



COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No: CR047Aug10/SA009Apr16

In the matter between:

The Competition Commission

Applicant

And

Ton Scrap (Pty) Ltd

Respondent

Panel : Andreas Wessels (Presiding Member)
Andiswa Ndoni (Tribunal Member)
Medi Mokuena (Tribunal Member)

Heard on : 04 May 2016
Last submission received on : 06 May 2016
Decided on : 09 May 2016

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Ton Scrap (Pty) Ltd annexed hereto marked "A", as well as addendum marked "B".



Presiding Member
Mr Andreas Wessels

09 May 2016
Date

Concurring: Ms Andiswa Ndoni and Ms Medi Mokuena

"A"

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA) CR047Aug10/SA009Apr16

CT Case No: 51/CR/Aug10

CC Case No: 2006Aug2447/

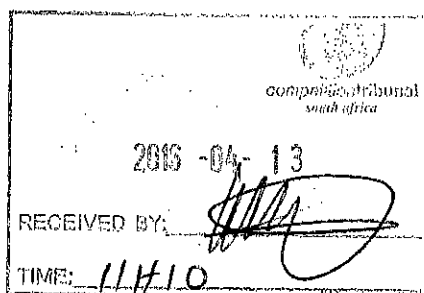
2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

and

TON SCRAP (PTY) LTD



Applicant

Respondent

FILING NOTICE

TAKE NOTICE THAT the applicant herewith files the following:

1. CT 6 Notice of Motion; and
2. Settlement Agreement between the Competition Commission and Ton Scrap (Pty) Ltd.

Signed at Pretoria on this 13th day of April 2016.

COMPETITION COMMISSION

DTI Campus

77 Meintjies Street

Sunnyside, Pretoria

Tel: 012 394 3335

Ref: K. Ayayee / J. Ngobeni

E-mail: korkoia@compcom.co.za /

jabulanin@compcom.co.za

To:

THE REGISTRAR

Competition Tribunal

3rd Floor, Mulayo

The DTI Campus

77 Meintjies Street

Sunnyside, Pretoria

Tel: (012) 394-3300/55

E-mail address: Leratom@comptrib.co.za

AND TO:

COETZEES INC

Respondent's Attorneys

25 Buiten Street

Parys

Tel: 056 811 2136

Ref: Japie Coetzee

Email: J1@Coetz.co.za



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 3300
fax: 27 12 394 0169
e-mail: ctsa@comptrib.co.za

Notice of Motion

Date: 13-Apr-2016 File #

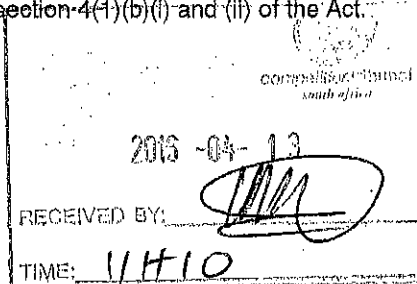
To: The registrar of the Competition Tribunal

Concerning the matter between:

COMPETITION COMMISSION (Applicant)
and TON SCRAP (PTY) LTD (Respondent)

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

Confirmation of the attached settlement agreement between the Applicant and the Respondent, as an order of the Competition Tribunal in terms of section 49D, read with section 58(1)(a)(iii) and section 59(1)(a) of the Competition Act 89 of 1998 as amended ("the Act") in respect of a contravention of section 4(1)(b)(i) and (ii) of the Act.



Name and Title of person authorised to sign:

Chief Legal Counsel: Bukhosibakhe Majenge

Authorised Signature:

Date:

[Signature]

13/04/2016

For Office
Use Only:

Tribunal file number:

Date filed:

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

CT Case No: 51/CR/Aug10

CC Case No: 2006Aug2447/

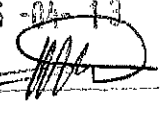
2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

and

TON SCRAP (PTY) LTD

COMPETITION TRIBUNAL SOUTH AFRICA	
2016-04-13	Applicant
RECEIVED BY: 	
TIME: 11H10	Respondent

**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND
TON SCRAP (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 Ton Scrap (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:

- 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 Booysens Reserve Johannesburg and carrying on business as a scrap dealer;
- 1.3. **"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;
- 1.4. **"Ben Jacobs Iron and Steel"** 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;
- 1.5. **"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 Mentjie Street, Sunnyside, Pretoria, Gauteng;

- 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 Ton Scrap;

- 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. **"Respondent"** or **"Ton Scrap"** refers to Ton Scrap (Pty) Ltd; In paragraph 3 of its answering affidavit the sixth respondent ("Ton Scrap") states that it has changed its name to *"Nieuwco (Pty) Ltd"*. Consequently on 19 April 2011, the Commission brought an application to correct and substitute the citation of the sixth respondent as cited in the referral with *"Nieuwco (Pty) Ltd"*. This application has not been opposed by Ton Scrap and is yet to be decided upon by the Tribunal.
- 1.19. **"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;
- 1.20. **"Scrap"** refers to ferrous or non-ferrous scrap metal that can be used as an input in the manufacture of metal products;
- 1.21. **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and Ton Scrap;
- 1.22. **"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;

- 1.23. "Supplier" means suppliers of scrap metal to consumers of scrap metal such as mills and foundries;
- 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 dtl Campus, 77 Menfile 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 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 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 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 Rail 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 Iron and Steel 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.

2.8. Furthermore, it came to the attention of the Commission that Ton Scrap was not cited in any of the previous initiations despite the fact that the Commission's investigations revealed that Ton Scrap colluded with the firms identified in paragraph 2.6 above in contravention of section 4(1)(b)(i) and 4(1)(b)(ii) of the Competition Act. On 9 July 2010, the Commissioner amended the second complaint initiation (under case number 2007Aug3121) to include Ton Scrap.

3. The Commission's findings

3.1. The Commission found that from the period prior to the coming into effect of the Act until early 2008, Ton Scrap together with other large scrap merchants, namely: Reclam, Ben Jacobs Iron and Steel, 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;

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 Iron and Steel, 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. As with regard to market allocation the Commission found 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, usually based on the generator's geographical location.

3.5.3. 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.
- 3.8. With the exception of Ben Jacobs Iron and Steel, all the other respondents and the Commission have concluded settlement agreements which settled, as between them, the conduct which formed the subject matter of the complaints and the conduct described above.

4. Admission of liability

- 4.1. Ton Scrap 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. Ton Scrap 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. Ton Scrap confirms that it has ceased the conduct referred to in clause 4 above and agrees to:

5.1.1. fully cooperate with the Commission in its prosecution of the remaining respondents under the referral complaint. This co-operation includes, but is not limited to:

5.1.1.1. providing documentary evidence , which in its possession or under its control concerning the alleged contraventions contained in this Settlement Agreement; and

5.1.1.2. availing employees of Ton Scrap, and using reasonable endeavours to contract past employees of Ton Scrap, to assist the Commission in the alleged contraventions covered by this Settlement Agreement.

5.2. Ton Scrap 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 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

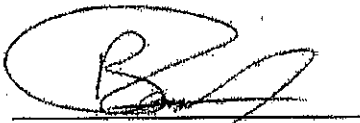
- 6.1. Having regard to the provisions of sections 58(1)(a)(iii) as read with sections 59(1)(a), 59(2) and 59(3) of the Competition Act, Ton Scrap accepts that it is liable to pay an administrative penalty.
- 6.2. The parties have agreed that Ton Scrap will pay an administrative penalty in the amount of R3 500 000 (three million five hundred thousand rand) being 5% of Ton Scrap's total annual turnover in respect of ferrous scrap metal for the financial year ended 28 February 2005.
- 6.3. Ton Scrap will pay the amount set out in paragraph 6.2 above to the Commission within six (6) months from the date of confirmation of this Settlement Agreement as an order of the Tribunal
- 6.4. The penalty must be paid into the Commission's bank account which details is as follows:
- | | |
|------------------------|---|
| Name: | The Competition Commission Fee Account |
| Bank: | Absa Bank, Pretoria |
| Account Number: | 4050778576 |
| Branch Code: | 323 345 |
| Reference: | Ton Scrap / 2007Aug3121 |
- 6.5. 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 Ton Scrap 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.

Dated and signed at VERENIGING on the 30 day of MARCH 2016

For Ton Scrap (Pty) Ltd

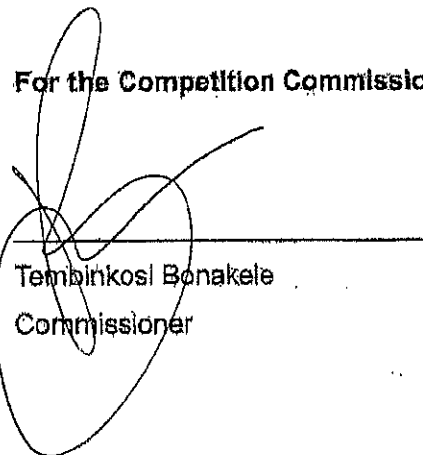


B. Nieuwenhuizen

Chief Executive Officer (duly authorised)

Dated and signed at PRETORIA on the 12 day of APRIL 2016

For the Competition Commission



Tembinkosi Bonakele
Commissioner

" B "

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

CT Case No: CR047Aug10 / SA009Apr16

CC Case No: 2006Aug2447 / 2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

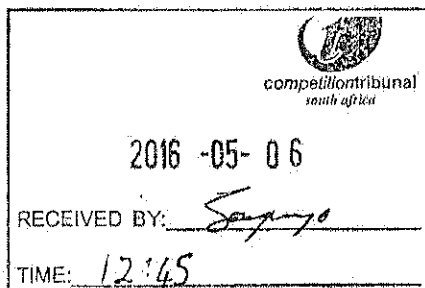
TON SCRAP (PTY) LTD

Respondent

FILING NOTICE

TAKE NOTICE THAT the applicant herewith files the addendum to the Settlement Agreement between the Competition Commission and Ton Scrap (Pty) Ltd.

Signed at Pretoria on this 06 day of May 2016.



COMPETITION COMMISSION

DTI Campus

77 Meintjies Street

Sunnyside, Pretoria

Tel: 012 394 3335

Ref: K. Ayayee / J. Ngobeni

E-mail: korkoia@compcom.co.za /

labulanin@compcom.co.za

To: **THE REGISTRAR**
Competition Tribunal
3rd Floor, Mulayo
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77 Meintjies Street
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E-mail address: Leratom@comptrib.co.za

AND TO: **COETZEES INC**
Respondent's Attorneys
25 Bulten Street
Parys
Tel: 056 811 2136
Ref: Japie Coetzee
Email: J1@Coetz.co.za

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

(HELD IN PRETORIA)

CT Case No: CR047Aug10 / SA009Apr16

CC Case No: 2006Aug2447 / 2007Aug3121

In the matter between:

THE COMPETITION COMMISSION

and

TON SCRAP (PTY) LTD

 competitiontribunal south africa	
2016 -05- 06	
RECEIVED BY:	<i>Sengiso</i>
TIME:	12:45

Applicant

Respondent

ADDENDUM TO THE SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION AND TON SCRAP (PTY) LTD IN RESPECT OF AN ALLEGED CONTRAVENTION OF SECTION 4(1)(B)(I) AND SECTION 4(1)(B)(II) OF THE COMPETITION ACT NO. 89 OF 1998, AS AMENDED

Amendment of clause 3.5 of the settlement agreement

Clause 3.5 of the settlement agreement between the Competition Commission and Ton Scrap (Pty) Ltd dated 12 April 2016 is hereby amended to read as follows:

3.5. In respect of market allocation, the Commission found representatives of the large scrap 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.

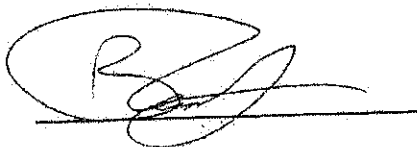
3.5.2. In these meetings the large scrap merchants reached an understanding that their market shares and margins would be kept constant.

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.

Dated and signed at Pretoria on this 4 day of May 2016

FOR TON SCRAP (PTY) LTD



B. Nieuwenhuizen

Chief Executive Officer (duly authorised)

Dated and signed at Pretoria on this 15 day of May 2016

FOR THE COMPETITION COMMISSION



Tembinkosi Bonakele
Competition Commissioner