



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 020297

In the matter between:

The Competition Commission

Applicant

and

Columbus Stainless (Pty) Limited

Respondent

Panel : Y Carrim (Presiding Member)
M Mokuena (Tribunal Member)
A Ndoni (Tribunal Member)

Heard on : 18 December 2014

Decided on : 18 December 2014

Order


The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Columbus Stainless (Pty) Limited, annexed hereto marked 'A'.

Presiding Member
Ms. Y Carrim

18 December 2014
Date

Concurring: Ms. M Mokuena and Ms. A Ndoni

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

 competition tribunal south africa	
2014 -12- 09	
RECEIVED BY:	<i>Malomo</i>
TIME:	<i>9h20</i>

CT Case No.: ~~018259~~
CC Case No.: 2009DEC4844

In the matter between

Competition Commission

Applicant

And

Columbus Stainless (Pty) Ltd

Respondent

CONSENT AGREEMENT

BETWEEN THE COMPETITION COMMISSION AND COLUMBUS STAINLESS (PTY) LTD
IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 4(1)(b) OF THE
COMPETITION ACT, 1998 (ACT NO. 89 OF 1998), AS AMENDED

Preamble

The Competition Commission and the Respondent 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, 1998 (Act No. 89 of 1998), as amended, between the Competition Commission and Columbus Stainless (Pty) Ltd in respect of an alleged contravention of section 4(1)(b)(i) of the Act, on the terms set out below.

11 *10/12/14*

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. "CLP" means the Commission's Corporate Leniency Policy (Government Gazette Notice No. 628 of 23 May 2008) published in Government Gazette no.31064;
- 1.3. "Columbus" means Columbus Stainless (Pty) Ltd a private company duly registered and incorporated in accordance with the company laws of the Republic of South Africa, with its principal place of business at Hendrina Road, Middelburg, Mpumalanga, South Africa
- 1.4. "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;
- 1.5. "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.6. "Complaint" means the complaint initiated by the Commissioner in terms of section 49B(1) of the Act under case number 2009DEC48444;
- 1.7. "Consent Agreement" means this agreement duly signed and concluded between the Commission and Columbus;
- 1.8. "Parties" means the Commission and Columbus;
- 1.9. "Referral complaint" means the complaint referred to the Tribunal under case number 018259
- 1.10. "Respondents" means ArcelorMittal SA Ltd, Columbus, Cape Gate (Pty) Ltd and Scaw South Africa (Pty) Ltd;
- 1.11. "Scrap merchants" means SA Metal and Machinery (Pty) Ltd, National Scrap Metal (Pty) Ltd, Ben Jacobs Metal (Pty) Ltd, Power Metals Recyclers

(Pty) Ltd, Universal Recycling Company (Pty) Ltd, Ton Scrap (Pty) Ltd, Scaw South Africa (Pty) Ltd, Scaw Metals Group (Pty) Ltd, Amalgamated scrap Metals Recycling CC, Abbedac Training (Pty) Ltd, Ben Jacobs Iron and Steel (Pty) Ltd, Cape Town Iron and Steel Works (Pty) Ltd and The New Reclamation Group (Pty) Ltd

1.12. "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.

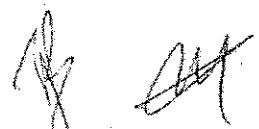
2. The Commission's investigation and Findings

2.1. On 21 December 2009 and pursuant to an application for leniency under the Commission's CLP, the Commissioner initiated a complaint in terms of section 49(B)(1) of the Act under case number 2009DEC4844 against ArcelorMittal SA Ltd, Columbus, Cape Gate (Pty) Ltd, Scaw South Africa (Pty) Ltd, Highveld Steel & Vanadium Corporation, Cape Town Iron & Steel Works and the South African Iron and Steel Institute for alleged prohibited practices in contravention of section 4(1)(b)(i) of the Act in the market for the purchase of scrap metal.

2.2. Following investigation of the complaint, the Commission referred the complaint on 7 August 2013 against the Respondents for the contravention of section 4(1)(b)(i) of the Act. The Commission's referral is predicated on its findings that from the period commencing in or about 1998 until at least 2008, the Respondents, being firms in a horizontal relationship, entered into an agreement, alternatively, engaged in a concerted practice of directly or indirectly fixing the purchase price of scrap metal in contravention of section 4(1)(b)(i) of the Act.

2.3. In particular, the Commission's investigation revealed that:

2.3.1 The Respondents, commencing in or about 1998 until at least 2008, coordinated and aligned their behaviour in the market for the purchase of scrap metal, acting as a buyers' cartel;

Two handwritten signatures in black ink, one on the left and one on the right, located at the bottom right of the page.

2.3.2 The Respondents collaborated and acted in tandem with the upstream cartel of scrap merchants, which was investigated and referred to the Tribunal under case number CT/51/CR/Aug10;

2.3.3 The Respondents began coordinating and aligning their behaviour through meetings and correspondence and adopted two main interrelated mechanisms;

2.3.3.1. The Respondents and the scrap merchants, referred to above, collectively negotiated and agreed a standard pricing formula which was used to determine the purchase price of scrap metal and on an annual basis, agreed amongst themselves as the Respondents, through meetings and various correspondence, adjustments to the standard pricing formula and used the agreed adjustments to collectively renegotiate the standard pricing formula with the scrap merchants; and

2.3.3.2. The Respondents and the scrap merchants, referred to above, agreed on premiums that were applied by different tiers of scrap merchants when selling scrap metal. The premiums were then structured as discounts off the formula price and on an annual basis, the Respondents agreed amongst themselves the premiums to be applied by different tiers of scrap merchants and used their agreement as a basis for renegotiating the premiums with scrap merchants.

2.4. Therefore, the Commission's investigation revealed that in the period commencing in or about 1998 and until at least 2008, the Respondents entered into an agreement, alternatively, engaged in a concerted practice to fix the purchase price of scrap metal in contravention of section 4(1)(b)(i) of the Act.



3. Settlement discussions

- 3.1. Shortly following the Commission's referral of this matter to the Tribunal, Columbus contacted the Commission seeking a meeting in order to discuss the possibility of settlement. The Commission and Columbus met in December 2013 and began engagements regarding making a formal settlement proposal.
- 3.2. In June 2014 Columbus made its formal settlement proposal for the Commission's consideration. In October 2014 the Commission responded to Columbus' proposed settlement agreement. In November 2014, both the Commission and Columbus reached agreement on settlement. This Consent Agreement is the product of these engagements.

4. Admission

Columbus admits that it entered into a price fixing agreement or alternatively a concerted practice with its competitors in contravention of section 4(1)(b)(i) of the Act, as described in paragraph two above.

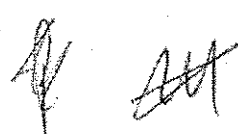
5. Cooperation

5.1. Columbus agrees to:

5.1.1 Fully cooperate with the Commission in its prosecution of the remaining Respondents in the referral complaint. This cooperation includes, but is not limited to;

5.1.1.1 Providing documentary evidence, which is in its possession or under its control, concerning the alleged contraventions contained in this Consent Agreement; and

5.1.1.2 Availing employees of Columbus, and using reasonable endeavours to contact past employees of Columbus, to assist the Commission in the complaint referral in respect of the alleged contraventions covered by this Consent Agreement.

Two handwritten signatures in black ink, one on the left and one on the right, located at the bottom right of the page.

6. Future Conduct

6.1. Columbus agrees to:

- 6.1.1 Prepare and circulate a statement summarising the content of this agreement to its employees, managers and directors within fourteen (14) days of the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 6.1.2 Refrain from engaging in the conduct described in paragraph 2 above in contravention of section 4(1)(b)(i) of the Act;
- 6.1.3 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; and
- 6.1.4 To submit a copy of such compliance programme to the Commission within 60 days of the date of confirmation of the Consent Agreement as an order by the Tribunal.

7. Administrative Penalty

- 7.1. 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, Columbus is liable to pay an administrative penalty;
- 7.2. Columbus agrees and undertakes to pay an administrative penalty in the amount of R32 576 835.87 (thirty two million five hundred and seventy six thousand eight hundred and thirty five and eighty seven cents) representing 7.9% of affected turnover for the financial year December 2007 (i.e. total purchases of the affected products);



- 7.3. This amount does not exceed 10% of Columbus' annual turnover in the Republic and its exports from the Republic for its financial year ending December 2013;
- 7.4. Columbus will pay the total amount set out in paragraph 7.2 above to the Commission within twelve months from the date of confirmation of this Consent Agreement by the Tribunal. To this end Columbus will make:
- 7.4.1. The first instalment payment in the amount of R16 288 417.44 (sixteen million two hundred and eighty eight thousand four hundred and seventeen rands and forty four cents) six months from the date on which the consent order is granted by the Tribunal; and
- 7.4.2. The second instalment payment in the amount of R16 288 417.44 (sixteen million two hundred and eighty eight thousand four hundred and seventeen rands and forty four cents) twelve months from the date on which the consent order is granted by the Tribunal
- 7.5. The penalty must be paid into the Commission's bank account which is as follows:

NAME:	The Competition Commission Fee Account
BANK:	ABSA Bank, Pretoria
ACCOUNT NUMBER:	4050778576
BRANCH CODE:	323 345
REFERENCE:	2009Dec4844 Columbus

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

8. Full and Final Settlement

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 Columbus

relating to any alleged contravention of the Act that is the subject of the Commission's investigation under Commission Case No. 2009Dec4844.

Dated and signed at Middelburg on the 5th day of December 2014

For Columbus



Chief Executive Officer

Dated and signed at PRETORIA on the 8th day of December 2014

For the Commission



Competition Commissioner