

**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: 51/CR/Aug10

In the matter between:

The Competition Commission Applicant

and

National Scrap Metals (Cape Town) (Pty) Ltd Respondent

Panel : N Manoim (Presiding Member), Y Carrim (Tribunal Member), and M Madlanga (Tribunal Member)

Heard on : 01 December 2010

Decided on : 01 December 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 M Madlanga

'A'

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

CT Case No: 51/CR/Aug10

CC Case No: 2006Aug2447

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

NATIONAL SCRAP METAL (CAPE TOWN) (PTY) LTD

Respondent

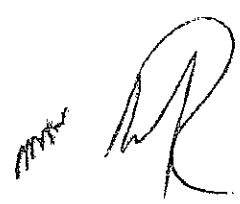
SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND NATIONAL SCRAP METAL (CAPE TOWN) (PTY) LTD IN RESPECT OF CONTRAVENTION OF SECTION 4(1)(B) (ii) OF THE COMPETITION ACT, NO. 89 OF 1998, AS AMENDED

The Competition Commission of South Africa and National Scrap Metal (Cape Town) (Pty) Ltd hereby agree that application be made to the Competition Tribunal for the confirmation of this settlement agreement as an order of the Tribunal in terms of section 58(1) (a) (iii) read with section 59(1) (a) of the Competition Act, No. 89 of 1998, as amended, on the terms set out below.

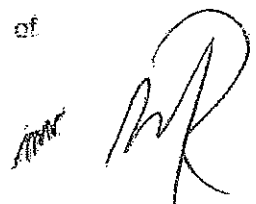
1. Definitions

For the purposes of this settlement agreement the following definitions shall apply:

- 1.1 "the Act" means the Competition Act, No. 89 of 1998, as amended;
- 1.2 "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;
- 1.3 "Cisco supply agreement" refers to the supply agreement entered into between Cisco and NSM on 16 September 1999, and any amendments thereto, which records therein that it terminates on 31 October 2010;
- 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 1st Floor, 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 formal complaint initiated by the Commissioner of the Commission in terms of section 49B of the Act under case number 2006Aug2447 (as extended by the Commission on 8 July 2007) and any other complaints of prohibited conduct arising from the conduct described in this settlement agreement;
- 1.7 "Complaint referral" means the Commission's referral to the Competition Tribunal under case number 51/CR/Aug10.
- 1.8 "Designated area" means the Western Cape, Northern Cape and Namibia;



- 1.9 "DTI" means the Department of Trade and Industry;
- 1.10 "Ferrous metal" refers to metals that include iron and all iron derivatives;
- 1.11 "Ferrous scrap metal" refers to ferrous scrap metal used as an input in the manufacture of steel and steel products;
- 1.12 "Fine Trading" refers to Fine Trading CC;
- 1.13 "L O Rail" refers to L O Rail Scrap Dealers CC;
- 1.14 "National Metal Cape Town" refers to National Metal Cape Town (Pty) Ltd;
- 1.15 "Non-ferrous metal" refers to metals or alloys that are free of iron;
- 1.16 "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, Kullsvier, Cape Town. NSM is a company with limited liability, in which Reclam has a 42.86% shareholding; NSM is engaged in the business of collection and supply of ferrous scrap metal to customers;
- 1.17 "Parties to the agreement" means the Commission and NSM;
- 1.18 "Reclam" refers to 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 283 Oxford Road, Illovo, Johannesburg. Reclam is engaged in the business of collecting, processing and selling of



ferrous and non-ferrous scrap metal;

- 1.19 "Respondent" refers to National Scrap Metal (Cape Town) (Pty) Ltd;
- 1.20 "SAM" refers to 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 2, Cape Town. SAM is involved in the business of collecting, processing and selling ferrous and non-ferrous scrap metal (other than that required for its own smelting purposes), for the sale to local customers and export markets;
- 1.21 "SAM agreement" refers to the agreement entered into between NSM, SAM, Reclam and Cisco on 2 October 2002, and any amendments thereto,;
- 1.22 "Scrap" refers to ferrous and/or non-ferrous scrap metal;
- 1.23 "Settlement agreement" means this agreement duly signed and concluded between the parties to the agreement;
- 1.24 "Shareholders agreement" refers to the sale of business and shareholders agreement dated 1 July 1999 in terms of which Reclam's Cape business and National Metal Cape Town's business were sold to NSM as going concerns, and any amendments thereto;
- 1.25 "Shredded ferrous scrap" means ferrous scrap metal that has been processed through a shredder;
- 1.26 "Suppliers" means suppliers of scrap metal to consumers of scrap metal such as mills and foundries;



1.27 "Tribunal" means the Competition Tribunal of South Africa, a statutory body established in terms of section 28 of the Act, with its principal place of business at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;

1.28 "Universal" refers to Universal Recycling Company (Pty) Limited, a company duly registered in terms of the company laws of the Republic of South Africa with its principal place of business at 4 Bompas Road, Dunkeld West, Johannesburg. Universal is involved in the business of processing, trading and transportation of ferrous and non-ferrous scrap metal.

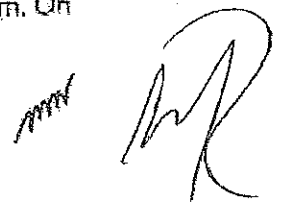
2. The Commission's Investigation

2.1 During August 2006 the Commissioner initiated a complaint, against a number of scrap processors and merchants, including Reclam, SAM, NSM and Cisco, under Case No 2006Aug2447, in respect of alleged prohibited practices in contravention of sections 4 and 5 of the Act.

2.2 The initiation was based on allegations that certain arrangements submitted to the Commission on 21 October 2005 in respect of a large merger filing in which Reclam proposed to acquire the businesses of SAM and its associated company Waste Control (Pty) Ltd, constituted price fixing, market allocation and exclusive dealing in contravention of sections 4(1)(b)(i) and (ii) and 5(1) of the Act respectively, in relation to ferrous and non-ferrous scrap metal.

Extension of the first complaint

2.3 During the course of the investigation, the Commissioner, acting in terms of section 48A of the Act, issued summons against Reclam. On

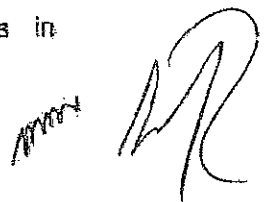


the basis of the information submitted by Reclam to the Commission, the Commission expanded the scope of the investigation under Case No 2008Aug2447 to include collusive tendering in contravention of section 4(1)(b)(iii) against Reclam, NSM, SAM, LO Rail, Universal and Fine Trading.

- 2.4 On 20 July 2007 the Commission obtained search warrants and conducted search and seizures at the premises of Reclam in Johannesburg, Port Elizabeth and Durban. Soon thereafter, the Commission received information that various parties (not including NSM) were engaged in price fixing and collusive tendering in respect of various types of non-ferrous scrap metal. On 8 August 2007 the Commission initiated another complaint (under case number 2007AUG3121) against those parties.
- 2.5 On 22 October 2007 Reclam approached the Commission with a view of settling the above matters and subsequently concluded a settlement agreement with the Commission on 4 April 2008 which was confirmed by the Tribunal on 7 May 2008.
- 2.6 As part of the Commission's investigation, the Commission considered the provisions of the shareholders agreement, the SAM agreement and the Cisco supply agreement.

3. The Commission's findings

- 3.1 The Commission's investigation established the following:
- 3.1.1 Reclam, SAM and NSM are in a horizontal relationship for purposes of section 4(1)(b) of the Act.
- 3.1.2 On 2 October 2000, SAM, NSM, Reclam and Cisco entered into the SAM agreement which allocated territories in



contravention of section 4(1)(b)(ii) in that:

- 3.1.2.1 SAM agreed to exclusively supply all its shredded ferrous scrap sourced within the designated area (other than that required for its own melting activities) to NSM for onward supply to Ciaco or to SAM's smelter thus preventing SAM from supplying other customers within and outside the designated area;
- 3.1.2.2 NSM agreed to obtain processed scrap from SAM or any other supplier in order to meet its contractual obligations to Cisco. NSM was not permitted to purchase unprocessed ferrous scrap arising in the designated area other than from SAM and NSM was not permitted to purchase non-ferrous scrap from any suppliers.
- 3.1.3 The relevant provisions of the SAM agreement provide as follows in this regard:

"4. RECIPROCAL UNDERTAKINGS TO SUPPLY AND PURCHASE

4.1. SAM agrees to supply exclusively to NSM all –

4.1.1. its shredded ferrous scrap (other than such shredded ferrous scrap which it requires for its own melting activities which shall not exceed 6000 MT per month), and NSM agrees to purchase all such shredded ferrous scrap from SAM. Notwithstanding the foregoing SAM shall not be entitled to build a stock pile of shredded ferrous scrap but only to retain such quantities (not exceeding 6000 MT per month) as SAM actually requires for its own melting activities in that month. ...



4.2 NSM will, with effect from the commencement date, subject to 4.9, only purchase processed ferrous scrap arising within the designated area from SAM and/or any other suppliers which can meet the requirements set out in 2.7 and the grade specifications set out in 1.2.2.15 (and in particular which can supply shredded scrap in combination with other grades). In addition, NSM will not purchase unprocessed ferrous scrap arising in the designated area other than from SAM as mentioned in 4.1.3. In addition, NSM will not purchase non-ferrous scrap from any suppliers.

4.3 It is a material term of this agreement that NSM receives from SAM sufficient quantities of ferrous scrap per day as are required by NSM to fulfil its obligations to Cisco and Gearings.

4.4 SAM will, subject to 4.1, supply all ferrous scrap it purchases in the Western Cape, the Northern Cape and Namibia (collectively referred to as 'the designated area') to NSM, on an exclusive basis, in a form processed according to the specified grades."

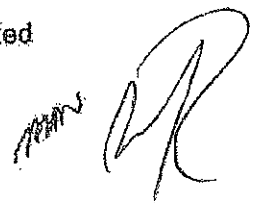
4. Admission of Liability

NSM admits that the clauses of the SAM agreement identified in paragraph 3 above amount to a contravention of section 4(1)(b)(ii) of the Act.

5. Future Conduct

5.1 NSM confirms that:

- 5.1.1 An amending agreement was concluded between the parties to the shareholders agreement on 14 April 2008, in terms of which the restraints and exclusivity provisions were deleted



from the agreement.

5.1.2 On or about 20 June 2008, NSM, Reclam and SAM agreed to the cancellation with immediate effect of the SAM agreement, which formally expired on 30 September 2005, and any agreements or arrangements that may have existed between the parties subsequent thereto.

5.1.3 On 3 July 2008, NSM waived any exclusivity provisions in its favour contained in the Cisco supply agreement and requested that Cisco waive the exclusivity provisions in Cisco's favour. NSM has not been able to procure Cisco's signature to a new and non-exclusive supply agreement but records that the supply of ferrous scrap metal to Cisco (prices and volume) is negotiated and agreed on a monthly basis.

5.2 NSM further undertakes:

5.2.1 to refrain from engaging in conduct of the kind referred to in paragraph 3 above to the extent that it gives rise to a contravention of section 4(1)(b)(ii) of the Act.

5.2.2 to develop and implement a compliance programme, with corporate governance, designed to ensure that all employees are aware of the provisions of the Act and do not contravene them and submit a copy of the said compliance programme to the Commission within 60 days of the date of confirmation of this Agreement as an order of the Tribunal.

5.2.3 to co-operate with the Commission in its prosecutions of parties to the agreements and arrangements (including but not limited to giving evidence at the request of the Commission) which are the subject of the Commission's findings herein.



6. Administrative Penalty

6.1 In terms of section 58(1)(a)(iii), and 59(2) and (3) of the Act, NSM agrees to pay an administrative penalty, in the amount of R17 730 873.60, [seventeen million seven hundred and thirty thousand and nine hundred and seventy three rands and sixty cents] being 5% of NSM's total turnover for the year ended 30 June 2006.

6.2 The penalty will be paid by NSM to the Commission within 6 months of the date of confirmation of this settlement agreement as an order of the Tribunal.

6.3 The relevant banking details for the Commission where the amount has to be paid are:

Name: The Competition Commission Fee Account

Bank: Absa Bank, Pretoria

Account Number: 4050778576

Branch Code: 323 345

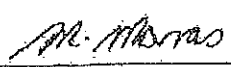
6.4 The penalty will be paid over by the Commission to the National Revenue Fund, referred to in section 59(4) of the Act.

7. Full and Final Settlement

This settlement agreement upon confirmation by the Tribunal is entered into in full and final settlement of the Commission's complaint under case number 2006Aug2447 and complaint referral under case number 51/CR/Aug10 and concludes all proceedings between the Commission and NSM relating to any alleged contraventions of the Act that are the subject of the Commission's complaint and complaint referral.

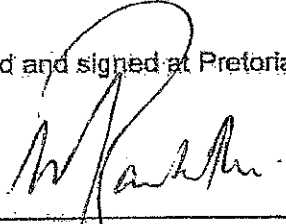


Dated and signed at _____ on the 27th day of October 2010



Chairman
National Scrap Metal (Cape Town) (Pty) Ltd

Dated and signed at Pretoria on the 12 day of October 2010



Mr Shan Ramburuth
Commissioner: Competition Commission

Tebogo Mputle

From: Tebogo Mputle
Sent: Wednesday, December 01, 2010 2:15 PM
To: Claire Reidy; 'd.lotter@bowman.co.za'; 'i.dhladhla@bowman.co.za'; Jabulani Ngobeni
Cc: Lerato Mofaung; Thandi T. Lamprecht; Andrew Masilo; Peter Slack; Justin Balkin; Universal Recycling Company (Pty) Ltd (jkatz@ens.co.za); Japie Jnr; Anthony Norton; anton@nortonsinc.com; Abbedac (sarel@rouxlaw.co.za); Lindy Holtzhausen; Ben Jacobs Iron and Steel (Pty) Ltd (anikani@fluxmans.com); Paul Coetser; TANYA HASKINS; LARA GRANVILLE; Lulama Mtanga; Iona Dhladhla; Rudolph Labuschagne
Subject: CC v Universal; Amalgamated and Abbedac - 51/CR/Aug10
Attachments: 20101201140438134.pdf

Dear Sirs

Please find attached order in the above matter.

Kindly confirm receipt.

Regards

Tebogo Mputle
Registry Administrator
competition tribunal south africa
Tel No: +27 (12) 394 3354
Fax No: +27 (12) 394 4354
Mobile: +27 (82) 557 6897
Email: tebogom@comptrib.co.za
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