



COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: CR047Aug10/SA089Aug16

In the matter between:

The Competition Commission

Applicant

and

Ben Jacobs Iron and Steel (Pty) Ltd

Respondent


Panel : N Manoim (Presiding Member)
M Mazwai (Tribunal Member)
M Mokuena (Tribunal Member)

Heard on : 21 September 2016

Decided on : 21 September 2016

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Ben Jacobs Iron and Steel (Pty) Ltd annexed hereto marked "A".



Presiding Member
Mr Norman Manoim

21 September 2016
Date

Concurring: Ms Mondo Mazwai and Ms Medi Mokuena

ANNEXURE "A"

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

CT Case No: 51/CR/Aug10

CC Case No: 2006Aug2447/ 2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

and

BEN JACOBS IRON AND STEEL (PTY) LTD

competitiontribunal
south africa

2016 -08- 18

RECEIVED BY: *[Signature]*

TIME: 15:57

Applicant

Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
BEN JACOBS IRON AND STEEL (PTY) LTD IN RESPECT OF AN ALLEGED
CONTRAVENTION OF SECTION 4(1)(b)(i) AND 4(1)(b)(ii) OF THE COMPETITION
ACT NO. 89 OF 1998, AS AMENDED

The Competition Commission and Ben Jacobs Iron and Steel (Pty) Ltd hereby agree that application be made to the Competition Tribunal ("Tribunal") for confirmation of this Settlement Agreement as an order of the Tribunal in terms of section 49D as read with sections 58(1)(a)(iii) and section 59(1)(a) of the Competition Act No. 89 of 1998, as amended, on the terms set out below.

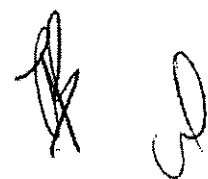
1. Definitions

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

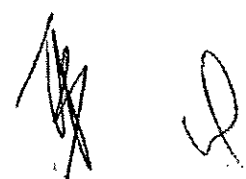
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- 1.1. "**Abeddac**" refers to Abeddac Metals (Pty) Ltd, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa with its principal place of business at 15th Avenue, Benoni, Gauteng and carrying on business as a dealer in ferrous scrap;
- 1.2. "**Amalgamated Metals**" means Amalgamated Metals Recycling CC, a close corporation duly incorporated and registered in terms of the close corporation laws of the Republic of South Africa, with its principal place of business at 100 4th Street Booyens Reserve Johannesburg and carrying on business as a scrap dealer;
- 1.3. "**Ben Jacobs**" or "**Respondent**" means Ben Jacobs Iron and Steel (Pty) Ltd, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa with its principal place of business at 15th Avenue, Boksburg North, Gauteng;
- 1.4. "**Ben Jacobs Metals**" means Ben Jacobs Metals (Pty) Limited, a company duly incorporated and registered in accordance with the laws of the Republic of South Africa with its principal place of business at 25 Plantation Road, Johannesburg. Where conduct is alleged to involve Ben Jacobs or Power Metals it must be read to involve either of them in the alternative. Ben Jacobs is a shareholder of Power Metals;
- 1.5. "**Cisco**" refers to Cape Town Iron and Steel Works (Pty) Limited, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its principal place of business at Fabriek Street, Kuilsrivier, Cape Town. Cisco is involved in the business of producing steel products from processed ferrous scrap which it requires as a raw material;
- 1.6. "**Commission**" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Competition Act, with its principal place of business at 1st floor, Mulayo Building (Block C), the Dti Campus, 77 Mentjies Street, Sunnyside, Pretoria, Gauteng;

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- 1.7. "**Commissioner**" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Competition Act;
- 1.8. "**Competition Act**" means the Competition Act, No. 89 of 1998, as amended;
- 1.9. "**Complaint referral**" means the Commission's referral to the Competition Tribunal under case number 51/CR/Aug10;
- 1.10. "**Complaints**" means the complaint initiated by the Commissioner of the Commission in terms of section 49B of the Competition Act under case number 2006Aug24447 (as extended by the Commission on 6 July 2007) and 2007Aug3121 and any other complaints of prohibited conduct arising from the conduct described in this Settlement Agreement;
- 1.11. "**Ferrous Metal**" refers to metals that contain iron and all iron derivatives;
- 1.12. "**Inland area**" refers to a territory defined as the provinces of Gauteng, Free State, North West, Northern Province, Mpumalanga and KwaZulu Natal but excludes those parts of the province south of Newcastle, the states of Lesotho and Swaziland and all African states north of South Africa's boundaries excluding Namibia;
- 1.13. "**Non-ferrous Metal**" refers to metals or alloys that are free of iron;
- 1.14. "**NSM**" refers to National Scrap Metal (Cape Town) (Pty) Ltd, a company duly incorporated and registered in terms of the company laws of South Africa, with its principal place of business at Fabriek Street, Kuilsrivier, Cape Town. NSM is a company with limited liability, in which Reclam has 40% shareholding. NSM is engaged in the business of collecting and processing all types of scrap metal including ferrous and non-ferrous scrap;
- 1.15. "**Parties**" refers to the Commission and Ben Jacobs;

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- 1.16. "**Power Metals**" means Power Metals (Proprietary) Limited, a company duly incorporated and registered in terms of the company laws of South Africa, with its principal place of business at 25 Plantation Road, Gardens, Johannesburg;
- 1.17. "**Reclam**" means The New Reclamation Group (Pty) Limited, a company duly incorporated and registered in terms of the company laws of the Republic of South Africa, with its principal place of business at 263 Oxford Road, Illovo, Johannesburg. Reclam is engaged in the business of collecting and processing of scrap metal;
- 1.18. "**SAM**" means SA Metal & Machinery Company (Pty) Ltd, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at 14 Christian Avenue, Epping Industria, and Cape Town. SAM is involved in the business of collecting ferrous and non-ferrous scrap metal for its own smelting purposes, for the sale to local smelters and for export markets;
- 1.19. "**Scrap**" refers to ferrous or non-ferrous scrap metal that can be used as an input in the manufacture of metal products;
- 1.20. "**Settlement Agreement**" means this agreement duly signed and concluded between the Commission and Ben Jacobs;
- 1.21. "**Steelco**" means Steelco Broking (Proprietary) Limited, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at corner Newclare and Kelvin Streets, Industria, Johannesburg. Steelco is a steel scrap trader as well as a broker for URC and Universal Metal Shredding (Proprietary) Limited;
- 1.22. "**Supplier**" means suppliers of scrap metal to consumers of scrap metal such as mills and foundries;

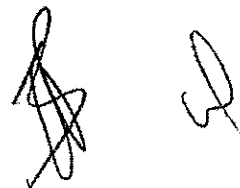


- 1.23. "Ton Scrap" means Ton Scrap (Pty) Ltd, a company duly incorporated and registered in terms of the Republic of South Africa with its principal place of business at Il Harrington Road, Duncanville, Vereeniging;
- 1.24. "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Competition Act, with its principal place of business at 3rd Floor, Mulayo Building Block C, the dti Campus, 77 Mentjie Street, Sunnyside, Pretoria, Gauteng;
- 1.25. "UMS" refers to Universal Metal Shredding (Proprietary) Limited, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at corner Newclare and Kelvin Streets, Industria, Johannesburg; and
- 1.26. "URC" refers to Universal Recycling (Proprietary) Limited, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at corner Newclare and Kelvin Streets, Industria, Johannesburg. References to URC should be taken to include Steelco and UMS.

2. The Complaints and the Commission's investigation

First complaint initiation

- 2.1. On 11 August 2006 the Commissioner initiated a complaint under case number 2006Aug2447 in respect of alleged prohibited vertical and horizontal practices in contravention of sections 4 and 5 of the Competition Act, against Reclam, SAM, NSM and Cisco.
- 2.2. The initiation was based on allegations of price fixing, market allocation and exclusive dealing in contravention of sections 4(1)(b)(i), 4(1)(b)(ii) and 5(1) of

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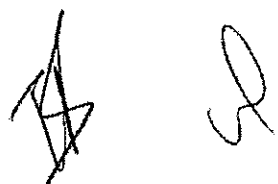
the Competition Act respectively in relation to ferrous and non-ferrous scrap metal.

Extension of the first complaint initiation

- 2.3. During the course of the investigation, the Commissioner, acting in terms of section 49A of the Competition Act, issued summons against Reclam. On the basis of the information submitted by Reclam to the Commission, the Commissioner on 6 July 2007 expanded the scope of the investigation under Case No: 2006Aug2447 to include collusive tendering in contravention of section 4(1)(b)(iii) against Reclam, NSM, SAM, LO Rall Scrap Dealers CC, URC and Fine Trading CC.
- 2.4. On 20 July 2007, the Commission obtained search warrants and conducted search and seizure operations at the premises of Reclam in Johannesburg, Port Elizabeth and Durban. Soon thereafter, the Commission received information that Reclam, Abeddac, Amalgamated Metals, Ben Jacobs Metals, Power Metals, SAM and URC were engaged in price fixing and collusive tendering in respect of various types of non-ferrous scrap metal.

Second complaint initiation

- 2.5. On 08 August 2007, the Commissioner initiated another complaint (under case number 2007Aug3121) against the respondents referred to in paragraph 2.4 above. This complaint was initiated because the Commission had established that certain respondents and other firms were likely to be involved in specific contraventions of the Competition Act, which were not identified at the time of the first initiation of the complaint.
- 2.6. The investigation that followed the second complaint initiation revealed that there were other arrangements between the scrap merchants (i.e Reclam, Ton



Scrap, URC, Ben Jacobs and Rand Scrap) and steel mills (i.e. ArcelorMittal South Africa Limited, Scaw South Africa (Pty) Ltd, Columbus Stainless (Pty) Ltd, Highveld Steel and Vanadium Corporation Limited and Cape Gate (Pty) Ltd) which could be in contravention of the Competition Act. These involved meetings and/or discussions resulting in agreements, arrangements or understandings relating to:

2.6.1. The allocation of scrap metal in times of shortages;

2.6.2. The selling prices of scrap metal to steel mills; and

2.6.3. The discounts to be applied to such selling prices.

2.7. During the course of the investigation of the second complaint initiation, the Commission was alerted to the fact that Ben Jacobs Metals and Ben Jacobs Iron and Steel, despite the similarity in names are separate and unrelated companies. Ben Jacobs Metals only operates in the non-ferrous metals markets and Ben Jacobs Iron and Steel only operates in the ferrous metals markets. As a result, on 26 May 2010 the Commissioner expanded the initiation (under case number 2007Aug3121) to include Ben Jacobs Iron and Steel.

3. The Commission's findings

3.1. The Commission found that from the period prior to the coming into effect of the Competition Act until early 2008, Ben Jacobs together with other large scrap merchants, namely: Reclam, Ton Scrap, URC and Rand Scrap as well as large scrap consumers, namely: ArcelorMittal South Africa Limited, Scaw South Africa (Pty) Ltd, Columbus Stainless (Pty) Ltd, Highveld Steel and Vanadium Corporation Limited and Cape Gate (Pty) Ltd in the inland area were involved in discussions, meetings and arrangements with regard to:



- 3.1.1. a standard pricing formula to determine the selling price of scrap metal;
 - 3.1.2. the premium charged by the large scrap merchants for scrap metal;
 - 3.1.3. the collective sourcing or supply of scrap metal by the large scrap consumers and the allocation of such scrap metal amongst them; and
 - 3.1.4. the allocation of suppliers of scrap metal by the large scrap merchants and penalising those that failed to adhere to the allocation.
- 3.2. The Commission's investigation revealed that the discussions, meetings and arrangements on the pricing formula were intended to ensure that:
 - 3.2.1. large scrap merchants did not dictate scrap prices;
 - 3.2.2. all of the large scrap consumers were charged a similar price for scrap metal.
- 3.3. The approach in these discussions was for the large scrap consumers to first meet and reach agreement or consensus before meeting with the large scrap merchants. The large scrap merchants did the same, that is, they met first as competitors and reached agreement or consensus among themselves.
- 3.4. The discussions, meeting and arrangements resulted in agreed prices (or pricing formula) that would apply to different tiers of scrap suppliers (that is scrap merchants). Tier 1 of the scrap merchants comprised Reclam, URC and Rand Scrap. Tier 2 comprised Ton Scrap and Ben Jacobs, whereas Tier 3

comprised the other (regional) scrap merchants who were also important suppliers to the steel mills but not big enough to be in tier 1 and 2. Tier 2 would receive lesser price than Tier 1. Tier 3 would receive the lowest price of all three. The Commission concluded that these agreements, arrangements and understandings reached by the scrap merchants concerning the Tier system and its adjustments from time to time constituted a contravention of section 4(1)(b)(i) of the Competition Act.

3.5. In respect of market allocation, the Commission found that the representatives of the large merchants also:

3.5.1. met regularly to discuss inter alia ways to ensure that they were supplied with adequate quantities of scrap from suppliers and generators.

3.5.2. In these meetings the large scrap merchants reached an understanding that their market shares and margins would be kept constant.

3.5.3. Specific scrap generators were allocated to specific large scrap merchants, usually based on the generator's geographic location.

3.5.4. The large scrap merchants also agreed not to poach one another's suppliers and scrap generators.

3.6. The Commission concluded that the above conduct amongst the large scrap merchants contravened section 4(1)(b)(ii) of the Competition Act in that it constituted the allocation of suppliers amongst the large scrap merchants.

3.7. Due to the fact that the complaints initiated related to substantially similar types of conduct, involving largely the same parties (scrap merchants), the



Commission investigated the complaints together and on 23rd August 2008 referred the allegations to the Tribunal.

4. Admission of liability

- 4.1. Ben Jacobs admits that it has contravened section 4(1)(b)(i) of the Competition Act in that it agreed with its competitors to fix purchasing and selling prices in relation to the trading of certain ferrous scrap metals.
- 4.2. Ben Jacobs also admits that it has contravened section 4(1)(b)(ii) of the Competition Act in that it agreed with its competitors to allocate suppliers amongst the large scrap merchants.

5. Future Conduct

- 5.1. Ben Jacobs confirms that it has ceased the conduct referred to in clause 4 above and undertakes not to engage in any contraventions of section 4(1)(b)(i) and 4(1)(b)(ii) of the Act.
- 5.2. Ben Jacobs further agrees to:
 - 5.2.1. Prepare and circulate a statement summarising the contents of this Settlement Agreement to its employees, managers and directors within fourteen (14) days from the date of confirmation of this Settlement Agreement as an order of the Tribunal;
 - 5.2.2. develop, implement and monitor a competition law compliance programme, with corporate governance, which is designed to ensure that its employees, management, directors and agents do not engage in future contraventions of the Competition Act. In particular, such compliance programme should include mechanisms for the

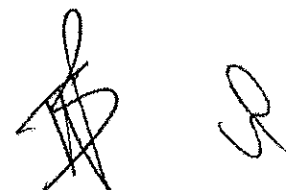
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identification, prevention, detection and monitoring of any contravention of the Competition Act, and

5.2.3. submit a copy of such compliance programme outlined above to the Commission within 60 days of the date of confirmation of this Settlement Agreement as an order of 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 Competition Act, Ben Jacobs accepts that it is liable to pay an administrative penalty.
- 6.2. The parties have agreed that Ben Jacobs will pay an administrative penalty in the amount of R2 995 922.70 (two million nine hundred and ninety five thousand, nine hundred and twenty-two rand and seventy cents). This administrative penalty constitutes approximately 5% of Ben Jacobs' total annual turnover in respect of ferrous scrap metal for the financial year ended 30 June 2006.
- 6.3. Ben Jacobs agrees to pay the abovementioned administrative penalty in 60 (sixty) monthly installments of not less than R50 000.00 (fifty thousand rand) each. The first installment must be paid on 30 September 2016 and subsequent installments must be paid on the last day of each month.
- 6.4. No interest will be levied upon the administrative penalty for the first year from the date on which this Settlement Agreement is made an order of the Tribunal and thereafter interest will be levied on the remaining outstanding balance at the prevailing interest rate on debts owing to the State in terms of the Public Finance Management Act No.1 of 1999 (as amended by Act No.29 of 1999).

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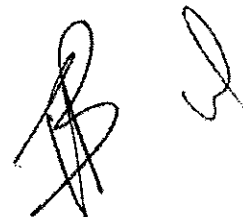
6.5. Ben Jacobs shall remit payments of the administrative penalty into the following bank account:

Name: The Competition Commission Fee Account
Bank: Absa Bank, Pretoria
Account Number: 4050778576
Branch Code: 323 345
Reference: Ben Jacobs / 2007Aug3121

6.6. 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 Competition Act.

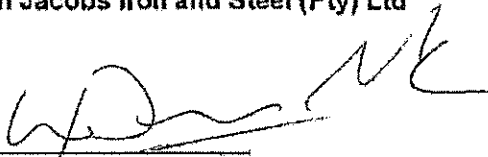
7. Full and Final Settlement

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 Ben Jacobs relating to any alleged contraventions of the Competition Act by the Respondent that is the subject of the Commission's investigations and complaint referral under case numbers 2006Aug2447 and 2007Aug3121 and CT Case No. 51/CR/AUG10.

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Dated and signed at Boksburg on the 15 day of August 2016

For Ben Jacobs Iron and Steel (Pty) Ltd

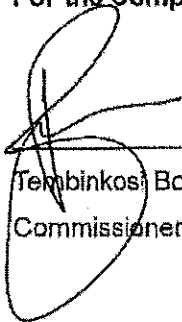


Wayne Diner

Director (duly authorised)

Dated and signed at PRETORIA on the day of 17th / 08 / 2016

For the Competition Commission



Tembinkosi Bonakele
Commissioner