



**COMPETITION TRIBUNAL
REPUBLIC OF SOUTH AFRICA**

Case No: CO303Mar18

In the matter between:

The Competition Commission

Applicant

And

Blurock Quarries (Pty) Ltd

First Respondent

Procon Precast CC

Second Respondent

Panel	:	E Daniels (Presiding Member) I Valodia (Tribunal Member) M Mokuena (Tribunal Member)
Heard on	:	22 March 2018
Last submission	:	23 March 2018
Decided on	:	23 March 2018

Consent Agreement

The Tribunal hereby confirms the consent agreement as agreed to and proposed by the Competition Commission and Blurock Quarries (Pty) Ltd and Procon Precast CC annexed hereto marked "A".

**Presiding Member
Mr Enver Daniels**

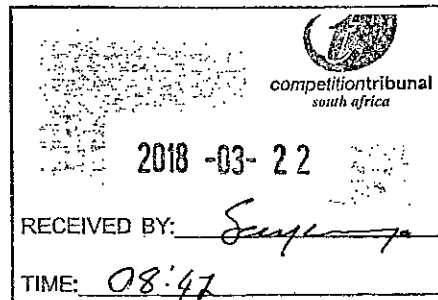
23 March 2018
Date

Concurring: Prof. Imraan Valodia and Mrs Medi Mokuena

"A"

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IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA



CT CASE NO:

CC CASE NO: 2015Oct0576

In the matter between

COMPETITION COMMISSION OF SOUTH AFRICA

Applicant

and

BLUROCK QUARRIES (PTY) LTD

First Respondent

PROCON PRECAST CC

Second Respondent

**CONSENT AGREEMENT BETWEEN THE COMPETITION COMMISSION,
BLUROCK QUARRIES (PTY) LTD AND PROCON PRECAST CC IN RESPECT OF
THE ALLEGED CONTRAVENTION OF SECTIONS 8(c) AND 9(1) OF THE
COMPETITION ACT NO. 89 OF 1998, AS AMENDED**

The Competition Commission of South Africa, Blurock Quarries (Pty) Ltd and Procon Precast CC hereby agree that an application be made to the Competition Tribunal of South Africa for confirmation of this Consent Agreement as an order of the Competition Tribunal in terms of section 49D read with sections 27(1)(d) and 58(1)(b) of the Competition Act No. 89 of 1998, as amended, on the terms set out below:

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1 DEFINITIONS

The following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings in this Consent Agreement:

- 1.1 **"Act"** means the Competition Act, No.89 of 1998 (as amended);
- 1.2 **"Blurock"** means Blurock Quarries (Pty) Ltd, a private company with limited liability duly registered and incorporated in accordance with the laws of the Republic of South Africa, with its business premises situated at Alfred Street, Estcourt, KwaZulu-Natal;
- 1.3 **"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, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 **"Commissioner"** means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.5 **"Complaint"** means the complaint initiated by the Commissioner in terms of section 49B of the Act under Competition Commission case number 2015Oct0576;
- 1.6 **"Consent Agreement"** means this agreement duly signed and concluded between the Commission and the Respondents;

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- 1.7 **"DMR"** means the Department of Minerals and Resources;
- 1.8 **"LED"** means the Local Economic Development programme which is one of the programmes under the Social Labour Plan as required by the DMR;
- 1.9 **"Procon"** means Procon Precast CC, a subsidiary of Blurock and a company duly registered and incorporated in accordance with the laws of the Republic of South Africa with its business premises situated at 14 Bank Road, Estcourt, KwaZulu-Natal;
- 1.10 **"SLP"** means the Social Labour Plan which is a regulatory requirement document introduced by the DMR in terms of the Mineral and Petroleum Resources Development Act 28 of 2002;
- 1.11 **"Respondents"** means Blurock and Procon collectively, being the firms cited in the complaint initiation;
- 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, the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng.

2 THE COMMISSION'S INVESTIGATION AND FINDINGS

- 2.1 On or about 15 October 2015, the Commissioner initiated a complaint against Blurock and its subsidiary Procon for allegations of excessive pricing, margin

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squeeze and price discrimination in contravention of sections 8(a), 8(c) and 9(1) of the Act. These abuse of dominance practices cover the supply of crusher dust as well as the manufacture and supply of bricks and blocks in the geographic market of Estcourt and surrounding areas in KwaZulu Natal (This is approximately 80km radius from the Respondents).

2.2 Crusher dust is an essential input in the downstream manufacture of concrete products such as bricks and blocks.

2.3 Blurock is the only supplier of crusher dust in Estcourt and is vertically integrated into block and brick manufacturing through Procon. Procon is active in the manufacture and supply of *inter alia* concrete bricks, building bricks and retaining blocks in Estcourt and surrounding areas. The different types of bricks and blocks which Procon manufactures includes those known as M90, M140, M190 and MBX.

2.4 The customers of crusher dust include *inter alia* block or brick manufacturers, construction companies, government departments or municipalities, asphalt companies, ready mix companies, hardware stores and the individual consumers.

2.5 In the complaint initiation, it is alleged that:

2.5.1 Blurock charges Estcourt based ("local") customers of crusher dust excessive prices and Procon charges local customers of bricks and blocks excessive prices in contravention of section 8(a) of the Act;

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2.5.2 Blurock supplies crusher dust to its subsidiary Procon at reduced or preferential rates/prices allowing the latter to sell at a greater margin and subsequently squeeze competitors out of the market (margin squeeze) in contravention of section 8(c) of the Act; and

2.5.3 Blurock sells crusher dust at higher prices to local customers and at lower prices to customers outside Estcourt in contravention of section 9(1) of the Act.

2.6 The Commission conducted an investigation of the complaint for the period 2013-2016 and found that the conduct of Blurock and Procon amounts to margin squeeze in contravention of section 8(c) of the Act and price discrimination in contravention of section 9(1) of the Act.

Margin Squeeze

2.7 In respect of section 8(c) contravention, the Commission found *inter alia* that:

2.7.1 Blurock charges Procon and other block manufacturers based outside Estcourt lower prices per ton for crusher dust whilst it charges local block manufacturers who compete directly with Procon significantly higher prices. In particular, Blurock charges Procon and other block manufacturers based outside Estcourt between [R...] to [R...] per ton for crusher dust whilst it charges local block manufacturers who compete directly with Procon [R...] per ton for crusher dust.

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2.7.2 The lower crusher dust prices allowed Procon to sell its blocks at greater margin and further increased Procon's competitors' costs of producing blocks. The margins of Procon's rivals were squeezed during the period 2015 and 2016.

2.7.3 Charging these differential prices is exclusionary as it impedes or prevents block manufacturers who compete with Procon from expanding within the block manufacturing market and raises substantial foreclosure concerns. The Commission's investigation revealed that the Respondents' conduct coincided with the entry of four block manufacturers in the local market during 2014 and that two of the four block manufacturers have since exited the market.

2.7.4 The Commission's investigation further revealed that this conduct has resulted in manufacturers who compete with Procon in and around Estcourt selling blocks at higher prices (approximately [R...] per block whilst Procon charges [R...] per block) specifically in respect of the M140 blocks which are alleged to be in greater demand compared to other types of blocks. The M140 crusher block is used *inter alia* by individual consumers to build their homes and is also the most preferred type by Kwazulu Natal's local government and contractors involved in low cost housing projects within the relevant geographic market.

Price Discrimination

2.8 In respect of section 9(1) contravention, the Commission found *inter alia* that:

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2.8.1 Blurock charges customers located outside Estcourt or away from Procon (who do not pose a competitive constraint on Procon) lower prices per ton for crusher dust whilst it charges local customers in close proximity to Procon (who pose a significant competitive constraint on Procon) higher prices per ton in respect of crusher dust.

2.8.2 The Commission's investigation revealed that whilst Blurock charged Procon and other block manufacturers located outside Estcourt a price per ton of crusher dust of [R...] in 2014, [R...] in both 2015 and 2016, it comparatively charged Estcourt based block manufacturers for the same product substantially higher prices of [R...] in 2014 and R216 in both 2015 and 2016.

2.8.3 The price per ton of crusher dust charged to Estcourt based block manufacturers was therefore higher by approximately 122% in 2014 and 260% in 2015 and 2016 compared to what Blurock charged Procon and other block manufacturers located outside Estcourt.

Blurock's LED programme

2.9 Blurock developed its LED programme in 2010/2011 when it was applying for a mining right. The LED programme was incorporated in Blurock's SLP document which was submitted to the DMR. The SLP has to be submitted by applicants of mining rights and its objectives are to promote employment and advance the social and economic welfare of all South Africans and contribute to the

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transformation of the mining industry, and ensure that all holders of mining rights contribute towards the socio-economic development of the areas in which they are operating.

2.10 In its LED programme Blurock selected certain block manufacturers to be part of the programme and its selection criteria covered 100% local black owned manufacturers who purchase crusher dust in small volumes, have potential to grow, have existing business plans and with a focus on increasing employment. Blurock's current LED beneficiaries include block manufacturers Wembezi Uqobo Blocks and Skhuni J.T Enterprises.

3 ADMISSIONS/UNDERTAKINGS

3.1 The Respondents admit that Blurock supplies crusher dust to Procon and other firms located outside of Estcourt at lower prices and supplies crusher dust to firms based in Estcourt and who directly compete with Procon at significantly higher prices.

3.2 However, Blurock and Procon do not admit that the above conduct constitutes a contravention of sections 8(c) and 9(1) of the Act. Nevertheless, the Respondents have agreed to a pricing remedy to address the competition concerns arising from the abovementioned conduct, which remedy is set out more fully in clause 4 below.

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4 PRICING REMEDY FOR CRUSHER DUST

- 4.1 The parties agree that Blurock shall set the price of crusher dust at cost plus capped reasonable margin of [...] for a 1 year period immediately following confirmation of this Consent Agreement by the Tribunal.
- 4.2 The parties agree that Blurock shall set the price of crusher at cost plus a capped reasonable margin of [...] for a period of 4 years following the expiry of the 1 year period mentioned in clause 4.1 above.
- 4.3 Blurock undertakes to sell crusher dust to Procon and Procon's competitors in all geographic locations on terms and conditions that are non-discriminatory as regards price, volumes and quality.
- 4.4 Blurock shall publish its crusher dust prices and communicate the applicable discounting structure to all customers annually.

Blurock's LED Programme

- 4.5 In order to provide redress for the exclusion of local block manufacturers from its LED programme, Blurock shall appoint at least 50% of qualifying small block manufacturers from the Estcourt area.

5 AGREEMENT CONCERNING FUTURE CONDUCT

- 5.1 The Respondents further agree and undertake to:

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- 5.1.1 refrain from engaging in margin squeeze and price discrimination in contravention of sections 8(c) and 9(1) of the Act;
- 5.1.2 prepare and circulate a statement summarising the contents of this Consent Agreement to its customers, employees and to its directors within one month after the date of confirmation of this Consent Agreement as an order of the Tribunal;
- 5.1.3 develop, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that that its employees, management and directors do not engage in any conduct which constitutes a prohibited practice in terms of the Act; and
- 5.1.4 submit a copy of the compliance programme to the Commission within 3 months of confirmation of this Consent Agreement by the Tribunal.

6 MONITORING

- 6.1 The pricing remedy will be valid for a period of 5 years following confirmation of this Consent Agreement by the Tribunal.
- 6.2 During the subsistence of this Consent Agreement, Blurock shall:
 - 6.2.1 within 4 months following the end of each relevant financial year, provide the Commission with an independently audited report detailing

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compliance with the pricing remedy and undertaking to include Estcourt based block manufacturers to its LED programme.

6.2.2 on 15 days' prior written request by the Commission, grant the Commission access within business hours to such information, including audit reports contemplated in clause 6.2.1 above, that is necessary to demonstrate its compliance with the terms of this Consent Agreement.

6.2.3 include in its financial statements a statement signed by the Chief Executive Officer or responsible person that it has in all material respects complied with this Consent Agreement for the relevant financial year.

6.3 The Commission may, after the lapsing of the 5 year period mentioned in clause 6.1 above and on 15 days' prior written request, require Blurock to furnish a written report on the crusher dust prices and discounts offered to all its customers within a defined period of time.

7 VARIATION

7.1 The Commission or Blurock may at any time on good cause shown approach the Tribunal for the terms of this Consent Agreement to be revised, lifted or amended.

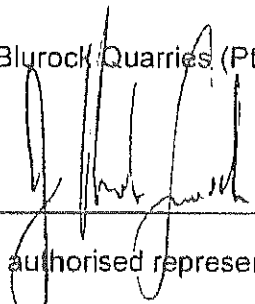
8 FULL AND FINAL SETTLEMENT

8.1 This Consent Agreement, upon confirmation thereof as an order by the Tribunal is in full and final settlement and concludes all proceedings between the

Commission and the Respondents in relation to the alleged contravention by the Respondents of sections 8(c) and 9(1) of the Act that is subject of the complaint initiation and the Commission's investigation under Commission case number 2015Oct0576.

Dated and signed at ESTERHART on the 16 day of FEBRUARY 2018

For Blurock Quarries (Pty) Ltd and Procon Precast CC

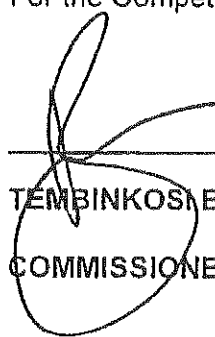

Duly authorised representative of

BLUROCK QUARRIES (PTY) LTD AND PROCON PRECAST CC

Full Names JEREMY HUNTER-SMITH.

Dated and signed at Pretoria on the 27th day of February 2018

For the Competition Commission


TEMBINKOSI BONAKELE

COMMISSIONER