

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 23/CR/Feb09

In the matter between:

The Competition Commission

Applicant

and

Cape Concrete Works (Pty) Ltd

Respondent

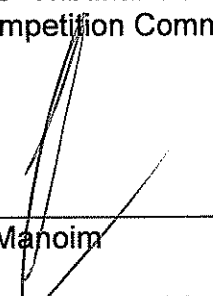
Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and M Holden (Tribunal Member)

Heard on : 12 August 2010

Decided on : 12 August 2010

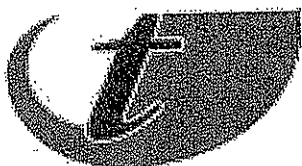
Order

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



N Manoim

Concurring: Y Carrim and M Holden



competitiontribunal south africa

Form CT 6

About this Form

This Form is issued in terms of the Competition Tribunal Rules.

Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.

If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132

Notice of Motion

Date: 10-Aug-2010 File # 23/CR/Feb09

To: The registrar of the Competition Tribunal

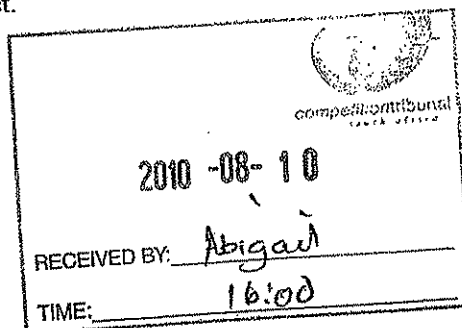
Concerning the matter between:

The Competition Commission (Applicant)

and Cape Concrete Works (Pty) Ltd (Respondent)

Take notice that the Applicant intends to apply to the Tribunal for the following order:

Confirmation of the attached settlement agreement concluded between the Applicant and the Respondent as an consent order of the Competition Tribunal in terms of section 58(1)(a)(iii) as read with sections 59 (1)(a) and 59 (3) of the Act.



Name and Title of person authorised to sign:

Shweta Anand

Authorised Signature:

Date:

10-Aug-2010

Tribunal file number:

Date filed:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

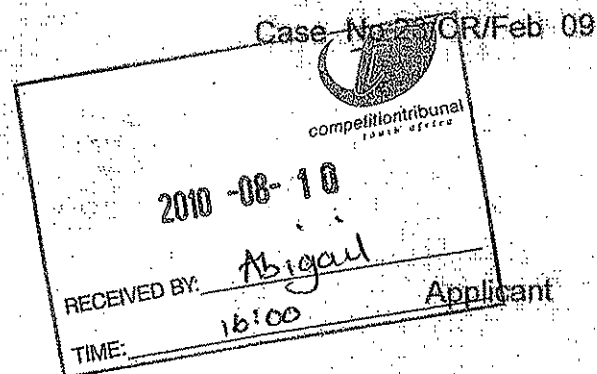
In the matter between:

THE COMPETITION COMMISSION

and

CAPE CONCRETE WORKS (PTY) LIMITED

Respondent



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

The Competition Commission and Cape Concrete Works (Pty) Ltd. hereby agree
that application be made to the Competition Tribunal for an order in terms of
section 58(1)(a)(iii) of the Competition Act, No. 89 of 1998 (as amended), on the
terms set out more fully 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 "Cape Concrete" or "Respondent" means Cape Concrete Works (Pty) Limited;
- 1.3 "Concrete Units" means Concrete Units (Pty) Ltd;
- 1.4 "Complaint" means the complaint initiated by the Commissioner of the Commission in terms of section 49B of the Act under case number 2008Mar3595 into possible contraventions 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, Gauteng;
- 1.6 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.7 "Days" means calendar days;
- 1.8 "Infraset" means the business unit of Aveng Manufacturing, a subsidiary of Aveng (Africa) Limited;
- 1.9 "Rocla" means Rocla (Pty) Ltd;



1.10 "Settlement Agreement" means this agreement duly signed and concluded between the Commission and Cape Concrete ;

1.11 "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.

2 Complaint investigation and the Commission's findings

2.1 During December 2007, the Commission received an application for leniency under its corporate leniency programme from Rocla regarding its involvement in a cartel in the precast concrete market within South Africa. In its leniency application, Rocla advised the Commission that it, together with SPC, Concrete Units, Cape Concrete, Cobro, Grallio, Aveng Africa Ltd, Craig Concrete, Conrite Walls and D&D Concrete had engaged in the following conduct:

2.1.1 fixed the selling price of pipes, culverts and manholes;

2.1.2 divided the markets for the production and distribution of pipes, culverts and manholes; and

2.1.3 collusively tendered in respect of the supply of precast concrete products and precast concrete sleepers to certain suppliers.

2.2 The Commissioner initiated an investigation into this alleged cartel activity on 19 March 2008.

2.3 The Commission's investigation found in respect of Cape Concrete the following:



2.3.1 *Price fixing and fixing of trading conditions*

2.3.1.1 During the period 2000 until August 2007 (the relevant period), Cape Concrete, Rocla, Infraset and Concrete Units, competitors in the business for manufacture and sale of precast pipes in South Africa, acting through their respective representatives in meetings:

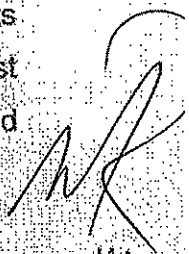
2.3.1.1.1 Directly fixed prices of pipes sold to their customers by agreeing on prices that each would quote to customers/contractors allocated to each other;

2.3.1.1.2 Directly fixed prices of pipes by agreeing on price increases and discounts to be offered to their customers;

2.3.1.1.3 Directly fixed credit terms to be granted to their customers.

2.3.1.2 Discussions on price increases, prices to be quoted to customers, discounts and credit terms occurred between Cape Concrete and its competitors during meetings held at the premises of Cape Concrete during the relevant period. These discussions were confirmed in written documentation such as price lists and so called *modus operandi* documentation generated and exchanged between Cape Concrete and its competitors during the relevant period. This conduct constitutes price fixing and fixing of trading conditions in contravention of section 4(1)(b)(i) of the Act.

2.3.1.3 Through these price fixing arrangements, Cape Concrete and its competitors prevented and limited price competition amongst themselves in relation to pricing of precast concrete pipes and culverts.



2.3.2 *Market Division Pipes and Culverts*

2.3.2.1 During the relevant period, Cape Concrete together with Infraset and Rocla, being competitors in the market for the manufacture and sale of pipes in South Africa, acting through their respective representatives in meetings, divided the Western Cape market for pipes by:

2.3.2.1.1 Allocating customers/contracts amongst themselves in accordance with agreed upon percentage share, in particular it was agreed that Rocla would have 46.2%, Infraset 30.8% and Cape Concrete 23% of the regional market for pipes.

2.3.2.1.2 Allocating the specific territories within which each firm would supply pipes.

2.3.2.1.3 Allocating the specific size pipes to be supplied by each.

2.3.2.1.4 Prior to 2002 the market for culverts were divided 33.3% each for Cape Concrete, Rocla and Infraset. In 2002 an agreement was reached between Rocla, Infraset, Cape Concrete and Concrete Units that Concrete Units will stop manufacturing pipes in exchange for share of the culverts market. In order to facilitate this Cape Concrete agreed to give up its 33.3% of the culvert market.

2.3.3 *Collusive Tendering*

2.3.3.1 During the relevant period, Cape Concrete together with Rocla and Infraset collectively agreed on prices that they would tender for in relation to customers including Government contracts,



with agreed upon market shares pertaining to pipes, and coordinating quotations offered to contractors in order to secure such contracts, in contravention of s 4(1)(b)(iii).

3 Admission

3.1 Cape Concrete admits that it has contravened sections 4(1)(b)(i), 4(1)(b)(ii), 4(1)(b)(iii) in that it and its competitors, through a series of meetings attended by their respective representatives colluded to fix prices, price increases and discounts, allocate customers, territories and specific goods amongst themselves and engaged in collusive tendering during the relevant period in the markets for pipes as set out above.

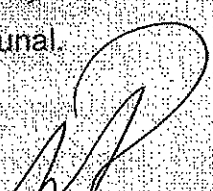
4 Agreement concerning future conduct

4.1 Cape Concrete agrees to cooperate fully with the Commission in relation to the prosecution of any other firm arising from the Commission's investigation of the Complaint. Without limiting the generality of the above, Cape Concrete specifically agrees to:

4.1.1 testify in support of the Commission's case regarding the contraventions in this Settlement agreement; and

4.1.2 provide evidence, written or otherwise, concerning the contraventions contained in this Settlement agreement.

4.2 Cape Concrete agrees to develop and implement a formal compliance programme incorporating corporate governance designed to ensure that employees, management and directors 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 by the Tribunal.



5 Administrative Penalty

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

5.2 Cape Concrete has agreed to pay an administrative penalty in the amount of R 4, 371,386 being 7% of the turnover attributable to Cape Concrete in the 2008 financial year.

5.3 Cape Concrete will pay the penalty amount to the Commission within 6 months of the date of confirmation of this Settlement Agreement by the Tribunal as an order.

5.4 The penalty amount shall be paid into the following bank account:

NAME:	THE COMPETITION COMMISSION FEE ACCOUNT
BANK:	ABSA BANK, PRETORIA
ACCOUNT NUMBER:	4050778576
BRANCH CODE:	323 345

5.5 The Commission will pay the money into the National Revenue Fund in terms of section 59(4) of the Act.

6 Full and final resolution

This Settlement Agreement is entered into in full and final settlement of all proceedings between Cape Concrete and the Commission, and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission and Cape Concrete relating to any alleged contravention by Cape

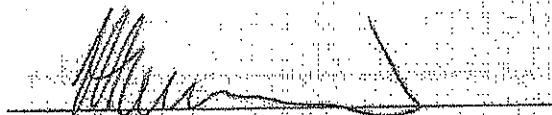


Concrete of section 4(1)(b) of the Act that is the subject of, or was investigated pursuant to, the Complaint under case number 2008Mar3595.

7. Non-Variation

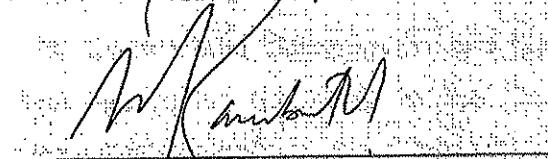
No contract varying, adding to, deleting from or cancelling of this agreement and no waiver of any right under this agreement, shall be effective unless reduced to writing and signed by the parties, and confirmed by the Competition Tribunal.

Dated and signed in *Cape Town* on this the *7th* day of *August* 2010.



Roelof Andrew Louw
Managing Director-authorised signatory
Cape Concrete Works (Pty) Ltd

Dated and signed in *Pretoria* on this the *10th* day of *August* 2010.



Shan Ramburuth
The Commissioner, Competition Commission