

competitiontribunal
south africa

fax form

to	Ms Jocelyn katz edward nathan sonnenbergs inc	fax	011 269 7899
	Legal Services Competition Commission		44283
ref	51/CR/Aug10	date	03 November 2010
from	Abigail Mashigo	pages	12 (including this page)
re	Order		

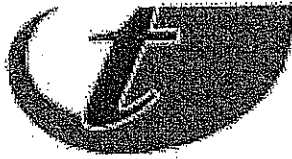
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Attached please find the order in the above matter.

Regards

Abigail Mashigo

CC: Jabulane Ngobeni - 44182



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 4.1.

2010-10-26
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Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0152
Republic of South Africa
Tel: 27 12 394 5300
Fax: 27 12 394 0169
E-mail: cca@comptrib.co.za

Notice of Motion

CC CASE NO 2006/148 2447
2007/148 3121

Date: 26 OCTOBER 2010 File # CTSI/CA/AUG10

To: The registrar of the Competition Tribunal

Concerning the matter between:

COMPETITION COMMISSION (Applicant)

and
UNIVERSAL RECYCLING COMPANY (PTY) LTD (Respondent)

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

CONFIRMATION OF THE ATTACHED SETTLEMENT AGREEMENT AS AN ORDER OF THE TRIBUNAL IN TERMS OF SECTION 58(1)(a)(iii) AND 59(1)(a) OF THE COMPETITION ACT 89 OF 1998 AS AMENDED.

Name and Title of person authorised to sign:

Dr Mkhwanana: Chief Legal Counsel

Authorised Signature:

Date:

26/10/2010

For Office Use Only: Tribunal file number: _____ Date filed: _____

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 51/CR/Aug10

In the matter between:

The Competition Commission

Applicant

and

Universal Recycling Company (Pty) Ltd

Respondent

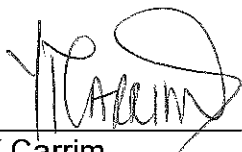
Panel : Y Carrim (Presiding Member), M. Mokuena (Tribunal Member), and A Wessels (Tribunal Member)

Heard on : 3 November 2010

Decided on : 3 November 2010

Order

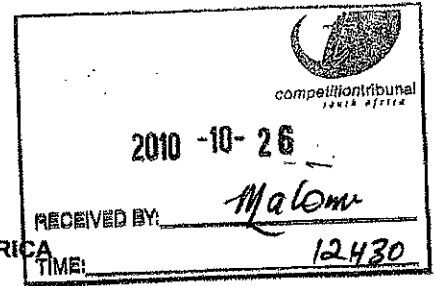
The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".



Y Carrim

Concurring: M. Mokuena and A Wessels

"A"



IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: 51/CR/Aug10

CC Case No: 2006Aug2447 and Case No: 2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

Applicant

And

UNIVERSAL RECYCLING COMPANY (PTY) LTD

Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND UNIVERSAL RECYCLING COMPANY (PROPRIETARY) LIMITED IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(B) (i) and (ii) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED

The Competition Commission of South Africa and Universal Recycling Company (Proprietary) Limited hereby agree that application be made to the Competition Tribunal for confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 58(1) (a) (iii) read with section 59(1) (a) of the Competition Act, No. 89 of 1998, as amended, on the terms set out below.



1. Definitions

For the purposes of this consent order agreement the following definitions shall apply:

- 1.1. "Abeddac" refers to Abeddac Metals (Pty) Ltd, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa with its principal place of business at 15th Avenue, Benoni Gauteng and carrying on business as a dealer in ferrous scrap;
- 1.2. "the Competition Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.3. "Amalgamated Metals" means Amalgamated Metals Recycling cc, a close corporation duly incorporated and registered in terms of the close corporation laws of the Republic of

South Africa, with its principal place of business at 100 4th Street Booyens Reserve Johannesburg and carrying on business as a scrap dealer;

- 1.4. "Ben Jacobs" means Ben Jacobs Metals (Pty) Limited, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa with its principal place of business at 25 Plantation Road, Johannesburg. Where conduct is alleged to involve Ben Jacobs or Power Metals it must be read to involve either of them in the alternative. Ben Jacobs is a shareholder of Power Metals;
- 1.5. "Cisco" refers to Cape Town Iron and Steel Works (Pty) Limited, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its principal place of business at Fabriek Street, Kullsrivier, Cape Town. Cisco is involved in the business of producing steel products from processed ferrous scrap which it requires as a raw material;
- 1.6. "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act, with its principal place of business at 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.7. "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Competition Act;
- 1.8. "Complaints" means the complaint initiated by the Commissioner of the Commission in terms of section 49B of the Competition Act under case number 2006Aug2447 (as extended by the Commission on 6 July 2007) and 2007Aug3121 and any other complaints of prohibited conduct arising from the conduct described in the Report or this Consent Order Agreement;
- 1.9. "Complaint referral" means the Commission's referral to the Competition Tribunal under case number 51/CR/Aug10.
- 1.10. "Settlement Agreement" means this agreement duly signed and concluded between the parties to the agreement;
- 1.11. "DTI" means the Department of Trade and Industry;
- 1.12. "Ferrous Metal" is metal that contains iron and all iron derivatives;

 ² 

- 1.23. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act, with its principal place of business at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.24. "UMS" refers to Universal Metal Shredding (Proprietary) Limited, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at corner Newclare and Kelvin Streets, Industria, Johannesburg; and
- 1.25. "URC" refers to Universal Recycling (Proprietary) Limited, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at corner Newclare and Kelvin Streets, Industria, Johannesburg. References to URC should be taken to include Steelco and UMS.

2. The Complaints and the Commission's Investigation

- 2.1. During August 2006, the Commissioner initiated a complaint under Case number 2006Aug2447 in respect of alleged prohibited practices in contravention of sections 4 and 5 of the Competition Act, against a number of scrap processors and merchants including Reclam, SAM, NSM and Cisco.
- 2.2. The initiation was based on allegations that certain arrangements submitted on 21 October 2005 to the Commission in respect of a large merger filing in which Reclam proposed to acquire the businesses of SAM and its associated company Waste Control (Pty) Ltd, constituted price fixing, market allocation and exclusive dealing in contravention of section 4(1) (b) (i) and (ii) and 5(1) of the Competition Act respectively in relation to ferrous and non- ferrous scrap metal.

Extension of the first complaint

- 2.3. During the course of the investigation, the Commissioner, acting in terms of section 49A of the Competition Act, issued summons against Reclam. On the basis of the information submitted by Reclam to the Commission, the Commission expanded the scope of the investigation under Case No 2006Aug2447 to include collusive tendering in contravention of section 4(1)(b)(iii) against Reclam, NSM, SAM, LO Rail Scrap Dealers cc, URC and Fine Trading cc.
- 2.4. On 20 July 2007, the Commission obtained search warrants and conducted search and seizure operations at the premises of Reclam in Johannesburg, Port Elizabeth and



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- 1.13. "Non-Ferrous Metal" is metal or alloy that is free of iron;
- 1.14. "NSM" refers to National Scrap Metal (Cape Town) (Pty) Ltd, a company duly incorporated and registered in terms of the company laws of South Africa, with its principal place of business at Fabriek Street, Kuilsrivier, Cape Town. NSM is a company with limited liability, in which Reclam has 40% shareholding. NSM is engaged in the business of collecting and processing all types of scrap metal including ferrous and non-ferrous scrap;
- 1.15. "Parties to the agreement" refers to the Commission and URC;
- 1.16. "Power Metals" means Power Metals (Proprietary) Limited, a company duly incorporated and registered in terms of the company laws of South Africa, with its principal place of business at 25 Plantation Road, Gardens, Johannesburg;
-
- 1.17. "Reclam" means The New Reclamation Group (Pty) Limited, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its principal place of business at 263 Oxford Road, Illovo, Johannesburg. Reclam is engaged in the business of collecting and processing of scrap metal;
- 1.18. "Respondent" or "URC" means Universal Recycling Company (Proprietary) Limited;
- 1.19. "SAM" means SA Metal & Machinery Company (Pty) Ltd, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at 14 Christian Avenue, Epping Industria, and Cape Town. SAM is involved in the business of collecting ferrous and non-ferrous scrap metal for its own smelting purposes, for the sale to local smelters and for export markets;
- 1.20. "Scrap" refers to ferrous or non-ferrous scrap metal that can be used as an input in the manufacture of metal products;
- 1.21. "Steelco" means Steelco Broking (Proprietary) Limited, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at corner Newclare and Kelvin Streets, Industria, Johannesburg. Steelco is a steel scrap trader as well as a broker for URC and Universal Metal Shredding (Proprietary) Limited.
- 1.22. "suppliers" means suppliers of scrap metal to consumers of scrap metal such as mills and foundries;

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Durban. Soon thereafter, the Commission received information that Reclam; Abeddac; Amalgamated Metals; Ben Jacobs; Power Metals, SAM and URC were engaged in price fixing and collusive tendering in respect of various types of non-ferrous scrap metal. The information showed that Reclam had sent an email to its competitors confirming that all of them agreed to maximum buying levels for millberry, berry, birch/cliff, heavy brass, Al cast and old rolled, all of which are different types of non-ferrous scrap.

- 2.5. On 8 August 2007 the Commission initiated another complaint (under case number 2007AUG3121) against the respondents referred to in paragraph 2.4 above. This complaint was initiated because the Commission had established that certain respondents and other firms were likely involved in specific contraventions of the Competition Act, which were not identified at the time of the initial initiation of the complaint. Based on evidence before the Commission, the Commission had reason to believe that Reclam; Abeddac Metals (Pty) Ltd; Amalgamated Metals Recycling; Ben Jacobs; Power Metals, SAM and URC were engaged in price fixing and collusive tendering in contravention of sections 4(1) (b) (i) and 4(1) (b) (iii) of the Competition Act as amended in that these companies engaged in the following conduct:
- 2.5.1. Agreeing on prices ("maximum buying levels") under which they will buy various types of scrap; and
- 2.5.2. Agreeing to fix maximum buying levels of various types of scrap metal/steel sold at auctions or in the open market.
- 2.6. On 22 October 2007, Reclam approached the Commission with a view of settling the above matters. Pursuant to a process of consultation with the Commission on 01 February 2008, Reclam submitted a report, which report was intended to deal with the subject matter of the complaints. On 4 April 2008, Reclam and the Commission concluded a settlement agreement which settled, as between them, the conduct which formed the subject matter of the complaints and the conduct described above. In terms of the settlement agreement Reclam agreed that it will assist the Commission in pursuing the case against all the other respondents mentioned above.
- 2.7. The settlement agreement between Reclam and the Commission was subsequently confirmed by the Competition Tribunal on 07 May 2008.
- 2.8. Further to this, Power Metals entered into a consent agreement with the Commission which was confirmed by the Tribunal on 14 July 2010.

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3. **The Commission's findings**

- 3.1. The Commission found that in 2003 URC and its competitors Reclam; Abbedac; Amalgamated Metals; SAM and Power Metals, who are suppliers and processors of non-ferrous scrap in the inland area, were involved in contraventions of section 4(1)(b)(i) in that they:
- 3.1.1. held numerous discussions, including discussions about the prices at which non-ferrous scrap should be sourced. For example, a list price was issued in late 2003 in respect of Gauteng buying prices. This was referred to as the "*Gauteng price arrangement*" or "*JHB Pricing*" or "*JHB NF Prices*";
- 3.2. The Commission also found that from the period prior to the coming into effect of the Act until early 2008, large scrap merchants, namely: Reclam; Universal; Ton Scrap; Ben Jacobs Iron and Steel and Rand Scrap and large scrap consumers¹ namely: Mittal, Scaw; Columbus; Cape Gate and Highveld in the inland area were involved in discussions, meetings and arrangements with regard to:
- 3.2.1. a standard pricing formula to determine the selling price of scrap metal;
- 3.2.2. the premium charged by the large scrap merchants for scrap metal;
- 3.2.3. the collective sourcing or supply of scrap metal by the large scrap consumers and the allocation of such scrap metal amongst them;
- 3.2.4. the allocation of suppliers of scrap metal by the large scrap merchants and penalising those that failed to adhere to the allocation
- 3.3. The Commission's investigation revealed that the discussions, meetings and arrangements on the pricing formula were intended to ensure that:
- 3.3.1. large scrap merchants did not dictate scrap prices;
- 3.3.2. all of the large scrap consumers were charged a similar price for scrap metal.
- 3.4. The approach in these discussions was for the large scrap consumers to first meet and reach agreement or consensus before meeting with the large scrap merchants. The

¹ These can also be referred to as steel mills

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large scrap merchants did the same, that is, they met first as competitors and reached agreement or consensus amongst themselves.

3.5. The discussions, meetings and arrangements resulted in agreed prices (or pricing formula) that would apply to different tiers of scrap suppliers (that is, the scrap merchants). Tier 1 of the scrap merchants comprised Reclam, Universal and Rand Scrap. Tier 2 comprised Ton Scrap and Ben Jacobs Iron and Steel, whereas Tier 3 comprised the other (regional) scrap merchants who were also important suppliers to the steel mills but not big enough to be in tier 1 and 2. Tier 2 would receive a lesser price than Tier 1. Tier 3 would receive the lowest price of all three. The Commission's investigation revealed that the scrap merchants continued to apply the categorisation as to Tier 1, Tier 2 and Tier 3 merchants until about January 2008. The Commission concluded that these agreements, arrangements and understandings reached by the scrap merchants concerning the Tier system and its adjustments from time to time constituted a contravention of section 4(1) (b) (i) of the Act.

3.6. As with regard to market allocation the Commission found representatives of the large scrap merchants also:

- met regularly to discuss *inter alia* ways to ensure that they were supplied with adequate quantities of scrap from suppliers and generators.
- In these meetings meetings the large scrap merchants reached an understanding that their market shares and margins would be kept constant.
- Specific scrap generators were allocated to specific large scrap merchants, usually based on the generator's geographic location.
- The large scrap merchants also agreed not to poach one another's suppliers and scrap generators.

3.7. The Commission concluded that the above conduct amongst the large scrap merchants contravened section 4(1) (b) (ii) of the Act in that it constituted the allocation of suppliers amongst the large scrap merchants.

4. Admission of Liability

4.1. URC admits that it has contravened section 4(1)(b)(i) of the Competition Act in that it agreed with its competitors to fix purchasing and selling prices in relation to the trading of certain non ferrous metals and in the trading of certain ferrous metals.

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- 4.2. URC admits that it has contravened section 4(1)(b)(ii) of the Competition Act in that it agreed with its competitors to allocate suppliers amongst the large scrap merchants.

5. Future Conduct

- 5.1. URC confirms that the conduct under investigation has already ceased and it undertakes:

5.1.1. to refrain from engaging in conduct that amounts to directly or indirectly fixing a purchase or selling price or any trading condition in contravention of section 4(1)(b)(i);

5.1.2. to refrain from engaging in conduct that amounts to market allocation in violation of section 4(1)(b)(ii).

5.1.3. ~~not to enforce any of the restrictive clauses of any of the arrangements or agreements mentioned herein or require any of the parties to abide by the aforesaid;~~


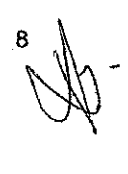
5.1.4. develop and implement a compliance programme, with corporate governance, designed to ensure that all its employees are aware of the provisions of the Competition Act and do not contravene them;

5.1.5. submit a copy of the compliance programme outlined above to the Commission within 60 days of the date of confirmation of this Agreement as an order of the Tribunal; and

5.1.6. co-operate with the Commission in its ongoing investigation of the scrap metal sector and any subsequent prosecutions of parties to the agreements and arrangements which are the subject of this agreement. This co-operation includes and is not limited to the provision of evidence, documentary and oral pertaining to the contraventions detailed in this consent agreement and the provision of witnesses to testify to this conduct in proceedings before the Tribunal.

6. Administrative Penalty

- 6.1. In terms of section 58(1) (a) (iii), and 59(2) and (3) of the Competition Act, URC is liable to pay an administrative penalty.

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6.2. The parties have agreed that URC should pay an administrative penalty in the amount of R 18 061 596.75,[eighteen million sixty one thousand five hundred and ninety six rand and seventy five cents] being 5% of URC and Steelco's total annual turnover for the financial year ended 30 June 2005.

6.3. The relevant banking details for the Commission where the amount has to be paid are:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576


Branch Code: 323 345

6.4. The penalty amount will be paid by URC within six months of the date of confirmation of this Settlement Agreement as an order of the Tribunal.

6.5. The Commission will pay these sums into the National Revenue Fund in terms of Section 59(4) of the Competition Act.

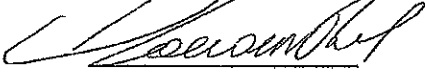
7. Full and Final Settlement

This agreement, upon confirmation as a consent order by the Tribunal, is entered into in full and final settlement and concludes all proceedings between the Commission and URC (including Steelco and UMS) relating to any alleged contraventions by URC, Steelco and/or UMS of the Competition Act that are the subject of the Commission's investigations and complaint referral under case numbers 2006Aug2447 and 2007Aug3121 and CT Case NO 51/CR/AUG10.



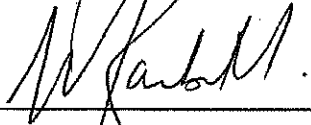
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Dated and signed at *Johannesburg* on the *18* day of *October* 2010



Chief Executive Officer
Universal Recycling Company (Proprietary) Limited

Dated and signed at Pretoria on the *26* day of *October* 2010



Mr Shan Ramburuth
Commissioner: Competition Commission

* * * Communication Result Report (3. Nov. 2010 16:31) * * *

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Date/Time: 3. Nov. 2010 15:39

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to	Ms Jocelyn katz edward nathan sonnenbergs inc	fax	011 269 7899
	Legal Services Competition Commission		44283
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CC: Jabulana Ngobeni - 44182