



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO204Oct18

In the matter between:

The Competition Commission

Applicant

And

Scott Bader (Pty) Ltd

Respondent


Panel : N Manoim (Presiding Member)
M Mokuena (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 14 November 2018

Decided on : 14 November 2018

Consent Agreement

The Competition Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Scott Bader (Pty) Ltd annexed hereto marked "A".



Presiding Member
Mr Norman Manoim

14 November 2018
Date

Concurring: Mrs Medi Mokuena and Prof. Fiona Tregenna

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD IN PRETORIA

CT CASE NO: CO204Oct18

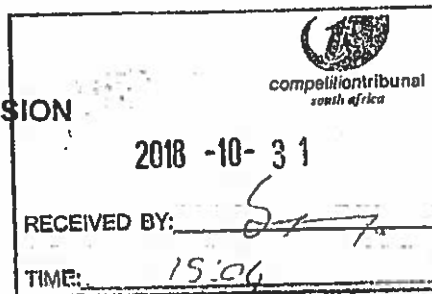
CC CASE NO: CASE NO: 2017Jul0015

In the matter between:

THE COMPETITION COMMISSION

and

SCOTT BADER (PTY) LTD



Applicant

Respondent

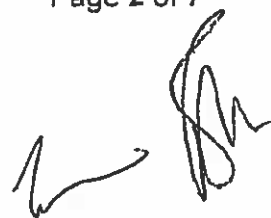
CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTION 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND SCOTT BADER (PTY) LTD , IN RESPECT OF A CONTRAVENTION OF SECTION 4(1)(b) (I) AND (ii) OF THE COMPETITION ACT, 1998

The Competition Commission ("Commission") and Scott Bader (Pty) Ltd ("Scott Bader") hereby agree that application be made to the Competition Tribunal ("Tribunal") for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended ("the Act"), in respect of contraventions of section 4(1)(b) (i) and (ii) of the Act.

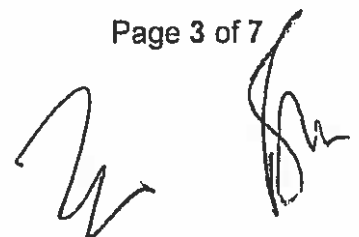
1 DEFINITIONS

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

- 1.1. **"Accessories"** means catalysts;
- 1.2. **"Act"** means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.3. **"Ancillaries"** means all gel coats, pool coats, flow coats, pigments, bonding pastes;
- 1.4. **"Catalysts"** means catalyst products '*M50 catalyst*' and '*279 catalyst*';
- 1.5. **"CLP"** means the Commission's Corporate Leniency Policy (Government Notice No. 628 of 23 May 2008, published in Government Gazette No. 31064 of 23 May 2008);
- 1.6. **"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 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.7. **"Commissioner"** means Commissioner of the Competition Commission appointed in terms of section 22 of the Act.



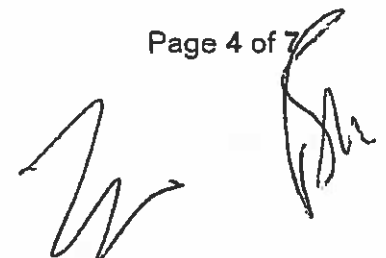
- 1.8. **"Complaint"** means the complaint initiated by the Commissioner of the Competition Commission in terms of section 49B of the Act under case number: 2017Jul0015;
- 1.9. **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Scott Bader;
- 1.10. **"NCS Resins"** means NCS Resins Proprietary Limited, a company duly registered and incorporated under the laws of South Africa with its principal place of business at 9 Pineside Road, New Germany, KwaZulu-Natal, South Africa;
- 1.11. **"Parties"** means the Commission and Scott Bader;
- 1.12. **"Respondents"** means Scott Bader and NCS Resins;
- 1.13. **"Scott Bader"** means Scott Bader (Pty) Ltd, a company duly incorporated under the laws of the Republic of South Africa with its principal place of business at 1 Lubex Road, Hammarsdale, Kwa Zulu-Natal;
- 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

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at 3rd Floor, Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

2 BACKGROUND

- 2.1 On 18 November 2016, the Commission received an application for leniency in terms of the Commission's CLP from Scott Bader wherein it implicated itself and NCS Resin in an agreement to fix the price of resin, Accessories and Ancillaries as well as divide markets by allocating customers in contravention of section 4(1)(b)(i) and (ii) of the Act as described in paragraph 3 below.
- 2.2 On 05 July 2017, the Commissioner of the Competition Commission ("Commissioner") initiated a complaint in terms of section 49(B)(1) of the Act against the Respondents.
- 2.3 On 16 May 2018 the Tribunal confirmed a consent agreement between the Commission and NCS Resin wherein NCS Resin admitted to being party to the prohibited practice described in paragraph 3 below with Scott Bader, and agreed to pay an administrative penalty in the amount of R29 701 689.76 (Twenty-nine million, seven hundred and one thousand, six hundred and eighty-nine rand and seventy-six cents).
- 2.4 On 03 June 2018, the Commission granted conditional immunity to Scott Bader for its involvement in the collusive agreement described in paragraph 3 below.
- 2.5 Upon confirmation of this consent agreement by the Tribunal, all proceedings under case number 2017Jul0015 are brought to an end.



3 THE COMMISSION'S INVESTIGATION AND FINDINGS

3.1 The Commission's investigation under Case No. 2017Jul0015 revealed the following:

3.1.1 During the period from approximately 2012 to approximately August 2016, the Respondents agreed to fix the price of resins, Ancillaries and Catalysts as well as divide the market by allocating customers.

3.1.2 During this period, employees of the Respondents regularly exchanged prices and customer information which they used to determine prices at which they would sell resins, Ancillaries and Accessories to their mutual customers, as well as determine future price increases of resins, Ancillaries and Catalysts.

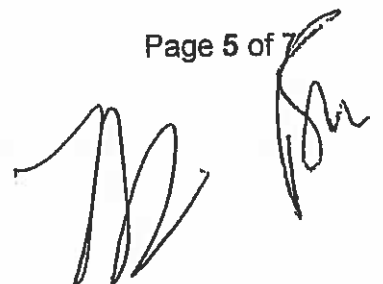
3.1.3 In addition, the Respondents also agreed to not supply customers which had overdue accounts with either or both Respondents.

3.1.4 Further, the Respondents agreed not to target each other's potential customers and not undercut each other in respect of their mutual customers.

3.1.5 This agreement amounts to price fixing and market division in contravention of section 4(1)(b)(i) and (ii) of the Act.

4 ADMISSION

4.1 Scott Bader admits that it acted in contravention of section 4(1)(b) (i) and (ii) of

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the Act as described in paragraph 3 above.

5 AGREEMENT REGARDING FUTURE CONDUCT

5.1 Scott Bader agrees to:

5.1.1 Refrain from engaging in conduct in contravention of section 4(1)(b) of the Act in future;

5.1.2 Prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within thirty (30) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;

5.1.3 Develop, implement and monitor a competition law compliance programme as part of its corporate governance policy, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Act. In particular, such compliance programme should include mechanisms for the identification, prevention, detection and monitoring of any contravention of the Act;

5.1.4 Submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of this Consent Agreement as an order by the Tribunal.

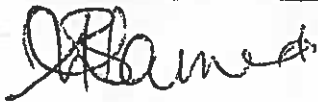


6 FULL AND FINAL SETTLEMENT

6.1 This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement in respect of the Commission's investigation under Case No. 2017Jul0015, and concludes all proceedings between the Commission and Scott Bader relating to the conduct that is the subject of the Commission's investigation under Case No. 2017Jul0015 as described in paragraph 3 above.

For Scott Bader (Pty) Ltd

Dated and signed at Hammerdale on the 26th day of September 2018



Name: B. Mohamed Yunus

Capacity: Managing Director

For the Commission

Dated and signed at 1st 30 Protea on the 30th day of October 2018



TEMBINKOSI BONAKELE

Commissioner of the Competition Commission