

COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA

Case No:
CO190Jan14/018465

In the matter between:

The Competition Commission

Applicant

and

Amsteele Systems (Pty) Ltd

Respondent

Panel : Y Carrim (Presiding Member)
M Mazwai (Tribunal Member)
M Mazwai (Tribunal Member)

Heard on : 13 May 2015

Decided on : 13 May 2015

Order

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



Presiding Member
Ms Y Carrim

Concurring: Ms M Mazwai and Mr A Roskam



competitiontribunal south africa

Form CT 6

About this Form

- This Form is issued in terms of the Competition Tribunal Rules.
- Please indicate in the space provided the nature of your motion, including specific reference to the relevant section of the Act or Tribunal Rules.
- If this Notice of Motion concerns a matter being brought in terms of Division E of Part 4 of the Competition Tribunal Rules, it must comply with the requirements of Competition Tribunal Rule 42(3).

Contacting the Tribunal

The Competition Tribunal
Private Bag X24
Sunnyside
0132
Republic of South Africa
tel: 27 12 394 8300
fax: 27 12 394 0160
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: _____

File # _____

To: The registrar of the Competition Tribunal

competitiontribunal
south africa
2015 -02-11
RECEIVED BY: [Signature]
TIME: 12H45

Concerning the matter between:

COMPETITION COMMISSION

(Applicant)

and AMSTEELE SYSTEMS (PTY) LTD

(Respondent)

Take notice that the COMPETITION COMMISSION
intends to apply to the Tribunal for the following order:

CONFIRMATION OF THE CONSENT ORDER, ATTACHED TO THIS
APPLICATION, IN TERMS OF SECTION 58(1)(b) OF THE
COMPETITION ACT 89 OF 1998

Name and Title of person authorised to sign:

WENDY NDLOVU, HEAD OF LEGAL SERVICES

Authorised Signature: _____

Date: _____

[Signature]

11/02/2015

For Office
Use Only:

Tribunal file number

Date filed:

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA
HELD AT PRETORIA

CT Case No:

CC Case No: 2010Apr5034

In the matter between:

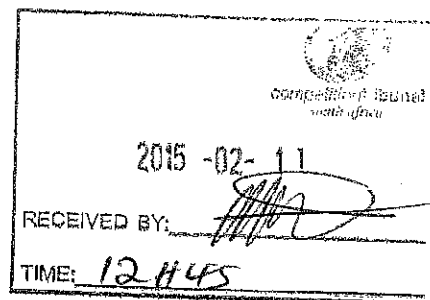
THE COMPETITION COMMISSION

Applicant

and

AMSTEELE SYSTEMS (PTY) LTD

Respondent



CONSENT AGREEMENT IN TERMS OF SECTION 49D READ WITH SECTIONS 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 AMSTEELE SYSTEMS (PTY) LTD IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTIONS 4(1)(b)(i), 4(1)(b)(ii) and 4(1)(b)(iii) OF THE COMPETITION ACT, 1998

The Competition *Commission* and *Amsteele* Systems (Pty) Ltd hereby agree that application be made to the Competition *Tribunal* for confirmation of this consent agreement as an order of the Competition Tribunal in terms of section 49D as read with sections 58(1)(a)(iii) and 58(1)(b) of the Competition Act, 1998 (Act No.89 of 1998), as amended, on the terms set out below:

1. Definitions

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

- 1.1 "Act" means the Competition Act, 1998 (No. 89 of 1998), as amended.
- 1.2 "**Amsteele**" means Amsteele Systems (Pty) Ltd, a company incorporated under the laws of the Republic of South Africa with its principal place of business at Germiston, Gauteng.
- 1.3 "**consent agreement**" means this agreement set out herein, duly signed by the *Commissioner* and *Amsteele*.
- 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 Competition Commissioner of South Africa, the Chief Executive Officer of the *Commission* appointed in terms of section 22 of the *Act*.
- 1.6 "**Complaint**" means the complaint initiated by the *Commissioner* under case number 2010Apr5034 in relation to a possible contravention of sections 4(1)(b)(i) and (iii) of the *Act*.

- 10
- 1.7 **"CLP"** means the Commission's Corporate Leniency Policy.
- 1.8 **"SAPTA"** means the South African Post Tensioning Association, an industry association for the providers of post-tensioning steel in South Africa.
- 1.9 **"the Republic"** means the Republic of South Africa.
- 1.10 **"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 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies street, Sunnyside, Pretoria, Gauteng.

2. Background to the complaint and settlement discussions

- 2.1 On 13 April 2010 the *Commissioner* initiated a *Complaint*, in terms of section 49B(1) of the Act, against Amsteele Tsala-RMS Construction Solutions (Pty) Ltd ("Tsala-RMS"), Freyssinet Posten (Pty) Ltd ("Freyssinet"), Steelforce Systems (Pty) Ltd ("Steelforce") and SAPTA in respect of their involvement in fixing prices and allocating tenders for the supply of post-tensioning steel in contravention of sections 4(1)(b)
- 2.2 The Commission conducted an investigation and found that Tsala-RMS, Freyssinet, Steelforce and Amsteele had entered into an agreement, arrangement and/or understanding which contravened section 4(1)(b).
- 2.3 Following from this complaint, Amsteele engaged the Commission in settlement negotiations which have culminated in this consent agreement.



3. Commission's findings

Upon completion of its investigation into the *Complaint*, the *Commission* found that *Amsteele* had, between the period June 2006 and December 2008, reached and implemented an overarching agreement which involved:

- 3.1 Division of markets by allocating customers in contravention of section 4(1)(b)(ii) of the *Act*. This aspect of the overarching agreement was implemented by meetings and discussions between *Amsteele* and its competitors, *Tsala-RMS* and *Freyssinet* to achieve an outcome of roughly equally shared available tenders for post-tensioning steel;
- 3.2 Collusive tendering in contravention of section 4(1)(b)(iii) of the *Act*. This aspect of the overarching agreement was implemented by:
 - (a) participating in meetings and discussions with competitors, *Tsala-RMS*, and *Freyssinet*, wherein they identified and allocated tenders amongst each other in the provision of post-tensioning steel, and
 - (b) submitted cover pricing bids for each other's allocated projects, and
 - (c) in so doing, achieved an outcome of indirectly price fixing by agreeing on controlled mark-ups and profit margins on tenders with a view to excluding substitutable products (and in particular reinforcing steel bar).
- 3.3 Indirectly agreeing with competitors, *Tsala-RMS*, *Freyssinet* and *Steelforce*, on industry trading terms and conditions in respect of applicable price adjustment formulae for post tensioning contracts in contravention of section 4(1)(b)(i) of the *Act*. This arrangement was reached by participating in meetings and discussions with competitors, *Tsala-RMS*, *Freyssinet* and *Steelforce*, under the auspices of *SAPTA*. The *SAPTA* members agreed upon and implemented an escalation formula and certain conditions of contract. The formula proportioned the mix of labour and materials applicable



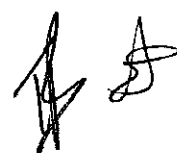
to the post tensioning industry and applied specific indices available from Statistics South Africa.

4. Admission of Liability

Amsteele admits that it engaged in contravention of sections 4(1)(b)(i), 4(1)(b)(ii) and 4(1)(b)(iii) of the Competition Act, as set out in the Commission's Findings in paragraph 3 above. Amsteele, however, cannot provide the detail of all construction projects involved in the admitted conduct described in 3 above. Amsteele is able to provide the list of projects, attached as Annex "A" as Amsteele's best recollection of the projects affected by this conduct.

5. Agreement concerning future conduct

- 5.1 *Amsteele* has been candid in its engagement with the *Commission* and has provided information that has assisted the *Commission* in concluding its investigation. *Amsteele* undertakes to cooperate further with the Commission including providing information and witnesses to assist in the prosecution of the other participants in the cartel.
- 5.2 In so far as the Commission is aware, and has confirmed by *Amsteele*, the conduct that is the subject of this agreement has ceased and *Amsteele* undertakes not to engage in conduct that is in contravention of section 4(1)(b) of the *Act* in future.
- 5.3 *Amsteele* undertakes to develop and implement a compliance programme designed to ensure that its employees, management and directors do not engage in any conduct which constitutes a prohibited practice in terms of the Act, a copy of which programme shall be submitted to the Commission within ninety (90) days of the date of confirmation of this agreement as an order of the Tribunal.

Two handwritten signatures in black ink, one appearing to be a stylized 'A' and the other a stylized 'S'.

6. Administrative penalty

- 6.1 In terms of section 58(1)(a)(iii) of the *Act* read with section 59(1)(a), 59(2) and (3) of the *Act*, and in order to settle the matter *Amsteele* agrees to pay an administrative penalty in the amount of R2 800 000 (Two Million Eight Hundred Thousand Rand).
- 6.2 The above amount is equivalent to 7% of the turnover derived from the manufacture and supply of post-tensioning steel in the financial year ending March 2011 and does not exceed 10% of *Amsteele's* annual turnover in the same year.
- 6.3 *Amsteele* will pay the amount set out in paragraph 6.1 above to the *Commission* in accordance with the following schedule of payments:
- 6.3.1 The first payment of R1 000 000.00 (One Million Rand) to be paid within 30 days of the Tribunal order.
- 6.3.2 The second and final payment of R1 800 000.00 (One Million Eight Hundred Thousand Rand) to be paid on the first anniversary of the first payment.
- 6.4 The penalty amount is to be paid into the bank account of the *Commission*. The *Commission's* banking details are as follows:

Bank:	ABSA Bank
Name of Account:	The Competition Commission Fees
Branch Name:	Pretoria
Branch Code:	323345
Account Number:	4050778576
Reference:	2010Apr5034 (Amsteele Settlement)



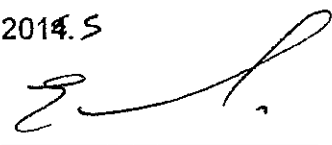
6.5 The *Commission* will pay the penalty amount into the National Revenue Fund in accordance with section 59(4) of the *Act*.

7. Full and final settlement

This *Agreement* is entered into in full and final settlement and upon confirmation thereof as a consent order by the *Tribunal* concludes all proceedings between the *Commission* and *Amsteele* relating to *its* involvement in the conduct that is the subject of the *Complaint* under case number: 2010Apr5034.

FOR AMSTEELE:

Dated and signed at GERMISTON on this the 22 day of JANUARY 2014.5



Signature

Name: ERROL IVOR TESSEMDORF

Capacity: MANAGING DIRECTOR

FOR THE COMMISSION:

Dated and signed at PRETORIA on this the 2nd day of February 2015



Tembinkosi Bonakele
Competition Commissioner



AMSTEELE SYSTEMS (PTY) LTD
List of Affected Contracts (July 2006 - September 2008)

Annexure "A" 17

AMSTEELE TENDER NUMBER	REF. No.	CONTRACT	TENDER VALUE (Bidding Price) (R '000) (EXCL. VAT)	DATE SUBMITTED	WINNING BIDDER	PROJECT DESCRIPTION	CONTRACTOR	CLIENT
S1142	1	Munpen Building- Centurion	148	27-Jul-06	Tsala-RMS	Floor slabs		
S1146	2	Rivonia Square Planet Fitness Pool Slab	121	15-Aug-06	Amstele	Pool slab	C.I.I. Construction	Apex-Hi Properties
S1148	3	Constantia Park Phase V	376	31-Aug-06	Freyssinet	Floor slabs		
S1141	4	ACSA Multi Storey Parkade 2	21 520	18-Sep-06	Freyssinet	Floor slabs		
S1149	5	King Shaka Airport	4 290	29-Sep-06	Tsala-RMS	Floor slabs		
S1155	6	Lampton Shopping Mall	1 274	17-Nov-06	Freyssinet	Floor slabs		
S1154	7	New Taxi Rank , Alexandra	1 623	19-Nov-06	Not Awarded	Floor slabs		
C 1076	8	Third Forest Reservoir 20 Ml Natal	456	20-Nov-06	Amstele	Reservoir	Deroma Structures	City of Umhlatuze
S1156	9	Fury Ford, Midrand	318	26-Nov-06	Tsala-RMS	Floor slabs		
C 1082	10	Barberton Bridges	939	19-Jan-07	Not Awarded	Vehicle Bridge		
C 1083	11	Enqolothi Ulundi	275	25-Jan-07	Amstele	Rail Beams	Blue Print Construction	Kwa-Zulu Department of Transport
C 1080	12	N 17 Bridges - Leandra to Ermelo Bridges	1 424	31-Jan-07	Freyssinet	Vehicle Bridge		
S1159	13	Investec Phase 2 - Lvl 2-9 Lvl7 Beams	1 110	02-Feb-07	Tsala-RMS	Floor slabs		
S1159	14	Investec Phase 2 - Lvl2	2 266	02-Feb-07	Tsala-RMS	Floor slabs		
S1159	15	Investec Phase 2-Lvl 1,3,4,5,6	4 947	02-Feb-07	Tsala-RMS	Floor slabs		
S1163	16	Altech Autopage	81	14-Feb-07	Cancelled	Floor slabs		
S1165	17	Stoneridge Shopping Centre	6 268	22-Feb-07	Tsala-RMS	Floor slabs		
S1168	18	Heathway Shopping Centre	248	07-Mar-07	Amstele	Floor slabs	KNS Construction	Momentum Property Investments (Pty) Ltd
C 1101	19	Holcim Silo - SAME AS C1061	2 220	20-Mar-07	Freyssinet	Silo		
C 1102	20	Lifestyle Crossing West Rand	484	11-Apr-07	Tsala-RMS	Floor slabs		
S1171	21	Wetvreden Reservoir	2 923	12-Apr-07	Amstele	Reservoir floor slab	Safcrete/Bishop Joint Venture	Rand Water
S1173	22	Audi Church Street	1 043	23-Apr-07	Freyssinet	Floor slabs		
S1178	23	Mbombela Stadium	3 217	21-Jun-07	Amstele	Floor slabs	Basli Read Construction	Mbombela Local Municipality
S1180	24	Lazarus Phase 3	226	09-Jul-07	Amstele	Floor slabs	Stocks and Stocks Construction	Atterbury Properties
C 1098	25	Oscar Mpetha Bridge - Khayalitsha	497	23-Jul-07	Not Awarded	Bridge		
S1182	26	Pulco- Pretoria	1 816	27-Jul-07	Freyssinet	Floor slabs		
S1184	27	Inner Circle Offices Morningside	5 247	13-Aug-07	Amstele	Floor slabs	Stocks and Stocks Construction	Veleat Moon Properties 60 (Pty) Ltd
CT395	28	Romney Park	57	13-Aug-07	Amstele	Floor slabs	Vector Construction	Romney Park Hotels
C 1107	29	Kwadabekka Pedestrian Bridge	76	26-Aug-07	Not Awarded	Pedestrian bridge		
S1187	30	Norwood Shopping Centre-250 & 350mm slab	1 751	17-Sep-07	Tsala-RMS	Floor slabs		
S1186	31	Brooklyn Square	123	20-Sep-07	Amstele	Floor slabs	Tristar Construction	Atterbury Properties
S1188	32	Alberton City Extensions	3 865	21-Sep-07	Amstele	Floor slabs	ReImcon Construction	Liberty Group Properties
C 1103	33	Simon Vermooten / Lynwood Rd	625	01-Oct-07	Not Awarded	Vehicle Bridge		
S1189	34	Stonemill Office Park Phase 3	71	05-Oct-07	Tsala-RMS	Floor slabs		
S1185	35	9 Fredman Drive	4 514	24-Oct-07	Freyssinet	Floor slabs		
S1192	36	Action Ford Parking, Rooopdepoort	429	29-Oct-07	Cancelled	Floor slabs		
C 1109	37	Coega Bridge B0006	3 209	30-Oct-07	Tsala-RMS	Vehicle Bridge		
C 1081	38	N 17 Stage 2 - Leandra to Leven Bridges	1 287	10-Dec-07	Freyssinet	Vehicle Bridge		
C 1120	39	Borchards Quarry Interchange	127	06-Feb-08	Amstele	Vehicle Bridge	Vusela Construction	City of Cape Town
S1199	40	Nampak Parking Sandton - REV.1	338	03-Mar-08	Amstele	Floor slabs	ReImcon Construction	Pangbourne Properties (Pty) Ltd
S1203	41	The Glen Shopping Centre' Big Box'	13 062	17-Apr-08	Tsala-RMS	Floor slabs		
S1204	42	Waverley	4 969	24-Apr-08	Freyssinet	Floor slabs		
C 1143	43	King Shaka Airport Interchange	3 685	29-May-08	Tsala-RMS	Vehicle Bridge		
S 1205	44	Cedar Office Park	1 458	06-Jun-08	Not Awarded	Floor slabs		
S 1206	45	Hydra Spes, Stonemill	90	11-Jun-08	Tsala-RMS	Floor slabs		
S1211	46	Monash University, West Rand	308	21-Jul-08	Freyssinet	Floor slabs		
S1221	47	Morning side Shopping Centre - Mezz. Floor	2 273	23-Jul-08	Tsala-RMS	Floor slabs		
S1221	48	Morning side Shopping Centre - U.G Floor	2 072	23-Jul-08	Tsala-RMS	Floor slabs		
S1216	49	KPMG East Campus - REV. 1	2 960	24-Jul-08	Amstele	Floor slabs	Barrow Construction	Old Mutual Properties
S1229	50	McCarthy Menlyn	142	20-Aug-08	Not Awarded	Floor slabs		
CT403	51	Kenilworth Centre	460	10-Nov-08	Amstele	Floor slabs	Steffanuli and Bressan	Fountain Head Properties
C 1075	52	Clinker Silo N.P.C	no information	no information	Tsala-RMS	Silo		
C 1079	53	Diaphragm Wall Durban	no information	no information	Tsala-RMS	Diaphragm wall		
CT400	54	Virage Multi-Storey Apartment Block	2 500	no information	Tsala-RMS	Floor slabs		
C 1068	55	Kalkontein Pedestrian Bridge	no information	no information	Not Awarded	Pedestrian bridge		
C 1065	56	Komati River - Moamba	no information	no information	Not Awarded	Vehicle Bridge		
C1287	57	Clearwater Mall Extensions	9 391	03 March 2009	Freyssinet	Floor slabs		
S1177	58	Piazza, Melrose Arch	2 406	2007/06/15	VSL	Floor slabs		
S1179	59	Klerksdorp Clifmali Shopping Centre	2 100	20-Jul-07	Amstele	Floor slabs	Ludick Construction (Pty) Ltd	Investec
C 1087	60	New England Road Interchange PMB	350	19-Feb-07	Freyssinet	Vehicle Bridge		