



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO048Jun16

In the matter between:

The Competition Commission

Applicant

And

Murray & Roberts Limited

First Respondent

Freyssinet Posten (Pty) Ltd

Second Respondent

Panel : N Manoim (Presiding Member)
A Wessels (Tribunal Member)
F Tregenna (Tribunal Member)

Heard on : 29 June 2016

Decided on : 29 June 2016

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Murray & Roberts Limited and Freyssinet Posten (Pty) Ltd annexed hereto marked "A".



Presiding Member
Mr N Manoim

29 June 2016
Date

Concurring: A Wessels and Prof. F Tregenna

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

CT CASE NO: _____

CC CASE NO: 2010Apr5034

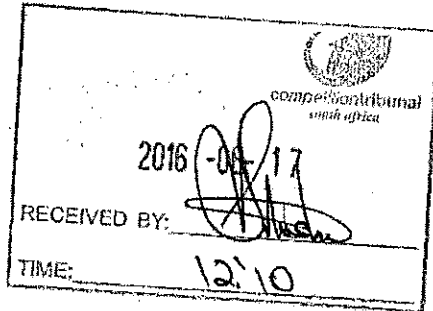
In the matter between:

THE COMPETITION COMMISSION

And

MURRAY & ROBERTS LIMITED

FREYSSINET POSTEN PROPRIETARY LIMITED



Applicant

First Respondent

Second Respondent

CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION, MURRAY & ROBERTS LIMITED AND FREYSSINET POSTEN PROPRIETARY LIMITED, IN RESPECT OF CONTRAVENTIONS OF SECTION 4(1)(b) OF THE COMPETITION ACT

PREAMBLE

The Commission, Murray & Roberts and Freyssinet hereby agree that application be made to the Tribunal for the confirmation of this Consent Agreement as an order of the Tribunal in terms of section 49D as read with section 58(1)(b) of the Act, in respect of contraventions of section 4(1)(b)(i), 4(1)(b)(ii) and 4(1)(b)(iii) of the Act, on the terms below:

1 DEFINITIONS

For the purposes of this Consent Agreement the following definitions shall apply:

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "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;
- 1.3 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.4 "Consent Agreement" means this agreement duly signed and concluded between the Commission, Murray & Roberts and Freyssinet;
- 1.5 "Cover Price" means, generally, a price that is provided by a firm that wishes to win a tender to a firm that does not wish to do so, in order that the firm that does not wish to win the tender may submit a higher price; or alternatively, a price that is provided by a firm that does not wish to win a tender to a firm that does wish to win that tender in order



that the firm that wishes to win the tender may submit a lower price;

1.6 **"Freyssinet"** means Freyssinet Posten Proprietary Limited a private company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Unit 1 Poplar Place, 16B Axle Drive, Clayville, Olifantsfontein Gauteng. Until approximately November 2011, Freyssinet was a joint venture owned in equal parts by the Soletanche Freyssinet Group (based in France) and Murray & Roberts Steel Proprietary Limited, who was the managing partner of the joint venture. Freyssinet is currently wholly owned by the Soletanche Freyssinet Group;

1.7 **"Murray & Roberts"** means Murray & Roberts Limited, a public company duly incorporated under the laws of the Republic of South Africa with its principal place of business at Douglas, Roberts Centre, 22 Skeen Boulevard, Bedfordview. Murray & Roberts offers civil, mechanical, electrical, mining and process engineering, general building, procurement, construction, commissioning, operations and maintenance services;

1.8 **"Respondents"** mean Murray & Roberts and Freyssinet;

1.9 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its

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principal place of business at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 BACKGROUND


- 2.1 On 13 April 2010, the Commissioner initiated a complaint, in terms of section 49B(1) of the Act, against Amsteele Systems (Pty) Ltd ("Amsteele"), Tsala-RMS Construction Solutions (Pty) Ltd ("Tsala-RMS"), Freyssinet, Steelforce Systems (Pty) Ltd ("Steelforce") and the South African Post Tensioning Association ("SAPTA") in respect of their involvement in fixing prices and allocating tenders for the supply of post-tensioning steel in contravention of sections 4(1)(b).

3 COMMISSION'S INVESTIGATION AND FINDINGS

- 3.1 Following its investigation, the Commission found that Freyssinet had, between the period June 2006 and December 2008, reached and implemented the following overarching arrangements:

Division of markets by allocating customers in contravention of section 4(1)(b)(ii) of the Act.

- 3.2 This overarching agreement was implemented by meetings and discussions between Freyssinet, Amsteele, Tsala-RMS to achieve an outcome of roughly equally shared available tenders for post-




tensioning steel;

Collusive tendering in contravention of section 4(1)(b)(iii) of the Act

- 3.3 This overarching agreement was implemented by:
- 3.3.1 participating in meetings and discussions between Freyssinet, Tsala-RMS and Amsteele wherein they identified and allocated tenders amongst each other for the provision of post-tensioning steel;
- 3.3.2 submitting cover pricing bids for each other's allocated projects; and
- 3.3.3 indirectly fixing prices by agreeing on controlled mark-ups and profit margins on tenders with a view to excluding substitutable products (In particular reinforcing steel bar).

Price fixing in contravention of section 4(1)(b)(i)

- 3.4 Freyssinet indirectly agreed with competitors, Tsala-RMS, Amsteele and Steelforce, on industry trading terms and conditions in respect of applicable price adjustment formulae for post tensioning contracts.
- 3.5 This overarching agreement was reached by participating in meetings and discussions with competitors Amsteele, Tsala-RMS and

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Steelforce, under the auspices of the SAPTA. The SAPTA members agreed upon and implemented an escalation formula and certain conditions of contract. The formula proportioned the mix of labour and materials applicable to the post tensioning industry and applied specific indices available from Statistics South Africa.

- 3.6 The Commission found that the above conduct contravened section 4(1)(b) of the Act.

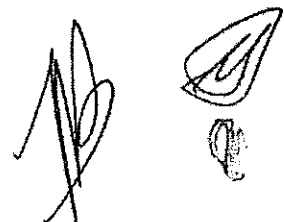
4 ADMISSION

- 4.1 Murray & Roberts and Freyssinet admit that Freyssinet was involved in the collusive conduct detailed in paragraph 3 above with its competitors, in contravention of section 4(1)(b)(i), 4(1)(b)(ii) and 4(1)(b)(iii) of the Act.

- 4.2 Please see Annex "A", for a list of projects that, to the best of Freyssinet's knowledge, formed part of the above overarching collusive arrangements.

5 COOPERATION

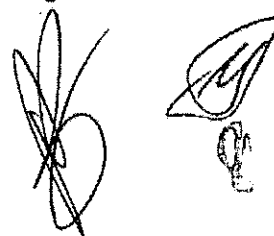
- 5.1 The Respondents, respectively, agree to fully cooperate with the Commission in its investigation and prosecution of the above conduct. This cooperation includes, but is not limited to:



- 5.1.1 To the extent that it is in existence, provide evidence, written or otherwise, which is in their possession or under their control, concerning the alleged contraventions contained in this Consent Agreement; and
- 5.1.2 To the extent that they are able, testify in the complaint referral in respect of the alleged contravention covered by this Consent Agreement.

6 FUTURE CONDUCT

- 6.1 Murray & Roberts and Freyssinet, respectively, agree and undertake to:
- 6.1.1 prepare and circulate a statement summarising the content of this agreement to their managers and directors within 14 (fourteen) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.1.2 refrain from engaging in collusive tendering in contravention of section 4(1)(b) of the Act, and from engaging in any prohibited practice under the Act in future;
- 6.1.3 If not already done so, the Respondents undertake to develop and implement a compliance programme designed to ensure that their employees, management and directors do not engage



in any conduct which constitutes a prohibited practice in terms of the Act, a copy of which shall be submitted to the Commission within ninety (90) days of the date of confirmation of this agreement as an order of the Tribunal; and

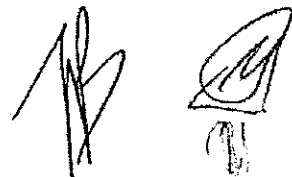
6.1.4 undertake henceforth to engage in competitive bidding.

7 ADMINISTRATIVE PENALTY

7.1 Having regard to the provisions of sections 59(1)(a), 59(2) and 59(3) of the Act, the Respondents have agreed to pay the total settlement amount of R4 704 936 which amounts to approximately 7% of Freyssinet's turnover in 2011. This amount will be paid in the following manner:

7.1.1 Murray & Roberts agrees to pay an administrative penalty in the amount of R1 352 468 (one million, three hundred and fifty two thousand, four hundred and sixty eight Rand), which shall be paid by Murray & Roberts to the Commission on 31 August 2016 (accruing no interest).

7.1.2 Freyssinet agrees to pay an administrative penalty in the amount of R3 352 468 (three million, three hundred and fifty two thousand, four hundred and sixty eight Rand and nil cents) in two equal instalments. The first payment, totaling R1 676 234



must be made to the Commission on 31 August 2016 and the second payment, totaling R1 676 234 must be made on 31 August 2017.

7.1.3 Freyssinet agrees to pay simple interest of 9.5% per annum on the second instalment of R1 676 234. This interest will be calculated and applied after one year from the date of the Tribunal's Order confirming this Consent Agreement.

7.1.4 Payment of the amounts referred to in paragraphs 7.1.1 and 7.1.2 above shall be made into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Commission Fees Account
Account number:	4050778576
Account type:	Current Account
Branch Code:	323 345
Reference:	2010Apr5034

7.2 The amounts referred to in paragraphs 7.1.1 and 7.1.2 above shall be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

8 FULL AND FINAL SETTLEMENT

8.1 This Consent Agreement is entered into in full and final settlement of the specific conduct set out in paragraph 3 above and, upon confirmation by the Tribunal, concludes all proceedings between the Commission and Murray & Roberts and the Commission and Freyssinet in respect of this conduct.

For Murray & Roberts

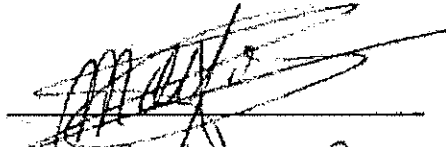
Dated and signed at Bedford View on the 2nd day of JUNE 2016



Name: H. J. LAMS
Designation: CEO

For Freyssinet

Dated and signed at ISANDO on the 1 day of JUNE 2016




Name: Rik LUCHTEN MALFAIT
Designation: MANAGING DIRECTOR
FREYSSINET BSIEN PROPRIETARY LIMITED




For the Commission

Dated and signed at Pretoria on the 4th day of June 2016



TEMBINKOSI BONAKELE
COMMISSIONER



	Name of affected project	Project description	Approximate date of the tender process	Approximate Value (R '000)	Who won the tender? Or not awarded	Client
1	Gautrain	Bridges and Viaducts to Rapid Rail				Bombela Consortium
2	Loch Logan	Shopping Centre, Alberton/Albert				Dont know
3	Marirosa Arch	Piazza slabs	2007-06-01	2 406	Tsala-RMS	
4	Richardshay Railway Bridge					
5	Swaziland WBHO					
6	Bay Bridges Durban					
7	Holcim Silo	Cement Silos	2007-03-01	2 218	Freyssinet	Dont know
8	Jannuoloti					
9	Diaphragm Wall				Tsala-RMS	
10	Ficksburg					
11	New Third Forest	20 ML Reservoir, KZN	2006-11-01	458	Amsteale	Derma Structures
12	Coena					
13	Gautrain extra Quantities					Bombela Consortium
14	Lazarus Phase 3	Building	2007-07-01	228	Amsteale	Stocks and Stocks Construction
15	New England	Road Interchange, FMB	2007-02-01	350	Freyssinet	
16	Kalkfontein	Pedestrian Bridge			Freyssinet	
17	Lindloe					
18	Audi Church Street	Building	2007-04-01	1 043	Freyssinet	
19	Nelspruit	Stadium floor	2007-06-01	3 217	Amsteale	Banli Read Construction
20	Waterwanden Reservoir	Reservoir Floor	2007-04-01	2 923	Amsteale	Safrica / Bishop JV
21	Naeleni	Bridge in Richard's Bay	2007-12-01	5 888	Amsteale	GMC di Ravenna
22	Silo Port Shepstone	Silo			Freyssinet	
23	N17 Phase 1	N17, New Canada Bridge	2007-01-01	1 423	Freyssinet	
24	N17 Phase 2	N17, Bridges, Leandra to Leven	2007-12-01	1 237	Freyssinet	
25	Braamhoek	Pump Storage Scheme, Eskom			Oversease Company	CMC di Ravenna
26	Komati River	Bridge near Moamba			Tsala-RMS	
27	Barberton					
29	Inner Circle	Office block	2007-08-01	5 246	Amsteale	Stocks and Stocks Construction
30	22 Gerton Road					
31	Dusport FLAan					
32	Lynwood Offices					
33	Pulco	Pulco Building Pretoria	2007-07-01	1 815	Freyssinet	
34	Lynwood Ridge					
35	Carnival City					
36	K109 Sandton					
37	Lexus					
38	Norwood S.C	Shopping Centre	2007-09-01	3 586	Tsala-RMS	
39	Klerksdorp	Shopping Centre	2007-07-01	2 100	Amsteale	Jota Construction
40	Damas Centre	Shopping Centre	2007-08-01	176	Amsteale	KNS Construction
41	Ladybrand Hospital					
42	Stockford Height					
43	Wonderboom Junction					
44	Sandown Isle	Showroom, Offices	2007-09-01	1 180	Amsteale	G D Irons Construction
45	Alberton City	Shopping Centre Extension	2007-09-01	3 895	Amsteale	KNS Construction
46	Hotel Sandton					
47	Trybekker					
48	9 Friedman Drive	Office	2007-10-01	4 514	Freyssinet	
49	BMW Alberton					
50	Alex Taxi Rank	Taxi Rank Slabs	2006-11-01	1 823	Not awarded	
51	Free State Stadium					
52	Fourways Parking					
53	ABSA Parking					
54	Simon Vermoolen	Bridge, Lynwood, Pretoria	2007-10-01	625	Not Awarded, Postponed	
55	Oscar Bridges	Oscar Mpelha Bridge, Khayelitsha	2007-07-01	496	Not Awarded, Postponed	
56	Warwick Bridges	Warwick Interchange Bridge, Durban	2008-05-01	3 917	Amsteale	Rumdel Cape Construction
57	Kwadabeka Ped Bridge	Pedestrian Bridge	2007-08-01	76	Not Awarded, Postponed	
58	Klipker Silo NPC Port Shepstone					
59	Selkirkway (N2) Upgrade	Bridges, Hospital Bend, CT	2008-09-01		Amsteale	Haw and India Conet
61	Casco Bridge @ 51,745 Km	Bridge	2007-10-01	3 200	Tsala-RMS	
62	CTIA 2078		2006/05/01	14 890	Freyssinet	Stocks/BLTA JV (contractor)
63	Coona Georgia Hotel	Hotel	2007/05/01	2 829		