

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 017400

In the matter between:

The Competition Commission

Applicant

and

National Glass Distributors (Pty) Ltd

Respondent


Panel: A Wessels (Presiding Member), M Mazwai
(Tribunal Member) and A Roskam (Tribunal
Member)

Heard on: 24 July 2013

Decided on: 24 July 2013

Order

The Tribunal hereby confirms as an order in terms of section 58(1)(a) of the Competition Act, 1998 (Act No. 89 of 1998) the settlement agreement reached between the Competition Commission and the respondent which is attached hereto, including Addendum A.



Presiding Member
A Wessels

Concurring: M Mazwai and A Roskam

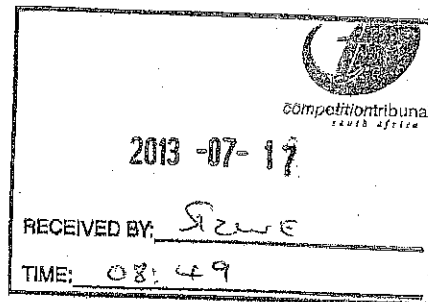
IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CC Case No: 2010Feb4941

In the matter between:

THE COMPETITION COMMISSION



Applicant

And

NATIONAL GLASS DISTRIBUTORS (PTY) LTD

Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND NATIONAL GLASS DISTRIBUTORS (PTY) LTD 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 National Glass Distributors (Pty) Ltd hereby agree that an 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 2010Feb494;
- 1.6. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and National Glass;
- 1.7. **"Days"** means calendar days;

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- 1.8. **"National Glass"** means National Glass Distributors (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 situated at 39 Newton Street, Newton Park, Port Elizabeth;
- 1.9. **"Parties"** means, collectively, the Commission and National Glass;
- 1.10. **"Prohibited Practice"** means a practice prohibited in terms of Chapter 2 of the Act;
- 1.11. **"Relevant period"** means the period from 1995 to April 2007;
- 1.12. **"Respondents"** collectively refers to Glass South Africa (Pty) Ltd, National Glass (Pty) Ltd, Northern Hardware and Glass (Pty) Ltd, Furman Glass Company (1964) (Pty) Ltd, McCoy's Glass, and AF-FSL Glass and Windscreen Centre (Pty) Ltd ("AF-FSL Glass"); and
- 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.

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

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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 float glass, laminated glass and toughened glass. National Glass was a participant thereof as far as the conduct related to float glass.

2.3 The agreements entered into between the respondents remained in force intermittently between 1993 and 2007. The Commission investigation revealed that the prohibited conduct took place mainly in Gauteng, Free State and Western Cape. National Glass joined the cartel in 1995 and was a participant thereof as far as the conduct related to Gauteng.

3. Admission

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

4. Agreement Concerning Future Conduct

4.1. The parties record that the conduct forming the subject matter of the complaint has ceased.

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- 4.2. National 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) of the Act.
- 4.3. Within six (6) months from the date of confirmation of this Consent Agreement, National 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.
- 4.4. National Glass undertakes not to engage in any conduct which constitutes a prohibited practice in contravention of chapter 2 of the Act.
- 4.5. National 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 witnesses and giving evidence before the Tribunal.
- 4.6. The parties record that National Glass cooperated with the Commission in that it made 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, National Glass accepts that it is liable pay an administrative penalty.

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5.2. The parties agree that National Glass will pay an administrative penalty in the amount of R 414 615.00 (four hundred and fourteen thousand six hundred and fifteen rand).

5.3. The administrative penalty will be paid into the following account:

NAME: COMPETITION COMMISSION FEE ACCOUNT

BANK: ABSA BANK, PRETORIA

ACCOUNT NO: 405 077 8576

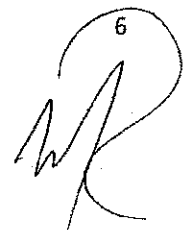
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5.4. National Glass shall pay the administrative penalty within three (3) months of the date of the confirmation of this Consent Agreement by the Tribunal.

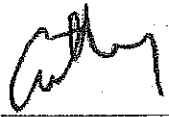
5.5. The Commission will pay the administrative penalty received from National Glass into the National Revenue Fund as contemplated by section 59(4) of the Act.

6. 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 National Glass relating to any alleged contravention by National Glass of sections 4(1)(b)(i) of the Act that are the subject of the complaint and the Commission's investigations under case number 2010Feb4941.

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Dated and signed in ~~Port-Elizabeth~~ on this the 11th day of July 2013.

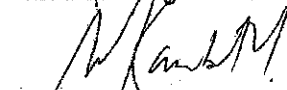


Anthony Adler

Managing Member:

National Glass Distributors (Pty) Ltd

Dated and signed in Pretoria on this the 16 day of July 2013



Shan Ramburuth

The Commissioner

Competition Commission

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD AT PRETORIA

CT Case No: 017400

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In the matter between:

THE COMPETITION COMMISSION

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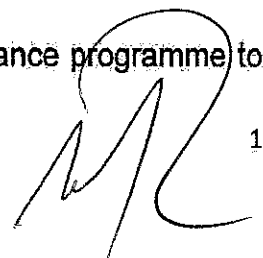
NATIONAL GLASS (PTY) LTD

Respondent

ADDENDUM TO CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND NATIONAL GLASS (PTY) LTD 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 National Glass (Pty) Ltd hereby agree to amend the Consent Agreement concluded on 16 July 2013 by substituting the existing clause 4.3 with the following:

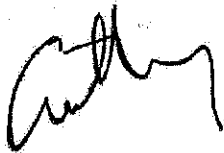
"4.3. National Glass agrees to develop, implement, monitor and enforce a competition law compliance programme in order to ensure that its employees, management, members and agents do not engage in future contraventions of the Act. National Glass shall submit a copy of its compliance programme to



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the Commission within six (6) months of the date of the confirmation of this Consent Agreement by the Tribunal.”

Dated and signed at 10:30pm on this the 22nd day of July 2013.

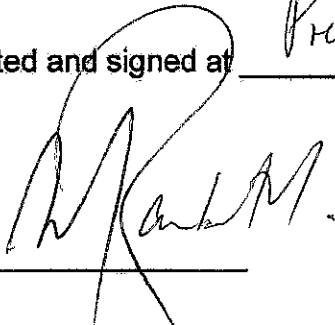


Anthony Adler

Managing Director

National Glass (Pty) Ltd

Dated and signed at Pretoria on this the 23rd day of July 2013.



Shan Ramburuth

The Commissioner

Competition Commission