

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 017129

In the matter between:

THE COMPETITION COMMISSION

Applicant

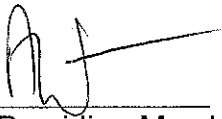
and

CAST INDUSTRIES (PTY) LTD

Respondent

Order

The Tribunal hereby confirms as an order the addendum agreed to and proposed by the Applicant and the Respondent attached hereto marked as "**Annexure C**", to be read with the prior settlement agreement and the addendum attached thereto marked as "**Annexure A**" and "**Annexure B**" respectively.



Presiding Member
Mr A. Wessels

22 May 2014
Date

Concurring: Ms A Ndoni and Ms M Mokuena

"ANNEXURE C"

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

CT Case No: 30/CR/Mar12

CC Case No: 2009May4419

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

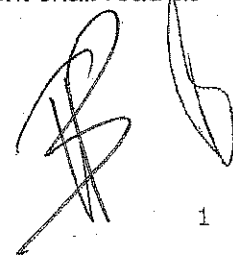
CAST INDUSTRIES (PTY) LTD

Respondent

ADDENDUM TO THE SETTLEMENT AGREEMENT BETWEEN THE COMPETITION
COMMISSION AND CAST INDUSTRIES (PTY) LIMITED IN RESPECT OF
CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF
1998 (AS AMENDED)

The consent agreement between the Competition Commission and New Cast Industries (Pty) Limited dated 21 June 2013 and confirmed by the Competition Tribunal on 16 July 2013 is hereby amended as follows:

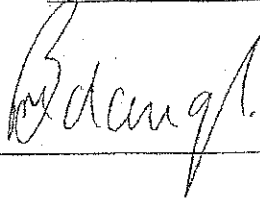
1. Amendment of sub paragraph 5.2 in the settlement agreement.
 - 1.1. The payment period of the administrative penalty is hereby amended by substituting it with a new payment period of the administrative penalty.
 - 1.2. The amended sub paragraph 5.2 of the consent agreement shall read as follows:



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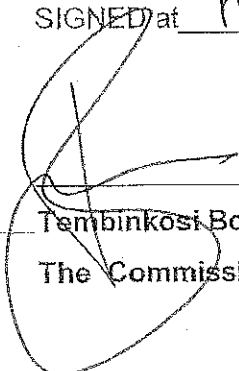
"5.2. *New Cast Industries* made a payment of R100 000 to the Commission on 27 March 2014. *New Cast Industries* will pay the balance of the administrative penalty (R467 970.48) to the Commission in four (4) equal instalments (R116 992.62) starting from 30 April 2014 and on the 30th of each month thereafter until the penalty is discharged."

SIGNED at MIDRAND on this the 13 day of MAY 2014.



Duly authorised signatory
Cast Industries (Pty) Ltd

SIGNED at PRETORIA on this the 19 day of MAY 2014.



Tembinkosi Bonakele

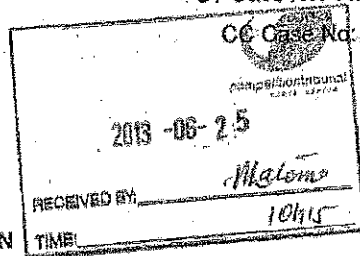
The Commissioner, Competition Commission

Annexure "A"

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

CT Case No: 30/CR/Mar12

CC Case No: 2009May4419



In the matter between:

THE COMPETITION COMMISSION

Applicant

and

CAST INDUSTRIES (PTY) LIMITED

Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
CAST INDUSTRIES (PTY) LIMITED IN REGARD TO A CONTRAVENTION OF
SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF 1998 (AS
AMENDED)

The Competition Commission ("Commission") and Cast Industries (Pty) Limited ("Cast Industries") hereby agree that an application be made to the Competition Tribunal ("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, No. 89 of 1998 (as amended), on the terms set out below:

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1 Definitions

For the purposes of this Settlement Agreement the following definitions shall apply –

- 1.1 **"Bosun Brick"** means Bosun Brick Midrand (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at corner Cresset and Musket Roads, Midrand Industrial Park, Midrand;
- 1.2 **"CLP"** means the corporate leniency policy of the Commission published in the Government Notice No. 628 of 23 May 2008, in Government Gazette No. 31064 of 23 May 2008.
- 1.3 **"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, Gauteng;
- 1.4 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5 **"Concor Technicrete"** means Murray & Roberts Building Products (Pty) Ltd t/a Concor Technicrete a company duly incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at corner Main Reef and Houtkapper Street, Rooderpoort, Johannesburg;
- 1.6 **"Complaint"** means the complaint initiated by the Commissioner on 07 May 2009 in terms of section 49B(1) of the Act under case number 2009May4419 against the respondents for alleged contravention of section 4(1)(b)(i) of the Act;

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- 1.7 **"Generic paving blocks"** means paving blocks which include interlocking and bevelled paving blocks used in the industrial, commercial and residential markets in South Africa;
- 1.8 **"Infraset"** means Aveng (Africa) Limited t/a Infraset, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at 204 Rivonia Road, Morningside, Sandton;
- 1.9 **"MVA Bricks"** means MVA Bricks (Pty) Limited, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Roger Dyson Road, Pretoria West Industrial, Pretoria;
- 1.10 **"New Cast Industries"** refers to a company currently registered as Cast Industries (Pty) Ltd with registration number 2007/022665/07 and with its principal place of business at 38 Spanner Road, Clayville Industrial, Midrand. Cast Industries (Pty) Ltd was originally registered and incorporated as Burnleigh Investments (Pty) Ltd and changed to its current name on 18 September 2008;
- 1.11 **"Old Cast Industries"** refers to Brimacks Trading (Pty) Ltd with registration number 1993/003790/07. Brimacks Trading (Pty) Ltd was originally registered and incorporated as Cast Industries (Pty) Ltd and changed to its current name on 18 September 2008;
- 1.12 **"Respondents"** means *Infraset, Bosun Brick, Cast Industries, Concor Technicrete, Vibro Bricks and MVA Bricks*;
- 1.13 **"Settlement Agreement"** means this agreement duly signed and concluded between the *Commission* and *new Cast Industries*;
- 1.14 **"The Act"** means the Competition Act, No. 89 of 1998, as amended;

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- 1.15 "**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, Gauteng;
- 1.16 "**Vibro Bricks**" means Vibro Bricks (Pty) Ltd, a company duly registered and incorporated in terms of the company laws of the Republic of South Africa, with its principal place of business at Schurweburg Street, Mooiplaas, Laudium, Pretoria.

2 Complaint investigation and the Commission's findings

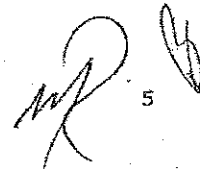
- 2.1 On 22 October 2008 *Infraset* applied for corporate leniency in terms of the CLP regarding its involvement in a cartel in the market for the manufacture and supply of *generic paving blocks* in South Africa. In the CLP application, *Infraset* submitted information and documents to the Commission indicating, *inter alia*, the respondents held meetings and discussions as a result of which they, *inter alia*, agreed to fix the selling price of *generic paving blocks* in contravention of section 4(1)(b)(i) of the Act.
- 2.2 Following *Infraset's* application for corporate leniency, on 07 May 2009 the Commissioner initiated a *complaint* in terms of section 49B(1) of the Act against the respondents. The Commission duly investigated the *complaint* and found that the respondents had entered into an agreement, arrangement and understanding involving the fixing of the selling price of *generic paving blocks* in contravention of section 4(1)(b)(i) of the Act. The fixing of the selling price included an agreement among the respondents on, *inter alia*, minimum prices, transport costs and price increases of *generic paving blocks*. The Commission's investigation established that the aforementioned conduct of the respondents commenced in or about 2001 and continued until at least 2008.

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2.3 The *new Cast Industries* alleges that:

- 2.3.1 it was incorporated on 15 August 2007 as Burnleigh Investments (Pty) Ltd with registration number 2007/022665/07;
- 2.3.2 on 01 March 2008 Burnleigh Investments (Pty) Ltd acquired as a going concern the business of a company which at the time of the acquisition was registered as Cast Industries (Pty) Ltd ("old Cast Industries") but is now registered as Brimacks Trading (Pty) Ltd with registration number 1993/003790/07;
- 2.3.3 as part of the sale of business agreement Burnleigh Investments (Pty) Ltd changed its name to Cast Industries (Pty) Ltd ("new Cast Industries") on 18 September 2008 and *old Cast Industries* changed its name to Brimacks Trading (Pty) Ltd;
- 2.3.4 the *new Cast Industries* was not involved in cartel conduct and came into existence four months before the demise of the cartel in 2008; and
- 2.3.5 the shareholding in *new Cast Industries* has changed several times since it acquired the business of *old Cast Industries* and there is no one currently in the employ of *new Cast Industries* who has any personal knowledge of any of the facts set out by the Commission in its referral of this matter to the Competition Tribunal.

2.4 The Commission found that the *new Cast Industries* is liable for payment of the administrative penalty on the basis of, *inter alia*, that the business of the *old Cast Industries* was acquired as a "going concern" and *old Cast Industries* did not indemnify the *new Cast Industries* from liability for payment of the administrative penalty in terms of the Act.

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3 Settlement Discussions

- 3.1 On 22 January 2013 *new Cast Industries* made a written settlement proposal to the *Commission*. Following *new Cast Industries'* settlement proposal, the *Commission* and *new Cast Industries* engaged in settlement discussions.
- 3.2 On 18 March 2013 the *Commission* and *new Cast Industries* reached an agreement, the outcome of which is this *Settlement Agreement*.

4. Admission

New Cast Industries admits that *old Cast Industries* engaged in conduct in contravention of section 4(1)(b)(i) of the Act.

5. Administrative Penalty

- 5.1 *New Cast Industries* is liable to pay an administrative penalty in terms of section 58(1)(a)(iii), read with sections 59(1)(a), 59(2) and (3) of the Act in the amount of R567 970.48 (FIVE HUNDRED AND SIXTY SEVEN THOUSAND AND NINE HUNDRED AND SEVENTY RAND AND FOURTY-EIGHT CENT) representing 2.5% of *New Cast Industries'* affected turnover for the financial year ended in February 2011.
- 5.2 *New Cast Industries* will pay the administrative penalty to the *Commission* within six (6) months after the date of the confirmation of this *Settlement Agreement* as an order of the *Tribunal*;
- 5.3 *New Cast Industries* shall remit payment of the administrative penalty into the following bank account:

Name of account holder:

COMPETITION COMMISSION

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Bank name: ABSA BANK PRETORIA
Account number: 4050778576
Branch code: 323345

7.3 The *Commission* will pay the administrative penalty into the National Revenue Fund in terms of section 59(4) of the *Act*.

8. Full and final settlement

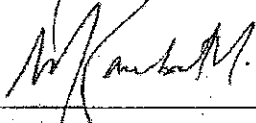
This *Settlement Agreement*, upon confirmation thereof as an order by the *Tribunal* concludes all proceedings between the *Commission* and *new Cast Industries* in relation to the contravention of section 4(1)(b)(i) of the *Act*, referred to the *Tribunal* under case number: CT Case No: 30/CR/Mar12.

SIGNED at MIDRAND on this the 12 day of JUNE 2013.



Duly authorised signatory
Cast Industries (Pty) Ltd

SIGNED at Pretoria on this the 21 day of June 2013.



Shan Ramburuth
The Commissioner, Competition Commission



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

CT Case No: 30/CR/Mar12

CC Case No: 2009May4419

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

CAST INDUSTRIES (PTY) LTD

Respondent

ADDENDUM TO THE SETTLEMENT AGREEMENT BETWEEN THE COMPETITION
COMMISSION AND CAST INDUSTRIES (PTY) LIMITED IN RESPECT OF
CONTRAVENTION OF SECTION 4(1)(b)(i) OF THE COMPETITION ACT, NO. 89 OF
1998 (AS AMENDED)

The settlement agreement between the Competition Commission and New Cast Industries (Pty) Limited dated 21 June 2013 ("the settlement agreement") is hereby amended as follows:

Insertion of paragraph 4A in the settlement agreement.

1. Paragraph 4A is hereby inserted in the settlement agreement.
2. The inserted paragraph 4A shall read as follows:

"4A. Agreement concerning future conduct

New Cast Industries agrees and undertakes to:

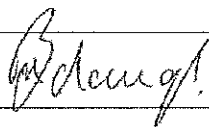


4.1 prepare and circulate a statement summarising the content of this *Settlement Agreement* to its employees who are managers and to its directors and relevant corporate governance structures within one (1) month after the date of confirmation of this *Settlement Agreement* as an order of the Tribunal;

4.2 develop and implement a compliance programme in order to ensure that its employees, management and directors do not engage in any conduct which constitutes a prohibited practice in terms of the Act.

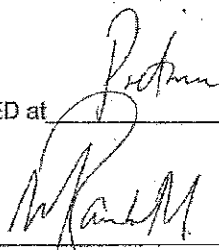
4.3 A copy of the compliance programme shall be submitted to the Commission within three (3) months after the date of confirmation of this *Settlement Agreement* as an order of the Tribunal."

SIGNED at NIDEAN on this the 15 day of July 2013.



Duly authorised signatory
Cast Industries (Pty) Ltd

SIGNED at Pretoria on this the 16 day of July 2013.



Shan Ramburuth
The Commissioner, Competition Commissioner


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