



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CR036Jun15/SA179Dec16

In the matter between:

The Competition Commission

Applicant

and

NC Specialised Fasteners CC

First Respondent

Specialised Inserts CC

Second Respondent


Panel : N Manoim (Presiding Member)
E Daniels (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on : 08 March 2017

Decided on : 08 March 2017

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and NC Specialised Fasteners CC annexed hereto marked "A".



**Presiding Member
Mr Norman Manoim**

08 March 2017
Date

Concurring: Mr Enver Daniels and Ms Andiswa Ndoni

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

CT Case No: CR036JUN15/SA/1790ec16


CC Case No: 2015MAY0273

In the matter between

THE COMPETITION COMMISSION

and

NC SPECIALISED FASTENERS CC

 competitiontribunal south africa
2015 -12- 02
RECEIVED BY: <i>[Signature]</i>
TIME: 12:08

Applicant

Respondent

CONSENT AGREEMENT IN TERMS OF SECTION 49D AS READ WITH SECTIONS 58(1)(a)(iii) and 58(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED, BETWEEN THE COMPETITION COMMISSION AND NC SPECIALISED FASTENERS CC, IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(b) (ii) OF THE COMPETITION ACT, NO 89 OF 1998.

Preamble

The Competition Commission and NC Specialised Fasteners CC hereby agree that application be made to the Competition Tribunal for the confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of section 49D read with section 58(1)(a)(iii) and 58(1)(b) of the Competition Act, No. 89 of 1998, as amended, in respect of contravention of section 4(1)(b) (ii) of the Act, on the terms set out below.

1. Definitions

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

- 1.1 "Act" means the Competition 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 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 "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case numbers 2015May0273;
- 1.5 "Consent Agreement" means this agreement duly signed and concluded between the Commission and NC Specialised Fasteners CC;
- 1.6 "Market Division" means dividing markets by allocating customers, suppliers, territories or specific types of goods or services;
- 1.7 "NC Specialised Fasteners CC" means NC Specialised Fasteners, a close corporation incorporated under the laws of the Republic of South Africa with its principal place of business situated at Unit 6, Powerville Park, 6 Taaibos Street, Powerville, Vereneenging, Gauteng;
- 1.8 "Parties" means the Commission and NC Specialised Fasteners;
- 1.9 "Respondents" means NC Specialised Fasteners and Specialised Inserts CC;

- 1.10 **“Specialised Inserts”** means Specialised Inserts CC, a close cooperation incorporated under the laws of the Republic of South Africa, with its principal place of business situated at Unit 3, Marvil Park, 84 Ratchet Avenue, Stormill, Johannesburg; and
- 1.11 **“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 Mulayo building (Block C), the DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2. THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On 19 May 2015, the Commission initiated a complaint in terms of section 49(B)(1) of the Act into alleged prohibited practices relating to market division in the markets for sheet metal and turned metal products within South Africa against NC Specialised Fasteners and Specialised Inserts under Commission case number 2015May0273.
- 2.2 The Commission's investigation under Case No. 2015May0273 revealed the following:
- 2.2.1 In April 2013, the Respondents, being competitors and/or potential competitors in the markets for sheet metal and turned metal products, concluded an agreement in terms of which they agreed to divide markets.
- 2.2.2 In terms of the agreement, NC Specialised Fasteners could not supply turned metal products to customers and Specialised Inserts could not supply sheet metal products to customers.
- 2.3 This conduct of the Respondents constitutes market division in contravention of section 4(1)(b) (ii) of the Act.

3. ADMISSION

NC Specialised Fasteners admits that it engaged in the conduct set out in clause 2 above in contravention of section 4(1)(b) (ii) of the Act.

4. CO-OPERATION

NC Specialised Fasteners confirms that it has ceased engaging in the conduct set out in clause 2 above.

5. FUTURE CONDUCT

NC Specialised Fasteners agrees to:

- 5.1 Prepare and circulate a statement summarising the contents of this Consent Agreement to its employees, managers and members within fourteen (14) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 5.2 Refrain from engaging in conduct in contravention of the act in future;
- 5.3 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; and
- 5.4 Submit a copy of such compliance programme to the Commission within sixty (60) days of the date of confirmation of the Consent Agreement as an order

by the Tribunal.

6. ADMINISTRATIVE PENALTY

- 6.1 Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Act, NC Specialised Fasteners is liable to pay an administrative penalty.
- 6.2 NC Specialised Fasteners agrees and undertakes to pay an administrative penalty in the amount of **R669 566.45 (Six hundred and sixty-nine thousand, five hundred and sixty-six Rand and forty-five cents)**. This administrative penalty represents 5% of NC Specialised Fasteners' annual turnover for the financial year ended 28 February 2014.
- 6.3 NC Specialised Fasteners shall pay the administrative penalty set out in paragraph 6.2 above to the Commission in 36 monthly instalments. The first payment shall be made on 31 January 2017 or within thirty (30) days of the confirmation of this Consent Agreement as an order of the Tribunal, whichever is the later.
- 6.4 NC Specialised Fasteners will thereafter pay the balance of the administrative penalty amount in 35 monthly instalments.
- 6.5 NC Specialised Fasteners will also pay interest at the rate of 10.25% per annum on any balance then outstanding, from the 13th month in terms of the Public Finance Management Act's provisions on interest to be levied on debts owing to the state.
- 6.6 The administrative penalty payable by NC Specialised Fasteners in terms of this Consent Agreement shall be paid into the Commission's bank account which is 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: 2015May0273/NC Specialised Fasteners

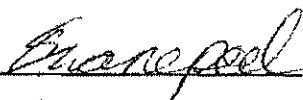
6.7 The administrative penalty will then be paid over by the Commission to the National Revenue Fund in accordance with the provisions of section 59(4) of the Act.

7. Full and Final Settlement

This agreement, upon confirmation as an order of the Tribunal, is entered into in full and final settlement of the conduct set out in clause 2 above and concludes all proceedings between the Commission and NC Specialised Fasteners in respect of this conduct only.

Dated and signed at Johannesburg on the 23 day of November 2016

For NC Specialised Fasteners CC




Member

Name in Full: Catherine Swanepoel

Dated and signed at PRETORIA on the 23rd day of NOVEMBER 2016

For the Commission



Tembinkosi Bonakele
Competition Commissioner