

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 016543

In the matter between:

The Competition Commission

Applicant

and

Mccoy's Glass Wholesalers CC

Respondent

Panel: N Manoim (Presiding Member), T Madima
(Tribunal Member) and A Ndoni (Tribunal
Member)

Heard on: 12 June 2013

Decided on: 12 June 2013

Order

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



Presiding Member
N Manoim

Concurring: T Madima and N Ndoni



competitiontribunal south africa

Form CT 6

Notice of Motion

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 or Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Date: 10-Mar-2013

File # 016451

To: The registrar of the Competition Tribunal

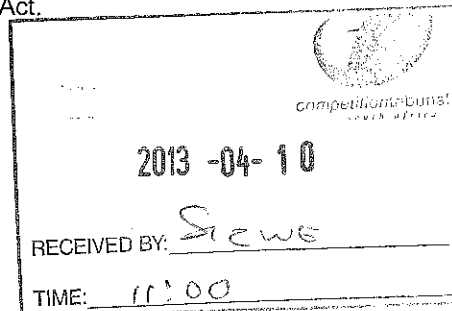
Concerning the matter between:

The Competition Commission (Applicant)

and McCoy's Glass Wholesalers CC (Respondent)

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

Confirmation of the attached consent agreement entered into between the Competition Commission and McCoy's Glass Wholesalers CC on 09 March 2013 in respect of the contravention of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Competition Act No. 89 of 1998 (as amended) as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(a)(ii) and 59(1)(d) of the Act.



Name and Title of person authorised to sign:

Mervin Dorasamy: Acting Manager Legal Services

Authorised Signature:

Date:

[Signature]

10-Mar-2013

For Office
Use Only:

Tribunal file number:

Date filed:

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

11 A 11

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

**CT CASE NO: 016451
CC CASE NO: 2010Feb4941**

In the matter between:

COMPETITION COMMISSION

Applicant

and

MCCOY'S GLASS WHOLESALERS CC

Respondent

FILING SHEET

DOCUMENT FILED: **CONSENT AGREEMENT BETWEEN THE
COMPETITION COMMISSION AND MCCOY'S GLASS
WHOLESALERS CC IN RESPECT OF THE
CONTRAVENTION OF SECTIONS 4(1) (b) (i) AND (ii)
OF THE COMPETITION ACT NO. 89 OF 1998, (AS
AMENDED).**

FILED BY:

COMPETITION COMMISSION

77 Meintjies Street
Block C, DTI Campus
Sunnyside
PRETORIA

Ref: T. Khumalo/ B. Ntshingila

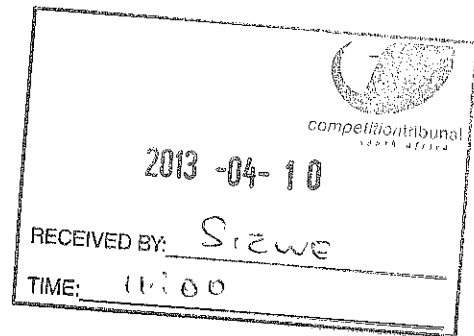
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AND TO: **EVERSHEDS**
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Sandton
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Ref: Alex Elliot
Tel: 011 286 6920
Fax: 086 680 9084
E-mail: alexe@rmlaw.co.za

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CC Case No: 2010Feb4941

In the matter between:

THE COMPETITION COMMISSION

And

MCCOY'S GLASS WHOLESALERS CC

 competitiontribunal south africa
2013 -04- 10
RECEIVED BY: <u>Sizwe</u>
TIME: <u>11:00</u>

Applicant

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
MCCOY'S GLASS WHOLESALERS CC IN REGARD TO THE ALLEGED
CONTRAVENTION OF SECTIONS 4 (1) (b) (i) AND (ii) OF THE COMPETITION ACT,
NO. 89 OF 1998, AS AMENDED

The Competition Commission and McCoy's Glass Wholesalers CC hereby agree that application be made to the Competition Tribunal ("the Tribunal") for an order confirming this Consent Agreement as an Order of the Tribunal in terms of section 49D read with section 58(1)(a)(iii) and (b) as well as section 59(1)(a) of the Competition Act, No. 89 of 1998 as amended, on the terms set out more below.

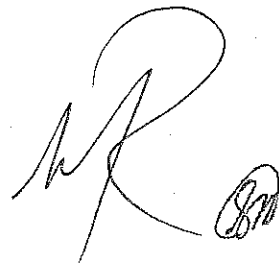
 

1.

Definitions

For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1. **"the Act"** means the Competition Act No. 89 of 1998, as amended;
- 1.2. **"CLP"** means the Corporate Leniency Policy issued by the Commission in terms of the Act to clarify the Commission's policy approach on matters falling within its jurisdiction in terms of the Act as published in the Government Gazette Notice 628 of 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. **"Complaint"** means the Complaint initiated by the *Commissioner* of the *Commission* against the *Respondents* on (23 February 2010 under case number 2010Feb4941.
- 1.6. **"McCoy's Glass"** means McCoy's Glass Wholesalers CC, a close corporation duly registered and incorporated in terms of the company laws of the Republic of

A large, stylized handwritten signature in black ink, consisting of a large 'R' and a smaller 'M' or 'B' at the end.

South Africa, with its principal place of business situated at 18 Jurie Street, Alrode, Alberton, South Africa.

- 1.7. **"Days"** means calendar days.
- 1.8. **"Parties"** means, collectively, the Commission and McCoy's Glass.
- 1.9. **"Relevant period"** means the period from 1998 to April 2007.
- 1.10. **"Prohibited Practice"** means a practice prohibited in terms of Chapter 2 of the Act.
- 1.11. **"Respondents"** collectively refers to McCoy's Glass, Glass South Africa (Pty) Ltd, National Auto Glass (Pty) Ltd, AF-FSL Glass and Windscreen Centre (Pty) Ltd ("AF-FSL Glass"), Northern Hardware and Glass (Pty) Ltd, Furman Glass (Pty) Ltd, National Glass (Pty) Ltd.
- 1.12. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and McCoy's Glass.
- 1.13. **"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.

A large, stylized handwritten signature, possibly 'MR', is written in the bottom right corner. To its right, there are smaller initials, possibly 'GM'.

2.

The Complaint Investigation

- 2.1. On 08 June 2009 AF-FSL Glass applied for immunity in terms of the CLP for, *inter alia*, its role in concluding an agreement to fix prices, fix trading conditions and divide markets for the wholesale of glass products in contravention of section 4(1)(b)(i) and (ii) of the Act. On 30 March 2010 the Commissioner granted conditional immunity in term of the CLP.
- 2.2. On 23 February 2010 the Commissioner initiated the complaint against the respondents for alleged contraventions of, *inter alia*, sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act. The Commission duly investigated the complaint and found that the respondents entered into agreements to fix minimum prices and trading conditions and to divide markets for the supply and wholesale of flat glass, laminated glass and toughened glass.
- 2.3 The agreements entered into between the respondents remained in force intermittently between 1993 and 2007 (in the case of McCoy's Glass, between 1998 and April 2007). The Commission investigation revealed that the prohibited conduct took place mainly in Gauteng, Free State and Western Cape. McCoy's Glass joined the cartel in 1998, approximately one year after it (McCoy's Glass) was established, and operated only in Gauteng.



3.

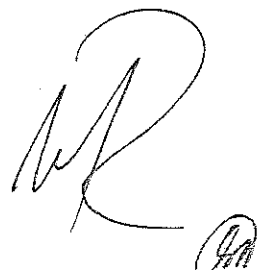
Admission

McCoy's Glass admits that, during the relevant period, it entered into agreements with the respondents which contravened section 4(1)(b)(i) and (ii) of the Act.

4.

Agreement Concerning Future Conduct

- 4.1. The *Parties* record that *McCoy's Glass*' participation in the conduct that formed the subject matter of the complaint ceased in or about April 2007 when it voluntarily left the cartel.
- 4.2. *McCoy's Glass* agrees and undertakes to refrain from engaging in price fixing, fixing of trading conditions, market division in contravention of sections 4(1)(b)(i) and 4(1)(b)(ii) of the Act.
- 4.3. Within six (6) months from the date of confirmation of this *Consent Agreement*, *McCoy's Glass* agrees to develop, implement, monitor and enforce a competition law compliance programme in order to ensure that its employees, management, members and agents do not engage in future contraventions of the Act.

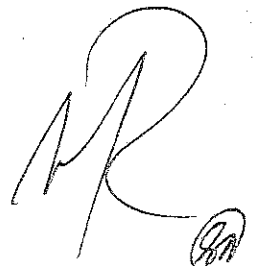
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- 4.4. *McCoy's Glass* undertakes not to engage in any conduct which constitutes a prohibited practice in contravention of chapter 2 of the Act.
- 4.5. *McCoy's Glass* agrees to co-operate with the *Commission* in the prosecution of the remaining respondents in relation to the complaint. This includes, but is not limited to providing relevant evidence, witness statements and giving evidence before the *Tribunal*.
- 4.6. The parties record that *McCoy's Glass* cooperated with the *Commission's* investigation and that it made immediate, full and frank disclosure of the nature and extent of its participation in the cartel.

5.

Administrative Penalty

- 5.1. In terms of section 58(1)(a)(iii) read with sections 59(1)(a), 59(2) and 59(3) of the Act, *McCoy's Glass* accepts that it is liable pay an administrative penalty.
- 5.2. The *Parties* agree that *McCoy's Glass* will pay an administrative penalty in the amount of R2 487 450.70 (two million four hundred and eighty seven thousand, four hundred and fifty rand and seventy cents), being 3% of *McCoy's Glass'* affected turnover for the financial year ending 30 June 2011.
- 6.3. The administrative penalty will be paid into the following account:

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NAME: COMPETITION COMMISSION FEE ACCOUNT

BANK: ABSA BANK, PRETORIA

ACCOUNT NO: 405 077 8576

BRANCH CODE: 323345

6.3. McCoy's Glass shall pay the administrative penalty within three (3) months of the date of the confirmation of this *Consent Agreement* by the *Tribunal*.

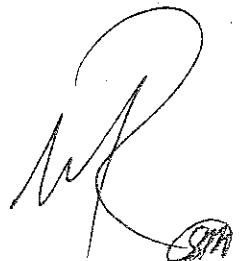
6.4. The *Commission* will pay the administrative penalty received from McCoy's Glass into the National Revenue Fund as contemplated by section 59(4) of the Act.

8.

Full and Final Settlement

This *Consent Agreement* is entered into in full and final settlement and upon confirmation as a Consent Order by the *Tribunal*, concludes all proceedings between the *Commission* and McCoy's Glass relating to any alleged contravention by McCoy's Glass of sections 4(1)(b) (i) and 4(1)(b)(ii) of the Act that are the subject of the *Complaint* and the *Commission's* investigations under case number 2010Feb4941.

Dated and signed in *Alrode* on this the *8* day of *April* 2013.

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Steve McCoy

Managing Member:

McCoy's Glass Wholesalers CC

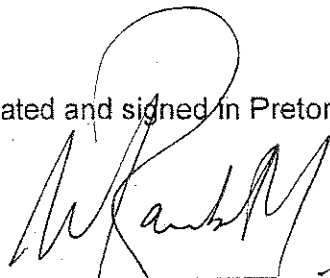
Dated and signed in Pretoria on this the

9

day of

April

2013



Shan Ramburuth

The Commissioner

Competition Commission

"B"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CC Case No: 2010Feb4941

CT Case No: 016451

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

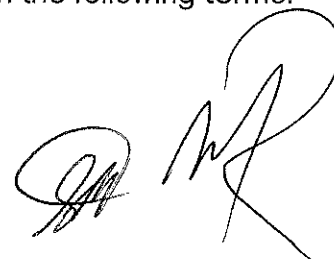
MCCOY'S GLASS WHOLESALERS CC

Respondent

**ADDENDUM TO CONSENT AGREEMENT BETWEEN THE COMPETITION
COMMISSION AND MCCOY'S GLASS WHOLESALERS CC IN REGARD TO THE
ALLEGED CONTRAVENTION OF SECTIONS 4 (1) (b) (i) AND (ii) OF THE
COMPETITION ACT, NO. 89 OF 1998, AS AMENDED**

The Competition Commission and McCoy's Glass Wholesalers CC hereby agree to amend clause 6.3 of the consent agreement concluded on 9 April 2013 by substituting the existing clause 6.3 with the following:

"6.3 McCoy's Glass shall pay the administrative penalty within six (6) months of the date of the confirmation of this *Consent Agreement* by the *Tribunal*, on the following terms:



6.3.1 50% of the penalty within three (3) months; and

6.3.2 the balance being the remaining 50% within six (6) months."

Dated and signed in Pretoria

on this the 12th day of June 2013.

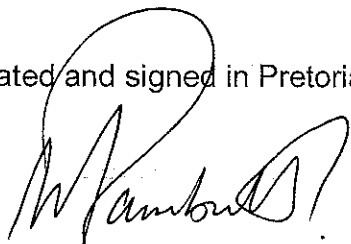


Steve McCoy

Managing Member:

McCoy's Glass Wholesalers CC

Dated and signed in Pretoria on this the 12 day of June 2013



Shan Ramburuth

The Commissioner

Competition Commission