

COMPETITION TRIBUNAL OF SOUTH AFRICA

Case No:
CR093Jan07/SA082Aug19

In the matter between:

Competition Commission

Applicant

And

Hendok (Pty) Ltd

Respondent

Panel : E Daniels (Presiding Member)
: Y Carrim (Tribunal Panel Member)
: A Ndoni (Tribunal Panel Member)
Heard on : 18 September 2019
Decided on : 18 September 2019

Settlement Agreement

The Tribunal hereby confirms the settlement agreement as agreed to and proposed by the Competition Commission and Hendok (Pty) Ltd annexed hereto marked "A".



Presiding Member
Mr Enver Daniels

18 September 2019
Date

Concurring: Ms Yasmin Carrim and Ms Andiswa Ndoni

IN THE COMPETITION TRIBUNAL OF SOUTH AFRICA

HELD IN PRETORIA

CT CASE NO: 09/CR/Jan07; 63/CR/SEP09

In the matter between:

THE COMPETITION COMMISSION

Applicant

and

HENDOK (PTY) LTD

Respondent

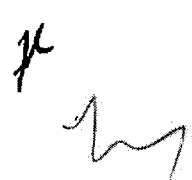
**SETTLEMENT AGREEMENT BETWEEN THE COMPETITION COMMISSION
AND HENDOK (PTY) LTD**

The Competition Commission and Hendok (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 49D read with section 58(1)(b) of the Competition Act no. 89 of 1998, as amended, in respect of contraventions of section 4(1)(b) of the Act.

1 DEFINITIONS

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

- 1.1 "Act" means the Competition Act, 1998 (Act No. 89 of 1998), as amended;
- 1.2 "Barnes" means Barnes Fencing Industries (Pty) Ltd, Dunrose (Pty) Ltd and F&G Quality Tubes (Pty) Ltd



- 1.3 **"Commission"** means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its offices at 1st Floor, Mulayo Building (Block C), the dti Campus, 77 Meintjies Street, Sunnyside, Pretoria, Gauteng;
- 1.4 **"CWI"** means Consolidated Wire Industries Limited;
- 1.5 **"Hendok"** means Hendok (Pty) Ltd, a private company incorporated in accordance with South African laws (registration number 1966/011770/07) which has its principal place of business at 200 Aberdare Drive, Phoenix Industrial Park, Durban, Kwa-Zulu Natal;
- 1.6 **"Other Respondents"** means Cape Gate (Pty) Ltd, Allens Meshco (Pty) Ltd, Wireforce Steelbar (Pty) Ltd, Agriwire (Pty) Ltd, Agriwire North (Pty) Ltd, Agriwire Upington (Pty) Ltd, Cape Wire (Pty) Ltd, Forest Wire (Pty) Ltd, Independent Galvanising (Pty) Ltd, Associated Wire Industries (Pty) Ltd and CWI;
- 1.7 **"Settlement Agreement"** means this agreement duly signed and concluded between the Commission and Hendok;
- 1.8 **"Parties"** means the Commission and Hendok; and
- 1.9 **"Tribunal"** means the Competition Tribunal of South Africa, a statutory body established in terms of section 26 of the Act, with its offices at 3rd Floor, Mulayo building (Block C), the dti Campus, 77 Meintjies Street,



Sunnyside, Pretoria, Gauteng.

2 BACKGROUND

- 2.1 On 19 December 2003, Barnes filed a complaint against certain firms including Hendok, alleging that Hendok and some of its competitors¹ engaged in collusive conduct.
- 2.2 On 15 January 2007, the Commission referred Barnes' complaint against, amongst others, Hendok ("the 2007 Referral") for alleged contravention of section 4(1)(b)(i) of the Act.
- 2.3 On 28 July 2008, CWI applied for corporate leniency for its involvement in certain cartel activity in the wire industry. Based on this information, the Commission initiated a complaint against various firms, including Hendok, and began investigating the matter.
- 2.4 On 7 September 2009, the Commission concluded its investigations and referred its findings to the Tribunal. The Commission found that Hendok and the Other Respondents had contravened section 4(1)(b) of the Act ("the 2009 Referral").²

¹ Allens Meshco, Hendok, Galvwire, Independent Galvanising, Associated Wire Industries (AWI) ("the Other Respondents in the 2007 Referral").

² The 2007 referral (Tribunal case: 09/CR/JAN07) and 2009 referral (Tribunal case 63/CR/SEP09) were later consolidated as they related to similar conduct and respondents.



3 COMMISSION'S REFERRAL

- 3.1 In its 2007 Referral, the Commission alleged that from at least 1 September 2000, Hendok and some of its competitors³ contravened section 4(1)(b)(i) of the Act by fixing the price of nails. This was achieved through the exchange of agreed price lists;
- 3.2 The 2009 Referral alleges that from 2001 to about 2008, Hendok had met, through its authorized representatives,⁴ and corresponded with representatives of the Other Respondents, on numerous occasions, to fix their selling prices in South Africa of wire and wire related products.⁵ Prices were fixed by agreeing on a common national price list and certain discounts that may be deducted from the national price list.⁶
- 3.3 In addition, the Referral alleges that from 2006 to 2008, Hendok and the Other Respondents allocated customers for wire and wire related products by agreeing to share customers, not compete for each other's "traditional" customers or not to sell into certain geographic areas.⁷

³ Allens Meshco, Hendok, Independent Galvanising and AWI.

⁴ For example, Mr Rick Allen who also represented Allens Meshco (Pty) Ltd, Wireforce Steelbar (Pty) Ltd, Agriwire (Pty) Ltd, Agriwire North (Pty) Ltd, Agriwire Upington (Pty) Ltd, Cape Wire (Pty) Ltd, Forest Wire (Pty) Ltd, Independent Galvanising (Pty) Ltd, Associated Wire Industries (Pty) Ltd.

⁵ Including products such as diamond mesh fencing, nails and barbed wire. For further detail, please see Annex "NN2" to the Referral. The relevant products produced by Hendok that were included in the collusion can be found at Annex "NN3" to the Referral.

⁶ Para 28 of the Referral.

⁷ Para 29 of the Referral.



3.4 Finally, the Referral alleges that from 2001 to 2008, Hendok and the Other Respondents, agreed on certain firms tendering collusively by co-ordinating their respective bids or deciding not to bid for the supply of cable armouring. These firms are alleged to have coordinated their bids to ensure that an allocated respondent was awarded certain tenders. These tenders were the Malasela Technologies tender, the Africa Cables tender⁸ as well as the 2001 Harmony Gold tender.

3.5 The Referral alleges that the above conduct contravened sections 4(1)(b)(i), (ii) and (iii) of the Act.

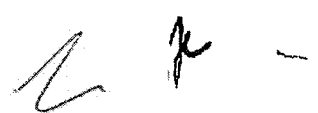
4 ADMISSION

4.1 Hendok admits that it had engaged in conduct in contravention of section 4(1)(b)(i) of the Act.

5 CO-OPERATION

5.1 Hendok agrees to fully cooperate with the Commission in its prosecution of the remaining respondents in the above collusive conduct. This co-

⁸ Not involving Cape Gate (Pty) Ltd.



operation includes, but is not limited to:

- 5.1.1 To the extent that it is in existence, provide evidence, written or otherwise, which is in its possession or under its control, concerning the alleged contraventions as set out in the Referrals;
- 5.1.2 Avail employees of Hendok, and using reasonable endeavours to contact past employees of Hendok, to assist the Commission in the prosecution of the alleged contraventions as set out in the Referrals; and
- 5.1.3 To the extent that it is able, testify in respect of the alleged contraventions as set out in the Referrals.

6 FUTURE CONDUCT

Hendok agrees and undertakes to:

- 6.1 prepare and circulate a statement summarising the content of this agreement to its, managers and directors within 14 (fourteen) days of the date of confirmation of this Settlement Agreement as an order of the Tribunal;
- 6.2 if not already doing so, implement and monitor a competition law compliance programme incorporating corporate governance designed to ensure that its employees, management, directors and agents do not



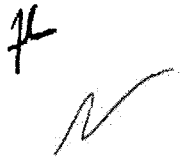
engage in future contraventions of the Act. In particular, such compliance programme will include mechanisms for the monitoring and detection of any contravention of the Act. Hendok undertakes to engage proactively with the Commission within 30 days of this settlement being confirmed by the Tribunal, to assess any existing programme and further developments of its internal programme. This programme will be submitted to the Commission.; and

- 6.3 refrain from engaging in any contraventions of the Act.

7 ADMINISTRATIVE PENALTY

- 7.1 After considering the factors in section 59(3) of the Act, as well as the role of Hendok in the contraventions alleged in the Referral, the Commission and Hendok agree an appropriate administrative penalty of R 5 001 364.34 (five million one thousand three hundred and sixty four rand and thirty four cents) will be paid by Hendok in full and final settlement of the complaint referrals.

- 7.2 Hendok will pay an administrative penalty over five years from the date when this settlement agreement is made an order of the Tribunal. Hendok agrees to pay the administrative penalty in five equal annual instalments of R1 000 272.87. . The first instalment shall be paid within one year from the date of the Tribunal Order, and thereafter on or within each successive anniversary of the date of the confirmation of this settlement agreement by



the Tribunal.

7.3 No interest will be levied upon the administrative penalty for the first twelve months from the date on which this settlement agreement is made an order of the Tribunal. Thereafter, interest on the remaining outstanding amounts will be levied at the prevailing interest rate on debts owed to the State in terms of section 80(1)(b) of the Public Finance Administration Act 1999, as amended.

7.4 Payment of the above administrative penalty shall be made into the Commission's bank account, details of which are as follows:

Bank name:	Absa Bank
Branch name:	Pretoria
Account holder:	Competition Penalties Account Commission
Account number:	40-8764-1778
Account type:	CALL ACCOUNT
Branch Code:	638056
Reference:	63/CR/SEP09(Hendok)

7.5 The administrative penalty shall be paid over by the Commission to the National Revenue Fund in accordance with section 59(4) of the Act.

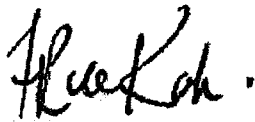


8 FULL AND FINAL SETTLEMENT

8.1 This Settlement Agreement is entered into in full and final settlement of the specific conduct set out in the referrals and, upon confirmation by the Tribunal, concludes all proceedings between the Commission and Hendok in respect of this conduct in relation to referrals under Tribunal number 09/CR/Jan07 and 63/CR/SEP09.

For Hendok

Dated and signed at Durban on the 5th day of June 2019



Name: FREDERIK ROBERT DE KOCK.

Designation: Proxy

For the Commission

Dated and signed at TSHWANE on the 18th day of June 2019



TEMBEKA SI BONAKELE

Commissioner