



**competitiontribunal**  
SOUTH AFRICA

**COMPETITION TRIBUNAL  
REPUBLIC OF SOUTH AFRICA**

**Case No: CR125Nov14/SA158Feb20**

In the matter between:

The Competition Commission

**Applicant**

and

Aberdare Cables (Pty) Limited

**Respondent**

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Panel : AW Wessels (Presiding Member)  
: E Daniels (Tribunal Member)  
: Y Carrim (Tribunal Member)

Heard in chambers on : 30 September 2020

Decided on : 30 September 2020

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**SETTLEMENT AGREEMENT**

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The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Aberdare Cables (Pty) Limited attached.

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**Presiding Member  
Mr AW Wessels**

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**30 September 2020  
Date**

**Concurring: Mr Enver Daniels and Ms Yasmin Carrim**

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

CT Case No.

~~CR205MAR14~~ and CR125Nov14/SA158Feb20

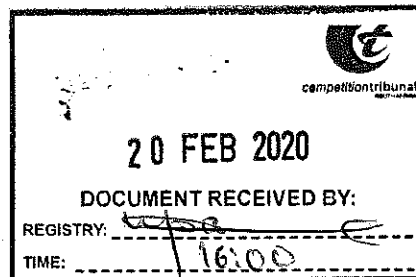
CC Case No. 2010Mar4981

In the matter between

COMPETITION COMMISSION

and

ABERDARE CABLES (PTY) LIMITED



Applicant

Respondent

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SETTLEMENT AGREEMENT

BETWEEN THE COMPETITION COMMISSION AND ABERDARE CABLES (PTY) LIMITED  
IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 4(1)(b)(i) & (ii) OF THE  
COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

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The Competition Commission and Aberdare Cables (Pty) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this Settlement Agreement as an order of the Competition Tribunal in terms of section 27(1)(d) read with section 58(1)(a) and section 49D read with section 58(1)(b) of the Competition Act, 1998 (Act No. 89 of 1998), as amended, on the terms set out below.

1. Definitions

For the purposes of this *Settlement Agreement* the following definitions shall apply:

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "Aberdare" means Aberdare Cables (Pty) Ltd;



- 1.3 "**Association**" means the Association of Electric Cable Manufacturers;
- 1.4 "**CLP**" means the Commission's Corporate Leniency Policy (Government Gazette Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);
- 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 1<sup>st</sup> Floor, Mulayo Building (Block C), the 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 "**Complaint**" means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B of the Act under case number 2010Mar4981;
- 1.8 "**Cover Pricing**" means collusive tendering conduct wherein one or more firms agree that they will submit tenders in such a way that a designated winner will submit the lowest or most favourable bid and the other(s) will submit artificially high bids that are not intended to win the contract;
- 1.9 "**Indices**" does not connote the conventional meaning ascribed to the term "index" in economics, where the base value (typically of 100) is adjusted by a percentage from time to time to indicate the change in value of the underlying item monitored by the index. It refers to the various raw material items and their individual Rand values as listed from time to time on a document entitled "Quotation Bases". The Indices measure relative price changes of input costs from one time to another and are used in price adjustment formulas;
- 1.10 "**Parties**" means the Commission and Aberdare;
- 1.11 "**Power cable manufacturers**" means Alvern, SOEW, Tulisa Cables (Pty) Ltd, Alcon Marepha (Pty) Ltd, CBI-Electric African Cables (Pty) Ltd, Phoenix Power Cables, Cabcon Technologies (Pty) Ltd, Silcom (Pty) Ltd, Malesela Taihan Electric Cable (Pty) Ltd, Norco Cables (Pty) Ltd, Kewberg Cables and Braids (Pty) Ltd and Aberdare Cables (Pty) Ltd;



- 1.12 "*Price adjustment formula*" means any formula used to calculate the future prices of power cables which were quoted on present prices to accommodate fluctuations in the prices of input costs;
- 1.13 "*Settlement Agreement*" means this agreement duly signed and concluded between the Commission and Aberdare; and
- 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 3<sup>rd</sup> Floor, Mulayo building (Block C), the DTI Campus, 77 Meinijies Street, Sunnyside, Pretoria, Gauteng.

## 2. *The Complaint and Complaint Investigation*

- 2.1 On 16 March 2010, the Commissioner, acting in terms of section 49B(1) of the *Act*, initiated a complaint under case number 2010Mar4981 against Alvern, SOEW, Tulisa and Aberdare for a possible contravention of section 4(1)(b)(i) and (ii) of the *Act* in the market for the supply of power cables ("*informal market conduct*").
- 2.2 The evidence obtained by the *Commission* through its investigation indicated that other companies, which were not part of the initial investigation, may also have been involved in the alleged conduct in contravention of the *Act*.
- 2.3 On 28 May 2010, the *Commission* expanded its investigations to include conduct by Aberdare, African Cables (Pty) Ltd, Malesela Taihan Electric Cable (Pty) Ltd and Alcon Marepha (Pty) Ltd and alleged that these firms, upon the issuing of a tender would agree amongst themselves which company would supply – which firm; which range of power cables and at what price. This conduct amounts to price fixing, customer allocation and collusive tendering in contravention of section 4(1)(b)(i), (ii) and (iii) of the *Act*. ("*formal market conduct*").
- 2.4 On 14 May 2012 the *Commission* further amended its complaint initiation to include further information and particulars in respect of the alleged conduct in contravention of the *Act*. The *Commission* alleged that Aberdare, Alvern, SOEW, Tulisa, Alcon Marepha (Pty) Ltd, CBI-Electric: African Cables (Pty) Ltd, Phoenix Power Cables (Pty) Ltd, Cabcon Technologies (Pty) Ltd, Silcom (Pty) Ltd, Malesela Taihan Electric Cable (Pty) Ltd, Norco



Cables (Pty) Ltd, Kewberg Cables and Braids (Pty) Ltd and the Association, as the members of AECMSA discussed and agreed on inputs to a price adjustment formula when bidding for contracts on a quotation basis. ('*Association conduct*').

- 2.5 A summary of the conduct in the *informal market*, *formal market* and the *Association conduct* is set out below.

***Informal market conduct***

- 2.6 The *Commission's* investigation revealed that:

2.7 *Aberdare*, SOEW, Tulisa and Alvern agreed, alternatively engaged in a concerted practice, to directly or indirectly fix the selling price of power cables to wholesalers, distributors and OEM's from approximately May 2001 to at least 2010 in contravention of section 4(1)(b)(i) of the Act;

2.8 *Aberdare*, SOEW and Alvern agreed, alternatively engaged in a concerted practice, to divide markets by allocating customers in respect of the supply of power cables to wholesalers, distributors and OEM's from approximately 2001 to at least end 2007 in contravention of section 4(1)(b)(ii).

2.9 The *Commission* referred the *informal market conduct* under case number 018614 (re-allocated case no: CR205Mar14) to the *Tribunal* on 19 March 2014.

***Formal market conduct***

- 2.10 The *Commission's* investigation revealed that:

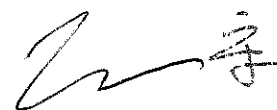
2.11 *Aberdare* and ATC agreed to tender collusively in respect of tenders issued by municipalities by allocating customers and specific product lines and agreeing on the price to be charged per product line of electric cables. ATC and *Aberdare* implemented and sustained their agreement by providing each other with Cover Prices. The agreement was longstanding and was in place from at least 1998 until January 2010 in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act. The municipalities affected by this collusive agreement were *inter alia* the City of Tshwane Municipality, Nelson Mandela Municipality, Buffalo City Municipality, Polokwane Municipality, Mbombela Municipality, the City of

Cape Town, Dundee Municipality, Mogale City Municipality, eThekweni Municipality and Kouga Municipality.

- 2.12 *Aberdare* and ATC agreed to divide markets by allocating customers in the mining industry. The agreement was longstanding and was in place from at least 1998 until August 2009. *Aberdare* and ATC maintained and reinforced the market allocation agreement by providing Cover Prices in relation to tenders or when customers tested the market for pricing in respect of electric cables. This conduct is in contravention of section 4(1)(b)(ii) and (iii) of the Act. The mining companies affected by this agreement include *inter alia* Anglo American Platinum Limited, Impala Platinum Holdings Limited, Gold Fields Limited, Lonmin Plc, Debswana Diamond Company (Pty) Ltd, Mine Kumba Iron Ore, a business unit of Anglo American and De Beers Consolidated Mines.
- 2.13 *Aberdare*, ATC, M-Tech and Alcon Marepha agreed to tender collusively in respect of tenders issued by Eskom by allocating specific product lines and agreeing on the price to be charged per product line of electric cable. *Aberdare*, ATC, M-Tech and Alcon Marepha implemented and sustained their agreement by providing each other with Cover Prices. The agreement was longstanding and was in place from at least 1994 until September 2008 in contravention of section 4(1)(b)(ii) and (iii) of the Act.
- 2.14 The Commission entered into consent agreements with each of the Respondents in the *formal market* which was confirmed by the Tribunal and did not refer the *formal market conduct* to the Tribunal.

#### ***Association conduct***

- 2.15 The *Commission's* investigation revealed that:
- 2.16 The *Power Cable Manufacturers*, by way of decisions by the *Association*, alternatively an agreement or concerted practice, directly or indirectly fixed the selling price of power cables, alternatively a trading condition relating to the sale of power cables, through agreeing on *Indices* which are used in *Price Adjustment Formulas* by its members. These *Indices* were referred to by the *Association* members as the "Quotation Base or Quotation Bases," and were circulated to all members monthly. The *Indices* were used by members who are involved in the manufacture and supply of power cables to customers in South Africa on a quotation basis from at least 2001 to August 2012 in contravention of section



4(1)(b)(i).

2.17 The *Commission* referred the *Association conduct complaint* under case number 019968 (re-allocated case no: CR125Nov14) to the *Tribunal* on 13 November 2014.

**3. Conditional Immunity**

3.1 *Aberdare* applied for leniency in terms of the *Commission's CLP*. On 15 March 2012 the *Commission* granted *Aberdare* conditional immunity from prosecution before the *Tribunal* for its involvement in cartel conduct described in paragraph 4 below.

3.2 *Aberdare* agreed to co-operate with the *Commission* in respect of any steps that the *Commission* may deem necessary to obtain an order from the *Tribunal* declaring the conduct set out in paragraph 4 below to be a contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.

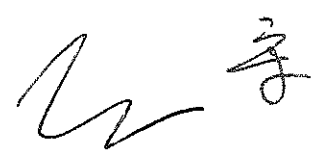
**4. Conduct in contravention of the Act**

4.1 In its *CLP*, *Aberdare* disclosed its participation in the following prohibited practices or contraventions of section 4(1)(b)(i), (ii) and (iii) of the Act:

4.2 *Alvern*, *SOEW*, *Tulisa* and *Aberdare* agreed, alternatively engaged in a concerted practice, to directly or indirectly fix the selling price of power cables to wholesalers, distributors and OEM's from approximately May 2001 to at least 2010 in contravention of section 4(1)(b)(i) of the Act;

4.3 *Alvern*, *SOEW* and *Aberdare* agreed, alternatively engaged in a concerted practice to divide markets by allocating customers in respect of the supply of power cables to wholesalers, distributors and OEM's from approximately 2001 to at least end 2007 in contravention of section 4(1)(b)(ii).

4.4 *Aberdare* and ATC agreed to tender collusively in respect of tenders issued by municipalities by allocating customers and specific product lines and agreeing on the price to be charged per product line of electric cables. ATC and *Aberdare* implemented and sustained their agreement by providing each other with Cover Prices. The agreement was

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longstanding and was in place from at least 1998 until January 2010 in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act.


4.5 *Aberdare* and ATC agreed to divide markets by allocating customers in the mining industry. The agreement was longstanding and was in place from at least 1998 until August 2009. *Aberdare* and ATC maintained and reinforced the market allocation agreement by providing Cover Prices in relation to tenders or when customers tested the market for pricing in respect of electric cables. This conduct is in contravention of section 4(1)(b)(ii) and (iii) of the Act.

4.6 *Aberdare*, ATC, M-Tech and Alcon Marepha agreed to tender collusively in respect of tenders issued by Eskom by allocating specific product lines and agreeing on the price to be charged per product line of electric cable. *Aberdare*, ATC, M-Tech and Alcon Marepha implemented and sustained their agreement by providing each other with Cover Prices. The agreement was longstanding and was in place from at least 1994 until September 2008 in contravention of section 4(1)(b)(ii) and (iii) of the Act.

4.7 The *Power Cable Manufacturers*, including *Aberdare*, by way of decisions by the *Association*, alternatively an agreement or concerted practice, directly or indirectly fixed the selling price of power cables, alternatively a trading condition relating to the sale of power cables, through agreeing on *Indices* which are used in *Price Adjustment Formulas* by its members. These *Indices* were referred to by the *Association* members as the "Quotation Base or Quotation Bases," and were circulated to all members monthly. The *Indices* were used by members who are involved in the manufacture and supply of power cables to customers in South Africa on a quotation basis from at least 2001 to August 2012 in contravention of section 4(1)(b)(i).

## 5. Admission

5.1 *Aberdare* admits that the conduct set out in paragraph 4 above is price fixing, market allocation and collusive tendering in contravention of section 4(1)(b)(i), (ii) and (iii) of the Act. This admission applies to the extent that the conduct in question is the subject of completed proceedings against the other respondents.





**6. Co-operation**

6.1 In so far as the *Commission* is aware, and in compliance with the requirements set out in the *CLP, Aberdare*:

6.1.1 has provided the *Commission* with truthful and timely disclosure, including information and documents in its possession or under its control, relating to the prohibited practices;

6.1.2 has provided full and expeditious co-operation to the *Commission* concerning the prohibited practices;

6.1.3 has provided a written undertaking that it has immediately ceased to engage in, and will not in future engage in, any form of prohibited practice;

6.1.4 has confirmed that it has not destroyed, falsified or concealed information, evidence and documents relating to the prohibited practices;

6.1.5 has confirmed that it has not misrepresented or made a willful or negligent misrepresentation concerning the material facts of any prohibited practice or otherwise acted dishonestly.

**7. Future conduct**

7.1 *Aberdare* confirms that it no longer engages in the conduct set out in paragraph 4 above.

7.2 *Aberdare* shall develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the *Act*. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contravention of the *Act*.

7.3 *Aberdare* shall submit a copy of such compliance programme to the *Commission* within 60 days of the date of confirmation of the Settlement Agreement as an order by the *Competition Tribunal*.

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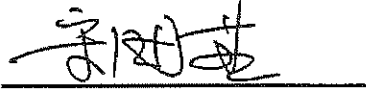
7.4 *Aberdare* shall circulate a statement summarizing the contents of this Settlement Agreement to all management and operational staff employed at *Aberdare* within 60 days from the date of confirmation of this *Settlement Agreement* by the *Tribunal*.

8. Full and Final Settlement

8.1 This agreement, upon confirmation as an order by the *Tribunal*, is entered into in full and final settlement and concludes all proceedings between the *Commission* and *Aberdare* relating to any alleged contraventions of the *Act* by *Aberdare* that is the subject of the *Commission's* referral to the *Tribunal* under case numbers CR205MAR14 and CR125Nov14.

Dated and signed at ELANDSFONTEIN on the 7<sup>th</sup> day of FEBRUARY 2020.

For *Aberdare*



Managing Director : HAIYAN SONG

Dated and signed at TSHWANE on the 18<sup>th</sup> day of February 2020.

For the *Commission*



Competition Commissioner