer to Annexure SW4 of Shaun Wustmann's supplementary affidavit.
25.3	Bridgestone – on 1 March 2005 announced average price increases of 4% and 7% with effect from 1 April 2005.	Item 66 of the Commission's Schedule	Provided. Items 66 of the Commission's schedule. Please refer to Annexure SW3 of Shaun Wustmann's supplementary affidavit.

25.4	Apollo – on 14 March 2005 announced average price increases of 5% and 8% with effect from 1 April 2005.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
26	On 16 May 2005, the manufacturers' representatives discussed and agreed on a further price increase by an average of 6% for the second half of 2005. Pursuant to the agreement, the tyre manufacturers increased their prices as follows:		
26.1	Bridgestone – on 1 September 2005 announced an increase of a maximum of 6% with effect from 1 October 2005.	Item 70 of the Commission's Schedule	Provided. Item 70 of the Commission's schedule. Please refer to Annexure SW7 of Shaun Wustmann's supplementary affidavit.
26.2	Goodyear – on 15 September 2005 announced an average increase of approximately 7% with effect from 12 October 2005.	Item 71 of the Commission's Schedule	Provided. Item 71 of the Commission's schedule. Please refer to Annexure SW8 of Shaun Wustmann's supplementary affidavit.

26.3	Apollo – on 31 August 2005 announced an average price increase of 6 % with effect from 1 October 2005.	No	Not provided. The Commission does not allege that the price increase announcements were in writing or that the announcements were made in the form of price increase letters.
27	In or about June 2006, the tyre manufacturers represented by their respective Managing Directors, namely Ito (of Bridgestone), Dreyer (of Apollo), Boezio (of Continental) and de Villiers (of Goodyear), agreed to increase their prices by an average of 10% with effect from August 2006. Pursuant to the agreement, the tyre manufacturers announced price increases as follows:		
27.1	Apollo – on 4 July 2006 announced a price increase between 8% and 12% with effect from 15 August 2006;	Item 12 of the Commission's Schedule	Provided. Please see Item 12 of the Commission's schedule.
27.2	Goodyear – On 6 July 2006 announced a price increase of an average of 8% with effect from 1 August 2006.	Item 13 of the Commission's Schedule	Provided. Please see Item 13 of Commission's schedule.
27.3	Bridgestone – on 1 August 2006 announced a price increase between 6% and 12% with effect from 1 September 2006;	Item 8 of the Commission's Schedule	Provided. Please see Items 8 and 9 of the Commission's schedule.
27.4	Continental – on 22 September 2006 announced a price increase of 8% with effect from 1 November 2006.	Item 14 of the Commission's Schedule	Provided. Please see Item 14 of the Commission's schedule.

28	In the last quarter of 2006, the manufacturers' Managing Directors agreed to a price increase of between 6% and 8% for the first half of 2007. Pursuant to the agreement, the tyre manufacturers announced price increases as follows-		
28.1	Apollo – on 30 January 2007 announced an average increase of 10% with effect from 1 March 2007.	No. (Note: Item 28 of the Schedule is a letter dated 11 December 2006)	Not provided.
28.1	Goodyear – on 5 December 2006 announced a price increase with effect from mid first quarter of 2007.	Item 27 of the Commission's Schedule	Provided. Please see Item 27 of the Commission's schedule
28.3	BFSA – on 29 January 2007 announced an increase between 6% and 10% with effect from 1 March 2007.	Item 19 of the Commission's Schedule	Provided. Please see Items 19 and 20 of the Commission's schedule.
28.4	Continental – on 30 January 2007 announced an increase between 8% and 12% with effect from 1 March 2007	Item 29 of the Commission's Schedule	Provided. Please see Item 29 of the Commission's schedule

ANNEXURE "B"

CONTINENTAL TYRES (PTY) LTD V COMPETITION COMMISSION CASE NUMBER: CR053AUG10/INS079SEP12

IN RE:

COMPETITION COMMISSION VS APOLLO TYRES AND OTHERS CASE NO: CR053AUG10

SCHEDULE OF REQUESTED *v* RECEIVED DOCUMENTS

NO.	DOCUMENT REQUESTED	REFERENCE	RECEIVED / NOT RECEIVED	COMMISSION'S RESPONSE TO CONTINENTAL
1.	The "*search warrant*".	Founding Affidavit: Par 22 (Page 197 of the bundle)	Received, Item 112 of the Commission's schedule.	Provided. Item 112 of the Commission's schedule.
2.	The "*numerous documents*" seized from the premises of "*Bridgestone, Appolla and the SATMC*".	Founding Affidavit: Par 22 (Page 197 of the bundle)	Not received. "Apollo documents" not yet received. (See paras 18.5 and 19.3, and Annexures CON3 and CON5 of Continental's Answering Affidavit to the Commission's Application for Default Judgement)	Not provided. Subject to confidentiality claims. See para 70 of answering affidavit. Although the Commission advised that it would provide Apollo's documents, it found that Continental does not need these documents to assist in its pleadings. The Commission tendered to provide the

				Apollo documents in order to move the case forward. However, the Commission found that despite its efforts, Continental had sought to exploit every conceivable loophole in order to delay, and was therefore unlikely to file its answer after having received the Apollo documents. Accordingly, the Commission maintained its stance that Continental was in a position to file its answer based on the Commission's referral affidavits.
3.	Bridgestone's *"application for leniency"*.	Founding Affidavit: Par 23 (Page 197 of the bundle)	Received. Items 1 – 111 of the Commission's schedule.	Provided. Items 1 – 111 of the Commission's schedule.
4.	The *"agreement"*.	Founding Affidavit: Par 26 (Page 200 of the bundle)	Not received.	Not provided. The Commission does not allege that the agreement is in writing.
5.	The *"escalation formula"*.	Founding Affidavit: Par 26.15	Not received.	Not provided. The Commission does not refer to a

		(Page 201 of the bundle)		document.
6.	The *"electronic mail discussions"*.	Supplementary Affidavit: Par 4.3 (Page 222 of the bundle)	Partially received. SATMC's e-mails received. Item 113 of the Commission's schedule. (See par 18.5 of Continental's Answering Affidavit to the Commission's Application for Default Judgement.) "Apollo documents" not yet received. (See paras 18.5 and 19.3, and Annexures CON3 and CON5 of Continental's Answering Affidavit to the Commission's Application for Default Judgement. Continental's request for *"electronic mail discussions"* and *"electronic communication"* is not limited to the SATMC's e-mails and the "Apollo documents", but relates to all electronic mail discussions and electronic communications referred to in paras 4.3 and 4.4 of the Commission's Supplementary Affidavit.	Provided. Item 113 of Commission's schedule. Apollo documents are not part of the electronic mail discussions referred to in paragraph 4.3 of the supplementary affidavit, but rather part of the seized documents.
7.	The *"electronic communication"*.	Supplementary Affidavit: Par 4.4 (Page 222 of the bundle)		Provided. Item 113 of Commission's schedule. Apollo documents are not part of the electronic mail discussions referred to in paragraph 4.4 of the supplementary affidavit, but rather part of the seized documents.
8.	The *"standard format for reporting*	Supplementary Affidavit:	Not received.	Not provided.

	industry statistics".	Paras 12 and 15 (Pages 224 and 225 of the bundle)		The Commission The Commission does not allege that the standard format for reporting industry statistics was recorded in a document within the meaning of High Court Rule 35(12). The Commission is merely recording agreement between the respondents to use price lists for the purpose of establishing a standard format for reporting industry statistics, as well as recording the exchange of price lists pursuant to the agreement.
9.	The "*price lists*" exchanged under the auspices of the SATMC.	Supplementary Affidavit: Par 12 (Page 224 of the bundle)	Not received.	Not provided. The Commission did not refer to written price lists in its supplementary affidavit within the meaning of High Court Rule 35(12). The Commission is merely recording agreement between the respondents to use price lists for the purpose of establishing a standard format for reporting industry

				statistics, as well as recording the exchange of price lists pursuant to the agreement.
10.	The "*price lists*" exchanged between the relevant individuals.	Supplementary Affidavit: Par 15 (Page 225 of the bundle)	Not received.	Not provided. The Commission did not refer to written price lists in its supplementary affidavit within the meaning of High Court Rule 35(12). The Commission is merely recording agreement between the respondents to use price lists for the purpose of establishing a standard format for reporting industry statistics, as well as recording the exchange of price lists pursuant to the agreement.
11.	The "*request*" submitted to the State Tender Board.	Supplementary Affidavit: Par 20 (Page 227 of the bundle)	Not received.	Provided. Please see Item 74 of the Commission's schedule (Statement of Tony Burns) at paragraphs 29 - 37 as well as items 81 to 84 being Annexures TB7; TB8; TB9 and TB10 to the Statement of Tony Burns.