

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 30/CR/Mar12
015966

In the matter between:

The Competition Commission

Applicant

and

Bosun Brick Midrand (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member), M Mokuena (Tribunal Member) and T Madima (Tribunal Member)

Heard on : 21 November 2012

Decided on : 21 November 2012

Order

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



Presiding Member
Y Carrim

Concurring: M Mokuena and T Madima

'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

BOSUN BRICK MIDRAND (PTY) LIMITED

Respondent

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

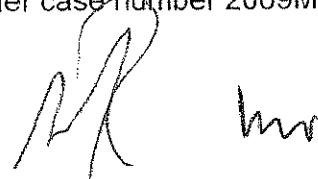
The Competition Commission ("Commission") and Bosun Brick Midrand (Pty) Limited ("Bosun Brick") hereby agree that an application be made to the Competition Tribunal ("Tribunal") for confirmation of this Settlement Agreement as an order of the Tribunal in terms of sections 58(1)(a)(iii) and 59(1)(a) of 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 “**Cast Industries**” means Cast Industries (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 38 Spanner Road, Clayville Industrial, Midrand;
- 1.3 “**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.
- 1.4 “**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;
- 1.5 “**Commissioner**” means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6 “**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;
- 1.7 “**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;

- 1.8 **“Generic paving blocks”** means paving blocks which include interlocking and bevelled paving blocks used in the industrial, commercial and residential markets in South Africa;
- 1.9 **“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;
- 1.10 **“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.
- 1.11 **“Respondents”** means Infraset, Bosun Brick, Cast Industries, Concor Technicrete, Vibro Bricks and MVA Bricks.
- 1.12 **“Settlement Agreement”** means this agreement duly signed and concluded between the Commission and Bosun Brick;
- 1.13 **“The Act”** means the Competition Act, No. 89 of 1998, as amended;
- 1.14 **“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;
- 1.15 **“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.


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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.

3 Settlement Discussions

- 3.1 On 17 March 2010 *Bosun Brick* applied for a marker in terms of the *CLP* in respect of contravention of section 4(1)(b)(i) of the *Act* in the market for the manufacture and supply of *generic paving blocks*. Subsequently, on 06 April 2010 *Bosun Brick* applied for corporate leniency. *Bosun Brick's* application for corporate leniency was not granted by the *Commission* on account of the fact that *Infraset* was the first company to apply for a marker and corporate leniency.

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3.2 *Bosun Brick* co-operated with the *Commission's* investigation of the *complaint* by, *inter alia*, providing additional information on the cartel including details of meetings and additional evidence.

3.3 After the unsuccessful corporate leniency application, *Bosun Brick* initiated settlement discussions with the *Commission*. Consequently, the *Commission* and *Bosun Brick* engaged in settlement discussions, the outcome of which is this *Settlement Agreement*.

4. Admission

Bosun Brick admits that it has entered into an agreement with the *Vibro Bricks*, *Cast Industries*, *MVA Bricks*, and *Concor Technicrete* which contravened section 4(1)(b)(i) of *the Act*.

5. Agreement concerning future conduct

Bosun Brick agrees and undertakes to:

5.1 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*;

5.2 refrain from engaging in price fixing in contravention of section 4(1)(b)(i) of *the Act*; and

5.3 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*.

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5.4 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*.

6. Co-operation

6.1 *Bosun Brick* agrees and undertakes to cooperate fully with the *Commission* in its prosecution of the remaining *respondents* in the *complaint* referral.


6.2 This cooperation includes, but is not limited to:

6.2.1 providing the *Commission* with all relevant evidence available to it that may assist the *Commission* in its prosecution of the remaining *respondents* in the *complaint* referral; and

6.2.2 ensuring that all *Bosun Brick*'s current employees, and to the extent possible, former employees, who have knowledge of the meetings and discussions among the *respondents* are available to and co-operate with the *Commission*, both for purposes of consultation and to give evidence in proceedings before the *Tribunal*.

7. Administrative Penalty

7.1 *Bosun Brick* 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 R1 320 700,36 (ONE MILLION THREE HUNDRED AND TWENTY THOUSAND AND SEVEN HUNDRED RAND AND THIRTY SIX CENT) representing 2.5% of *Bosun Brick*'s affected turnover for the financial year ended in February 2011.

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7.2 *Bosun Brick* 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*;

7.3 *Bosun Brick* shall remit payment of the administrative penalty into the following bank account:

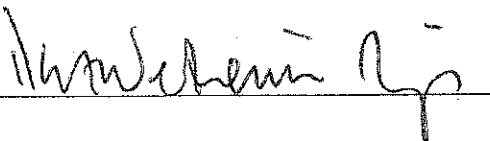
<u>Name of account holder:</u>	<u>COMPETITION COMMISSION</u>
<u>Bank name:</u>	<u>ABSA BANK PRETORIA</u>
<u>Account number:</u>	<u>4050778576</u>
<u>Branch code:</u>	<u>323345</u>

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 *Bosun Brick* 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 25th day of October 2012.



Duly authorised signatory
Bosun Brick Midrand (Pty) Ltd

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SIGNED at Pretoria on this the 6 day of November 2012.



Shan Ramburuth

The Commissioner, Competition Commission