

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No: 23/CR/Feb09

In the matter between:

The Competition Commission

Applicant

and

Concrete Units (Pty) Ltd

Respondent

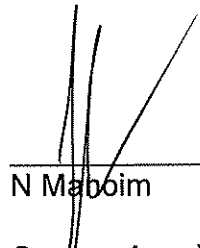
Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and A Wessels (Tribunal Member)

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

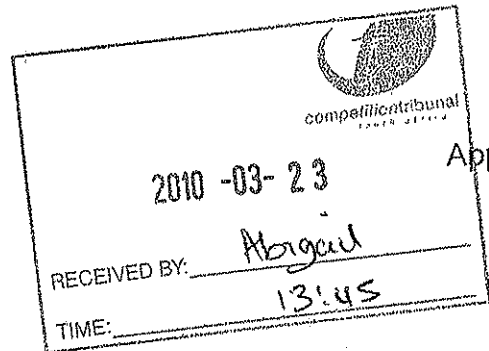
HELD AT PRETORIA

Ref : 2008Mar3595

In the matter between:

THE COMPETITION COMMISSION

And



Applicant

CONCRETE UNITS (PROPRIETARY) LIMITED AND OTHERS

Respondent

SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
CONCRETE UNITS (PROPRIETARY) LIMITED IN REGARD TO THE ALLEGED
CONTRAVENTION OF SECTIONS 4 (1) (b) (i), 4 (1) (b) (ii), (1) (b) (iii) OF THE
COMPETITION ACT NO. 89 OF 1998 (AS AMENDED)

The *Commission* and *Concrete Units* hereby enter into a *Settlement Agreement* in terms of section 49D of the Competition Act, No. 89 of 1998, (as amended) (the "Act") and agree that application be made for an order confirming the *Settlement Agreement*, in terms of section 58(1)(b) of the Act, on the terms set out more fully below.

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1.

Definitions

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

- 1.1. **"Act"** means the Competition Act, Number 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 Building C, Mulayo Building, 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* of the *Commission* against the *Respondents* under case number 2008MAR3595.
- 1.5. **"Concrete Units"** means Concrete Units (Proprietary) Limited, a private company duly registered in accordance with the company laws of the Republic of South Africa, with its principal place of business at Montreal Drive, Airport Industria, Cape Town.
- 1.6. **"Days"** means calendar days.
- 1.7. **"Parties"** means, collectively, the Commission and *Concrete Units*.
- 1.8. **"Period"** means the period from the year 2000 to September 2007.

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- 1.9. ***"Prohibited Practice"*** means a practice prohibited in terms of Chapter 2 of the Act.
- 1.10. ***"Respondents"*** means, collectively, Aveng Africa Limited t/a Infraset (***"Infraset"***), Cape Concrete (Proprietary) Limited (***"Cape Concrete"***), Cobro (Proprietary) Limited (***"Cobro"***), Concrete Walls (Proprietary) Limited, Concrete Units, Craig Concrete (Proprietary) Limited (***"Craig Concrete"***), DND Concrete (Proprietary) Limited, Empowa-Grinaker Ltd (Proprietary) Limited, Grallio (Proprietary) Limited, Southern Pipeline Contractors (Proprietary) Limited (***"SPC"***) and Rocla (Proprietary) Limited (***"Rocla"***).
- 1.11. ***"Settlement Agreement"*** means this agreement duly signed and concluded between the *Commission* and *Concrete Units*.
- 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 Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

CP

MP

2.

The Complaint and Complaint Investigation

- 2.1 During December 2007, the *Commission* received information regarding allegations that the *Respondents* operated a cartel in the pre-cast concrete industry in South Africa. The information was received by virtue of a corporate leniency application submitted to the *Commission* by one of the *Respondents*, *Rocla*. In its leniency application, *Rocla* advised the *Commission* that the *Respondents* had engaged in the following conduct –
- 2.1.1 fixing the selling price of precast concrete pipes, culverts and manholes;
 - 2.2.2 dividing the markets for the production and distribution of precast concrete 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 the activities of the *Respondents* on 19 March 2008. These investigations established that the *Respondents* operated a cartel within the pre-cast concrete industry in South Africa and, in certain instances, in neighbouring African countries such as Namibia, Botswana, Mozambique, Lesotho and Swaziland.
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3.

Commission's Findings

Upon completion of its investigation into the *Complaint*, the *Commission* found that *Concrete Units* had engaged in the following *prohibited practices* during the *Period*, namely –

3.1. Price fixing and fixing of trading conditions

- 3.1.1. As regards the production and supply of precast concrete pipes in the Gauteng region of South Africa, *Concrete Units* and the relevant *Respondents* (namely, *Craig Concrete*, *Infraset*, *Rocla* and *SPC*) engaged in price fixing and fixing of trading conditions for the manufacture and sale of pre-cast concrete pipes, in contravention of section 4(1)(b)(i) of the *Act*.
- 3.1.2. As regards the production and supply of precast concrete culverts in the Gauteng region of South Africa, *Concrete Units* and the relevant *Respondents* (namely, *Infraset* and *Rocla*) engaged in price fixing and fixing of trading conditions for the manufacture and sale of pre-cast concrete culverts, in contravention of section 4(1)(b)(i) of the *Act*.
- 3.1.3. As regards the production and supply of precast concrete culverts in the Western Cape region of South Africa, *Concrete Units* and the relevant *Respondents* (namely, *Infraset* and *Rocla*) engaged in price fixing and fixing of trading conditions for the manufacture and sale of



pre-cast concrete culverts, in contravention of section 4(1)(b)(i) of the Act.


3.1.4. More particularly, the price fixing and fixing of trading terms and conditions involved *Concrete Units* and the relevant *Respondents* in each case, fixing –

3.1.4.1. the prices that each would quote to customers/contractors allocated to each other for the pre-cast concrete pipes and culverts;


3.1.4.2. the price increases and discounts to be offered to customers for the pre-cast concrete pipes and culverts; and

3.1.5. Furthermore, discussions on price increases, prices to be quoted to customers and discounts occurred between *Concrete Units* and the relevant *Respondents* during meetings held during the *Period*. These discussions were confirmed in written documentation such as price lists and *modus operandi* documentation generated and exchanged between *Concrete Units* and the relevant *Respondents* during the *Period*.

3.1.6. Through these agreements, *Concrete Units* and the *Respondents* prevented and/or limited price competition amongst themselves in relation to the pricing of precast concrete pipes and culverts.



3.2. Market Division

- 3.2.1. As regards the production and supply of precast concrete pipes in the Gauteng region of South Africa, *Concrete Units* and the relevant *Respondents* (in particular, *Craig Concrete*, *Infraset*, *Rocla* and *SPC*) agreed to divide/share the market for precast concrete pipes in contravention of section 4(1)(b)(ii) of the *Act*.
- 3.2.2. As regards the production and supply of precast concrete culverts in the Gauteng region of South Africa, *Concrete Units* and the relevant *Respondents* (in particular, *Infraset* and *Rocla*) agreed to divide/share the market for precast concrete pipes in contravention of section 4(1)(b)(ii) of the *Act*.
- 3.2.3. More particularly, the dividing/sharing of the market for precast *Concrete Pipes* and culverts involved *Concrete Units* and the relevant *Respondents* in each case,—
- 3.2.3.1. allocating customers/contracts amongst themselves in accordance with their agreed respective percentage market shares of the Gauteng market for precast concrete pipes and culverts; and
- 3.2.3.2. allocating specific territories within Gauteng to which each firm would supply precast concrete pipes and culverts.
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3.2.3.3. Furthermore, in the market for precast concrete pipes in Gauteng it was agreed that the following market shares would be maintained; *Craig Concrete* (15.75%), *Concrete Units* (10%), *Infraset* (35.75%), *Rocla* (26.75%) and *SPC* (11.75%).

3.2.3.4. These figures were amended subsequent to *SPC's* acquisition of *Craig Concrete* in or around 2001, save for *Concrete Units*, whose market share remained at 10%.

3.2.4. As regards the production and supply of precast concrete culverts in the Western Cape region of South Africa, *Concrete Units* and the *Respondents* (in particular, *Infraset* and *Rocla*) agreed to divide/share the market for precast concrete culverts in contravention of section 4(1)(b)(ii) of the Act by-

3.2.4.1. allocating customers/contracts amongst themselves in accordance with their respective percentage market shares of the Western Cape market for precast concrete culverts; and

3.2.4.2. allocating specific territories within the Western Cape to which each firm would supply precast concrete culverts.

3.2.5. Furthermore, *Concrete Units* and those *Respondents* (namely, *Cape Concrete*, *Infraset* and *Rocla*) who were its competitors for the manufacture and sale of precast concrete culverts in the Western

Cape region, agreed that *Cape Concrete* would not compete with *Concrete Units*, *Infraset* and *Rocla* in relation to precast concrete culverts in that region, in contravention of section 4(1) (b)(ii) of the *Act*.

3.2.6. Furthermore, *Concrete Units* and the relevant *Respondents* (namely, *Infraset* and *Rocla*) agreed that *Concrete Units*' would not manufacture any precast concrete pipes in the Western Cape region unless the market reached a predetermined threshold volume, in contravention of section 4(1)(b)(ii) of the *Act*.

3.2.7. The precast concrete pipes market in the Western Cape did not reach the predetermined threshold during the *Period* and consequently, *Concrete Units* never entered this market.


3.3. Collusive Tendering

Concrete Units engaged in collusive tendering in relation to pre-cast concrete pipes and culverts within the Gauteng region and culverts, within the Western Cape region, together with the relevant *Respondents* in each case, in contravention of section 4(1)(b)(iii) of the *Act*.

4.

Admission

The *Commission* and *Concrete Units* agree that, for the duration of the *Period*, the conduct engaged in by *Concrete Units* (as espoused in paragraph 3 above) constitutes a contravention of sections 4(1)(b)(i), 4(1)(b)(ii) and 4(1)(b)(iii) of the *Act*.



5.

Agreement Concerning Future Conduct

- 5.1. The *Parties* record that *Concrete Units'* participation in the conduct that formed the subject matter of the *Complaint* ceased in or about September 2007.
- 5.2. *Concrete Units* undertakes to refrain from engaging in price fixing, fixing of trading conditions, market division and collusive tendering in contravention of sections 4(1)(b)(i), 4(1)(b)(ii) and 4(1)(b)(iii) of the Act, in relation to the manufacture and sale of pre-cast concrete pipes and culverts in South Africa.
- 5.3. Within 6 months from the date of this *Settlement Agreement*, *Concrete Units* agrees to develop, implement, monitor and enforce a competition law compliance programme in order to ensure that its employees, management, directors and agents do not engage in future contraventions of the Competition Act.
- 5.4. *Concrete Units* agrees to make all reasonable efforts to co-operate with the *Commission* in the prosecution of any other party in relation to the *Complaint*. This includes, but is not limited to providing relevant witness statements, giving oral testimony before the *Tribunal*.
- 5.5. *Concrete Units* agrees to provide copies of this *Settlement Agreement* to each of its present directors and during the five-year period following the confirmation of this *Settlement Agreement* by the *Tribunal*, provide a copy to any future director on his or her future appointment and in each case draw the attention of such director to the contents of the *Settlement agreement*.

6.


Administrative Penalty

- 6.1. In terms of section 58(1)(a)(iii) read with sections 59(1)(a), 59(2) and 59(3) of the Act, *Concrete Units* is liable for an administrative penalty.
- 6.2. The *Parties* agree that *Concrete Units* will pay an administrative penalty in the amount of R5 763 743 (five million seven hundred and sixty three thousand, seven hundred and forty three rand), being 7 per cent of *Concrete Units'* turnover for the financial year ending 2008.
- 6.3. *Concrete Units* will pay the administrative penalty within 6 months of the date of the confirmation of this *Settlement Agreement* by the *Tribunal*.
- 6.4. The *Commission* will pay the administrative penalty received from *Concrete Units* into the National Revenue Fund as contemplated by section 59(4) of the Act.

7.

Application to the Tribunal

The *Parties* to this *Settlement Agreement* hereby agree that application be made to the *Tribunal* to have this *Settlement Agreement* confirmed as Consent Order as provided for in section 49D read with section 58(1)(b) of the Act.



8.

Full and Final Settlement

This *Settlement Agreement* is entered into in full and final settlement and upon confirmation as a Consent Order by the *Tribunal*, concludes all proceedings between the *Commission* and *Concrete Units* relating to any alleged contravention by *Concrete Units* of sections 4(1)(b) (i), 4(1)(b)(ii) and 4 (1)(b)(iii) of the Act that are the subject of the *Complaint* and the *Commission's* investigations under case number 2008MAR3595.

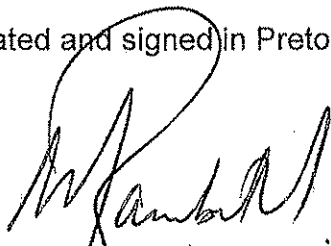
Dated and signed in *Cape Town* on this the *1st* day of *March* 2010.



Managing Director:

Concrete Units (Proprietary) Limited

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



Shan Rampuruth

The Commissioner

Competition Commission