

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 23/CR/Feb09

In the matter between:

The Competition Commission

Applicant

and

Cobro Concrete (Pty) Ltd

Respondent

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and A Wessels (Tribunal Member)

Heard on : 31 March 2010

Decided on : 31 March 2010

Order

The Tribunal hereby confirms the order as agreed to and proposed by the Competition Commission and the respondent, annexed hereto marked "A".



N Manoim

Concurring: Y Carrim and A Wessels

A

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA


CC Case No: 2008Mar3595

In the matter between:

THE COMPETITION COMMISSION

And

CONCRETE
COBRO (PTY) LIMITED

 competitiontribunal south africa	
2010 -03- 24	
RECEIVED BY:	<i>Ringail</i>
TIME:	15:20

Applicant

Respondent

MR *CR*

MR

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
CONCRETE
COBRO (PTY) LTD LIMITED IN REGARD TO A CONTRAVENTION OF SECTION
4(1) (b) OF THE COMPETITION ACT, NO. 89 OF 1998 (AS AMENDED)

MR



The Competition Commission and Cobro^{CONCRETE} (Pty) (Ltd) Limited hereby agree that application be made to the Competition Tribunal for an order in terms of section 58(1)(a)(iii) of the Competition Act, No. 89 of 1998 (as amended), on the terms set out more fully below.

CR

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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 **"Aveng"** means Aveng (Africa) Limited;
- 1.3 **"Cape Concrete"** means Cape Concrete (Pty) Ltd;
- 1.4 **"Cobro"** means Cobro ^{CONCRETE} (Pty) Ltd;  
- 1.5 **"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 Building C, Mulayo Building, dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.6 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.7 **"Concrete Units"** means Concrete Units (Pty) Ltd;
- 1.8 **"Conrite Walls"** means Conrite Walls (Pty) Ltd;
- 1.9 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and Aveng;
- 1.10 **"Complaint"** means the complaint initiated by the Commissioner of the Commission in terms of section 49B of the Act under case number 2008Mar3595 into possible contraventions of the Act;

"Days" means calendar days;

- 1.12 **"Empowa-Grinaker"** means Empowa-Grinaker Lta (Pty) Ltd;
- 1.13 **"Grallio"** means Grallio (Pty) Ltd;
- 1.14 **"Infraset"** means the Infraset business unit of Aveng Manufacturing, a subsidiary of Aveng (Africa) Ltd;
- 1.15 **"Parties"** means the Commission and "Cobro";
- 1.16 **"Rocla"** means Rocla (Pty) Ltd
- 1.17 **"SPC"** means Southern Pipeline Contractors (Pty) Ltd
- 1.18 **"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 Building C, Mulayo Building, dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.
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2 Complaint investigation and the Commission's findings

2.1 During December 2007, the Commission received an application for leniency under its corporate leniency programme from Rocla regarding its involvement in a cartel in the precast concrete market within South Africa. In its leniency application, Rocla advised the Commission that it, together with SPC, Concrete Units, Cape Concrete, Cobro, Grallio, Empowa Grinaker, Craig Concrete, Concite Walls and D&D Concrete had engaged in the following conduct:

- 2.1.1 fixing the selling price of pipes, culverts and manholes;
- 2.1.2 dividing the markets for the production and distribution of pipes, culverts and manholes; and
- 2.1.3 collusive tendering in respect of the supply of precast concrete products and precast concrete sleepers to certain suppliers.

2.2 The Commissioner initiated an investigation into this alleged cartel activity on 19 March 2008.

2.3 The Commission's investigation found the following:

2.3.1 *Price fixing and fixing of trading conditions*

2.3.1.1 During the period 1986 until September 2007, Rocla, Infraset, Cobro ("competitors") and during the period 1999 until November 2007, Cobro, Concite Walls and DND Concrete ["DND"] ("competitors"), competitors in the business of manufacture and sale of precast manholes and pipes in South Africa, acting through their respective representatives in meetings:

2.3.1.1.1

Directly fixed prices of manholes and pipes sold to their customers by agreeing on prices that each would quote to customers/contractors allocated to each other;

2.3.1.1.2

Directly fixed prices of manholes and pipes by agreeing on price increases and discounts to be offered to their customers;

2.3.1.1.3

Directly fixed credit terms to be granted to their customers.

2.3.1.2

Discussions on price increases, prices to be quoted to customers, discounts and credit terms occurred between Cobro and its competitors during meetings held during the relevant period. These discussions were confirmed by written documentation such as price lists and *modus operandi* documentation generated and exchanged between Cobro and its competitors during the relevant period. This conduct constitutes price fixing and fixing of trading conditions in contravention of section 4(1) (b) (i) of the Act.

2.3.1.3


Through these price fixing arrangements, Cobro and its competitors prevented and/or limited price competition amongst themselves in relation to pricing of precast concrete pipes and culverts.

2.3.2

Market Division

2.3.2.1

During the period 1999 until November 2007, Cobro together with D&D Concrete and Conrite Walls, being competitors in the market for the manufacture and sale of manholes in South Africa, acting through their respective representatives in meetings, divided the *Natal Market* market for manholes by:



2.3.2.1.1 Allocating customers/contracts amongst themselves in accordance with agreed upon percentage share of the market for manholes, in particular it was agreed with Rocla that 75% of available contracts/customers would be supplied by Cobro and the remaining 25% by D&D. Prior to the acquisition of D&D by Rocla, between the period 1999 and 2002 Cobro, D&D and Conrite Walls agreed to divide the market amongst them as follows: Cobro was to have 56% of the market, D&D 20% and Conrite Walls 15%.

2.3.2.1.2 In terms of the agreement Cobro made monthly payments of approximately R 30 000 to Conrite Walls to ensure that the latter did not enter the manhole market. D&D paid Conrite Walls an amount of about R 10 000 per month.


2.3.2.1.3 Allocating specific territories within which each firm would supply manholes.

2.3.2.2 Further, during the period 1986 until November 2007, Cobro, Rocla, Infraset and Grallio being competitors in the manufacture and sale of pipes in South Africa, acting through their respective representatives in meetings divided the *Natal* market for pipes by:

2.3.2.2.1 allocating customers/contracts amongst themselves in accordance with agreed upon percentage shares as follows: Rocla 54%; Infraset 19%; Grallio 10% and Cobro 17%

2.3.2.2.2 allocating specific territories within which each firm would supply pipes;

2.3.2.2.3 allocating specific goods to be supplied by each.




2.3.2.3 Further, in the market for the production and supply of culverts in Kwazulu-Natal Cobro, Rocla, Infraset and Grallio entered into and implemented an agreement in terms of which Rocla would supply culverts in that market without competition from Infraset, Grallio and Cobro.

2.3.3 Collusive Tendering

2.3.3.1 During the period 1986 until November 2007, Cobro together with Rocla, Infraset and Grallio, collectively agreed on prices that they would submit in relation to tenders for Government contracts, agreeing to allocate contracts amongst themselves in accordance with agreed upon market shares pertaining to pipes, manholes and culverts, and coordinating quotations offered to contractors in order to secure such contracts.

3 Admission

3.1 Cobro admits that it has contravened sections 4(1)(b)(i), 4(1)(b)(ii), 4(1)(b)(iii) and 4(1)(a) in that it and its competitors, through a series of meetings attended by their respective representatives, during the period 1986 until November 2007, colluded to fix prices, price increases and discounts, allocated customers, territories and specific goods amongst themselves and engaged in collusive tendering in the markets for pipes, manholes and manhole covers as set out in paragraph 2 above.



4 Agreement concerning future conduct

4.1 Cobro agrees to cooperate fully with the Commission in relation to the prosecution of any other firm arising from the Commission's investigation of the Complaint. Without limiting the generality of the above, Cobro specifically agrees to:

4.1.1 testify in support of the Commission's case regarding the contraventions in this consent agreement; and

4.1.2 provide evidence, written or otherwise, concerning the contraventions contained in this consent agreement.

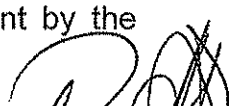
4.2 Cobro agrees to develop and implement a formal compliance programme incorporating corporate governance designed to ensure that employees, management and directors do not engage in any contraventions of section 4(1) (b) of the Act, a copy of which programme shall be submitted to the Commission within 60 days of the date of confirmation of this consent agreement by the Tribunal.

5 Administrative Penalty

5.1 Having regard to the provisions of section 58(1) (a) (iii), read with sections 59(1) (a), 59(2) and (3) of the Act, Cobro accepts that it is liable to pay an administrative penalty.

5.2 The parties have agreed that Cobro will pay an administrative penalty in the amount of R 4 022 568.29, being 6.5% of Cobro's turnover for the financial year ending 2008.

5.3 Cobro will pay the administrative penalty within 6 months of the date of the confirmation of the Settlement Agreement by the Tribunal.

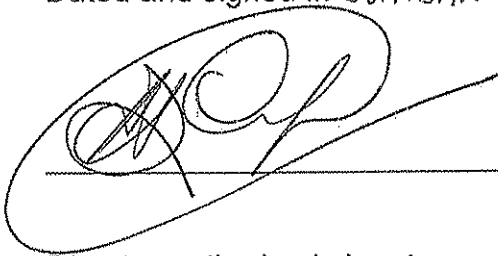


5.4 The Commission will pay the administrative penalty received into the National Revenue Fund in terms of section 59(4) of the Act.

6 Full and final resolution


This Settlement Agreement is entered into in full and final settlement of all proceedings between the parties, and upon confirmation as an order by the Tribunal, concludes all proceedings between the Commission, and ~~Aveng~~ ^{COBRO} relating to any alleged contravention by Cobro of section 4(1) (b) of the Act that is the subject of, or was investigated pursuant to, the Complaint under case number 2008Mar3595.

Dated and signed in *DURBAN* on this the *15* day of *MARCH* 2009/10.



Director-authorised signatory
Cobro (Pty) Ltd

Dated and signed in *PRETORIA* on this the *01* day of *Feb* 2010.



Shan Rambukuth
The Commissioner, Competition Commission

